

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL
CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

**KEVIN LEVONAS and ANGELINA AUCELLO
MATT and PRISCILLA POAGE
JUSTIN and GRACE WARNIMENT
ELIZABETH HAGAN
MIKE MILLER
ROBERT and EVELYN GRIFFITH**

CASE # 20-CA-006452

et al

Plaintiffs/Petitioners,

v.

**HILLSBOROUGH COUNTY SCHOOL BOARD, FLORIDA, and
SUPERINTENDENT ADDISON DAVIS
Defendant/Respondent.**

**Amended CONSOLIDATED VERIFIED PLAINTIFFS' EMERGENCY COMPLAINT FOR
DECLARATORY RELIEF AND INJUNCTIVE RELIEF
WITH INCORPORATED MOTION FOR TEMPORARY RESTRAINING ORDER
AND MEMORANDUM OF LAW**

Plaintiffs, in the cases captioned above, by and through their undersigned attorney, and pursuant to Florida Statute § 26.012 (3), (2019) and to Rule 1.610, Fla.R.Civ.P., respectfully move this Court for the entry of a Temporary Restraining Order or, in the alternative, move for a Preliminary Injunction enjoining Defendants, HILLSBOROUGH COUNTY SCHOOL BOARD, FLORIDA, and the SUPERINDENDENT of HILLSBOROUGH COUNTY SCHOOLS from compelling Students to wear facemasks as a requirement to attend school. Attached hereto are Affidavits of Verification supporting the request for extraordinary relief articulated herein, which also incorporate the Complaint in this action as a verified basis for the relief requested. Because a violation of Florida Sunshine Act is alleged in accordance with ARTICE I, § 24(B), immediate handling of this complaint is required pursuant to Florida Statute § 119.11(a). In support of the relief requested herein, would

show the following:

I. INTRODUCTION TO THE COMPLAINT

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Brown v. Board of Education of Topeka, 347 U.S. 483, at 493 (1954).

1. The intent of this lawsuit is to empower parents, whose love for their children cannot be questioned, and have the sole right to make decisions in their children's best interest. As of this writing, there is not one single instance, anywhere in the entire world, where one single school teacher has contracted COVID 19 from a student. Zero cases. Anywhere on planet earth. This lawsuit seeks to protect children from an irrational policy that proposes to protect them, but has the effect of actually harming children¹. The irrational policy proposed by the Superintendent of the Hillsborough County School Board (hereinafter referred to as "HCSB"), in violation of the Florida Sunshine Act, is a hidden effort to impose a heavy burden on students and parents alike for exercising their rights afforded to them under the Florida Constitution, thereby making it virtually impossible to enjoy those rights.

2. The HCSB has placed parents in a position to subject their children to real harm totally unrelated to COVID 19, both physical and psychological, if they choose to send them to school, as

¹ As of this writing, and according to the American Academy of Pediatrics, the following statistics concerning COVID 19 are published: Out of a children population of 77.9 million, the overall rate of COVID 19 in children is 447 cases per 100,000 children in the population. To date, there has been only 3 deaths involving Children in the State of Florida. Nationally, influenza in children has killed over twice as many as COVID 19. 166 children under 14 have died from Influenza this year, (as compared to 188 the year before throughout the United States).

would be their right to do so under the Florida Constitution. The policy of mandatory facemask wear for students of tender years leaves parents with little choice: subject their children to a policy that is not in the best interest of the child, or to be compelled to home school their children in a manner that is both separate and unequal. Most parents cannot make such a choice, given their own work requirements. This “Sofie Choice” is being foisted upon the citizens of Hillsborough County in an irrational way, in violation of the Florida Constitution.

3. The Florida Constitution requires the state to offer its citizens a free public education for its children. As such, any regulation that would interfere with the delivery of a free public education must be based on a compelling interest, be narrowly tailored to meet that interest, and pass strict judicial scrutiny. A free public education is a fundamental right, protected by the Florida Constitution, and any such policy that interferes with this right must survive the highest judicial scrutiny.

4. However, the HCSB has instituted a policy of required facemask wear for students in order to attend school that serves no rational purpose when analyzed through the prism of the actual science with respect to COVID 19 and in comparison to the potential harm to students that will be incurred if this policy of required long term facemask wear is implemented. In fact, it is a policy instituted not based on reliable data or science, but on irrational fear. Such policy is not in a minor child’s best interest, but actually serves to harm a child’s well-being.

5. The HCSB contemplates requiring children, as young as five (5) years of age, to wear facemasks, up to 7 hours a day, five days a week, in spite of little to no scientific evidence to support that these same individuals are susceptible of spreading the COVID 19 pandemic.²

² A study by the Netherlands’ National Institute for Health (RIVM) published on Wednesday, July 15, 2020, concluded that children under the age of 12 play little role in transmitting the new coronavirus. The study in the country’s leading medical journal *Nederlands Tijdschrift Voor Geneeskunde* followed the progress of the disease in 54 families, including

6. Further, the imposition of face mask wearing for minor children does not serve a rational purpose because the policy does not, and cannot, meet the policy objectives proposed by this policy (e.g. to stop the spread of COVID 19).³ One need only to look to the 57 nations that comprise the European Union to see that this policy is utterly irrational where schools are open and in session, and without any requirements to wear a face mask as are being proposed by the HCSB.⁴

7. In short, it is not the adults in the room that need protection from the children, rather, it is the children that need protection from the adults, who should be the one's wearing the masks that protect people from a source carrier.⁵ To that end, the facemasks that are to be worn under this policy offer little to no protection for students, and risk harm in other ways to these students.⁶ That is the

227 people in all. Studies in other countries have previously found that children are less often infected by the virus and, once infected, less often become seriously ill.

³ Arnaud Fontanet, an epidemiologist at the Pasteur Institute, and his colleagues started an investigation in Crépy-en-Valois in late March to see whether they could piece together the virus' reach in the town and its schools. In six elementary schools, they found a total of three children who had caught the virus, likely from family members, and then attended school while infected. But, as far as the researchers could tell, those younger children didn't pass the virus on to any close contacts. "It's still a bit speculative," says Fontanet, who shared results from the high school on 23 April and from the elementary schools on 29 June, both on the preprint server medRxiv. Children younger than 11 or 12, on the other hand, "probably don't transmit very well. They are close to each other in schools, but that is not enough" to fuel spread.

⁴ In some schools in Germany, students wear them in hallways or bathrooms, but can remove them when seated at their (distantly spaced) desks. Austria reopened with this approach, but abandoned masks for students a few weeks later, when officials observed little spread within schools. In Canada, Denmark, Norway, the United Kingdom, and Sweden, mask wearing was optional for both students and staff.

⁵ The CDC reports as of 8 August 2020, that "[m]ost reported cases of coronavirus disease 2019 (COVID-19) in children aged <18 years appear to be asymptomatic or mild." Since March 1, 2020, COVID-NET has identified 576 pediatric COVID-19-associated hospitalizations. 42 percent of that number had one or more underlying conditions. The total deaths for children <18 for COVID 19 are approximately 78.

⁶ Centers for Disease Control and Prevention (CDC) guidance states that standard N95 respirators reduce the wearer's exposure by filtering out around 95 percent of air particles, while those with exhalation valves allow "unfiltered exhaled air to escape into the sterile field." Dr. Matthew L. Springer, a cardiologist at the University of California, San Francisco, told the San Francisco Chronicle that masks with these values are "practically useless." "Given that most of the value of these masks is not to protect the wearer but to protect others from a potentially contagious asymptomatic wearer, those one-way valves make the masks practically useless for protecting others," he said. "So all those potentially contagious people are spewing unfettered large respiratory droplets, probably even in a concentrated stream going through the valves."

In addition, most masks only protect as a form of source control. Masks may be more effective as a "source control"

definition of a policy that fails a rational basis test, let alone strict scrutiny.

8. In addition, when a policy is instituted that requires minors to wear masks, as is being done here, it meets the definition of a medical device.⁷ Such wearing of a device interferes with the parents right to choose the medical decisions and treatments for their minor children. In short, the HCSB does not have the legal authority to order a medical device be worn, over a long period of time, five days a week, for the privilege of enjoying a free public education, as defined by the Florida Constitution. Such medical devices do not meet the pre-conditions of requiring certain inoculations to attend school, nor are they a proper definition of school clothing that schools may regulate.

9. At its heart, therefore, this case seeks to protect and vindicate fundamental liberties that citizens of the United States enjoy free from government interference. In the instant case, Plaintiffs are Florida and Hillsborough County citizens and parents of young children whose liberties protected by both the Florida and United States Constitutions have been denied through the arbitrary application of a Facemask rule for their children issued under a declared State of Emergency.

10. The liberties protected by the Constitution are not conferred or granted by government to then be rescinded at the will and whims of government officials. These God-given liberties are possessed by the people, and they are guaranteed against government interference by the United States and Florida Constitution, which are the supreme law of the land.

because they can prevent larger expelled droplets from evaporating into smaller droplets that can travel farther. Because minors are far less likely to contract COVID 19, and are less likely to spread the virus to others, masks as a form of “source” control loess their efficacy with respect to minor children.

⁷ According to the United States Food and Drug Agency, a face mask is a device, with or without a face shield, that covers the user’s nose and mouth and may or may not meet fluid barrier or filtration efficiency levels. It includes cloth face coverings as a subset. It may be for single or multiple uses, and if for multiple uses it may be laundered or cleaned. There are many products marketed in the United States as “face masks” that offer a range of protection against potential health hazards. Face masks are regulated by FDA when they meet the definition of a “device” under section 201(h) of the Act. Generally, face masks fall within this definition when they are intended for a medical purpose. Face masks are regulated under 21 CFR 878.4040 as Class I 510(k)-exempt devices (non-surgical masks).

11. Any government that has made the grave decision to suspend the liberties of a free people during a health emergency should welcome the opportunity to demonstrate-both to its citizens and to the courts-that its chosen measures are absolutely necessary to combat a threat of overwhelming severity.

