

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

J.W., individually and on behalf of minor :
children C.W., D.W. and M.W.; S.H., :
individually and on behalf of minor children :
C.H. and D.H; C.H., individually and on :
behalf of minor child M.J.L.; N.J., :
individually and on behalf of minor :
children J.J. and J.K.; R.M., individually :
and on behalf of minor child M.M.; C.A., :
individually and on behalf of minor child :
F.J.A., :

Petitioners, :

v. :

No. _____ 2021

Acting Secretary of the Pennsylvania :
Department of Health, Allison Beam :

Respondent. :

PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT

Petitioners (“Petitioners”), by and through its attorneys, Tucker R. Hull, Esquire and J. Chadwick Schnee, Esquire of the Law Office of Tucker R. Hull, LLC, submits the following Petition for Review in the Nature of a Complaint (“Petition”) against Respondent Acting Secretary of the Pennsylvania Department of Health Allison Beam, and avers as avers as follows:

JURISDICTION

1. This Court has original jurisdiction over this matter pursuant to 42 Pa.C.S. § 761(a)(1).

2. This Court has appellate jurisdiction over this matter pursuant to 42 Pa.C.S. § 5105(a)(1), to the extent that the August 31, 2021 Order (“Order”) issued by Respondent Acting Secretary of the Department of Health Allison Beam (“Respondent”) is capable of being appealed. (The Order is attached hereto as Exhibit A.)

NATURE OF THE CASE

3. Count I of this action seeks a declaratory judgment pursuant to 42 Pa.C.S. § 7531 *et seq.* that the Order does not apply to any county in which a health department is located.

4. Count II of this action seeks a declaratory judgment pursuant to 42 Pa.C.S. § 7531 *et seq.* that Respondent lacks the authority to require all students to wear face masks under the Disease Prevention and Control Law of 1955, 35 P.S. § 521.1-521.25 (“DPCL”).

5. Count III of this action seeks a declaratory judgment pursuant to 42 Pa.C.S. § 7531 *et seq.* that the Order violates Article I, Section 3 of the Pennsylvania Constitution by not allowing for religious and philosophical exceptions to the masking requirement.

6. Count IV of this action seeks a declaratory judgment pursuant to 42 Pa.C.S. § 7531 *et seq.* that the Order violates procedural due process because it was

issued without notice and an opportunity to respond and in the absence of a declared disaster emergency.

7. Count V of this action seeks declaratory and injunctive relief pursuant to 71 P.S. § 2301 *et seq.* that the Order impermissibly burdens Petitioners' free exercise of religion.

8. To the extent that the Order is an appealable final order, Count VI of this action seeks to appeal the Order for the reasons set forth in Counts I-V.

PARTIES

9. Plaintiff J.W. is an adult individual residing within the Central Bucks School District ("CBSD") and has three minor children, C.W., D.W., and M.W.

- a. CBSD is located within Bucks County, which has a county health department created under the authority of the Local Health Administration Law, 16 P.S. § 12001 *et seq.*
- b. The Bucks County Health Department ("BCHD") qualifies as "local ... department of health" for purposes of the DPCL.
 - i. On or about August 15, 2021, the BCHD issued guidance that recommended - but does not require - students attending schools in Bucks County wear masks. The BCHD guidance is attached hereto as Exhibit B.

- ii. The BCHD specifically noted that “The effects of ongoing COVID-19 mitigation efforts have led to significant learning loss, mental health issues, and social adjustment difficulties in many students.” *Id.*
- c. During the 2020-2021 school year, C.W. and D.W. could not breathe while wearing a mask.
- d. As a result, C.W. and D.W. were forced to leave the CBSD solely in order to attend a different school where masks were not required.
- e. In July, the CBSD voted to make masks optional, and C.W. and D.W. were looking forward to returning to their normal classroom and engaging with their friends for the 2021-2022 school year.
- f. At the beginning of this school year, CBSD did not require masks, and C.W. and D.W., like many other students, successfully attended school within CBSD without wearing masks.
- g. As a result of the Order, however, CBSD is now requiring masks for in-person education, and C.W. and D.W. are anxious and depressed at the thought of once again being forced to wear masks that interfere with their breathing.

