

NEW YORK STATE, SUPREME COURT
COUNTY OF MONROE

Nathanael Brown,
Kierstyn Brown,
Laura Jean Diekmann,
Doug Driscoll,
Laura Dwaileebe,
Alphonsine Englerth,
Rose Greene,
Christina Higley,
Chad Hummel,
Margaret Hummel,
Danielle Huertas,
Hayley Reed,
Michaela Scheerens,
Scott Steinfeldt,

COMPLAINT & ARTICLE 78
VERIFIED PETITION

Plaintiffs/Petitioners,

Index No. _____

Against

Howard Zucker, in his official capacity as
Commissioner of Health for the State of New York,

Andrew Cuomo, in his official capacity as
Governor of the State of New York,

Adam J. Bello, in his official capacity as
Monroe County Executive,

Dr. Michael Mendoza, in his official capacity as
Commissioner of Public Health for Monroe County,

Defendants/Respondents.

AS AND FOR A PROCEEDING BROUGHT PURSUANT TO
ARTICLE 78 AND 3001 OF THE CPLR.

Plaintiffs/Petitioners, allege through counsel, the following:

NATURE OF THE PROCEEDING

1. This proceeding is brought pursuant to CPLR Articles 78 and 3001, seeking an injunction and declaratory relief, challenging as unlawful and unconstitutional, emergency measures, specifically, but not limited to as updated from time to time, executive orders 202.1, 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.9, 202.10, 202.11, 202.13, 202.18, 202.48, 202.49, 202.53, 202.55, 202.28, 202.29, enacted by the Defendants/Respondents in their official capacities as Governor of the State of New York, Commissioner of Health of New York State, Monroe County Executive and Monroe County Commissioner of Public Health, in response to the Covid19 pandemic.

2. Plaintiffs/Petitioners allege that the emergency measures referenced above violate the rights of assembly and free speech clauses of the First Amendment of the Constitution of the United States.

3. Plaintiffs/Petitioners allege that the emergency measures referenced above violate the government's taking and due process (being deprived of life, liberty or property, without due process of law) clauses of the Fifth Amendment of the Constitution of the United States.

4. Plaintiffs/Petitioners allege that the emergency measures referenced above violate the right of due process clause as well as the right to privacy as specifically set forth by the United States Supreme Court in the case of Roe v. Wade, 410 U.S. 113, citing the Fourteenth Amendment of the Constitution of the United States.

5. Plaintiffs/Petitioners allege that the emergency measures referenced above violate the rights of Plaintiffs/Petitioners to a plethora of medical rights including but not limited to those rights afforded by the Health Insurance Portability And Accountability Act

(HIPAA) passed by the United States Congress at Public Law 104-191 on August 21, 1996.

PARTIES

6. Plaintiffs/Petitioners Nathanael Brown and Kierstyn Brown are residents of the Town of Perinton, County of Monroe, State of New York, and are the parents of 3 school age children in the Fairport Central School District all being subjected to and being negatively affected by the rules and mandates issued out of Albany. These guidelines and mandates from respondents that are being adopted by the local school district are limiting and restricting plaintiffs/petitioners children from full and free access to the normal and customary educational and extracurricular activities that would otherwise be enjoyed by children of New York State. This includes masking, social distancing, hybrid or online schooling, lack of social interaction, and excessive medical mandates/Covid-19 procedures being imposed upon families through the New York State. Plaintiffs, Nathanael Brown and Kierstyn Brown and their children also attend church weekly in town and have been deprived the ability to attend and assemble as they see fit due to the excessive and unnecessary mandates restricting worship in New York State.

Plaintiff/Petitioner Laura Jean Diekmann is a resident of the town of Pittsford, County of Monroe, state of New York. She's a singer/actress/choreographer who regularly performs in professional theater companies and choreographs for her local school districts. Due to the mandates and closures of theaters that have been thrust upon us by Albany she is unable to perform or choreograph at this time and thus is being denied income. Additionally she has three school-age children who are forced to follow

all of the state mandates and are being deprived of all aspects of normalcy (due to masking, social distancing, hybrid or online schooling) and all extracurricular activities including “high risk“ sports and all performing arts. Laura Jean, weekly attends church in her neighborhood and has been deprived of fellowship and gathering due to the church closures and current draconian mandates out of Albany.

Plaintiff/Petitioner Doug Driscoll is a resident of the Town of Perinton, County of Monroe, State of New York, and is the parent of 6 school-age children in the Fairport Central School District. Two of plaintiff’s children have special needs and four children have Individualized Educational Plans (IEP)s and have not been receiving services due to the rules and mandates issued by the State of New York. These guidelines and mandates from the respondents that are being adopted by the local school district is limiting and restricting plaintiff’s children from full and free access to the normal and customary educational and extracurricular activities that would otherwise be enjoyed by children of New York State. Denial of academic interventions for their special education needs is causing a lack of meaningful progress, and even regression, due to the excessive medical mandates/Covid-19 procedures imposed upon families in New York State. Doug and his children also attend church in their town and have been deprived of fellowship and gathering due to church closures, excessive and unnecessary mandates restricting worship in New York State.

