

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PATRICK FLYNN, AJ RATERINK, PATRICIA  
LOOKS, BRIAN DOKTER, AND STEVE AND  
JAMIE LEMIEUX,

CASE NO. 21-*6624* -CZ

Plaintiffs,

v

HON.

JON HULSING

OTTAWA COUNTY DEPARTMENT OF PUBLIC  
HEALTH, LISA STEFANOVSKY, M. ED., in her  
official capacity as Administrative Health Officer for  
the Ottawa County Department of Public Health,  
AND THE OTTAWA COUNTY BOARD OF  
COMMISSIONERS,

Defendants.



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**COMPLAINT FOR IMMEDIATE DECLARATORY RELIEF AND MANDAMUS**

There is no other pending or resolved  
civil action arising out of the transactions or occurrences  
alleged in this Complaint.

NOW COME the Plaintiffs, Patrick Flynn ("Mr. Flynn"), AJ Raterink ("Ms. Raternick"), Patricia Looks ("Ms. Looks"), Brian Dokter ("Mr. Dokter"), and Steve and Jamie LeMieux (the "LeMieuxes"), (collectively, the "Plaintiffs"), by and through their counsel, Smith Haughey Rice & Roegge, P.C., and for

their Complaint against the Defendants, Ottawa County Department of Public Health (the “Health Department”), Lisa Stefanovsky, M. Ed., in her official capacity as Administrative Health Officer for the Ottawa County Department of Public Health (“Ms. Stefanovsky”), and the Ottawa County Board of Commissioners (the “County Commission”), hereby state as follows:

### INTRODUCTION

1. This lawsuit is an attempt by several community members to reclaim the machinery of local government. More specifically, in this case, the Plaintiffs challenge the ability of one unelected government official to unilaterally make decisions affecting their fundamental rights without any oversight or accountability.

2. On August 20, 2021, three days before the scheduled start of the school year, Ms. Stefanovsky, acting as Administrative Health Officer for the Health Department, issued an order (the “Mask Mandate”) requiring every student and teacher in the K-6 setting to wear a face covering while indoors. (**Exhibit A**, 8/20/21 Order).

3. The Mask Mandate was an unlawful exercise of governmental authority because it purported to take effect without the County Commission, who serves as the elected representatives of the people, voting to approve it. The Mask Mandate was unlawful for other reasons, too.

4. The public’s reaction to the Mask Mandate was swift and definitive. Nearly one-thousand people attended the very next County Commission meeting on August 24, 2021. And, the vast majority of them expressed their outrage at the Mask Mandate and asked the County Commission to do something about it.

5. At the same meeting, several County Commissioners took the position that they were powerless to stop the Mask Mandate from taking effect. On August 25, 2021, the very next day, the County Commission’s Chairman, Roger Bergman, issued a public statement doubling down on his alleged political

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powerlessness. In that statement, Commissioner Bergman claimed that there is “no question that the [County Commission] cannot make this decision and cannot reverse this decision.” (**Exhibit B**, Commissioner Bergman’s 8/25/21 statement). That’s simply untrue.

6. While the notion of students and teachers wearing masks in school may seem harmless, government overreach isn’t without consequence. By allowing the Health Department to operate without oversight, the County Commission is setting the stage for more invasive action. Since the Mask Mandate took effect, Ottawa County’s Corporation Counsel has stated, in writing, that the Health Department “absolutely holds the right” to require that every student age 12 and up obtain a COVID vaccination as a condition of attending school in Ottawa County. Clearly, the line has been drawn. And, the time for judicial intervention is now.

7. In this suit, the Plaintiffs seek a judicial declaration that the Mask Mandate was unlawful; that the Health Department’s rules and regulations don’t take effect until the County Commission has approved of them; and that, in a democratic republic, the voice of the people has value. For the reasons that follow, the Plaintiffs’ request for relief should be granted.

**PARTIES, JURISDICTION, AND VENUE**

8. Mr. Flynn is a resident of Ottawa County. He has a child who attends a Jenison Public School in the K-6 setting, and is otherwise subject to the Mask Mandate. Michigan law recognizes Mr. Flynn’s fundamental right to “make decisions concerning the care, custody, and control” of his child. *In re Sanders*, 495 Mich 394, 409; 852 NW2d 524 (2014); see also *Frowner v. Smith*, 296 Mich App 374, 382; 820 NW2d 235 (2012) (holding that “a parent’s precious right to raise his or her child is so firmly rooted in our jurisprudence that it needs no further explanation.”). The Mask Mandate interferes with that right. So, Mr. Flynn has standing to bring this challenge.