- h. M.W. has a philosophical objection to wearing face masks and refuses to attend public school within CBSD solely because of the requirement to wear masks.
 - i. M.W. attended a private religious school where no masks were required during the 2020-2021 school year. As a result of the Order, however, M.W.'s school is requiring masks for the 2021-2022 school year.
10. Plaintiff S.H. is an adult individual who resides within the CBSD and has two children, C.H. and D.W., who attend school in the CBSD.
- a. During the 2020-2021 school year, C.H. participated in sports in the CBSD, which required masking during sports.
 - b. While working out in the weight room in May of 2020 while wearing a mask, C.H. developed a migraine significant enough that it required transporting C.H. to the local hospital.
 - c. C.H. also has a philosophical objection to the Order, as, given the 99.997% survival rate to COVID-19 in his age group, C.H. believes that masks are being used as a control mechanism over the population.
 - d. D.H. has been diagnosed with anxiety, as reflected in his Section 504 Plan with CBSD.

- e. The changing guidance regarding masking requirements and the Order's requirement to wear masks has exacerbated D.H.'s anxiety.
- f. Additionally, the Order's requirement to wear masks has impacted D.H.'s ability to learn in the classroom because D.H. has hearing difficulties.
- g. S.H., C.H., and D.H. also all have religious objections to the requirement to wear masks.
- h. The H. family identify as Christian and believe that it is against God's will to wear masks because wearing masks interferes with their religious duty to spread the word of God and forces them to participate in a satanic ritual.
- i. During the 2020-2021 school year, the H. family felt tortured by being forced to choose whether to practice their religious beliefs or participate in sports.
- j. The Order has significantly impacted C.H.'s and D.H.'s ability to participate in school, as they feel the masking requirement imposes a prison-like atmosphere in school that interferes with their ability to pay attention in school, engage in the classroom, and listen to their instructors.

11. Plaintiff C.H. resides in the Mechanicsburg Area School District in Cumberland County and has a child, M.J.L., who attends school in the district. Cumberland County does not have a county health department.

- a. M.J.L. has experienced trouble breathing while wearing and mask.
- b. Additionally, masking requirements have particularly impacted M.J.L.'s ability to communicate due to his history of having speech problems and receiving speech therapy.
- c. The H. family has religious objections against using medical products and devices for healing due to their deeply-held reliance on healing through their faith.

12. Plaintiff N.J. resides in the Parkland School District in Lehigh County and has children, J.J. and K.J., who attend school in the district.

- a. During the 2020-2021 school year, J.J. and K.J. had difficulty understanding their teachers due to mask requirements.
- b. In particular, K.J. regressed academically, socially, and emotionally last year to mask requirements.
- c. In June of 2021, when temperatures were in the mid-eighties or higher, J.J. and K.J. attempted to go to school without wearing masks; however,

J.J. and K.J. were prevented from paying with their friends outside without masks.

- d. The following week, when N.J. attempted to drop off J.J. and K.J. at school, N.J. was denied entry to the school without a mask by the principal, assistant superintendent, and an unmasked police officer.
- e. During the school year, J.J. and J.K. complained of headaches and being hot.
- f. J.J. specifically reported feeling scared going to school, which never occurred before the masking requirement was imposed.
- g. J.J. feels bullied and scared due to being constantly directed to pull his mask up.

13. Plaintiff R.M. is an adult individual who resides in the Pennsbury School District in Bucks County and has a child, M.M., who attends school in the district.

- a. M.M. has repeatedly had trouble breathing while wearing a mask in school and frequently gets light-headed as a result of wearing masks.
- b. M.M. has reported that she has difficulty communicating with both her teachers and her peers in the classroom.

- c. The communication difficulty has magnified M.M.'s shyness and caused her to become very depressed during the 2020-2021 school year.
- d. M.M. would return home from school crying almost every day, and, toward the end of the 2020-2021, M.M. attended virtual school to avoid having to return to the classroom.

14. Plaintiff C.A. is an adult individual who resides in the Fox Chapel Area School District in Allegheny County and has a child, F.J.A., who attends school in the district. Allegheny County has a county health department that is recommending – but not requiring – face masks in school.

- a. F.J.A. has encountered difficulty communicating while wearing a mask.
- b. Masks cause F.J.A. pain because of the pressure placed on her nose when she speaks.
- c. Masks impact F.J.A.'s voice and make it difficult her to understand others when they speak.
- d. While F.J.A. loves to sing, she no longer does because of masks.
- e. F.J.A. has also been berated by district personnel when she has temporarily lowered her masks.