Plaintiff/Petitioner Laura Dwaileebe is a resident of the Town of Webster, County of Monroe, State of New York, and is the parent of 2 school age children attending public elementary schools within the Webster Central School District who are subjected to and negatively impacted by the rules and mandates issued by respondents pertaining to school

reopening. These guidelines and mandates from respondent that are being adopted by the local school district are limiting and restricting plaintiffs/petitioners children from full and free access to the normal and customary educational and extracurricular activities including sports that would otherwise be enjoyed by children of New York State. This includes masking, social distancing, hybrid or online schooling, and excessive medical mandates/Covid-19 procedures being imposed upon families against their will. Plaintiff has incurred significant income loss due to taking a part-time position and reduced hours of employment to be able to accommodate the new hybrid school schedules, which requires plaintiff to be at home.

Plaintiff/Petitioner Alphonsine Englerth is a resident of the Town of Penfield, County of Monroe, State of New York, and is a parent of 2 school-age children in both the Webster Central School District and Rochester City School District both being subjected to and negatively affected by the rules and mandates issued by the State of New York. These guidelines and mandates from the respondents that are being adopted by the local school district is limiting and restricting plaintiff's children from full and free access to the normal and customary educational and extracurricular activities that would otherwise be enjoyed by children of New York State. This includes masking, social distancing, loss of extracurricular activities like sports and performing, and denial of academic interventions for their special education needs causing a lack of meaningful progress and regression due to the excessive medical mandates/Covid-19 procedures imposed upon families in New York State. Plaintiff, Alphonsine Englerth, is also a business owner whose businesses are subject to the mandates and various executive orders of the respondents. Due to the excessive executive orders and mandates by the

respondents, Plaintiff Alphosnine Englerth has been unable to operate her business or work with clients as she had been accustomed to successfully doing pre-COVID-19 and has suffered significant income loss. Alphonsine Englerth is a travel agency owner in Monroe County, New York and the draconian measures have significantly affected the travel industry, which she has worked in for over 15 years with the new measures created by the respondents. Alphonsine and her children attend church in their town and have been deprived of fellowship and gathering due to church closures, excessive and unnecessary mandates restricting worship in New York State.

Plaintiff/Petitioner Rose Greene is a resident of the Town of Pittsford, County of Monroe, State of New York, and operates a business and is a landlord who has been significantly impacted by the Covid-19 shutdowns and New York State mandates/guidelines. Plaintiff's business is a health club/gym. It officially closed on March 16, 2020 and was unable to hold any group exercise classes in person until August 24, 2020. Plaintiff/Petitioner lost income for almost six months due to the lockdowns. Once the business opened, Plaintiff/Petitioner was limited to a 33% capacity again significantly reducing the amount of people allowed to participate in classes and effecting income. Masks have to be worn at the plaintiff/petitioner's business 100% of the time which has deterred 40% of their customers from having memberships.

Plaintiff/Petitioner is also a landlord. Due to 50% of tenants working in the service industry, many were forced into unemployment and did not receive unemployment for weeks making them unable to pay their rent. Rent for these tenants fell way behind and most are still playing catch up on their rent and do not pay on time or are months behind.

Due to the new regulations put in place by the State of New York, plaintiff/petitioner has no legal recourse at this time to collect rent.

Plaintiff/Petitioner Christina Higley is a resident of the Town of Penfield, County of Monroe, State of New York, and is the parent of 3 school age children in the Webster Central School District all being subjected to and negatively affected by the rules and mandates issued by the State of New York. These guidelines and mandates from respondents that are being adopted by the local school district are limiting and restricting plaintiff/petitioner's children from full and free access to the normal and customary educational and extracurricular/sports activities that would otherwise be enjoyed by children of New York State. This includes masking, social distancing, hybrid or online schooling, and excessive medical mandates/Covid-19 procedures being imposed upon families in New York State. Plaintiff, Christina Higley, is also a business owner whose businesses are subject to the mandates and various executive orders of the respondents. Due to the excessive executive orders and mandates by respondent, Plaintiff Christina Higley has been unable to operate her business or work with clients as she had been accustomed to successfully doing pre Covid-19 and has suffered significant income loss. Plaintiff Christina Higley is also a college adjunct professor at numerous colleges in New York State where the draconian measures have significantly impacted the colleges she teaches at and enrollment in courses with the new measures created by respondents. Plaintiff, Christina Higley and her children also attend church weekly in their town and have been deprived of fellowship and gathering due to the church closures and excessive and unnecessary mandates restricting worship in New York State.