9. Ms. Raterink is a resident of Ottawa County. She has a child who attends an Allendale Public School in the K-6 setting. For that reason, Ms. Raterink also has a legally recognized “fundamental right” to make decisions regarding the care, custody, and control of her child. *In re Sanders*, supra, at 409. The Mask Mandate interferes with that right. She has standing to bring this challenge, too.

10. Ms. Looks is a resident of Ottawa County. She has a child who attends a Coopersville Public School in the K-6 setting. Ms. Looks has a legally recognized “fundamental right” to make decisions regarding the care, custody, and control of her child. *In re Sanders*, supra, at 409. The Mask Mandate interferes with that right. So, like the other Plaintiffs, Ms. Looks has standing to bring this challenge.

11. Mr. Dokter is a resident of Ottawa County. He has three children who attend a Hudsonville Public School in the K-6 setting. Mr. Dokter has a legally recognized “fundamental right” to make decisions regarding the care, custody, and control of his children. *In re Sanders*, supra, at 409. The Mask Mandate interferes with that right. Mr. Dokter has standing to bring this challenge, too.

12. The LeMieuxes are residents of Ottawa County. They have a child who attends a Coopersville Public School in the K-6 setting. The LeMieuxes have a legally recognized “fundamental right” to make decisions regarding the care, custody, and control of their child. *In re Sanders*, supra, at 409. The Mask Mandate interferes with that right. So, they have standing to bring this challenge.

13. The County Commission is an elected body that represents the people of Ottawa County, Michigan. Its powers are derived from the Michigan Constitution and state statutes. *Arrowhead Development Co. v. Livingston County Road Commission*, 413 Mich 505, 511-512; 322 NW2d 702 (1982). Moreover, the County Commission constitutes a “local governing entity” as that term is used in MCL 333.2406(a), the portion of the public health code relevant to this dispute. Finally, according to Ottawa County’s website, the County Commission “provides leadership and policy direction for all County activities,” and is responsible for “[establishing] the policies of county government” and “[devoting] ...

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time to oversight of the administrators in county government.” See <https://www.miottawa.org/departments/boc/>

14. The Health Department is the local administrative agency tasked with protecting the public health of Ottawa County, but only within the limits of its statutorily delegated authority. Additionally, the Health Department constitutes a “local health department” as that term is used in MCL 333.2401, *et seq.*

15. Ms. Stefanovsky is the Administrative Health Officer of the Health Department. She constitutes a “local health officer” as that term is used in MCL 333.2428.

16. This Court has jurisdiction over this dispute by virtue of MCL 600.605.

17. Venue is proper in this Court under MCL 600.1615 because all the Defendants exercise governmental authority in Ottawa County. Each Defendant maintains a principal office in Ottawa County. Venue is appropriate in this Court for that reason, too.

18. Under MCR 2.605, an action for declaratory judgment is considered “within the jurisdiction of a court if the court would have jurisdiction of an action on the same claim or claims in which the plaintiff sought relief other than a declaratory judgment.” As such, the fact that the Plaintiffs are seeking declaratory relief does not affect this Court’s jurisdiction over the underlying action.

19. Finally, under MCR 3.305(A)(B), an action for mandamus against a county commission, like this one, must be brought in a circuit court for a county in which venue is proper under the general venue statutes and rules. So, venue for the purpose of the Plaintiffs’ mandamus claim is proper here, too.

**IMMEDIATE DECLARATORY RELIEF UNDER MCR 2.605 IS APPROPRIATE**

20. Under Michigan law, “whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment.” *League of Women Voters v. Secretary of State*, 506 Mich 561, 585-586; 957 NW2d 731 (2020).

21. To that end, MCR 2.605(A)(1) states that, “[i]n a case of actual controversy in its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment.”

22. To show an “actual controversy,” the Plaintiffs need only “plead and prove facts which indicate an adverse interest necessitating the sharpening of the issues raised.” *Lansing School Educational Association v. Lansing Board of Education*, 487 Mich at 372 n. 20; 792 NW2d 686 (2010).