12. The government should also be expected to demonstrate that less restrictive measures cannot adequately address the threat. Whether it is strict scrutiny or some other rigorous form of review, courts must identify and apply a legal standard by which to judge the constitutional validity of the government's anti-virus actions.

13. Governments wield the highest state power when confronting a health crisis. But ample police powers to administer health, safety, and welfare matters do not obviate state and local officials' grave duty to safeguard civil liberties. The "Flatten the Curve" campaign to avoid hospital overload was within state powers as a legitimate and attainable regime.

14. However, any legitimate action that infringes upon civil liberties must closely target the root of crisis. Executive orders by the Superintendent of the School Board, not supported by legislative vote by the elected members of the board, and that interfere with a child's right to a free public education, must be clearly defined, narrowly tailored, attain a compelling interest, and not violate equal protection under Florida Law. None of these elements are met in this case.

**II. A SUMMARY OF THE REASONS FOR
EMERGENCY AND EXTRAORDINARY RELIEF**

15. The Florida Constitution holds at Article IX the following:

a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other

public education programs that the needs of the people may require.

16. As is patently clear, the continued closures of school's risk "scarring the life chances of a generation of young people," as stated by an open letter published last month and signed by more than 1500 members of the United Kingdom's Royal College of Pediatrics and Child Health. The alternative being offered to forcing a child of tender years to wear a mask five days a week, 7 hours a day, is home schooling.

17 Virtual education is often a pale shadow of the real thing and left many parents juggling jobs and childcare. In short, a virtual education is inconsistent with the Florida Constitution. Lower-income children who depend on school meals will go hungry. And yet, the policy of the HCSB compels parents to choose between sending their minor children to school in a manner that is not in their best interest, versus having to go through virtual education that is insufficient. Such virtual education expects a child of tender years to sit in front of a computer screen for 6 hours a day, monitored by their parent. What working parent is capable of doing that, and what child will sit still in front a computer screen hour after hour, day after day. There are innumerable studies that show that extended screen time as proposed by HCSB is ultimately harmful to the child and is not in a child best interest.

18. Early data from a landmark National Institutes of Health (NIH) study that began in 2018 indicates that children who spent more than two hours a day on screen-time activities scored lower on language and thinking tests, and some children with more than seven hours a day of screen time experienced thinning of the brain's cortex, the area of the brain related to critical thinking and reasoning.

19. But this is exactly what the HCSB is proposing to do to students who refuse to comply

with the Board's mask rule. Such screen time is not only unhealthy and bad for a child's eye's⁸, brain development,⁹ and has a deleterious effect on a child's mental and physical growth.¹⁰ Expecting a child to wear a mask 7 hours a day, or sit in front a computer for an equal period of time, requiring a parent to monitor the child at the expense of their own jobs, is a Hobbesian choice¹¹ indeed.

20. From the studies listed above we can determine the following without any dispute:

- Children appear significantly less likely to acquire COVID-19 than adults when exposed;
- There is reasonable evidence that there are significantly fewer children infected in the community than adults;
- Children are rarely the index case in a household cluster in the literature to date; and
- It is not clear how likely an infected child is to pass on the infection compared to an infected adult, but there is no evidence that they are any more infectious.

⁸ A new study appearing in *Ophthalmology*, the journal of the American Academy of Ophthalmology, offers further evidence that at least part of the worldwide increase in nearsightedness has to do with near work activities; not just screens but also traditional books. And, that spending time outdoors—especially in early childhood—can slow the progression of nearsightedness.

⁹ A new study from Cincinnati Children's Hospital Medical Center published in *JAMA Pediatrics* showed concerning evidence that brain structure may be altered in kids with more screen use. Researchers looked at brain MRIs in 47 preschoolers and found that screen time over the AAP's recommendations was associated with differences in brain structure in areas related to language and literacy development.

According to David Anderson, Ph.D., a clinical psychologist and senior director of National Programs and Outreach at the Child Mind Institute, it's especially important "to be very cautious when using screens with young kids, as this study highlights, as young kids are in a critical developmental period." At this stage, children "require face-to-face interaction," said Anderson to reach developmental milestones including building language and social skills. During this time they also develop empathy, the ability to understand emotion, and "build stamina to navigate personal situations," he said.

¹⁰ Dr. Jennifer F. Cross, attending pediatrician and a developmental and behavioral pediatrics expert at NewYork-Presbyterian Komansky Children's Hospital. "If young children spend most of their time engaging with an iPad, smartphone, or the television, all of which are highly entertaining, it can be hard to get them engaged in non-electronic activities, such as playing with toys to foster imagination and creativity, exploring outdoors, and playing with other children to develop appropriate social skills. Interacting almost exclusively with screens would be like working out only your arm muscles and nothing else. You would have really strong arm muscles, but at the expense of overall fitness."

¹¹ A Hobson's choice is a free choice in which only one thing is offered. Because a person may refuse to accept what is offered, the two options are taking it or taking nothing. In other words, one may "take it or leave it".

The most parsimonious explanation for all the above seems to be that children are less susceptible to becoming infected, therefore fewer of them have become infected, and children have therefore infrequently brought the infection into their homes.

21. FIRST: It is a violation of the Florida Constitution to fail to offer children a free public education. Imposing a requirement to receive that education that serves no rational basis violates this requirement.

22. SECOND: In addition, offering as an alternative a virtual education regimen that forces a parent to stay with the minor is an inadequate alternative that violates Article IX of the Florida Constitution. A virtual classroom is not the classroom, and children subject to a virtual education are receiving a separate and unequal education. See *Brown v. Board of Education*, 347 U.S. 483 (1954).

23. THIRD: In addition, requiring students to wear face masks as a medical device, interferes with a parent right to determine medical treatments for their child. Parents have a legal right to make treatment decisions on behalf of their young children. Such rights are normally rebuttable: they can be set aside by courts where parents' decisions pose a significant risk to the life or well-being of the child. However, in all cases, such arrangements create a presumption in favor of parental rights in the absence of an existing and existential threat to the life of child. In all cases involving these judgments with regards to medical treatment of children, family autonomy is not absolute, but may only be limited where it appears that parental decisions will jeopardize the health or safety of a child through the exercise of a specific court order based on a specified determination involving a specific minor that such evidence exists. Given the facts as presented by science that COVID 19 presents a far reduced risk to the health of minors then, for example, the flu, it calls into the question the rational and authority that the HCSB has to interfere with parental authority in these

matters.

24. FOURTH: The HCSB policy also violates numerous other provisions within the Florida Constitution. Chief among those rights and liberties are those found in Article 1 of the Florida Constitution.¹² The HCSB policy as applied violated equal protection as found within the Florida Constitution, Article I, § 2, due process under § 9, and the right of privacy under § 23.

25. FIFTH: The Superintendent of the Hillsborough County Schools is not a dictator, where he may pass policy by fiat. This is official is subject to Florida Laws concerning government being conducted in the Sunshine. The process by which the adoption of this facemask policy by the HCSB, violated multiple Florida Statutes. Article I, § 24(b) of the Florida Constitution requires all meetings of public entities to be in public and noticed. This policy was placed into effect with no notice, hearing or publication of the law as of July 7, 2020. The HCSB may suggest that that the requirement of Florida Statute § 286.0115(3) provides an exemption from public notice and participation in the case of emergency. However, the nature of how this facemask policy was adopted, without any public comment or open hearing, and not scheduled to into effect until late August, shows that the need for such actions that avoid Florida Constitutional requirements did not

¹² Article 1, Sections 2, 9, 21 and 23 the Florida Constitution provides, in pertinent part:

a. SECTION 2. Basic rights. —All-natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

b. SECTION 9. Due process. —No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself.

c. SECTION 21. Access to courts. —The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

d. SECTION 23. Right of privacy. —Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

constitute an emergency in any sense of the word.

SIXTH: The HCSB has threatened to close down public schools for a week in violation of Article IX and Article I, section 2 (equal protection), and will impose a separate and unequal education of the students of Hillsborough county for the first week of school.

III. STANDARD OF REVIEW

27. Because this is an action being brought under Florida Statute §119.11, an accelerated hearing and immediate compliance are required. Florida Statute § 119.11(1) states in part: (1) Whenever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending cases.

28. Because a specific constitutional right is being violated by the BCSB, the standard of review is Strict Scrutiny. The HCSB facemask policy must have a compelling interest, and be narrowly tailored. For the aforementioned reasons state *infra*, the BCSB fails even a rational basis test.

IV. JURISDICTION AND VENUE

29. The Plaintiffs in this action are a number of individuals who reside in Hillsborough County who have minor children who attended Hillsborough County Public Schools who are impacted by the order of the HCSB, and whose civil liberties and constitutional rights are being violated.

30. This is an action for declaratory and injunctive relief, that also seeks a TRO, and this action is related to the separate actions specified herein.

31. This in an action challenging the constitutionality of the facemask policy instituted against the Plaintiffs by the HCSB.

32. This is an action for temporary and permanent injunctive relief and for a declaratory

judgment and related relief. The jurisdiction of this Court is invoked pursuant to Chapter 86 et.seq. Florida Statutes, which authorizes circuit courts to enter declaratory judgments related to controversies within the jurisdiction of the circuit court. The jurisdiction of this Court is also invoked pursuant to Rule 1.610, Fla.R.Civ.Pro., Chapter 26.012(3), Florida Statutes, which authorizes the circuit courts to enter injunctions, and the inherent power of Florida courts to grant injunctive and declaratory relief.

33. The jurisdiction of this Court is also invoked pursuant to Article I, § 2, 9, 21, and 23, and Article IX, of the Constitution of the State of Florida.

34. The jurisdiction of this Court is also invoked pursuant to *Smith v. Avino*, 91 F.3d 105 (11th Cir. 1996), abrogated on other grounds *Steel Co. v. Citizens for Better Env.*, 523 U.S. 82 (1998) (noting that government may impose a curfew during times of emergency but they must be imposed in good faith, have a factual basis, and be necessary to maintain order) and *SW v. State*, 431 So. 2d 339 (2DCA 1983), “Government has a legitimate right to enact laws for the protection of minors, but such laws must reasonably relate to their purpose without unduly limiting individual freedoms.”