Plaintiffs/Petitioners Chad Hummel and Margaret Hummel are residents of the Town of Irondequoit, County of Monroe, State of New York, and are the parents of 4 school age children in the East Irondequoit School District, who are all subject to the rules and mandates issued out of Albany that are being adopted by the local school district and that are limiting and restricting their full and free access to the normal and customary educational and extracurricular activities that would otherwise be enjoyed; Plaintiff, Chad Hummel, is also a business owner whose businesses are subject to the mandates and various executive orders of the Respondents. Plaintiff, Chad Hummel, is also a licensed and practicing attorney in the State of New York and maintains his law office at 530 Titus Avenue, Rochester, New York; and due to various executive orders, mandates, dictates and other 'policy' and 'procedural' changes to the administration of the laws of the State, he has been unable to effectively represent his clients. Plaintiffs, Chad Hummel and Margaret Hummel are the parents of a child who, but for arbitrary and capricious regulations being foisted upon our houses of worship, was prepared to participate in the holy sacrament of Confirmation in the Catholic Church. The rules that the Church felt compelled to obey as dictated by Respondents, rendered the sacrament and the ceremony so devoid of its holy nature that the Plaintiffs/Petitioners were unable to participate in the sacrament at this time; Plaintiff, Margaret Hummel, is a teacher and a special education coordinator in Rochester, New York, and has been instructed on the vast number of regulations that she is required to follow in order to teach. These regulations are so restrictive, including mask wearing at all times, social distancing at all times, no recess, no singing, virtually no customary peer to peer and peer to teacher interaction, that they effectively render conventional special education a nullity.

Plaintiff/Petitioner Danielle Huertas is a resident of the Town of Irondequoit, County of Monroe, and State of New York. She is a disabled, single parent that works full-time as an essential full-time employee at an independent 55 and older senior community. Plaintiff/Petitioner has a child who was enrolled at East Irondequoit Central School District. Since the beginning of the school year, plaintiff/petitioner has removed child from school to homeschool being the child's educational needs were not being met due to the district hybrid learning model and the state's guidelines restricting access to an acceptable education. Plaintiff has another child who attends McQuaid Jesuit High School, a private high school in Monroe County. Both children are involved in numerous activities including Scouts of America, sports, etc. The excessive mandates and guidelines placed on both public and private schools has deprived plaintiff's children of all aspects of normalcy both in school and through extracurricular activities. Plaintiff/Petitioner as a disabled person counts on LA Fitness, Hot Yoga LLC and other therapies in order to maintain her chronic disease and has been denied access to these services through New York State business closures as a result of Covid19 mandates.

Plaintiff/Petitioner Hayley Reed is a resident of the Village of Fairport, County of Monroe, State of New York, and a single, full-time, working parent of 2 school age children that attend public elementary schools within the Fairport Central School District, who have been emotionally, mentally and physically impaired due to the rules and regulations imposed by the state including social distancing, restriction of extracurricular activities and masking policies. Plaintiff, Hayley Reed, is a single parent of a child who has a severe speech impediment who has not received any specialized care since schools were closed in March and the child has regressed due to school closures. Current school

policies include masking at all times in addition to social distancing. These draconian regulations do not allow children with speech disabilities to see teacher's mouths. Masking, specifically, does not allow for children to practice forming words correctly, see tongue placement, or mimic phonetics due to facial hindrance. Children with speech impediments require in-person instruction. Plaintiff, Hayley Reed, is a single, working parent of 2 school age children who now has to pay significant money per month for her children to receive an appropriate and legally required education.

Plaintiff/Petitioner Michaela Scheerens is a resident of the Town of Perinton, County of Monroe, State of New York, and is the parent of one school-age child in the Fairport Central School District being subjected to and negatively affected by the rules and mandates issued by the State of New York. These guidelines and mandates from the respondents that are being adopted by the local school district is limiting and restricting plaintiff's child from full and free access to the normal and customary educational and extracurricular activities that would otherwise be enjoyed by children of New York State. This includes masking, social distancing, loss of extracurricular activities all of which causing a lack of meaningful progress and regression due to the excessive medical mandates/Covid-19 procedures imposed upon families in New York State. Michaela and her child attend church in their town and have been deprived of fellowship and gathering due to church closures, excessive, and unnecessary mandates restricting worship in New York State as well.

Plaintiff Scott Steinfeldt is a resident of the Town of Webster, County of Monroe, State of New York and is the parent of one special needs child. Pre-Covid, plaintiff's son was doing very well with school, sports, and development of age-appropriate social

skills. Since being subjected to the rules and mandates issued out of Albany regarding the reopening of schools, plaintiff has seen a significant decline in his son educationally, socially, and emotionally. These guidelines and mandates from respondents that are being adopted by the local school district are limiting and restricting to plaintiff's child and is inhibiting the child from full and free access to the normal and customary educational and extracurricular activities that would otherwise be enjoyed by children of New York State. This includes masking, social distancing, hybrid or online schooling, and excessive medical mandates/Covid-19 procedures being imposed upon families of New York State by school districts.