23. Michigan’s appellate courts have consistently found that a plaintiff pleads an “actual controversy” where they allege that an invalid rule or illegal action jeopardizes their rights or interests. See *Lash v. Traverse City*, 479 Mich 180, 196-197; 735 NW2d 628 (2007) *UAW v. Central Michigan University Trustees*, 295 Mich App 486, 496-497; 815 Nw2d 132 (2012).

24. Here, the Plaintiffs allege that the Mask Mandate was issued in violation of the Public Health Code’s statutory framework. Moreover, each of the Plaintiffs has a constitutionally protected interest that is affected by the Mask Mandate’s restrictions. They (and their children) are also susceptible to civil or criminal penalties for non-compliance with the Mask Mandate. So, the Mask Mandate, which they allege to be invalid, jeopardizes the Plaintiffs’ well-established rights or interests. A declaratory judgment is therefore necessary to sharpen the issues raised, and to clarify that the Mask Mandate is an invalid and unlawful exercise of governmental authority.

25. Finally, MCR 2.605(D) says that a court “may order a speedy hearing of an action for declaratory relief” and otherwise “advance it on the calendar.” Given the purely legal nature of the issues presented and the fundamental nature of the rights involved, the Plaintiffs hereby request an expedited determination of their claims.

26. For these reasons, then, the Plaintiffs request a declaratory judgment under MCR 2.605.

### FACTUAL BACKGROUND

27. On August 20, 2021, the Health Department issued the Mask Mandate, which requires every educational institution in Ottawa County to ensure that its students in “Pre-Kindergarten through Grade 6 consistently and properly wear a facial covering while inside any enclosed building or structure of the institution.” (**Exhibit A**, p. 3).

28. The Mask Mandate also requires every educational institution to ensure that “all persons, regardless of vaccination status, providing service to any persons in Pre-Kindergarten through Grade 6 properly and consistently wear a facial covering while inside an enclosed building or structure of the institution.” (*Id.*).

29. Under the Mask Mandate, the term “persons” includes “students, teachers, administrative staff, attendees, volunteers, coaches, camp leaders, and other employees or volunteers” of an educational institution. (*Id.*).

30. The Health Department’s Mask Mandate further defines “educational institutions” as including “youth camps, youth programs, child care centers, preschools, primary through secondary schools,” among other things. (*Id.*).

31. The Health Department allegedly derives the authority to issue its Mask Mandate from two statutes and one administrative rule: MCL 333.2451; MCL 333.2453; and Mich Admin Code R 325.175(4). (**Exhibit A**, p. 1). But, none of those code sections authorize the Mask Mandate. Nor do they otherwise insulate it from the County Commission’s plenary power to approve or disapprove the Mask Mandate.

32. The Mask Mandate also purports that it’s based upon several factual “determinations” and “findings” related to COVID-19, the Delta variant, and the efficacy of mask wearing as a mitigation technique. (**Exhibit A**, pp. 1-3).

33. The Mask Mandate does not contain, however, the specific factual “determinations” and “findings” that are necessary to support its existence under these particular circumstances. For example, the Health Department didn’t find or determine that:

- a. There are actual or suspected cases of COVID-19 among a student, teacher, or other person in any Ottawa County schools, as required by Mich Admin Code R 325.175(4);
- b. COVID-19 poses an “imminent danger” to the health or lives of people in Ottawa County, as that term is defined under MCL 333.2451; or
- c. A Mask Mandate is necessary “to ensure continuation of essential public health services and enforcement of health laws” as required by MCL 333.2453.

34. Under the relevant statutory authority, each of the aforementioned findings is necessary before an order like the Mask Mandate can be issued. They were all notably absent from the Health Department’s Mask Mandate. So, the Mask Mandate is invalid.

35. Although the Mask Mandate is an invalid exercise of governmental authority, it has yet to be challenged in circuit court. As such, the citizens of Ottawa County, including the Plaintiffs and their children, are subject to the Mask Mandate’s restrictions.

36. Under Michigan law, the violation of a local health department regulation or order is a misdemeanor “punishable by imprisonment for not more than 6 months or a fine of not more than \$200.00, or both.” MCL 333.2443.

