

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JACOB DOYLE CORMAN, III, *et al.*,
Petitioners

NO. 294 MD 2021

v.

ACTING SECRETARY OF THE
PENNSYLVANIA DEPARTMENT OF
HEALTH,

Respondent

**RESPONDENT’S ANSWER TO PETITIONERS’
APPLICATION FOR SUMMARY RELIEF**

Respondent, Acting Secretary of the Pennsylvania Department of Health, Alison Beam (hereinafter “the Secretary”), through her undersigned counsel, pursuant to this Court’s September 13, 2021, Order, responds to Petitioners’ Application for Summary Relief as follows:

1. It is admitted only that on August 31, 2021, the Secretary issued and order titled *Order of the Acting Secretary of the Pennsylvania Department of Health Directing Face Coverings in School Entities* (hereinafter “the Order”). It is denied that the Order mischaracterizes the Secretary’s authority. By way of further response, the averments refer to a written document that speaks for itself and any characterization thereof is denied.

2. The averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied.

3. It is admitted that the terms “alternative to a face covering”, “face covering”, and “school entity” are not defined in the Disease Prevention and Control Law of 1955 (hereinafter “DPCL”) or the Department of Health’s (hereinafter “the Department”) regulations. By way of further response, the averments of this paragraph refer to written documents that speak for themselves and any characterization thereof is denied.

4. Denied. By way of further response, the Secretary was not required to follow the regulatory review process because the Department had existing regulations.

5. The averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied.

6. The averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied.

7. The averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied. By way of further response, Respondent’s authority is derived from The Disease Prevention and Control Law, 35 P.S. § 521.5; section 2102(a) of the Administrative Code of 1929, 71 P.S. § 532(a); and the Department of Health’s regulation at 28 Pa. Code § 27.60 (relating to disease control measures).

8. The averments of this paragraph refer to written documents that speak for themselves and any characterization thereof is denied.

9. The averments of this paragraph constitute conclusions of law to which no response is required. By way of further response, Section 532 lists 14 duties of the Department, one of which is to promulgate its rules and regulations, which it has done. Additionally, the averments refer to a written document that speaks for itself and any characterization thereof is denied

10. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

11. The averments of this paragraph refer to a written statute that speaks for itself and any characterization thereof is denied.

12. The averments of this paragraph constitute a conclusion of law to which no response is required. By way of further response, to the extent this Court determines the language at issue is ambiguous, the Department is entitled to strong deference. *Bethenergy Mines Inc. v. Com., Dept. of Env't Prot.*, 676 A.2d 711, 715 (Pa. Commw. Ct. 1996).

13. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied. By way of further response, see 28 Pa. Code § 27.60(a)-(b).

14. The averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied.

15. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

16. The averments of this paragraph refer to a written statute that speaks for itself and any characterization thereof is denied.

17. The averments of this paragraph constitute conclusions of law to which no response is required. By way of further response, to the extent this Court determines the language at issue is ambiguous, the Department is entitled to strong deference. *Bethenergy Mines Inc. v. Com., Dept. of Env't Prot.*, 676 A.2d 711, 715 (Pa. Commw. Ct. 1996).

18. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied. By way of further response, the Order is a written document that speaks for itself and any characterization thereof is denied.

19. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied. By way of further response, the Order applies to all individuals within a school entity, some of whom may be infected with COVID-19 but asymptomatic yet

still able to transmit the virus. To the extent an infected individual is present within a school entity, others present within the school may be “contacts of a person ... with a communicable disease or infection” who are subject to “surveillance, segregation, quarantine, or modified quarantine.” The Regulations define “modified quarantine” as “[a] selected, partial imitation of freedom of movement determined on the basis of differences in susceptibility or danger of disease transmission which is designated to meet particular situations.” 28 Pa. Code. § 27.1. Further, the Order is a written document that speaks for itself and any characterization thereof is denied.

20. The averments of this paragraph refer to a written statute that speaks for itself and any characterization thereof is denied.

21. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

22. The averments of this paragraph refer to a written statute that speaks for itself and any characterization thereof is denied.

23. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied. By way of further response, to the extent this Court determines the language at issue is ambiguous, the Department is entitled to strong deference. *Bethenergy Mines Inc. v. Com., Dept. of Env't Prot.*, 676 A.2d 711, 715 (Pa. Commw. Ct. 1996).

24. The averments of this paragraph refer to a written regulation that speaks for itself and any characterization thereof is denied.

25. The averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied.

26. The averments of this paragraph refer to a written regulation that speaks for itself and any characterization thereof is denied.

27. The averments of this paragraph refer to a written regulation that speaks for itself and any characterization thereof is denied.

28. The averments of this paragraph refer to a written regulation that speaks for itself and any characterization thereof is denied. By way of further response, Paragraph (a) of the Regulation refers to “contacts of a person ... with a communicable disease or infection.” 28 Pa. Code § 27.60(a).

29. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied. By way of further response, to the extent any individual located within a school entity is infected with COVID-19 they may be considered a “patient.”

30. Denied. By way of further response, an individual can be infected with COVID-19, capable of transmitting the virus to others, and be either symptomatic or asymptomatic.

31. Denied as stated.

32. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

33. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

34. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

35. The averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied. By way of further response, the letter of the House of Representatives Health Committee is not dispositive of the issue before this Court. Indeed, the chair of the Joint Committee on Documents has recognized that any decision of the Joint Committee on Documents is appealable to this Court.¹

36. Denied as stated. By way of further response, the Order does not impose any contact tracing requirements and that issue is not relevant to the two

¹ Pa. House panel seeks ruling on health secretary's authority to issue school mask order," PennLive, <https://www.pennlive.com/news/2021/09/pa-house-panel-seeks-ruling-on-health-secretarys-authority-to-issue-school-mask-order.html> (last visited 9/18/2021).

legal issues presently before the Court. Moreover, Petitioners' reliance on factual declarations is not appropriate as part of the resolution of the pending Applications. Petitioners have admitted the issues currently before the Court are purely legal in nature and there are no facts in dispute. *Petitioner's Application for Summary Relief*, ¶ 42. *See also, September 27, 2021, Order.* As such, the declarations should be disregarded.

37. The averments of this paragraph refer to a written law that speaks for itself and any characterization thereof is denied.

38. The Secretary incorporates her responses to Paragraphs 1 through 37 as though set forth at length herein.

39. The averments of this paragraph refer to a written rule that speaks for itself and any characterization thereof is denied.

40. Admitted.

41. The averments of this paragraph constitute conclusions of law to which no response is required.

42. It is admitted only that there are no material facts in dispute. The remaining averments constitute conclusions of law to which no response is required. It is denied that the Order was issued without legal authority or in violation of the law.

43. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature, they are denied. It is specifically denied that Petitioners have established a right to judgment.

44. Denied.

45. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

46. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

47. Denied.

48. Denied.

49. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

50. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

51. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

52. The averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied. By way of further response, Respondent's authority is derived from The Disease Prevention and Control Law, 35 P.S. § 521.5; section 2102(a) of the Administrative Code of 1929, 71 P.S. § 532(a); and the Department of Health's regulation at 28 Pa. Code § 27.60 (relating to disease control measures).

53. The averments of this paragraph refer to written documents that speak for themselves and any characterization thereof is denied.

54. The averments of this paragraph constitute conclusions of law to which no response is required. By way of further response, Section 532 lists 14 duties of the Department, one of which is to promulgate its rules and regulations, which it has done. Additionally, the averments refer to a written document that speaks for itself and any characterization thereof is denied.

55. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

56. The averments of this paragraph refer to a written statute that speaks for itself and any characterization thereof is denied.