7. Defendant/Respondent, Andrew Cuomo, is the Governor of the State of New York, Defendant/Respondent, Howard Zucker, is the Commissioner of Health of the State of New York, Defendant/Respondent Adam Bello is the Monroe County Executive and Defendant/Respondent Michael Mendoza, M.D., is the Commissioner of Health of Monroe County.

JURISDICTION

8. This Court has jurisdiction pursuant to CPLR Article 78 to review the challenged actions of the NYS Governor and Commissioner of Health as well as the Monroe County Executive and Commissioner of Health and to strike down the emergency measures enacted as violative of state and federal law, and this Court has the authority pursuant to Article 3001 of the CPLR to permanently enjoin the emergency measures, upon a showing of constitutional violations and irreparable harm to Plaintiffs/Petitioners.

ALLEGATIONS

9. In the early months of 2020, the Center for Disease Control (“CDC”) identified cases of a virus, Covid19, that were a threat to the citizens of the United States.

10. Within short weeks, governing leaders started to act to protect the public and, with input from the Center for Disease Control, took action to shut down public life in an unprecedented way for The People of the United States.

11. Initially, in New York State, The People were told that the reason they were being ordered to stay home and not convene at work, restaurants, theaters, beauty salons, stores and churches was to protect Us from the threat of Covid19.

12. The People were warned about the threat of the Covid19 virus and advised that the reason they were being ordered not to convene for a “short period of time” was to “flatten the curve” of those who would contract the virus and limit the populations of those needing and seeking help from hospitals so that hospitals would not be overwhelmed by those affected with the virus.

13. The public was warned that failure to comply with taking drastic measures to protect the public health would lead to the deaths of over two million Americans. Quarantines and lock downs would reduce the number to one million dead Americans, according to UK advisor Professor Neil Ferguson. Ferguson resigned his position as advisor to the prime Minister Boris Johnson on May 6, 2020, having been caught breaking his own social distancing rules. See *Exhibit A: Imperial College London dated 17 March 2020*. Being rational citizens, The People took this advice seriously and took drastic measures to reduce risks by staying home and exercising social distancing.

14. While finding it annoying and economically damaging, The People followed the directives of governing leaders and shuttered their businesses and schools and ceased convening in public in a combined effort to curtail Covid19 and defeat the virus that threatened the public health.

15. In the weeks that followed, Downstate New York became the new epicenter of the Covid19 crisis as residents of New York City started to contract the virus in large numbers.

16. Andrew Cuomo, the governor of New York State, shut down the operations of the entire State excepting certain “essential” services to include a few areas he deemed essential to human life until such time as the crisis could be averted.

17. Just weeks into the “crisis”, in Downstate New York, the death rate began to steadily decline approaching the current very low levels which have now persisted for months. In Upstate New York, death rates never approached the levels initially feared, and yet they too have decreased dramatically and have remained low for months. Hospitals cancelled elective procedures at the time under State order to be able to handle the feared case loads of those infected with the virus. In Upstate New York massive caseloads never occurred. As a result, hospitals were left in severe financial trouble due to prolonged loss of income caused by following the State Covid19 directives.

18. Death rates from Covid19 were manipulated by hospitals which were being encouraged with financial incentives by government leaders. The numbers of those being counted as dying *from* Covid19 were made to include numerous patients *with* Covid19 who died by other causes. Additionally, the government ceased to track the number of deaths from other illnesses and viruses; likely, the number of those listed as dying *from*

Covid19 was further inflated by this. *Exhibit B: Pneumonia and Influenza Mortality Surveillance from the National Center for Health Statistics Mortality Surveillance System 2019-2020 data.*

19. According to Dr. Birx, Covid19 advisor to the White House, the CDC has used a “liberal accounting” of Covid19 deaths, there being no distinction of dying *with* Covid19 or dying *from* Covid19. By contrast, the Chinese medical scientists quickly realized Antigen/PCR tests were not valid. Due to this finding the CCP required a CT scan or MRI of the lungs and two (2) positive Antigen/PCR tests before making a positive Covid19 case. This further illustrates the extent to which the death count from Covid19 in New York State and the United States has been exaggerated. *Exhibit C: Dr. Birx: Real Clear Politics dated April 8, 2020 and Exhibit D: National Vital Statistics System, Covid19 Alert No. 2, dated March 24, 2020.*

20. In fact, the hospitals were never overwhelmed by a population of those suffering from Covid19, and hospitals have struggled financially due to lost income when they were not allowed to continue providing elective procedures.

21. In fact, the “curve” was flattened as the number of those dying of Covid19 plummeted in number. As a result, policy makers stopped reporting the mortality rates and instead started to report “new cases” as the number of those who contracted the virus, regardless of how mild the cases might be. For the past several months, given extremely stable low death rates in New York State, the Defendants have aggressively publicized any new cases, regardless of number or severity, in defense of perpetuating their draconian measures. In numerous instances, one or two cases have been sufficient to shut

down entire schools, houses of worship, businesses, theaters, sports stadiums and entire communities.