35. An actual and existing controversy exists between Plaintiffs and Defendant Superintendent for the Hillsborough County Schools and the Hillsborough County School Board relative to their respective rights and duties as set forth herein.

36. Venue is proper in Hillsborough County, because Hillsborough County is the County where the Plaintiffs and Defendants are located, and where relief is sought from the enforcement of the unconstitutional threat to personal and property rights brought about through enforcement of the challenged order.

V. PARTIES

37. Plaintiffs *KEVIN LEVONAS and ANGELINA AUCELLO* reside in Hillsborough County and have two minor children enrolled in Hillsborough County Schools. A.L and L.L. attend elementary school in Hillsborough County. Both Plaintiff's contend that their minor children should be permitted to attend a brick and mortar school, without being compelled to wear a facemask.

38. Plaintiff *MATT and PRISCILLA POAGE* resides in Hillsborough County, and has one minor child enrolled in the Hillsborough County Schools. W.F.P. is in elementary school in Hillsborough County. Both Plaintiff's contend that their minor children should be permitted to attend a brick and mortar school, without being compelled to wear a facemask.

39. Plaintiffs *JUSTIN and GRACE WARNIMENT* resides in Hillsborough County, and have two minor children enrolled in the Hillsborough County Schools C.P.G. and B.P.G. attend elementary school in Hillsborough County. Both Plaintiff's contend that their minor children should be permitted to attend a brick and mortar school, without being compelled to wear a facemask.

40. Plaintiff *ELIZABETH HAGAN* resides in Hillsborough County, and has two minor children enrolled in the Hillsborough County Schools M.N.H. and A.H. are both enrolled in middle school in Hillsborough County. Plaintiff contend that her minor children should be permitted to attend a brick and mortar school, without being compelled to wear a facemask. (Left intentionally blank)

41. Plaintiff *MIKE MILLER* resides in Hillsborough County, and has one minor child enrolled in the Hillsborough County Schools. E.R.M. is attending an elementary school in Hillsborough County. Plaintiff contend that his minor child should be permitted to attend a brick and mortar school, without being compelled to wear a facemask.

42. Plaintiff *ROBERT and EVELYN GRIFFITH* reside in Hillsborough County and have

two minor children in the Hillsborough County Schools. R.L.G. is in high school. R.G. and E.G. are students in elementary school. Plaintiffs contend that all of their children should be able to attend a brick and mortar school without being compelled to wear a facemask.

43. At all times material hereto, Defendant SUPERINTENDENT and the HILLSBOROUGH COUNTY SCHOOL BOARD, FLORIDA, was and is a political subdivision of the State of Florida. Naming HILLSBOROUGH COUNTY SCHOOL BOARD, FLORIDA, as a Defendant in this action is intended to include all HILLSBOROUGH COUNTY PUBLIC SCHOOLS, FLORIDA representatives, employees, and agents, including but not limited to, the Hillsborough County School Superintendent and the School Board, all public and public charter schools, and all employees and agents under whose authority to enact and enforce these policies and regulations is duly governed and limited by, *inter alia*, Sec.286, et.seq., Florida Statutes (Florida "Sunshine" law) and Article I, Section 24, Florida Constitution, as well as the defined authorization to carry out county government responsibilities under Chapter 125, Florida Statutes, duly governed, limited and enumerated by, *inter alia* Sec.125.01, Sec. 125.011, Sec. 125.66 and Sec. 286, et.seq. of the Florida Statutes (Florida Constitution, effective July 1, 1993).

**VI. PLAINTIFFS' STATEMENT OF JURISDICTIONAL ALLEGATIONS
ESTABLISHING STANDING, RIPENESS AND A RIGHT TO RELIEF**

44. Plaintiffs assert that their position, as set forth in this Complaint, is legally sound and supported by fact and law (see enclosure 1). The Defendants' threatened actions in the form of a facemask order for minor children to enjoy a right protected by the Florida Constitution and one which interferes with other rights and privileges as is shown in this complaint created a bona fide controversy between the parties, and Plaintiffs are in doubt as to their rights, privileges and immunities with respect to the HCSB facemask order. Plaintiffs require, therefore, a declaratory

judgment determining their rights, privileges and immunities, and relief from unconstitutional and illegally imposed facemask order of the HCSB

45. Plaintiffs *KEVIN LEVONAS and ANGELINA AUCELLO* reside in Hillsborough County and have two minor children enrolled in Hillsborough County Schools. The Plaintiffs believe that wearing masks for their young children is not in their physical and mental best interest, given their age. Their emotional intelligence will not allow them to successfully wear a mask for hours at a time. In addition, the Plaintiffs believe that the mask are unhealthy and risk causing harm to their children's health, both physical, mental and emotional.

46. Plaintiff *MATT and PRISCILLA POAGE* resides in Hillsborough County, and has one minor child enrolled in the Hillsborough County Schools. In the parent's view, they believe the masks are unhealthy and represent a greater danger to their child's physical and psychological well-being. But for the mask regulation, the Plaintiffs would desire their minor child to remain in a brick and mortar schools, where they believed their minor child would receive a better education. They believe that wearing a mask is actually unhealthy for their child.

47. Plaintiffs *JUSTIN and GRACE WARNIMENT* resides in Hillsborough County, and have two minor children enrolled in the Hillsborough County Schools. Plaintiffs have one minor child who is learning impaired and incapable of wearing a mask full time. They fear that this child will be subject to ridicule, even if given an exemption. In addition, both parents feel strongly that being compelled to wear a facemask all day five days a week represents a threat to their minor children's health and welfare. In addition, the parents believe that this facemask regulation is divisive and will result in children being persecuted for failing to comply with imposed regulations.

48. Plaintiff *ELIZABETH HAGAN* resides in Hillsborough County, and has two minor children enrolled in the Hillsborough County Schools. Plaintiff values her children's health and

believes that wearing masks represents a threat to her minor children's physical health and emotional wellbeing. Plaintiff does not want her children to be compelled to wear mask in school because she feels that wearing a mask provide will not provide proper protection. Additionally, she feels strongly that wearing a mask is harmful to their health, and will not allow them to be a productive student.

49. Plaintiff *MIKE MILLER* has one minor child enrolled in the Hillsborough County Schools. Mr. Miller believes that the HCSB facemask policy presents a health and welfare threat to his minor child due to improper wear of the mask during the school day. Mr. Miller feels that compelling his child to wear a facemask will result in his child adjusting the mask in a way that will lead to increase risk due to a contaminated mask. Plaintiff *ROBERT and EVELYN GRIFFITH* are not comfortable with their minor children being compelled to wear a medical device without proper medical supervision, and outside of the parent's presence.

50. There is a clear, present, actual, substantial and bona fide justifiable controversy between the parties. All conditions precedent to the institution and maintenance of this cause of action have occurred or have been performed.

51. The acts, practices and jurisdiction of the Defendant, HCSB, as set forth herein, were and are being performed under color of state law and therefore constitute state action within the meaning of that concept.

52. Plaintiffs are and will be threatened with adverse treatment and a denial of due process and their civil rights, and compelled to receive separate and unequal education in violation of the Florida Constitution, on the basis of the facemask order of the HCSB that is hopelessly vague. In addition, Plaintiffs rights to determine how medical services are delivered to their children are interfered with in violation of the Florida Constitution. Further, the HCSB facemask order treats individuals differently based on no recognizable status., thereby violating the Equal Protection

Doctrine as found under the Florida Constitution. Finally, this facemask order was implemented in violation of the Florida Sunshine Act.

53. Plaintiffs have no adequate remedy at law. No amount of money damages could adequately compensate the Plaintiffs for the irreparable harm described herein, specifically the deprivation of constitutionally protected fundamental rights.

54. Plaintiffs and the public at large will suffer irreparable injury if injunctive relief is not granted, and Defendants are permitted to enforce the provisions of the HCSB facemask order.

55. The public interest would best be served by the granting of injunctive relief, and, indeed, the public interest is disserved by permitting the enforcement of invalid facemask order of the HCSB and the flawed procedures in violation of Florida Statute's that resulted in this flawed and vague order that violates numerous constitutional rights, as set forth herein.

56. The financial and non-financial losses the Plaintiffs have suffered is the direct result of the discriminatory, irrational, and unequal restrictions from the HCSB facemask order and the overreaching adoption and enforcement of the order's challenged herein.

57. Plaintiffs and the public at large will suffer irreparable injury if injunctive relief is not granted, and if the Respondent is permitted to enforce the provisions of the offending facemask order.

58. Plaintiffs have engaged the undersigned to prosecute this action and vindicate their rights under the law and Plaintiffs would request an award of attorneys' fees.

VII. GENERAL ALLEGATIONS

A. DESCRIPTION OF THE HISTORY LEADING TO THE SUPERINTENDENT REQUIRING THE WEARING OF PROTECTIVE FACE COVERINGS

59. In December 2019, a cluster of pneumonia cases, caused by a newly identified β -coronavirus, occurred in Wuhan, China. The World Health Organization (WHO) officially named

the disease as coronavirus disease 2019 (COVID-19).

60. On February 29, 2020, the United States reports the first death on American soil.

61. On March 1, 2020 the Governor of the State of Florida issued Executive Order Number 20-51, declaring that a public health emergency exists throughout the State of Florida as a result of the spread of the COVID-19 virus; and

62. On March 9, 2020 the Governor of the State of Florida issued Executive Order Number 20-52, declaring that a state of emergency exists throughout the State of Florida as a result of the spread of the COVID-19 virus and its imminent threat to health and welfare of the citizens of Florida.

63. WHO declared the outbreak a pandemic on March 11, 2020 Two days later, on March 13, 2020, a US national emergency is declared over the novel coronavirus outbreak.