- f. F.J.A.'s academic performance has suffered as a result of masks, as she has had trouble concentrating during class and difficulty reading other people's emotions while they wear masks.
- g. In addition to having trouble breathing while wearing a mask, F.J.A. frequently complains of headaches, acne, dry lips and skin irritations due to masks.
- h. F.J.A. has previously contracted COVID-19 and has natural immunity to the SARS-CoV-2 virus.
- i. Based on her natural immunity, F.J.A. has medical and philosophical objections to the requirement for her to wear a mask, since she has immunity to the virus.

15. Respondent Acting Secretary of Health Allison Beam Centennial School District ("District") is the governmental official overseeing the Pennsylvania Department of Health, with offices at 625 Forster St, Harrisburg, PA 17120.

BACKGROUND

16. A novel coronavirus emerged in Wuhan, China, began infecting humans, spread throughout the world and is known to have the potential to cause Coronavirus Disease-2019 ("COVID-19") in humans.

17. In response to fear of the spread of COVID-19, the Pennsylvania Office of the Governor declared a disaster on March 6, 2020. The March 6, 2020, disaster declaration is attached hereto as Exhibit C.

18. Since the end of the 2020-2021 school year, the Commonwealth's disaster declaration has ended. *See* House Resolution 106 of 2021.

19. On August 31, 2021, after many schools had already been in session for several days, Respondent issued an Order titled "Order of the Acting Secretary of the Pennsylvania Department of Health Directing Face Coverings in School Entities." *See* Exhibit A.

20. The Order purports to require all "[e]ach teacher, child/student, staff, or visitor working, attending, or visiting a School Entity ... [to] wear a face covering indoors, regardless of vaccination status," with limited exceptions. *Id.* at § 2.

21. The Order purports to impact students in all counties, regardless of whether they reside in a county with its own health department. *See generally* Exhibit A.

22. The Order does not allow for religious or philosophical objections to the masking mandate. *See generally id.*

23. The Order was issued outside the rulemaking procedures under the Commonwealth Documents Law, 45 P.S. § 1101 *et seq.*, and the Regulatory Review

Act, 71 P.S. § 745.1, and without allowing for notice or an opportunity to respond.

See generally id.

24. The Order purports to require all schools to enforce the requirement to wear face masks, regardless of whether a local school board adopted a contrary Health and Safety Plan. *Id.* at § 4.

COUNT I – DECLARATORY JUDGMENT

Seeking a declaration that the Order does not apply to any county with a health department

25. The preceding paragraphs are incorporated herein by reference.

26. Under the Declaratory Judgments Act, courts have the “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” 42 Pa.C.S. § 7532.

27. Section 7541 of the Declaratory Judgments Act states that “[i]ts purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.” 42 Pa.C.S. § 7541.

28. Here, an actual controversy exists with respect to whether the Order applies in counties where a health department exists.

29. Under DPCL, Respondent has the responsibility for disease prevention and control in areas “not served by a local board or department of health...” 35 P.S. § 521.3(b).

30. Where a local board or department of health exists, “Local boards and departments of health shall be primarily responsible for the prevention and control of communicable and non-communicable disease, including disease control in public and private schools...” 35 P.S. § 521.3(a).

31. The General Assembly has declared that the “protection and promotion of the health of the people in the furtherance of human well-being, industrial and agricultural productivity and the national security is one of the highest duties of the Commonwealth,” and that these duties “can best be achieved by empowering counties to establish county departments of health...” 16 P.S. § 12002.

32. Counties are able to create local departments of health under the Local Health Administration Law, 16 P.S. § 12001 *et seq.*

33. As a result of a 1953 referendum, Bucks County created a department of health (“BCHD”) that qualifies as a “local board or department of health” for purposes of the DPCL.

34. BCHD possesses the exclusive authority for the prevention and control of COVID-19 within school districts within Bucks County. 35 P.S. § 521.3(a); 16 P.S. § 12010.

35. By information and belief, Allegheny County created the Allegheny County Health Department (“ACHD”) in 1957, and ACHD possesses the legal authority to order schools to require masks for the prevention and control of COVID-19 within school districts within Allegheny County. 35 P.S. § 521.3(a); 16 P.S. § 12010.