22. In fact, of the approximately 200,000 deaths in the US, only 6% had Covid19 as the only cause mentioned. 94% of Covid19 victims had an average of 2.6 comorbidities. Rational minds would conclude that the death rate from Covid19 has been significantly exaggerated. *Exhibit E: Center for Disease Control and Prevention Weekly Updates by Demographic and Geographic Characteristics dated August 19, 2020.*

23. Governing leaders, faced with the extent to which they had overstated the effects of Covid19, and being unwilling to admit they were wrong, changed the rhetoric about the virus and increased the restrictions on business, education and public life in an effort to “protect” The People. Schools, colleges and universities, performance halls, food establishments, sports stadiums, churches and even the Courts were kept closed. Landlords remain restricted from attempting to evict tenants, for any reason. The public remains forced to wear masks or risk being arrested. Businesses and restaurants remain forced to operate long term at levels that are not financially feasible.

24. In the meantime, while the masses obeyed the government directive to “maintain a distance of 6 feet apart or wear a mask” in order to prevent the spread of Covid19, many of those constituting The People refused to be muzzled by the government - time has borne out that The People got it right again.

25. The mortality rate for children, young adults and those up to forty-five years of age is mathematically nearly zero (0) percent, for those forty-five to seventy years is anywhere from .05 to .3 of a percentage point, and only for those over 70 years of age of

mathematical significance. *Exhibit F: The Washington Examiner, Stanford Doctor: Coronavirus fatality rate for people under 45 'almost 0'.*

26. Emerging science has discovered that the immune system has developed Sars-COV2 specific antibodies that are long lasting and will lead to an immunity from the virus. *Exhibit G: The Seattle Times, article dated August 18, 2020.*

27. As deaths due to Covid19 decreased significantly and plateaued at an extremely low level, some businesses were allowed to slowly start reopening; of note, there has been no escalation of deaths as can be seen in the attached chart from the 23rd day of September, 2020. *Exhibit H: Monroe County COVID-19 Surveillance – Preliminary Data as of September 23, 2020.*

28. Schools and institutions of higher learning, a huge part of public life in the United States, having been closed during the crisis, partially re-opened for the Fall semester of 2020, subject to crippling rules being arbitrarily ordered by the Respondents with little scientific basis, in fact, for formulating said rules. In fact, compiled data from almost 70,000 cases of Covid19 at universities shows only three hospitalizations and no deaths. Once again, the overstatement of risk resulting in significant harm to The People is apparent. *Exhibit I: October 5, 2020 update on Covid19 from 50 U.S. universities.*

29. The doctors of the Panorama Pediatric Group in Rochester, New York, placed a statement on their web-site in support of re-opening schools only to remove their statement and make an apology for same less than one day later, upon information and belief, under political pressure being exerted against them by the Defendant/Respondent's agents. *Exhibit J, Panorama Pediatric Group Statement Supporting Reopening of Schools.*

30. The fact is, experts the world over as well as right here in Upstate New York have stated publicly to policy makers that children are at extremely low risk of Covid19 and that they are at greater risk for many reasons if they are not in school. *Exhibit K: Open Letter from 24 medical doctors in the Rochester, New York, region, posted July 14, 2020.*
Exhibit L: Great Barrington Declaration.

31. The fact is, young children cannot understand why they are being forced to be socially distant from their classmates and made to wear masks as required by the exaggerated safety precautions instituted by the Defendants. In light of the extremely low risk Covid19 poses to school children, and in the absence of evidence of community spread of the disease from schools, parents and schoolmates, the social distancing and masking requirements dictated by the Defendants are clearly excessive. While being forced to practice social distancing, students should not at the same time be forced to wear masks as they participate in classrooms, physical education and the arts.

32. Dr. Clayton Baker, one of the signers of the open letter referenced herein above, has stated that decisions regarding the details of school re-openings should be made locally in an update to the prior letter based on what has been proven scientifically over the last months. Furthermore, he states that given the many known harms to children from being denied in-school learning, which far exceed the risk Covid19 poses to them, schools should be fully opened at once. *Exhibit M: Affidavit of Clayton Baker, M.D., dated August 25, 2020.*

33. The fact is, the American People understand risk and it is inherent in the rights We possess in our nation's Constitution to be able to take appropriate steps to limit risks whether for those who are vulnerable and need protection or for those who are not likely

at risk. That amelioration of risk includes more than just a fear of dying of Covid19 - it includes all of the well documented consequences of living life being socially distant, muzzled by a mask, and economically destroyed. *Exhibit N: Center for Disease Control and Prevention, Morbidity and Mortality Weekly Report dated August 14, 2020.*