B. A DESCRIPTION OF HCSO FACE MASK ORDER

64. On July 7, 2020, without a vote of the Hillsborough County School Board, and without notice or public comment, Superintendent Addison put out the following statement:

At Hillsborough County Public Schools, the safety of our staff and students is always a top priority. As we face the global challenges brought upon us by COVID-19, we must focus on the impact of this pandemic within our own community, and most importantly the effects upon our children. Although we are presented with a myriad of changes and challenges daily, we can agree that the health and safety of our students, teachers, staff and Hillsborough County residents are paramount to launching the 2020-2021 academic year.

While much of the COVID pandemic has seemed insurmountable and ever-changing, it is incumbent upon us to provide optimal health and safety structures for our schools as we traverse these challenges. To that end, and after much consideration and consultation with health experts, civic leaders, educators, and Hillsborough County Public Schools stakeholders, I have made the decision that as we prepare to re-open our schools, face coverings will be a requirement for all students, teachers, staff, administrators and visitors, where social distancing cannot be maintained or when an approved exemption does not apply.

The CDC has identified face coverings as one of the most effective tools in stopping the spread of COVID-19, along with social distancing, hand washing and disinfecting frequently touched surfaces. With that said, reusable face coverings will be provided for our faculty, staff, and students, and non-reusable face coverings will be provided to all visitors.

It is our goal that as we re-open our schools and welcome our children into a new year of learning, that we mitigate the health concerns with which we are faced and focus on providing high-quality instruction and engagement for every student. We will continue to work in partnership with all stakeholders, as well as with the Florida Department of Health and our state and local governance, to ensure that we provide a safe, healthy, and successful return to school for our students.

For your review, I have provided a document of Frequently Asked Questions specific to this face covering requirement. Thank you for your continuing support of the health and well-being of our students. I appreciate your dedication.

65. Attached to this statement was a series of what is described as “Frequently Asked Questions on the Use of Face Covering” that propose to explain this announced policy (Enclosure

2). Some of the important highlights include:

- a. Face covering will be required to be worn in Hillsborough County Public Schools by all students and personnel for the entire day unless eating or drinking, everywhere on the school campus, even if participating in extracurricular activities, and on school buses. Since social distancing cannot be achieved in the classrooms, facemasks will be required to be worn in the classrooms.
- b. The policy provides for exemptions, but does not explain how they are to be applied. For example, persons for whom a face covering would cause an impairment due to an existing health condition; persons who need to communicate with someone who is hearing impaired and needs to see the person’s mouth to communicate; teachers and students when face covering would be an impediment to instruction; and Appropriate accommodations will be made based on the individualized needs of the students.
- c. Students that refuse to comply with this policy will face disciplinary actions. Such actions will ultimately result in the Student being required to withdraw from Public School and enroll in distance learning.

d. Face Covering are subject to speech and dress codes of the school. Inflammatory language, not defined, on a face mask, will not be approved.

66. There is no scientific evidence to suggest that those students and individuals who qualify for an exception for reasons clearly unrelated to Title VII, 42 U.S.C. § 2000d et seq, are immune from contracting COVID 19. Such exceptions would make the general rule of a face mask wear for all others fail even a rational basis test, and would violate the Florida Constitutional requirement of equal protection as found under Article I, § 2.

VIII. COMPLAINT

A. FIRST CLAIM FOR RELIEF

THE FACEMASK ORDER FROM THE SUPERINTENDENT OF THE HILLSBOROUGH COUNTY SCHOOL BOARD VIOLATES THE FLORIDA CONSTITUTIONAL REQUIREMENT OF PROVIDING A FREE PUBLIC EDUCATION

67. Plaintiff incorporates herein by reference each and every allegation contained in paragraphs 1-66 of this Complaint as though fully set forth herein.

68. The Florida Constitution, Article IX states, in part, that the education of children is a fundamental value of the people of the State of Florida. Because a free public education is guaranteed in the Florida Constitution, any impediments to receiving that education must have a compelling interest and be narrowly tailored to meet that interest. *Grutter v. Bollinger*, 539 U.S. 306 (2003)

69. The Center for Disease Control (“CDC”) has made clear that “Schools are an important part of the infrastructure of communities and play a critical role in supporting the whole child, not just their academic achievement.”¹³ Nowhere in the guidance provided to local schools by the CDC is any information about compelling students to wear face masks.

¹³ Preparing K-12 School Administrators for a Safe Return to School in Fall 2020. Guidance from the CDC to school Districts.

70. Children cannot be expected to wear masks of any kind for the duration of a school day. At some point, the mask has to come off; even adult medical professionals take breaks. And anyone who's worked with young children knows they will play with their masks and not even realize they're doing it. It's simply unrealistic to expect otherwise. What occurs is that minor children will touch their face far more often than they would.

71. Parents, and not the school board, are in the best position to determine whether or not their minor children are capable of wearing face covering, and if they have the ability to do so for up to 7 hours a day, five days a week.

72. Because many parents strongly object to their minor children wearing facemasks for extended periods of time, every day of the school year, children are being forced to dis-enroll from public school in favor of distance learning. Distance learning does not provide the same level of education as that receiving classroom instruction.

73. The facemask policy is irrational because it does not protect students. To contrary, all evidence suggests that children are less susceptible to catching COVID 19, or spreading it, and on the rare occasions that they contract COVID 19, received the virus from adults, rather than spreading COVID 19 to one another or to other adults.¹⁴

¹⁴ How easily children catch the disease? On this front, we have five studies (three published and two pre-print) to help inform us. These studies all look more-or-less at the same thing, which is contact tracing. From cases that have been confirmed positive (an index case), they trace back all the people who that case has been in contact with over the recent past and test all of them for COVID-19 to see how many of them caught the illness from exposure to that index case. The proportion of people who have had contact that subsequently became infected is referred to as the Attack Rate (AR). Broadly speaking contacts can be split into two groups: household and non-household (this is important as obviously you are much more likely to transmit to someone in your house). We can also split them up according to age, and see if there is any difference in the number of children who catch the illness compared to adults.

A study from Shenzhen in China was the first to be released in pre-print in March and is now published in the Lancet ID. This study assessed 1286 contacts of 391 initial cases and showed children had a similar attack rate to the population average (7.4% vs 7.9%), but interestingly were much less likely to be symptomatic. This finding caused a lot of concern, but more data has emerged since.

A pre-print study from Japan was released shortly after. They examined 2496 contacts of 313 domestically acquired

74. The evidence in fact points out that minor children rarely contract COVID 19.¹⁵ On those occasions when a minor contracts COVID 19, the symptoms are often relatively minor, and rarely if ever led to death.¹⁶ In point of fact, the science indicates that the Flu is up to three (3) times more deadly to minor children than COVID 19.¹⁷

75. Scientists are yet to find a single confirmed case of a teacher catching coronavirus

cases and found a much lower attack rate in children (7.2% males, 3.8% females) compared to adults (22% in people aged 50 -59 years).

Another pre-print study from Guangzhou in China examined 2017 close contacts of 212 confirmed cases. The overall attack rate was 12.6%, however, the attack rate in children was 5.3%. They calculated an odds ratio of acquiring infection in children of 0.27 (0.13 – 0.55) compared to adults >60 years of age.

A study published in *Clinical Infectious Diseases* assessed household contacts in particular. They assessed 392 contacts of 105 index cases in Wuhan, China (they had more stringent eligibility criteria to ensure they had correctly identified the index case in the household i.e. the person who brought the infection in). Of the 100 contacts under 18 years of age, only four became infected. This was compared to an attack rate of 21.9% among adult household contacts (making an overall attack rate of 16%).

A further study published in *Science* included some far-reaching assessments of transmission, but for our purposes, we will look at their findings regarding secondary attack rates in children. This was a contact tracing study from the Hunan CDC in China. They assessed 114 clusters (some clusters had more than one index case) and 7375 contacts. A regression analysis to adjust for other factors that influence AR (the type of transmission, travel history, etc) to determine the odds of becoming infected at different age groups. They found an odds ratio of 0.34 (0.24–0.49) for children under 14 years, compared to the reference group of 15-64 years (consistent across models).

¹⁵ Iceland tested 6% of their entire population and found dramatically lower numbers of cases in children, including 6.7% children under 10 positive in “targeted testing” (symptomatic or high risk due to contacts) compared to 13.7% of those 10 and older, and found 0 children under 10 years positive in population screening (by invitation) compared to 0.8% of those over 10 years.

The Italian principality of Vo tested >85% of their population following their first death from COVID-19, and found no positive cases in children despite 2.6% of the population being positive. This finding was repeated when they tested again two weeks later – despite a number of children living in households with confirmed positive contacts.

Finally, a study in The Netherlands is undertaking community serology testing (looking for antibodies against SARS-CoV-2 as evidence of current or previous infection) and has released preliminary results. They have found 4.2% of adults are positive compared to 2% of those aged <20 years.

¹⁶ On April 6, the C.D.C. published preliminary findings on pediatric coronavirus cases in the United States. According to the report, 2,572 cases occurred in children younger than 18, and those children were significantly less likely to become seriously ill from the virus than American adults were. They also appeared less likely than adults to develop the main coronavirus symptoms like fever, cough or shortness of breath.

¹⁷ According to the CDC, as of August 14, 2020, there were 169 Pediatric deaths due to the Flu. There has been a total of 49 deaths of minors under the age of 15 due to COVID 19.

from a pupil anywhere in the world, according to Dr. Mark Woolhouse, an infectious disease epidemiologist at Edinburgh University. Professor Woolhouse, a member of the UK government’s scientific advisory group, Sage, said that in hindsight closing schools in March was probably a mistake, but the limited role children play in spreading the virus only became clear further along the infection curve. Dr. Woolhouse is quoted as saying: “One thing we have learnt is that children are certainly, in the five to 15 brackets¹⁸ from school to early years, are minimally involved in the epidemiology of this virus.”¹⁹

76. Such a policy of requiring facemasks fails even a rational basis test, and is clearly not in a child best interest when assessed through a factual, rather than fear based, lens. It is simply not rational to believe that an ill-fitting mask, designed for the face of an adult, will be properly worn by young children, 6-7 hours day, five days a week.