57. The averments of this paragraph constitute a conclusion of law to which no response is required. To the extent they are factual in nature they are denied. By way of further response, to the extent this Court determines the language at issue is ambiguous, the Department is entitled to strong deference. *Bethenergy Mines Inc. v. Com., Dept. of Env't Prot.*, 676 A.2d 711, 715 (Pa. Commw. Ct. 1996).

58. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied. By way of further response, see 28 Pa. Code § 27.60(a)-(b).

59. Denied.

60. The averments of this paragraph state the legal position of the Petitioners to which no response is required. To the extent a response is required, the averments are denied.

61. It is denied that the Attorney General agrees with Petitioners. By way of further response, the averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied.

62. The averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied.

63. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

64. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

65. The averments of this paragraph refer to a written statute that speaks for itself and any characterization thereof is denied.

66. The averments of this paragraph constitute conclusions of law to which no response is required. By way of further response, to the extent this Court determines the language at issue is ambiguous, the Department is entitled to strong deference. *Bethenergy Mines Inc. v. Com., Dept. of Env't Prot.*, 676 A.2d 711, 715 (Pa. Commw. Ct. 1996).

67. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied. By way of further response, the Order is a written document that speaks for itself and any characterization thereof is denied.

68. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied. By way of further response, the Order applies to all individuals within a

school entity, some of whom may be infected with COVID-19 but asymptomatic yet still able to transmit the virus. To the extent an infected individual is present within a school entity, others present within the school may be “contacts of a person ... with a communicable disease or infection” who are subject to “surveillance, segregation, quarantine, or modified quarantine.” The Regulations define “modified quarantine” as “[a] selected, partial imitation of freedom of movement determined on the basis of differences in susceptibility or danger of disease transmission which is designated to meet particular situations.” 28 Pa. Code. § 27.1. Further, the Order is a written document that speaks for itself and any characterization thereof is denied.

69. The averments of this paragraph refer to a written statute that speaks for itself and any characterization thereof is denied.

70. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

71. The averments of this paragraph refer to a written statute that speaks for itself and any characterization thereof is denied.

72. The averments of this paragraph constitute conclusions of law to which no response is required. By way of further response, to the extent this Court determines the language at issue is ambiguous, the Department is entitled to strong

deference. *Bethenergy Mines Inc. v. Com., Dept. of Env't Prot.*, 676 A.2d 711, 715 (Pa. Commw. Ct. 1996).

73. Denied.

74. Denied as stated. Respondent's position is clearly set forth in its Application for Summary Relief and supporting brief.

75. The averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied.

76. The averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied.

77. The averments of this paragraph refer to a written regulation that speaks for itself and any characterization thereof is denied.

78. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual, they are denied.

79. The averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied.

80. It is admitted only that the Order mandates the wearing of face coverings in school entities. The remaining averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature, they are denied.

81. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual, they are denied.

82. Denied as stated.

83. The averments of this paragraph refer to a written regulation that speaks for itself and any characterization thereof is denied.

84. The averments of this paragraph refer to a written regulation that speaks for itself and any characterization thereof is denied.

85. Denied as stated. By way of further response, the Order applies to all individuals within a school entity, some of whom may be infected with COVID-19 but asymptomatic yet still able to transmit the virus.

86. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied. By way of further response, to the extent any individual located within a school entity is infected with COVID-19 they may be considered a “patient.”

87. Denied. By way of further response, an individual can be infected with COVID-19, capable of transmitting the virus to others, and be either symptomatic or asymptomatic.

88. Denied as stated.

89. Denied. By way of further response, an individual can be infected with COVID-19, capable of transmitting the virus to others, and be either symptomatic or asymptomatic.

90. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

91. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

92. Denied. By way of further response, *see* 28 Pa. Code § 27.60(a)-(b).

93. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

94. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

95. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied. By way of further response, the Order is a written document that speaks for itself and any characterization thereof is denied.