34. In an article dated September 11, 2020, Ronald B. Brown, PhD, disclosed that the coronavirus mortality calculations given in testimony to the U.S. Congress on March 11, 2020, were wrongfully overestimated by a factor of ten-fold due to a mistake made by how the case fatality rate was applied to the population resulting in drastic measures being taken that have had “adverse impacts on psychological well-being, human rights issues, social disruption, and economic costs...”. *Exhibit O: Cambridge Coronavirus Collection: Disaster Medicine and Public Health Preparedness, September 11, 2020, Ronald B. Brown, PhD.*

35. Despite the evidence of how limited the threat has become to the public at large and to children, in particular, the Defendants have intensified the protocols for students attending schools such that even the most minor medical symptoms result in students missing their schooling as they are being forced to either be evaluated by a health care provider or forced not to return to school for ten days. Additionally, if a student does not get evaluated and/or tested, the Defendants have mandated that the school *deem* the student to be Covid19 positive and then contact the health department to begin the contact tracing process. This is an egregious violation of normal medical diagnostic practice and of a patient's rights to privacy with regard to their health status. The disregard this mandate shows for diagnostic principals and patient autonomy illustrates in bold relief the irrational zeal the Defendants have applied to the Covid19 issue at the

expense of reason and citizens' rights. *Exhibit P: NYSDOH, Pre-K to Gr 12 Covid-19 Toolkit dated September, 2020 and Covid-19 Update as of October 5, 2020, Julie Pancio, RN, Charles Finney School Nurse.*

36. New York State legislators have asserted that the actions of the Defendants have far superseded the emergency powers extended to them as can be seen in the actual emergency powers law and a list of its violations prepared by the NYS legislators on May 12, 2020. *Exhibit Q: Emergency Powers Legislation. Exhibit R: Executive Order Statutory and Constitutional Violations.*

37. The evidence proves that the public health emergency related to Covid19 has ended and with it whatever powers, whether legitimate or otherwise, Defendants/Respondents possessed to enact emergency legislation. Accordingly, it is now up to our legislators to enact any laws they deem appropriate to protect The People as our duly elected leaders. Safeguards for our citizens, whether students in schools, parents at work, or the elderly in nursing homes, should be overseen by local leadership instituting reasonable and rational measures in concert with laws generated by our elected legislators.

AS AND FOR A FIRST CAUSE OF ACTION

(Declaratory Relief under Article 3001 of the CPLR)

38. Plaintiffs/Petitioners incorporate all preceding paragraphs as though set forth fully herein.

39. The safety protocols for children returning to school should be made at the local school district level not by a governing leader who resides in or around Albany or New York City. There is a vast difference between issues being faced by inner city school

districts in New York City and those in agricultural communities in Upstate New York. The primary focus of school districts must immediately return to servicing the educational interest of their children, rather than slavishly following misguided and excessive governmental restrictions that harm those same children.

40. It is a violation of every student's Constitutional Right to Due Process pursuant to the 14th Amendment of the United States Constitution and specifically as set forth by the United States Supreme Court in the case of *Roe v. Wade* referenced herein above for a governor and/or health commissioner to be controlling the details of classrooms everywhere in the State of New York. Further, students have a right to privacy regarding their medical conditions without fear of public officials misusing that information.

41. The New York State Constitution provides that every local government “shall have a legislative body elected by the people thereof” (N.Y. Constitution art. IX, Section 1(a)). The Defendants/Respondents have continued to mandate all sorts of rules that are an unconstitutional delegation of the “fundamental policy-making responsibility” of the legislature, in violation of the separation-of-powers doctrine. See *N.Y. Statewide Coalition of Hispanic Chambers of Commerce*, 23 N.Y. 3d at 693-695; Cf. *Boreali*, 71 N.Y. 2d at 9.

AS AND FOR A SECOND CAUSE OF ACTION

(Declaratory Relief under Article 3001 of the CPLR)

42. Plaintiffs/Petitioners incorporate all preceding paragraphs as though set forth fully herein.

43. It is a violation of every student's Constitutional Right to Due Process pursuant to the 14th Amendment of the United States Constitution and specifically as set forth by the United States Supreme Court in the case of Roe v. Wade referenced herein above for a governor and/or health commissioner to be controlling the details of classrooms everywhere in the State of New York. Further, students have a right to privacy regarding medical conditions without fear of public officials misusing that information. The safety protocols for college students returning to colleges and universities across the State should be made by the leadership of colleges and universities themselves not by governing administrators who reside in or around Albany or New York City.

AS AND FOR A THIRD CAUSE OF ACTION

(Declaratory Relief under Article 3001 of the CPLR)

44. Plaintiffs/Petitioners incorporate all preceding paragraphs as though set forth fully herein.

45. It is a violation of the Freedom of Religion and Freedom of Assembly clauses of the First Amendment of the United States Constitution for the Defendants/Respondents to have restricted the People from attending houses of worship and the Defendants/Respondents should be enjoined from any attempts to re-institute any such restrictions in the future.