77. Even if one wishes to assume that masks likely blunt spread at school, children—even more than adults—find them uncomfortable to wear for hours and may lack the self-discipline to wear them without touching their faces or freeing their noses. Such discomfort overrides any potential public health benefit.

78. The policy proposed, without public comment or debate, is not supported by the evidence, the facts, the science, or the law. The evidence is that minor children are less susceptible to catching COVID 19. The facts show that no child has ever passed the virus to a teacher. The

¹⁸ A peer review study published in the journal Nature Medicine found that children and teenagers are only half as likely to get infected with the coronavirus as adults age 20 and older, and they usually don’t develop clinical symptoms of covid-19, the disease caused by the virus. The study, is based on a survey of six nations: Canada, China, Italy, Japan, Singapore and South Korea. The researchers developed mathematical models to interpret the demographic patterns of covid-19 cases in those countries. Age-dependent effects in the transmission and control of COVID-19 epidemics Nicholas G. Davies, Petra Klepac, Yang Liu, Kiesha Prem, Mark Jit, CMMID COVID-19 working group & Rosalind M. Eggo Nature Medicine (June 16 2020)

¹⁹ School closures ‘a mistake’ as no teachers infected in classroom: The Times of London, published 22 July 2020.

science makes clear that adults wearing mask protect children, not the other way around. The law clearly shows that this policy fails a rational basis test, let alone a test based on strict scrutiny, with no compelling interest, and where the policy itself is not narrowly tailored. A narrowly tailored policy would compel all adults to wear facemasks. A narrowly tailored test would allow for students' temperatures to be monitored and do what is possible to maintain social distancing in the classroom. A narrowly tailored policy would involve having students wash their hands frequently. An order that compels students to wear a facemask, that is not properly fitted, and which invites the very conduct we would hope to avoid (having hands touching the face) is a recipe for failure.

79. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Respondent is enjoined from implementing and enforcing the Orders. Pursuant to Section 26.012 (3), F.S., 2019 and to Rule 1.610, Fla.R.Civ.P., Plaintiffs are entitled to declaratory relief and preliminary, and permanent injunctive relief invalidating and restraining enforcement of the HCSB facemask order.

80. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law and request the award of attorney fees to vindicate their rights.

SECOND CLAIM FOR RELIEF

THE FACEMASK ORDER FROM THE SUPERINTENDENT OF THE HILLSBOROUGH COUNTY SCHOOL BOARD CREATES A SYSTEM OF EDUCATION THAT IS BOTH SEPARATE AND UNEQUAL

81. Plaintiff incorporates herein by reference each and every allegation contained in paragraphs 1-66 of this Complaint as though fully set forth herein.

82. Forced mask wear is compelling individual who feel strongly that such requirements are not in the child best interest, as described above, are being forced into a Virtual and e-learning

83. In addition, those students who either refuse to comply or cannot comply with the

HCSB facemask order will be relegated to virtual learning off campus.

84. Such e-learning is inadequate, and provides a separate and unequal education in violation of the Florida Constitution. In addition, to engage in eLearning has a cost to the parents involved. While the HCSB insists that this type of education will be free, that is not the case. Both Spectrum and Frontier required individuals to pay a fee in order to participate this past spring, and the HCSB admits that both corporations have made it clear that they will not be providing cost free Wi-Fi and internet.

85. In traditional classrooms, teachers can give students immediate face-to-face feedback. Students who are experiencing problems in the curriculum can resolve them quickly and directly either during the lecture or during the dedicated office hours. Personalized feedback has a positive impact on students, as it makes learning processes easier, richer, and more significant, all the while raising the motivation levels of the students. E-Learning, on the other hand, still tends to struggle with student feedback.

86. The eLearning methods currently practiced in education tend to make participating students undergo contemplation, remoteness and a lack of interaction. As a result, many of the students and teachers who inevitably spend much of their time online can start experiencing signs of social isolation, due to the lack of human communication in their lives. Social isolation coupled with a lack of communication often leads to several mental health issues such as heightened stress, anxiety, and negative thoughts.

87. Lack of self-motivation among students continues to be one of the primary reasons why students fail to complete online courses. In traditional classrooms, there are numerous factors which constantly push students towards their learning goals. Face-to-face communication with professors, peer-to-peer activities, and strict schedules all work in unison to keep the students from

falling off track during their studies. In the setting of an online learning environment, however, there are fewer external factors which push the students to perform well. In many cases, the students are left to fend for themselves during their learning activities, without anyone constantly urging them on towards their learning goals.

88. All educational disciplines are not created equal, and not all study fields can be effectively used in e-learning. For now, at least. eLearning tends to be more suitable for social science and humanities, rather than scientific fields which require a certain degree of hands-on practical experience.

89. Asides from providing what is a separate and unequal education that is a poor substitute for those receiving education that is hands on and in school, one that is not free in any sense of the word, it is also unhealthy to sit a small child in front of a computer screen 6 hours a day.

90. The American Academy of Pediatrics recommends parents place a reasonable limit on media. Elementary school-age children who watch TV or use a computer more than 2 hours per day are more likely to have emotional, social, and attention problems. Those problems include: educational problems, Obesity, Sleep problems and Violence.²⁰

91. The HCSB policy concerning facemasks results in some parents having to choose between the adverse impacts associated with long term face mask wear, and the deleterious effects of eLearning. This is why the HSCB policy fails to meet the criteria required when interfering with child's fundamental right to a free education by enacting a policy that is narrowly tailored in order to obtain a compelling interest. Instead, the HCSB facemask policy creates far more problems then it would ever hope to solve, at the short- and long-term expense to children.

²⁰ According to the American Academy of Child and Adolescent Psychiatry.

92. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Respondent is enjoined from implementing and enforcing the Orders. Pursuant to Section 26.012 (3), F.S., 2019 and to Rule 1.610, Fla.R.Civ.P., Plaintiffs are entitled to declaratory relief and preliminary, and permanent injunctive relief invalidating and restraining enforcement of the HCSB facemask order.

93. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law and request the award of attorney fees to vindicate their rights.

THIRD CLAIM FOR RELIEF

THE FACEMASK ORDER FROM THE SUPERINTENDENT OF THE HILLSBOROUGH COUNTY SCHOOL BOARD VIOLATES PARENTAL AUTHORITY TO DETERMINE THEIR MINOR CHILD'S MEDICAL TREATMENT

94. Plaintiff incorporates herein by reference each and every allegation contained in paragraphs 1-66 of this Complaint as though fully set forth herein.

95. The HCSB policy that requires minors to wear facemasks, as is being done here, meets the definition of a medical device.²¹ Such wearing of a device interferes with the parents right to choose the medical decision and treatments for their minor children in violation of Article I, § 23 of the Florida Constitution.

96. The CDC and other agencies make clear that facemasks worn by children are not a substitute for social distancing. Further, most government agencies make clear that minor children should not wear masks while outside. The HSCB policy requires a mask be worn at all times, inside

²¹ According to the United States Food and Drug Agency, a face mask is a device, with or without a face shield, that covers the user's nose and mouth and may or may not meet fluid barrier or filtration efficiency levels. It includes cloth face coverings as a subset. It may be for single or multiple uses, and if for multiple uses it may be laundered or cleaned. There are many products marketed in the United States as "facemasks" that offer a range of protection against potential health hazards. Facemasks are regulated by FDA when they meet the definition of a "device" under section 201(h) of the Act. Generally, facemasks fall within this definition when they are intended for a medical purpose. Facemasks are regulated under 21 CFR 878.4040 as Class I 510(k)-exempt devices (non-surgical masks).

or outside, from the bus stop to the school house door.

97. The decision to wear a facemask is that of the parents to make, not the HCSB. Florida law has traditionally recognized the right of parents to make health care decisions on their children's behalf, on the presumption that before reaching the age of majority, young people lack the experience and judgment to make fully informed decisions. The wearing of facemasks, under these facts, is not one of those rare exceptions that permits the Government to overcome parental consent in the child's best interest. COVID 19 does not represent that level of imminent and immediate threat to minor children, more so than influenza for example, to allow government to overcome the rights of the parents on this issue.

98. Parents have the responsibility and authority to make medical decisions on behalf of their children. This includes the right to refuse or discontinue treatments, even those that may be life-sustaining. While most physicians believe it is in a child's best interest to receive the routine childhood vaccinations and therefore recommend them to parents, they do not generally legally challenge parents who choose not to vaccinate their children. Even if that was the case, a vaccination is a one-time event. What is proposed here is the wearing of a medical device for extended periods. A parent may feel quite strongly that such a medical device is not in the child's best interest.

99. In order to overcome the parents right in determining a child's medical care, the policy must be one that is so compelling, that the life of child is in clear danger but for the treatment. Such policy must be narrowly tailored and executed in only the most unique factual settings (e.g. lifesaving chemotherapy treatment; necessary blood transfusion; or kidney dialysis, to name a few). In light of the science that shows that COVID 19 up to three time less likely to kill a child than the flu, none of the factors normally required to overcome parental consent exist.

100. Therefore, any mandatory rule that requires the wearing of facemasks that interferes

with parental consent is patently illegal and unconstitutional, because it interferes with the fundamental right to received a free public education.

101. As stated *infra*, there is little to no scientific evidence to support the proposition that minors are a source carrier of COVID 19. Additionally, the wearing of masks by those who so choose mitigates their risk. However, the rights of others go only as far as the nose of the Plaintiff. The Plaintiffs have a right to determine what touches their child's nose, not the government.

102. Accordingly, Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Respondent is enjoined from implementing and enforcing the Orders. Pursuant to Section 26.012 (3), F.S., 2019 and to Rule 1.610, Fla.R.Civ.P., Plaintiffs are entitled to declaratory relief and preliminary, and permanent injunctive relief invalidating and restraining enforcement of the HCSB facemask order.

103. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law and request the award of attorney fees to vindicate their rights.