36. Additionally, county health departments exist in Chester, Erie, Montgomery, and Philadelphia Counties.

37. The Pennsylvania Department of Health **only** has the ability to take actions with respect to disease prevention within a county with a health department “[i]f the secretary finds that the disease control program carried out by any local board or department of health is so inadequate that it constitutes a menace to the health of the people within ... the municipalities served by the local board or department of health.” 35 P.S. § 521.3(c).

38. Respondent has not made a finding that ACHD, BCHD, or any other health department is carrying out an “inadequate” disease control program that “constitutes a menace to the health of the people within” each respective county.

39. Because Respondent has not found that any county health department is carrying out an “inadequate” disease control program that “constitutes a menace” to public health, the Order cannot apply to any person or “School Entity” (as defined in the Order) within a county with a health department. *See* 35 P.S. § 521.3(a); 35 P.S. § 521.3(c).

40. Accordingly, Petitioners seek a declaration that the Order does not apply to any person or “School Entity” within a county with a health department.

41. As the Order does not contain a severability clause, Petitioners ask this Court to strike down the entire Order because of this defect.

WHEREFORE, Petitioners respectfully ask this Honorable Court to issue an order declaring that the Order does not apply to any person or School Entity within a county with a health department; or, in the alternative, striking the entire Order because of this defect.

COUNT II – DECLARATORY JUDGMENT

Seeking a declaration that the Secretary lacks the legal authority to require masks

42. The averments of the preceding paragraphs are incorporated herein by reference.

43. The Pennsylvania Department of Health is a creature of statute “and, thus, only [has] the authority to act pursuant to [its] official duties as established by [its] enabling legislation.” *See Department of Health v. Office of Open Records*, 4 A.3d 803, 814 (Pa. Commw. 2010) (citing *Mazza v. Bureau of Driver Licensing*, 692 A.2d 251, 252 (Pa. Commw. 1997)).

44. The Order states that it derives its authority from 35 P.S. § 521.5, 71 P.S. § 532(a), 71 P.S. § 1403(a) and 28 Pa. Code § 27.60. *See Exhibit A.*

45. None of these statutes or regulations vest Respondent with the ability to require the use of face masks.

46. None of these statutes or regulations vest Respondent with the ability to force individuals **without** a communicable disease (i.e. healthy individuals) to wear face masks.

47. Under Section 5 of the DPCL, 35 P.S. § 521.5, Respondent may only order “appropriate control measures ... as is provided by rule or regulation.”

48. There are no rules or regulations authoring the use of face masks as an “appropriate control measure[.]”

49. The closest Respondent comes is under 28 Pa. Code § 27.60, titled “Disease control measures.” However, this regulation only allows for “isolation,” “surveillance, segregation, quarantine or modified quarantine” and “any other

disease control measure ... appropriate for the surveillance of disease...” 28 Pa. Code § 27.60.

50. The use of face masks is not one of the specific powers listed in this regulation.

51. Because 28 Pa. Code § 27.60 delineates specific powers that Respondent has when it comes to disease prevention and control and masking is not listed, Respondent does not have that power. *See generally Atcovitz v. Gulph Mills Tennis Club, Inc.*, 812 A.2d 1218, 1223, 571 Pa. 580, 589 (Pa. 2002) (“under the doctrine of *expressio unius est exclusio alterius*, the inclusion of a specific matter in a statute implies the exclusion of other matters”).

52. Respondent’s only argument must be that masking must be authorized as an “other disease control measure ... appropriate for the surveillance of disease...” 28 Pa. Code § 27.60.

53. The term “surveillance of disease,” however, refers to the monitoring of the health of a population, rather than mitigation efforts. *See generally* Infectious Disease Surveillance, International Encyclopedia of Public Health (2017) (“Infectious disease surveillance is an important epidemiological tool to monitor the health of a population”), *available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7149515/>; WHO Report on

Global Surveillance of Epidemic-prone Infectious Diseases, World Health Organization (“Surveillance has been defined as the continuing scrutiny of all aspects of the occurrence and spread of a disease that are pertinent to effective control”) (citing Last, JM, *A Dictionary of Epidemiology*, Oxford University Press, 1995), *available at*

<https://www.who.int/csr/resources/publications/surveillance/Introduction.pdf>;

Surveillance of Infectious Diseases Is Information for Action, *AMA Journal of Ethics*, Mark S. Dworkin, MD, MPHTM (“Surveillance is defined as the “ongoing, systematic collection, analysis, and interpretation of outcome-specific data for use in the planning, implementation, and evaluation of public health practice”), *available at* <https://journalofethics.ama-assn.org/article/surveillance-infectious-diseases-information-action/2006-04>.