AS AND FOR A FOURTH CAUSE OF ACTION

(Declaratory Relief under Article 3001 of the CPLR)

46. Plaintiffs/Petitioners incorporate all preceding paragraphs as though set forth fully herein.

47. It is a violation of the Freedom of Assembly clause of the First Amendment of the United States Constitution for the Defendants/Respondents to restrict the People from attending performances in performance halls and sports events at stadiums and they should be enjoined from placing restrictions on same now that the threat of Covid19 is greatly reduced and much better understood.

AS AND FOR A FIFTH CAUSE OF ACTION

(Declaratory Relief under Article 3001 of the CPLR)

48. Plaintiffs/Petitioners incorporate all preceding paragraphs as though set forth fully herein.

49. It is a violation of the Taking Clause of the Fifth Amendment of the United States Constitution for the Defendants/Respondents to restrict the number of customers businesses are allowed to serve or to place restrictions such as the use of mask on customers such that it makes it likely that many customers will simply not patronize establishments thus making it not financially feasible to do business. Plaintiff/Petitioners' businesses have lost significant revenue due to the restrictions.

50. The Defendants/Respondents should be enjoined from placing such restrictions on business owners given that the threat of Covid19 is greatly reduced and much better understood.

AS AND FOR A SIXTH CAUSE OF ACTION

(Declaratory Relief under Article 3001 of the CPLR)

51. Plaintiffs/Petitioners incorporate all preceding paragraphs as though set forth fully herein.

52. It is a violation of the Taking Clause of the Fifth Amendment of the United States Constitution for the Defendants/Respondents to restrain landlords from evicting tenants from privately owned real estate whether for failure to pay rent or otherwise breaching the terms of a lease and otherwise imperiling the lives of other tenants in leased structures.

NO PRIOR APPLICATION

No prior application has been made for the relief requested herein.

RELIEF SOUGHT

(a) Allowing local school districts to make any rules they deem appropriate to safeguard the full return of children to schools and enjoining the Defendants/Respondents from instituting any such rules, including contact tracing, leaving any further rule making to the legislature.

(b) Allowing the institutions themselves to make any rules they deem appropriate to safeguard the full return of college students to colleges and universities and enjoining the Defendants/Respondents from instituting any such rules, including contact tracing, leaving any further rule making to the legislature.

(c) Enjoining the Defendants/Respondents from restricting access to houses of worship.

(d) Enjoining the Defendants/Respondents from restricting access to performance halls or athletic events or from instituting safety rules not mandated prior to Covid19 therein.

(e) Enjoining the Defendants/Respondents from attempting to restrict the number of customers that can frequent a business establishment or from instituting safety rules not mandated prior to Covid19 therein.

(f) Declaring that the Defendants have overreached the authority given to them by the New York State Legislature as set forth herein and terminating the powers of the Defendants to take any further such actions and declaring null and void all rules the promulation of which is not specifically set forth in the emergency powers.

(g) Such other and further relief as to the Court seems just and proper.

WHEREFORE, based on the foregoing, this Honorable Court should enjoin the Defendants/Respondents from making any further rules or policies and to vacate all prior rules and policies made under the emergency powers in response to Covid19 unless and until the Defendants/Respondents are able to provide the actual numbers of those who have died of Covid19 in New York State with their ages and underlying medical

conditions, if any, such that this Court can decide whether a public health emergency still exists and, if so, whether those at risk are able to be protected from same without continuing to violate the Freedoms and Constitutional Rights of The People.

Respectfully submitted,

Carl J. Schwartz, Jr., Esq.
Attorney for Plaintiffs/Petitioners
P.O. Box 681
Penn Yan, New York 14527
carlschwartz@fingerlakeslawgroup.com
(315) 536-4223 phone
(315) 536-3603 fax

VERIFICATION OF COMPLAINT & ARTICLE 78 PETITION

STATE OF NEW YORK
(COUNTY OF _____) to wit:

I, Michaela Scheerens, plaintiff/petitioner, being duly sworn, depose and say that I have read the Complaint/Petition and reviewed the exhibits attached thereto, and know the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Michaela Scheerens, plaintiff/petitioner

Sworn to before me this ____ day of _____, 2020.

Notary Public

VERIFICATION OF COMPLAINT & ARTICLE 78 PETITION

STATE OF NEW YORK
(COUNTY OF _____) to wit:

I, Doug Driscoll, plaintiff/petitioner, being duly sworn, depose and say that I have read the Complaint/Petition and reviewed the exhibits attached thereto, and know the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Doug Driscoll, plaintiff/petitioner

Sworn to before me this _____ day of _____, 2020.