FOURTH CLAIM FOR RELEIF

VIOLATIONS OF THE FLORIDA CONSTITUTION THE FACEMASK ORDER FROM THE SUPERINTENDENT OF THE HILLSBOROUGH COUNTY SCHOOL BOARD VIOLATES THE EQUAL PROTECTION CLAUSE ENSRHINED IN ARTICLE 1, § 2. 9. 21 and 23 OF THE FLORIDA CONSTITUTION

104. Plaintiff incorporates herein by reference each and every allegation contained in paragraphs 1-66 of this Complaint as though fully set forth herein.

105. Article I of the Florida constitution contains important provisions regarding the basic rights of all Florida citizens to be treated equally before the law and to have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property. While there is no single, inflexible test by

which our courts decide whether the requirements of procedural due process have been met, fundamentally it has been defined by the Courts to mean a structure of laws and procedures that hears before it condemns and proceeds upon inquiry and renders a judgment after trial.²² Unfortunately, none of these fundamental requirements were met in the underlying Facemask Orders that subjects children to wear facemasks based on an irrational fear that these very same children catch and spread COVID 19.

Equal Protection Under Article 1 § 2

106. Florida constitutional guarantee of equal protection and the Fourteenth Amendment’s guarantee of equal protection are substantially equivalent and analyzed in similar fashion. In addition, Florida’s constitutional guaranty of equal protection under Article 1 § 2 of the Florida Constitution has been defined to mean that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances in their lives, liberty and property and in their pursuit of happiness. In the instant case, the Facemask Order has the practical effect of treating different classes of students differently. The disparate and unequal treatment of these separate entities is not fully explained and has no rational basis.

107. Equal Protection refers to the idea that a governmental body may not deny people equal protection of its governing laws. The governing body state must treat an individual in the same

²² See *Watson v. Pest Control* commission of Florida, 199 So2nd 777 (4th DCA, 1967). The constitutional guarantee of due process extends to every type of legal proceeding. See *Pelle v. Dinners Club*, 287 So2nd 737, (Fla. DCA 3rd Dist 1974); *Tomayko v. Thomas*, 143 So2nd 227 (Fla. 3rd DCA, 1962); *State ex rel. Barancik v. Gates*, 134 So2nd 497 (Fla. 1961); It cannot be simply ignored by labeling the proceedings as merely “quasi-judicial” or administrative. Nor can it be merely colorable or illusory. See *Ryan’s Furniture Exchange v. McNair*, 120 Fla 109, 162 So. 483 (1935). Nor can it be a mere sham or pretense, *Robbins v Robbins*, 429 So2nd 424, 3rd DCA (1983). As outlined in the case of *Neff v. Adler*, 416 So2nd 1240 at 1242-43 (Fla 4th DCA 1982) the fundamentals of procedural due process include a hearing before an impartial decision-maker, after fair notice of the charges and allegations with a fair opportunity to present one’s own case. Fundamental due process includes the duty of the individual presiding over the hearing to apply a correct principle of law or rule, see *State v. Smith*, 118 So2nd 792 (Fla.1st DCA, 1960).

manner as others in similar conditions and circumstances.

108. Courts have generally ruled that most classifications imposed by the government do not deny persons equal protection of the laws. Generally, a legislature may make distinctions among people for any proper purpose, as long as the distinction is rational.²³ There must be a logical relationship between the purpose of a law and any classification of people that it makes. Without this "rational basis," a law will be struck down when challenged in court.²⁴ However, in this case, we are dealing with a Constitutional right to received a free public education. Therefore, the test is far higher. The proposed distinctions here must have a compelling interest, and be narrowly tailored, and pass strict scrutiny.²⁵

109. The Facemask Order at issue here, however, is utterly irrational in light of how COVID 19 operates. Either everyone needs to wear a mask to ensure safety, or not. What is really being done is to provide a series of regulations to be seen to be doing something but in reality has no basis in science or has the potential to create more health problems for those compelled to follow the regulation. In the case of the HCSB facemask regulation, exceptions are made for individuals who are considered students with "special needs" but not for any others. Students with health exceptions, not specified, are also excluded. However, the science concerning COVID 19 tells us that these are the exact individuals who need the most protection. Instead, they are given

²³ To pass the rational basis test, the statute or ordinance must have a legitimate state interest, and there must be a rational connection between the statute's/ordinance's means and goals.

²⁴ *Reed v. Reed*, 404 U.S. 71 (1971), the United States Supreme Court invalidated an Idaho statute that preferred males over females in the selection of a probate administrator. The Court explained that the equal protection issue was "whether a difference in the sex of the competing applicants for letters of administration bears a rational relationship to a state objective that is sought to be advanced by the operation of [the statute]." The Court concluded that it did not since it was arbitrary to prefer men over women merely to avoid hearings on the merits.

²⁵ *North Florida Women's Health & Counseling Services, Inc. v. State*, 866 So.2d 612, 635 (Fla. 2003)

special privileges not applied to others students, and in doing so, violate equal protection, for no valid rational purpose

Due Process Under Article 1 § 9

110. Article I, § 9 of the Florida Constitution provides that “No person shall be deprived of life, liberty or property without due process of law...”²⁶ Under Florida Statutes § 1006.09, a Student may be suspended only in accordance with the school board’s rules. The facemask rule is not a rule that has been formally adopted by the school board, but rather a policy statement put forth by the Superintendent, in violation of the Florida Sunshine Act.

111. Respondent’s facemask orders imply that students who do not comply with the HCSB facemask regimen will be moved out of the public schools and into distant learning. This is tantamount to an expulsion from the public school, and has great implications to families who have work requirements, and are unable to monitor their child during the day.

112. The HCSB policy states clearly that “The District will work with families to identify the more appropriate learning path if face coverings will not be worn.” Translation: expulsion from public schools and placement into distant learning for those failing to comply, on the grounds that the failure to wear a facemask is a disruption to the classroom. The secondary effect of this policy is to employ teachers as the facemask police for children who lack the maturity level to comply with this policy on a long-term basis, hour after hour, day after day.

113. This violates the due process rights of the parents and the minor, because the policy itself does not provide a clear process by which these decisions are to be made. Some children are going to simply be incapable of maintaining the discipline necessary to wear a mask for hours at a

²⁶ See generally *Stromberg v. California*, 283 U.S. 259 (1931) (voided a state statute on grounds of its interference with free speech. State common law was also voided, with the Court in an opinion by Justice Black asserting that the First Amendment enlarged protections for speech, press, and religion beyond those enjoyed under English common law).

time. The standard being applied to students is far more strident than any similar policy that is applied to adults.

114. Schools should be safe, and students should not have to be afraid. But students must also be able to enjoy the freedoms that enable them to learn and thrive. However, the policy as stated by the HCSB allows for the failure to wear a mask by a student to be defined as disruptive conduct, subject to discipline. Such passive conduct has never once been defined by any school policy as requiring discipline.

115. This policy has the absurdity of taking teachers, who have absolutely no medical training whatsoever, to monitor the use of a medical device, on minor children, who lack the requisite maturity and discipline to wear a device for extended periods beyond what is expected of grown adults. Never before has a standard been employed to minors that is higher and stronger in nature than that applied to the adults. The school teachers will get a break throughout the day. During these breaks, one envisions that the school teacher themselves will take a break from wearing a mask. However, the students get no such accommodations. Failure to comply has consequences.

116. It is also important to remember that the consequences of this policy are employed for violating a rule that has absolutely no rational basis whatsoever, and does absolutely nothing to protect the students or teachers involved.

Right of Privacy Under Article 1 §23

117. The Florida Constitution protects every” natural person has the right to be let alone and free from governmental intrusion into the person’s private life”.

118. Interpreting the Privacy Amendment, the Florida Supreme Court has recognized a

fundamental right to privacy in Florida²⁷ that is broader and more protective than the federal right to privacy offered by the Fourteenth Amendment to the U.S. Constitution.²⁸ Whereas the Fourteenth Amendment’s liberty protections extend to specific “zones of privacy”²⁹ (e.g., marriage,³⁰ procreation,³¹ contraception,³² abortion family,³³ relationships,³⁴ and child rearing and education³⁵), Florida’s Privacy Amendment “extends to all aspects of an individual’s private life..., and it ensures that the state cannot intrude into an individual’s private life absent a compelling interest.”³⁶

119. The Florida standard for privacy is broader than the less-defined federal standard. The Florida standard for privacy demands that government justify any intrusion into one’s privacy with (1) a compelling state interest and (2) the least intrusive means to accomplish that compelling state interest. The addition of Florida’s Privacy Amendment undoubtedly enhances Floridians’ right to protect themselves from a broad range of governmental intrusions.

²⁷ See *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1246 (Fla. 2017); *State v. J.P.*, 907 So. 2d 1101, 1110 (Fla. 2004); *Von Eiff v. Azicri*, 720 So. 2d 510, 514 (Fla. 1998); *City of North Miami v. Kurtz*, 653 So. 2d 1025, 1027 (Fla. 1995); *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Business Regulation*, 477 So. 2d 544, 547 (Fla. 1985).

²⁸ *Gainesville Woman Care, LLC*, 210 So. 3d at 124; *Winfield*, 477 So. 2d at 547–48 (Fla. 1985); see *Griswold v. Connecticut*, 381 U.S. 479 (1965) (recognizing an implicit right to privacy under the “liberty” protections of the Fourteenth Amendment to the U.S. Constitution).

²⁹ *Roe v. Wade*, 410 U.S. 113, 152 (1973).

³⁰ See *Obergefell v. Hodges*, 576 U.S. ___ (2015); *Loving v. Virginia*, 388 U.S. 1 (1967).

³¹ See *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); *Buck v. Bell*, 274 U.S. 200 (1927).

³² See *Eisenstadt v. Baird* 405 U.S. 438 (1972).

³³ See *Planned Parenthood v. Casey*, 505 U.S. 833 (1992); *Roe*, 410 U.S. 113.

³⁴ See *Prince v. Massachusetts*, 321 U.S. 158 (1944).

³⁵ *Cleveland Board of Education v. LaFleur*, 414 U.S. 632 (1974); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923).