54. Face masks are not “appropriate for the surveillance of disease” because they are not being used to collect data or otherwise monitor health. As a result, face masks are not an “appropriate control measure[.]” under any existing rule or regulation as required by 35 P.S. § 521.5.

55. Additionally, 35 P.S. § 521.5 requires that Respondent can only deploy an “appropriate control measure[.]” “in such place” where there is “a report

of a disease.” Absent a report of a disease in specific, individual school entities, Respondent lacks the ability to order any control measures under 35 P.S. § 521.5.

56. Under Respondent’s interpretation of 71 P.S. § 532(a) and 71 P.S. § 1403(a), Respondent enjoys virtually unlimited and unfettered ability to take actions, along as it is “[t]o protect the health of the people of this Commonwealth” or “to determine and employ the most efficient and practical means for the prevention and suppression of disease.” *See* 71 P.S. § 532(a).

57. Instead, this provision from the Administrative Code of 1929, however, should be read *in pari materia* with the DPCL, as both statutes relate to the same thing: the prevention of diseases by Respondent and the Pennsylvania Department of Health. *See* 1 Pa.C.S. § 1932.

58. Reading 71 P.S. § 532(a) and 71 P.S. § 1403(a) in concert with the DPCL, the particular powers vested in Respondent under the DPCL and accompanying regulations control over any general powers provided under 71 P.S. § 532(a) and 71 P.S. § 1403(a). *See* 1 Pa.C.S. § 1933.

59. As a result, Respondent lacks the ability to require face masks in schools under the authority it cites.

60. Finally, while the DPCL gives Respondent authority to take certain actions concerning individuals that are infected with a disease, nothing within the

DPCL, the Administrative Code of 1929 or accompanying regulations gives Respondent any authority to take actions concerning healthy individuals, those that **are not** infected with a disease.

61. Petitioners seek a declaration that Respondent lacks the legal authority to require students to wear masks.

62. Petitioners seek a declaration that Respondent lacks the legal authority to require students to wear masks absent “a report of a disease” in individual schools.

63. Petitioners seek a declaration that Respondent lacks the legal authority to require healthy individuals that are not infected with a communicable disease to take any action.

WHEREFORE, Petitioners respectfully ask this Honorable Court to issue an order holding that:

- 1) Respondent lacks the legal authority to require students to wear masks in schools;
- 2) Respondent lacks the legal authority to require students to wear masks in schools where there has not been a “report of a disease;”
and/or

3) Respondent lacks the legal authority to require healthy individuals that are not infected with a communicable disease to take any action.

COUNT III – DECLARATORY JUDGMENT

Seeking a declaration that the Order violates Article I, Section 3 of the Pennsylvania Constitution

64. The averments of the preceding paragraphs are incorporated herein by reference.

65. Article I, Section 3 of the Pennsylvania Constitution states

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship.

PA. CONST. art I, § 3.

66. Article I, Section 3 of the Pennsylvania Constitution provides protection for both religious worship and “the rights of conscience,” separate from religious beliefs. *Id.*

67. Article I, Section 26 of the Pennsylvania Constitution provides that “Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.” PA. CONST. art I, § 26.

68. A provision of the Public School Code executes the constitutional protections for religious beliefs and rights of conscience:

[Article XIV. School Health Services] shall not be construed to compel any person to submit to any medical ... examination or treatment under the authority of this act when the person or the parent or guardian of the person, if a minor, objects to the examination or treatment on religious grounds or to permit any discrimination against any person on account of such objections...

24 P.S. § 14-1419; *see also* 28 Pa.Code § 23.84(b) (stating that children are not required to receive certain medical treatment “if the parent, guardian or emancipated child objects in writing to the immunization on religious grounds or **on the basis of a strong moral or ethical conviction similar to a religious belief**”) (emphasis added).

69. The Public School Code does not define the terms “medical examination” or “medical treatment.”

70. Face masks constitute a form of a medical treatment to which the religious and/or philosophical objections guaranteed under the Pennsylvania Constitution and the Public School Code apply.

71. According to the CDC, face masks are intended “to prevent transmission of SARS-CoV-2.” See <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html>.

72. Per the Food and Drug Administration, face masks have been authorized for emergency use only “to prevent the spread of the virus called severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) during the Coronavirus Disease 2019 (COVID-19) pandemic...” See <https://www.fda.gov/media/137121/download>.