96. It is admitted that the terms “alternative to a face covering”, “face covering”, and “school entity” are not defined in the Disease Prevention and Control Law of 1955 (hereinafter “DPCL”) or the Department of Health’s (hereinafter “the Department”) regulations. By way of further response, the averments of this paragraph refer to written documents that speak for themselves and any characterization thereof is denied.

97. Denied. By way of further response, the Secretary was not required to promulgate additional regulations because the Department had existing regulations.

98. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

99. Denied as stated. It is admitted that the Order applies to all individuals within a school entity, some of whom may be infected with COVID-19 but asymptomatic yet still able to transmit the virus. For this reason, the disease control measure is only effective if it applies to everyone who does not meet a defined exception.

100. Denied.

101. Denied.

102. The averments of this paragraph refer to a written document that speaks for itself a written document that speaks for itself and any characterization thereof is denied.

103. Denied as stated. It is admitted only that, outside of school entities, individuals covered by the Order may interact without masks in locations that do not require face coverings. By way of further response, school entities are unique in that hundreds, if not thousands, of individuals—many of whom are not eligible for vaccines and some of whom are immunocompromised—are in close contact for an extended period of time each day. Mask wearing protects the entire school community.

104. The averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied.

105. The averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied.

106. Denied as stated.

107. The Order is a written document that speaks for itself and any characterization thereof is denied.

108. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

109. The Order is a written document that speaks for itself and any characterization thereof is denied.

110. It is admitted that the Order was not subject to the regulatory review process because the law did not require it was issued pursuant to existing Department regulations. The remaining averments of this paragraph are denied.

111. The averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied.

112. It is admitted that the Secretary relies on the regulation codified at 28 Pa. Code § 27.60 as a source of her authority in conjunction with the DPCL and the Administrative Code of 1929.

113. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

114. The averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied.

115. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

116. Denied as stated. By way of further response, the Secretary's position is fully set forth in her Application for Summary Relief and supporting brief.

117. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

118. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

119. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

120. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

121. The averments of this paragraph refer to a written statute that speaks for itself and any characterization thereof is denied.

122. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

123. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

124. The averments of this paragraph refer to a written decision that speaks for itself and any characterization thereof is denied.

125. The averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied.

126. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

127. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

128. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

129. The averments of this paragraph refer to a written statute that speaks for itself and any characterization thereof is denied.

130. The averments of this paragraph refer to a written statute that speaks for itself and any characterization thereof is denied.

131. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

132. Admitted. By way of further response, the Order was not required to go through the regulatory review process as it was entered pursuant to existing Department regulations.

133. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

134. Denied as stated. By way of further response, the letter of the House of Representatives Health Committee is not dispositive of the issue before this Court.

135. The averments of this paragraph refer to a written statute that speaks for itself and any characterization thereof is denied.

136. The averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied. By way of further response, the pending petition of the House of Representatives Health Committee is not dispositive of the issue before this Court.

137. The averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied. By way of further response, the letter of the House of Representatives Health Committee is not dispositive of the issue before this Court.

138. The averments of this paragraph refer to written documents that speak for themselves and any characterization thereof is denied. By way of further

response, the letter of the House of Representatives Health Committee is not dispositive of the issue before this Court.

139. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

140. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

141. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

142. Denied as stated. By way of further response, the Secretary derives her authority from the DPCL, the Administrative Code of 1929, and the Department's regulations.

143. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

144. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

145. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

146. The averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied. By way of further response, the letter of the House of Representatives Health Committee is not dispositive of the issue before this Court.

147. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

148. The averments of this paragraph refer to a written opinion that speaks for itself and any characterization thereof is denied.

149. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

150. The averments of this paragraph refer to a written opinion that speaks for itself and any characterization thereof is denied.

151. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

152. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied. By way of further response, the averments of this paragraph refer to a written opinion that speaks for itself and any characterization thereof is denied.

153. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied. By way of further response, the averments of this paragraph refer to a written opinion that speaks for itself and any characterization thereof is denied.

154. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied. By way of further response, the averments of this paragraph refer to a written opinion that speaks for itself and any characterization thereof is denied.

155. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied. By way of further response, the averments of this paragraph refer to a written opinion that speaks for itself and any characterization thereof is denied.

156. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied. By way of further response, the averments of this paragraph refer to written opinions that speak for themselves and any characterization thereof is denied.

157. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied. By way of further response, the averments of this paragraph refer to written opinions that speak for themselves and any characterization thereof is denied.

158. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied. By way of further response, the averments of this paragraph refer to written opinions that speak for themselves and any characterization thereof is denied.

159. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied. By way of further response, the averments of this paragraph refer to a written opinion that speaks for itself and any characterization thereof is denied.

160. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

161. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied. By way of further response, the averments of this paragraph refer to written opinions that speak for themselves and any characterization thereof is denied.

162. The averments of this paragraph refer to a written opinion that speaks for itself and any characterization thereof is denied.

163. The averments of this paragraph refer to a written opinion that speaks for itself and any characterization thereof is denied.

164. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied. By way of further response, the averments of this paragraph refer to a written opinion that speaks for itself and any characterization thereof is denied.

165. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

166. The averments of this paragraph refer to a written opinion that speaks for itself and any characterization thereof is denied.

167. The averments of this paragraph refer to written opinions that speak for themselves and any characterization thereof is denied.

168. The averments of this paragraph refer to a written opinion that speaks for itself and any characterization thereof is denied.

169. The averments of this paragraph refer to a written opinion that speaks for itself and any characterization thereof is denied.

170. The averments of this paragraph refer to a written opinion that speaks for itself and any characterization thereof is denied.

171. Denied as stated. By way of further response, the Secretary had legal authority to enter the Order.

172. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

173. The averments of this paragraph refer to a written statute that speaks for itself and any characterization thereof is denied.

174. Denied as stated. By way of further response, the averments of this paragraph refer to a written document that speaks for itself and any characterization thereof is denied.

175. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

176. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

177. Denied as stated. By way of further response, individuals who have been infected with COVID-19 are not immune from contracting the virus again.

178. The Order is a written document that speaks for itself and any characterization thereof is denied.

179. It is admitted only that the Order does not contain an express exemption for religious reasons. By way of further response, the averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

180. Denied.

181. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

182. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

183. It is admitted that 35 P.S. § 521.5 does not require the Department to submit disease control measures to the regulatory review process.

184. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent the averments are factual in nature they are denied.

185. It is admitted that there is no dispute of material fact. It is denied that Petitioners have a right to relief.

186. This is an incorporation response to which no response is required.

187. No response is required. By way of further response, the Secretary maintains that the affidavits attached to Petitioners' Application for Summary Relief should be disregarded as Petitioners have admitted the issues currently before the Court are purely legal in nature and there are no facts in dispute. *Petitioner's Application for Summary Relief*, ¶ 42. *See also, September 27, 2021, Order.*

WHEREFORE, Acting Secretary of the Department of Health, Alison Beam, respectfully requests that this Honorable Court deny Petitioners' Application for Summary Relief and dismiss the First Amended Petition for Review with prejudice.

Respectfully submitted,

JOSH SHAPIRO
Attorney General

KELI M. NEARY
Executive Deputy Attorney General
Civil Law Division

By: /s/ Karen M. Romano
KAREN M. ROMANO
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DATE: October 7, 2021

CERTIFICATE OF COUNSEL

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System 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/ Karen M. Romano

KAREN M. ROMANO
Chief Deputy Attorney General

CERTIFICATE OF SERVICE

I, Karen M. Romano, Chief Deputy Attorney General, do hereby certify that I have this day caused to be served the foregoing **Respondent's Answer to Petitioners' Application for Summary Relief**, via PACFile notification, on the following:

COUNSEL FOR PETITIONERS:

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/s/ Karen M. Romano

KAREN M. ROMANO
Chief Deputy Attorney General

DATE: October 7, 2021