³⁶ Honorable Ben F. Overton & Katherine E. Giddings, *The Right of Privacy in the Age of Technology and the Twenty-First Century: A Need for Protection from Private and Commercial Intrusion*, 25 FLA. ST. U. L. REV. 25, 40–1 (1997).

120. Florida Supreme Court Justice Ben F. Overton has acknowledged that Florida's Privacy Amendment "has had its greatest effect on Floridians in the area of personal autonomy.

121. A parent's ability to make decisions about one's own children has been recognized in areas such as discipline, education, and health care as having both liberty and privacy interests. A similar concern could apply to governmental intervention in parental decisions relating to home schooling and other alternative education decisions.

122. The HCSB requirements that minor children wear facemasks in order to enjoy their fundamental right to a free education also interferes with their privacy rights as protected by the Florida Constitution. Such facemask policy interferes with parental decision making, and also runs a foul of this constitutional protection.

123. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Respondent is enjoined from implementing and enforcing the Orders. Pursuant to Section 26.012 (3), F.S., 2019 and to Rule 1.610, Fla.R.Civ.P., Plaintiffs are entitled to declaratory relief and preliminary, and permanent injunctive relief invalidating and restraining enforcement of the HCSB facemask order.

124. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law and request the award of attorney fees to vindicate their rights.

FIFTH CLAIM FOR RELIEF

**THE FACEMASK ORDER FROM THE SUPERINTENDENT OF THE
HILLSBOROUGH COUNTY SCHOOL BOARD WAS ADOPTED IN
VIOLATION OF ARTICLE I, § 24(B)
OF THE FLORIDA CONSTITUTION**

125. Plaintiff incorporates herein by reference each and every allegation contained in paragraphs 1-66 of this Complaint as though fully set forth herein.

126. Section 286.0105, Florida Statutes, requires:

Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Where a public board or commission acts as a quasi-judicial body or takes official action on matters that affect individual rights of citizens, in contrast with the rights of the public at large, the board or commission is subject to the requirements of section 286.0105, Florida Statutes. Op. Att'y Gen. Fla. 81-06 (1981).

127. The HCSB facemask order was adopted without any notice to the general public, and with no chance for the public comment. The process by which the adoption of the order by the Superintendent of Hillsborough County schools violated multiple Florida Statutes.

128. Article I, Section 24(b) of the Florida Constitution requires all meetings of public entities to be in public and noticed. The facemask order was placed into effect with no notice, hearing or publication of the law as of July 7, 2020.

129. Article I, Section 24(b) of the Florida Constitution requires all meetings of public entities to be in public and noticed. "All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution. Any exemptions from complying with this requirement must be specifically spelled out in state law.

130. Fla. Stat. 286.0115(2) states: Members of the public shall be given a reasonable

opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decision-making process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action.

131. Florida Statute 286.0115(3) provides the following exemption: The requirements in subsection (2) do not apply to:

(a) An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;

132. However, the nature of how this facemask order was adopted unilaterally, without hearing or public comment, nearly 7 weeks before the start of schools (now set for August 24, 2020) clearly shows that the need for such actions that avoids Florida Constitutional requirements did not constitute an emergency in any sense of the word.

133. This exemption applies only to an emergency situation, and it is not a blanket exemption for all acts taken during an emergency declaration.

134. Pursuant to at least Florida black-letter law, acts of boards in violation of sunshine requirements do not have the force of law, unless subsequently adopted or ratified in a manner consistent with open government requirements.

135. Finally, Florida Stat 252 established the emergency powers of the Governor and counties. It does not provide a specific exemption for compliance with 286. In parts pertinent to this situation, Florida Statute 252.46(2) states:

All orders and rules adopted by the division or any political subdivision or other agency authorized by ss. 252.31-252.90 to make orders and rules have full force and effect of law after adoption in accordance with the provisions of chapter 120 in the

event of issuance by the division or any state agency or, if promulgated by a political subdivision of the state or agency thereof, when filed in the office of the clerk or recorder of the political subdivision or agency promulgating the same. All existing laws, ordinances, and rules inconsistent with the provisions of ss. 252.31-252.90, or any order or rule issued under the authority of ss. 252.31-252.90, shall be suspended during the period of time and to the extent that such conflict exists.

136. Violations of Florida's Sunshine Law can bring stiff and far reaching consequences, some of which are not just against the board members, Superintendent, etc. involved. For starters, there can be criminal penalties. If a board member, Superintendent, etc. knowingly violates the Sunshine Law, the individual is likely guilty of a second-degree misdemeanor.

137. Furthermore, an individual can be removed from office or suspended. Specifically, the Governor may suspend elected or appointed officials who are indicted for misdemeanor violations arising out of their official duties

138. Section 286.011(4), Florida Statutes. Section 286.011(4) essentially states that when a violation is found, the plaintiff's reasonable attorney's fees shall be assessed. The fees can be assessed against the individual board members, Superintendent, etc. unless they sought and took the advice of the board's, commission's, etc. attorney.

139. The Sunshine Law extends to the discussions and deliberations as well as the formal action taken by a public board or commission or an individual Superintendent acting in the capacity of the board. There is no requirement that a quorum be present for a meeting of members of a public board or commission to be subject to section 286.011, Florida Statutes. Instead, the law is applicable to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission. *Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973).

140. Section 119.11(1), Florida Statutes, mandates that actions brought under Ch. 119 are

entitled to an immediate hearing and take priority over other pending cases. See, *Matos v. Office of the State Attorney for the 17th Judicial Circuit*, 80 So. 3d 1149 (Fla. 4th DCA 2012) (“[a]n immediate hearing does not mean one scheduled within a reasonable time, but means what the statute says: immediate”). See also *Clay County Education Association v. Clay County School Board*, 144 So. 3d 708 (Fla. 1st DCA 2014). “The purpose of the hearing is to allow the court to hear argument from the parties and resolve any dispute as to whether there are public records responsive to the request and whether an exemption from disclosure applies in whole or in part to the records.” *Kline v. University of Florida*, 200 So. 3d 271 (Fla. 1st DCA 2016).

141. Because the Superintendent acted to pass a Facemask Order without public notice or comment, during a period of time where an emergency was not present that required forgoing of such notice, the actions taken by the HCSB should be found to be both null and void.

142. Attorney fees in such cases are warranted. Additionally, based on the foregoing, a temporary injunction is appropriate.

143. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law and request the award of attorney fees to vindicate their rights.

SIXTH CLAIM FOR RELIEF

THE FAILURE TO OPEN SCHOOLS BY THE HILLSBOROUGH COUNTY SCHOOL BOARD VIOLATES ARTICLE IX AND ARTICLE 1, SECTION 2 OF THE FLORIDA CONSTITUTION

144. The HCSB has declared that they will keep all schools closed for the first week of the semester, and require all students to attend eLearning.

145. This policy violates IX and Article I, section 2 of the Florida Constitution. In addition, this policy compels students that attend public schools to receive a separate and unequal education, as eLearning subjects’ students to a substandard education. Additionally, in the case of those students

in elementary school, eLearning subjects them to a process that deleterious to their long term mental and physical health.

146. Additionally, the HCSB violates the law by failing to provide in person education. Governor DeSantis has urged Florida's school districts to ensure that parents have the choice between in-person and distance learning for their kids. The Governor has made clear his own concerns with Hillsborough County's decision as Florida law requires school districts to offer certain amount of in-person instruction. The Florida Education Commissioner has alerted the HCSB that their policy violates Florida law.

147. The HCSB new order violates their own reopening plan as well as the Governor's emergency order. In short, the failure to reopen schools is patently illegal and violates both state law and the Florida Constitution requirement to offer a free public education. Additionally, the HCSB present plan will offer students a separate and unequal education.

148. The HCSB plan to compel eLearning also violates Article I, section 2 of the Florida Constitution as it violates equal protection for children in Hillsborough County. For simply living on the wrong side of the county line, Hillsborough Students are subject to a sub-standard education. This separate but unequal education violates longstanding principles embodied by our laws. See *Brown v. Board of Education of Topeka*, 347 U.S. 483, at 493 (1954).

149. The HCSB seems more concerns with the rights of their union members then that of the children they are employed to educate. The unreasonable fear mongering by employees of the school board must come as some surprise to minimum wage workers at a Walmart or Public, who deal with thousands of people of the general public with nothing more than a cloth mask to protect them. Medical personnel who deal with COVID 19 patients also are required to go to work each day. School board employees seem to fear young students, are highly unlikely to give them COVID

19 anymore than a trip to their local Public will.

150. At some point the irrational fear will end. Until that time, it is incumbent upon this court to impose some spine where the political will to do so shrinks before its legal obligations to educate our children. Attorney fees are warranted. Additionally, based on the foregoing, a temporary injunction is in order.

151. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law and request the award of attorney fees to vindicate their rights.

IX. MEMORANDUM OF LAW
FOR CONSIDERATIONS FOR THE ISSUANCE OF INJUNCTIVE RELIEF

152. A temporary injunction should be granted where there is a showing of:

(1) the likelihood of irreparable harm and the unavailability of an adequate remedy at law, (2) the substantial likelihood of success on the merits, (3) that the threatened injury to petitioner outweigh any possible harm to the respondent, and (4) that the granting of the preliminary injunction will not disserve the public interest. See *Cosmic Corp. v. Miami-Dade County*, 706 So.2d 347 (Fla. 3d DCA, 1998). The same considerations generally apply to the issuance of a Temporary Restraining Order, usually an emergency procedure to maintain the status quo until an injunction hearing can be held. In this submittal, the Plaintiffs will set forth a substantial and sufficient basis to show that each of these separate criteria are met and the facts and law set forth herein clearly justify the injunctive relief sought.

**A. THE ENFORCEMENT OF THE CHALLENGED
FACEMASK ORDER IS CAUSING PLAINTIFFS IRREPARABLE HARM AND
PLAINTIFFS HAVE NO ADEQUATE REMEDY AT LAW**

153. The Plaintiffs in this action are residents who seek judicial review, due to the unlawful nature of the HCSB facemask order and in the manner in which it was adopted in violation of Florida Statutes.