73. As face masks are being recommended to stop the spread of SARS-CoV-2 in order to prevent COVID-19 from occurring in humans, face masks are a form of prophylactic medical treatment. See generally <https://www.rxlist.com/prophylactic/definition.htm> (defining “prophylactic” as “A preventive measure. The word comes from the Greek for ‘an advance guard,’ an apt term for a measure taken to fend off a disease or another unwanted consequence. A prophylactic is a medication or a treatment designed and used to prevent a disease from occurring.”).

74. The Order, however, does not allow for either religious or philosophical objections to the requirement to wear masks. *See* Exhibit A.

75. Petitioners have religious and/or strong moral ethical convictions similar to a religious belief against the requirements to force children to wear face masks during in-person education.

76. Petitioners ask for an order declaring that the Order violates Article I, Section 3 of the Pennsylvania Constitution because it does not allow for religious objections from masking requirements.

77. Petitioners ask for an order declaring that the Order violates Article I, Section 3 of the Pennsylvania Constitution because it does not allow for philosophical objections from masking requirements.

WHEREFORE, Petitioners respectfully ask this Honorable Court to issue an order declaring that the Order violates Article I, Section 3 of the Pennsylvania Constitution because it does not allow for religious or philosophical objections to masks; or, in the alternative, striking the entire Order because of this defect.

COUNT IV – DECLARATORY JUDGMENT

Seeking a declaration that the Order violates procedural due process

78. The averments of the preceding paragraphs are incorporated herein by reference.

79. “Under the PA Constitution, public education is a fundamental right, defined also as a civil right...” *Pa. Human Relations Comm’n v. Sch. Dist. of Phila.*, 681 A.2d 1366, 1380 (Pa. Commw. 1996).

80. Respondent cannot “deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.” PA. CONST. art I, § 26.

81. Governmental agencies must provide for procedural due process before the deprivation of any right.

82. “[T]he essential elements of due process are notice and opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case before a tribunal having jurisdiction of the cause.” *Soja v. Pennsylvania State Police*, 455 A.2d 613, 615 (Pa. 1982).

83. Here, the Order was issued outside the requirements of the Regulatory Review Act and the Commonwealth Documents Law, without providing anyone notice or an opportunity to be heard prior to the issuance of the Order.

84. The Order denies Petitioners of the right to education guaranteed under the Pennsylvania Constitution without procedural due process.

85. The Order deprives Petitioners of the “inherent and infeasible right[]” to breathe without restriction without procedural due process. *See* PA.

CONST. art. I, § 1; *see also* PA. CONST. art. I, § 25 (“To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate”); PA. CONST. art. I, § 27 (“The people have a right to clean air...”).

86. Additionally, unlike the Universal Masking Order in effect during the 2020-2021 school year that was issued while a disaster declaration was in effect under the Emergency Management Code, the Order was issued 1) without an active emergency declaration; and 2) outside of the provisions of the Emergency Management Code. As a result, unlike the emergency provisions at issue in *Friends of Danny DeVito v. Wolf*, 227 A.3d 872 (Pa. 2020), procedural due process was required before the issuance of the Order.

87. Because the Order was issued without providing procedural due process to Petitioners or anyone else, the Order violates constitutional protections.

WHEREFORE, Petitioners respectfully ask this Honorable Court to issue an order declaring that the Order violates procedural due process and striking the Order in its entirety.

**COUNT V –
COMPLAINT UNDER THE RELIGIOUS FREEDOM PROTECTION ACT**

88. The averments of the preceding paragraphs are incorporated herein by reference.

89. The Religious Freedom Protection Act, 71 P.S. § 2401 *et seq.*, provides that an agency may not “substantially burden a person’s free exercise of religion, including any burden which results from a rule of general applicability,” except where the burden is both 1) “in furtherance of a compelling interest of the agency;” and 2) “the least restrictive means of furthering the compelling interest.” 71 P.S. § 2404.

90. Here, the Order’s requirement that Petitioners wear masks substantially burdens their free exercise of religion for the reasons previously asserted.

91. As the Order requires healthy individuals (rather than individuals infected with COVID-19) to wear masks, the Order was not issued in furtherance of a compelling interest of Respondent or the Department of Health.