Notary Public

VERIFICATION OF COMPLAINT & ARTICLE 78 PETITION

STATE OF NEW YORK
(COUNTY OF _____) to wit:

I, Alphonsine Englerth, plaintiff/petitioner, being duly sworn, depose and say that I have read the Complaint/Petition and reviewed the exhibits attached thereto, and know the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Alphonsine Englerth, plaintiff/petitioner

Sworn to before me this _____ day of _____, 2020.

Notary Public

VERIFICATION OF COMPLAINT & ARTICLE 78 PETITION

STATE OF NEW YORK

(COUNTY OF _____) to wit:

I, Christina Higley, plaintiff/petitioner, being duly sworn, depose and say that I have read the Complaint/Petition and reviewed the exhibits attached thereto, and know the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Christina Higley, plaintiff/petitioner

Sworn to before me this _____ day of _____, 2020.

Notary Public

VERIFICATION OF COMPLAINT & ARTICLE 78 PETITION

STATE OF NEW YORK
(COUNTY OF _____) to wit:

I, Chad Hummel, plaintiff/petitioner, being duly sworn, depose and say that I have read the Complaint/Petition and reviewed the exhibits attached thereto, and know the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Chad Hummel, plaintiff/petitioner

Sworn to before me this _____ day of _____, 2020.

Notary Public

STATE OF NEW YORK
(COUNTY OF _____) to wit:

I, Margaret Hummel, plaintiff/petitioner, being duly sworn, depose and say that I have read the Complaint/Petition and reviewed the exhibits attached thereto, and know the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Margaret Hummel, plaintiff/petitioner

Sworn to before me this _____ day of _____, 2020.

Notary Public

VERIFICATION OF COMPLAINT & ARTICLE 78 PETITION

STATE OF NEW YORK

(COUNTY OF _____) to wit:

I, Laura Jean Diekmann, plaintiff/petitioner, being duly sworn, depose and say that I have read the Complaint/Petition and reviewed the exhibits attached thereto, and know the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Laura Jean Diekmann, plaintiff/petitioner

Sworn to before me this _____ day of _____, 2020.

Notary Public

VERIFICATION OF COMPLAINT & ARTICLE 78 PETITION

STATE OF NEW YORK
(COUNTY OF _____) to wit:

I, Scott Steinfeldt, plaintiff/petitioner, being duly sworn, depose and say that I have read the Complaint/Petition and reviewed the exhibits attached thereto, and know the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Scott Steinfeldt, plaintiff/petitioner

Sworn to before me this ____ day of _____, 2020.

Notary Public

VERIFICATION OF COMPLAINT & ARTICLE 78 PETITION

STATE OF NEW YORK
(COUNTY OF _____) to wit:

I, Nathanael Brown, plaintiff/petitioner, being duly sworn, depose and say that I have read the Complaint/Petition and reviewed the exhibits attached thereto, and know the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Nathanael Brown, plaintiff/petitioner

Sworn to before me this ____ day of _____, 2020.

Notary Public

STATE OF NEW YORK
(COUNTY OF _____) to wit:

I, Kierstyn Brown, plaintiff/petitioner, being duly sworn, depose and say that I have read the Complaint/Petition and reviewed the exhibits attached thereto, and know the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Kierstyn Brown, plaintiff/petitioner

Sworn to before me this ____ day of _____, 2020.

Notary Public

VERIFICATION OF COMPLAINT & ARTICLE 78 PETITION

STATE OF NEW YORK
(COUNTY OF _____) to wit:

I, Danielle Huertas, plaintiff/petitioner, being duly sworn, depose and say that I have read the Complaint/Petition and reviewed the exhibits attached thereto, and know the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Danielle Huertas, plaintiff/petitioner

Sworn to before me this ____ day of _____, 2020.

Notary Public

VERIFICATION OF COMPLAINT & ARTICLE 78 PETITION

STATE OF NEW YORK
(COUNTY OF _____) to wit:

I, Laura Dwaileebe, plaintiff/petitioner, being duly sworn, depose and say that I have read the Complaint/Petition and reviewed the exhibits attached thereto, and know the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Laura Dwaileebe, plaintiff/petitioner

Sworn to before me this ____ day of _____, 2020.

Notary Public

VERIFICATION OF COMPLAINT & ARTICLE 78 PETITION

STATE OF NEW YORK
(COUNTY OF _____) to wit:

I, Shannon Joy Bones, plaintiff/petitioner, being duly sworn, depose and say that I have read the Complaint/Petition and reviewed the exhibits attached thereto, and know the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Shannon Joy Bones, plaintiff/petitioner

Sworn to before me this ____ day of _____, 2020.

Notary Public

VERIFICATION OF COMPLAINT & ARTICLE 78 PETITION

STATE OF NEW YORK
(COUNTY OF _____) to wit:

I, Hayley Reed, plaintiff/petitioner, being duly sworn, depose and say that I have read the Complaint/Petition and reviewed the exhibits attached thereto, and know the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Hayley Reed, plaintiff/petitioner

Sworn to before me this ____ day of _____, 2020.

Notary Public