154. The pertinent portions of this order, all of which point to its unconstitutionality, are set forth in aforementioned sections, but the bottom line is that the HSCB is presently requiring parents to make long terms decisions as to whether to enroll the children in brick and motor schools or to go with eLearning. Once enrolled, a parent is not allowed to change their minds. Therefore, a decision needs to made immediately if the rights of the Plaintiffs are to be protected.

155. The HSCB face mask mandate manifests a clear and present threat to the civil liberties of Plaintiffs' resulting in several forms of irreparable harm, vastly exceeding any form of harm simply compensable with money damages. The most egregious form of the irreparable harm occasioned by the challenged order is found in the loss of constitutional rights and freedoms manifest in the Plaintiffs' rights to engage in the conduct of their lives without excessive government interference with orders that have no nexus to the goals they attempt to achieve. In every case, the HCSB facemask order is not narrowly tailored, and fails to achieve its compelling interest while interfering with Plaintiff fundamental right to a free public education that is not separate and unequal.

156. The Plaintiff's rights and freedoms include, generally, the right to due process of law, the right to equal protection of the law, the right to privacy and the fundamental right to enjoy a free public education. The loss of any constitutional right or freedom, in and of itself, constitutes irreparable harm. See *Tampa Sports Authority v. Johnston*, 914 So.2d 1076 (Fla. 2d DCA 2005).

157. The irreparable harm described above is the direct result of the threatened enforcement

of the facemask order against the plaintiffs and their children, and the application of the unconstitutional provisions of the order against Plaintiffs. Plaintiffs have no adequate remedy at law because there is no plain, certain, prompt, speedy, sufficient, complete, practical, or efficient way to attain the ends of justice without enjoining *immediately* the threatened enforcement of the facemask order.

**B. THE MAINTENANCE OF THE STATUS QUO IS
JUSTIFIED AND NECESSARY
WHILE THIS MATTER IS LITIGATED**

158. The status quo prior to the Superintendent’s unilateral action to impose a facemask rule upon the Plaintiffs should be maintained while litigation is ongoing. Plaintiffs should be allowed to make a decision voluntarily as to whether their minor children will or will not wear a face covering while attending school, as is their right under the Florida Constitution. without fear of harassment by the School Board employees, or any functionary assigned by the HCSB to “enforce” or “inspect” the subject activities. Plaintiffs’ other constitutional rights and the maintenance of the status quo require the issuance of a TRO and subsequent temporary injunction.³⁷

159. In the instant action, the last “peaceable non-contested condition” that preceded this controversy was that the Plaintiffs were enjoying their rights to enroll their minor children to enjoy their fundamental right to a free public education unencumbered by governmental interference. The status quo should be preserved by the issuance of a TRO and subsequent temporary Injunction.

³⁷ ... The status quo preserved by a temporary injunction is the last peaceable non-contested condition that preceded the controversy, *Bowling v. National Convoy & Trucking Co.*, 135 So. 541 (Fla. 1931). One critical purpose of temporary injunctions is to prevent injury so that a party will not be forced to seek redress for damages after they have occurred. *Lewis v. Peters*, 66 So.2d 489 (Fla. 1953). ... *Bailey v. Christo*, 453 So.2d 1134 (Fla. 1st DCA 1984).

**C. PLAINTIFFS HAVE A SUBSTANTIAL LIKELIHOOD
OF SUCCESS ON THE MERITS INVALIDATING
THE CHALLENGED LEGISLATION**

160. The next consideration in evaluating the grant of injunctive relief is whether the party seeking the injunction shows a substantial likelihood of success on the merits. In the instant action, Plaintiffs can and have shown numerous grounds supporting the relief requested, any one of which would be sufficient to justify the injunctive relief sought herein, and all of which clearly establish that the challenged legislation is invalid and unconstitutional.

161. Equally as dominant as a “general rule” is the fact that the injunctive remedy is appropriate, on proper showing of injury, to restrain the enforcement of an invalid law. *Daniel v. Williams*, 189 So. 2d 640 (Fla. Dist. Ct. App. 2d Dist. 1966); *Board of Com'rs of State Institutions v. Tallahassee Bank & Trust Co.*, 100 So. 2d 67 (Fla. Dist. Ct. App. 1st Dist. 1958)(emphasis added). The injury may consist in the right to earn a livelihood and continue in one's employment. *Watson v. Centro Espanol De Tampa*, 158 Fla. 796, 30 So. 2d 288 (1947). Persons who are the subject of harassment by overzealous, improper, or bad-faith use of valid statutes may be afforded the protection of injunctive relief. *Kimball v. Florida Dept. of Health and Rehabilitative Services*, 682 So. 2d 637 (Fla. Dist. Ct. App. 2d Dist. 1996). The instant action manifests all these components. *Metropolitan Dade County v. Florida Processing Co.*, 218 So. 2d 474 (Fla. Dist. Ct. App. 3d Dist. 1969)(emphasis added).³⁸

D. THE PUBLIC INTEREST AND “BALANCING TEST”

162. The Constitutions of the State of Florida and the United States are the ultimate expressions of the public interest. As a result, the Plaintiffs’ rights to enjoy their constitutionally

³⁸ The circumstances must be exceptional and the danger of irremediable loss must be great and immediate. *Pohl Beauty School v. City of Miami*, 118 Fla. 664, 159 So. 789 (1935). Both conditions are present in this action.

protected rights to conduct their lives free from government intrusion and interference, enjoy due process of law, equal protection of the laws, and the numerous other rights articulated in the above sections cannot be lawfully abridged through the enforcement of the HCSB facemask order. The greatest public interest lies in the freedoms and rights to due process guaranteed by the Constitution.³⁹ Therefore, the overall public interest is served by safeguarding these Constitutional freedoms and the right to due process.

**E. NOTICE REQUIRMENTS OF THE
FLORIDA RULE OF CIVIL PROCEDURE 1.610**

163. A Temporary Injunction may be granted without written or oral notice to the adverse party only if it appears from the specific facts shown by affidavit or verified pleading that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition. Time is of the essence for both Plaintiffs and the Defendant as the HSCB and the Plaintiffs must make decisions based on the state of play. Asking the HCSB to move on a dime, given the size of the district, is not reasonable. Plaintiff as well need to be able to make decisions as to where their minor children will go to school, whether with the Hillsborough County Public Schools, home schooling, private schooling or something else. In all cases, time is not a luxury that anyone has at this point. That has been clearly shown in the pleadings as stated, *infra*.

164. In addition, the movant's attorney must certify in writing any efforts that have been made to give notice and the reasons why notice should not be required. In this case, the School Board office is located a few blocks from the Courthouse, and will be served concurrently with the

³⁹ ... Similarly, the public interest is served by any abatement of unconstitutional activity. *Illinois Migrant Council v. Pilliod*, 540 F.2d 1062, 1071, (7th Cir. 1976). *Decker, supra* See, also, *DiDomenico v. Employers Cooperative Industry Trust*, 676 F.Supp. 903 (N.D. Ind. 1987) and *Zurn Constructors, supra*.

electronic filing of this complaint. However, for this court to grant relief, we urge this court to give consideration that notice should not be required, as the injuries to Plaintiff's and those similarly situated is immediate, ongoing, and compelling.

X. CONCLUSION

Plaintiffs have demonstrated their entitlement to either a Temporary Injunction under Florida law and further still have demonstrated their entitlement to either a Preliminary or Permanent Injunction under State law. As shown herein, Plaintiffs will suffer irreparable harm if injunctive relief and a Temporary Injunction do not issue: as a matter of law, there is no adequate remedy at law for the current and continued deprivation of their constitutional rights and Plaintiffs have a clear legal right to the relief requested and a substantial likelihood of success on the merits in this action. Most importantly, the public interest demands the preservation of constitutional rights and representation by the people in law-making by the officials they elect for this function. Accordingly, this Court is requested to hold an appropriate hearing and **GRANT** the request for *Temporary Injunction*, temporarily enjoining the Defendant and HCSB from further enforcement of the facemask order, until such time as a full evidentiary hearing can be held on the issuance of a permanent injunction.

WHEREFORE, Plaintiffs respectfully request this Court grant the relief requested herein, and issue a Temporary Injunction against Defendants, enjoining the enforcement of the Facemask Order against Plaintiffs and all other citizens of Hillsborough County, pending the Court's determination of the merits of an application for a Permanent Injunction.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court GRANT the following relief:

- a) Declaring the HSCB Facemask Order as an unconstitutional violation of Article IX, Florida Constitution in that the order interferes with the Fundamental Right to receive a free public education, and;
- b) Declaring the HSCB Facemask Order as an unconstitutional violation of Article IX, Florida Constitution in that the order compels Plaintiffs to accept an educational platform in the way of eLearning that is separate and unequal, and;
- c) Declaring the HCSB Facemask Order as an unconstitutional violation of Article I, § 23 of the Florida Constitution in that the Facemask Order interferes with Parental Rights over their children's use or nonuse of a medical devices, and;
- d) Declaring the HCSB Facemask Order as an unconstitutional violation of Article I, § 2 of the Florida Constitution in that the Facemask Order violated both Equal Protection, and;
- e) Declaring the HCSB Facemask Order as an unconstitutional violation of Article I, § 9 of the Florida Constitution in that the Facemask Order violated the Due Process rights of the Plaintiffs, and;
- f) Declaring the HCSB Facemask Order as an unconstitutional violation of Article I, § 23 of the Florida Constitution in that the Facemask Order violated the Plaintiffs Rights to Privacy, and;
- g) Declaring the implementation of the HCSB Facemask Order violates Article I, § 24(B) of the Florida Constitution., and;
- h) Awarding any and all attorney's fees and costs as authorized by law;
- i) Awarding any and all actual, consequential and special damages to which Plaintiffs may be entitled.

j) Such other and further relief as this Court deems fit, just, and equitable.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been furnished to Jim Porter, Esq., Hillsborough County School Board, 901 East Kennedy Boulevard, Tampa, Florida 33602, via e-mail to jim.porter@akerman.com , on this 13th day of August 2020.

Respectfully Submitted,

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