92. As the Order requires healthy individuals (rather than just individuals infected with COVID-19) to wear masks, the Order is not the “least restrictive means of furthering” any alleged interest of Respondent or the Department of Health.

93. No notice of this count is required 71 P.S. § 2405(c)(1) and (2) because Respondent’s action “is imminent” and because Petitioners were “not informed and did not otherwise have knowledge of the exercise of governmental authority in time to reasonably provide notice.”

94. Petitioners ask this court to declare that the Order impermissibly violates Petitioners free exercise of religion under 71 P.S. § 2404. *See* 71 P.S. § 2405(f) (permitting declaratory relief).

95. Petitioners ask this court to enjoin Respondent from any enforcement of the Order because it impermissibly violates Petitioners free exercise of religion under 71 P.S. § 2404. *See* 71 P.S. § 2405(f) (permitting injunctive relief).

WHEREFORE, Petitioners respectfully ask this Honorable Court to issue an order 1) declaring that the Order impermissibly violates Petitioners free exercise of religion under the Religious Freedom Protection Act; 2) enjoining Respondent from enforcing the Order because it impermissibly violates Petitioners free exercise of religion under 71 P.S. § 2404; and 3) awarding whatever additional relief to Petitioners this Court deems appropriate.

COUNT VI – APPEAL OF ORDER

96. The averments of the preceding paragraphs are incorporated herein by reference.

97. To the extent that the Order is appealable under 42 Pa.C.S. § 5105(a)(1), Petitioners invoke this Court’s appellate jurisdiction for the same reasons set forth above: 1) that the Order does not impact school entities in any county with a health department; 2) that Respondent lacks the legal authority to require masks; 3) that the Order violates the Pennsylvania Constitution by not allowing for religious and philosophical objections to masking requirements; 4) that the Order violates Petitioners’ procedural due process rights; and 5) that the Order substantially and impermissibly burdens Petitioners’ free exercise of religion under the Religious Freedom Protection Act.

WHEREFORE, Petitioners respectfully ask this Honorable Court to reverse and vacate Respondent's Order for the reasons set forth above.

LAW OFFICE OF TUCKER R. HULL, LLC

Date: September 8, 2021

By: /s. Tucker R. Hull, Esq.
Tucker R. Hull, Esquire (PA 306426)

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Counsel for Petitioners

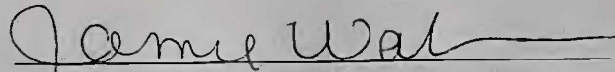
CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial Systems of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

/s. J. Chadwick Schnee, Esq.
J. Chadwick Schnee, Esq. (PA 306907)

VERIFICATION

I, J.W., hereby verify that the facts contained in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.


J.W.

Date: September 7, 2021

VERIFICATION

I, S.H., hereby verify that the facts contained in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

S.H.
S.H.

Date: September 7, 2021

VERIFICATION

I, C.H., hereby verify that the facts contained in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

C.H. 

Date: September 7, 2021

R.K.

Date: September , 2021

VERIFICATION

I, O.D., hereby verify that the facts contained in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

O.D.

Date: September , 2021

VERIFICATION

I, N.J., hereby verify that the facts contained in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.


N.J.

Date: September 7 , 2021

VERIFICATION

I, B.Z., hereby verify that the facts contained in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

B.Z.

Date: September , 2021

VERIFICATION

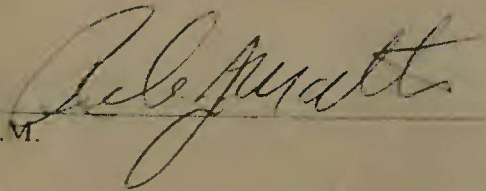
I, J.L., hereby verify that the facts contained in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand

Date: September _____, 2021

C.H.

VERIFICATION

I, R.M., hereby verify that the facts contained in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.



R.M.

Date: September 7, 2021

VERIFICATION

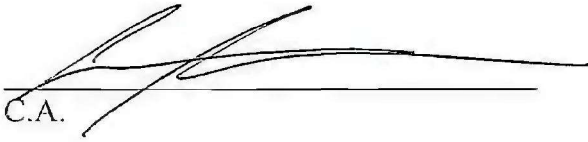
I, C.A., hereby verify that the facts contained in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

C.A.

Date: September _____, 2021

VERIFICATION

I, C.A., hereby verify that the facts contained in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.


C.A.

Date: September 7, 2021