37. The Health Department has taken other steps to enforce the unlawful Mask Mandate, too. On September 15, 2021, it issued a form Attestation to the relevant COVID-19 response contact person at every school in Ottawa County. (**Exhibit C**, 9/15/21 Attestation). The Attestation must be signed by every principal or head administrator of a school under the Health Department’s jurisdiction, and requires those individuals to declare that they have: (1) “enforced” the Mask Mandate and corrected any violations, (2) told parents and teachers that the Mask Mandate “is not optional and is not a matter of parental or personal



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choice,” (3) told their staff that any student who takes their mask off “must... replace it or be directed to the office where the parent is then called and asked to promptly pick the child up.” (*Id.*)

38. Based upon the language of the Attestation, then, the Health Department plans to enforce the Mask Mandate in other ways, too. One of those ways includes requiring that every K-6 student who refuses to wear a face covering be removed from the classroom and sent home.

39. Ultimately, then, the salient facts are these: The Health Department’s Mask Mandate was issued unlawfully, and the failure to comply with the Mask Mandate places every noncompliant child or adult at risk of one or more of the penalties set forth above.

40. In light of these considerations, an actual, justiciable controversy exists and immediate declaratory relief is appropriate.

**COUNT I**  
**JUDICIAL DECLARATION: THE COUNTY COMMISSION HAS A STATUTORY DUTY**  
**TO “APPROVE” OR “DISAPPROVE” OF THE MASK MANDATE**

41. The Plaintiffs incorporate the allegations of the proceeding paragraphs as if fully set forth herein.

42. The Health Department is a “local health department” under the Public Health Code. As such, its authority is limited and explicitly defined by statute. The statutory limits of the Health Department’s authority are defined as follows:

- a. Under MCL 333.2433(2)(a) and (f), a local health department shall “[i]mplement and enforce laws for which responsibility is vested in the local health department” and “[h]ave powers necessary or appropriate to perform the duties and exercise the powers given by law to the local health officer and which are not otherwise prohibited by law”;
- b. Under MCL 333.2435(d) and (i), a local health department may “[a]dopt regulations to properly safeguard the public health and to prevent the spread of diseases and sources of contamination” and “[p]erform a delegated function”;

- c. Under MCL 333.2441, a “local health department may adopt regulations necessary or appropriate to implement or carry out the duties or functions vested by law in the local health department”; and
- d. Under MCL 333.2428, the “local health officer shall act as the administrative officer of the Board of Health and local health department and may take actions and make determinations necessary or appropriate to carry out the local health department’s functions under this part or functions delegated under this part and to protect the public health and prevent disease.”

43. According to the Health Department, the Mask Mandate is an “order” promulgated under the authority conferred by MCL 333.2451, MCL 333.2453, and Mich Admin Code R 325.175(4).

44. The County Commission constitutes a “local governing entity” under Michigan’s Public Health Code. Furthermore, under Michigan law, “local health departments” are created by a “local governing entity.” MCL 333.2413. In that sense, then, the County Commission has primacy over, and is statutorily obligated to oversee, the Health Department.

45. The Public Health Code’s plain language supports this conclusion by providing that, when a local health department adopts a “regulation,” it “shall be approved or disapproved by the local governing entity.” MCL 333.2441. And, those regulations only become effective after receiving this “approval.” (*Id.*).

46. Clearly, then, Michigan law requires that a local governing entity oversee, and ultimately, approve any “regulations” issued by a local health department before they obtain the force of law.

47. The Health Department’s Mask Mandate is a “regulation” within the plain meaning of MCL 333.2441. So, the County Commission is statutorily obligated to approve or disapprove of the Mask Mandate before it takes effect.

WHEREFORE, the Plaintiffs hereby respectfully request that this Honorable Court issue an Order declaring that:

- a. Under MCL 333.2441, the County Commission has a mandatory statutory duty to exercise oversight over the Health Department’s regulations;

- b. Any orders promulgated by the Health Department under MCL 333.2451, MCL 333.2453, and Mich Admin Code R 325.175(4) are “regulations” within the plain meaning of MCL 333.2441; and
- c. Under the plain language of MCL 333.2441, the Health Department’s Mask Mandate is procedurally invalid and legally inoperative because the Health Department did not obtain the County Commission’s approval before it took effect.

**COUNT II**  
**MANDAMUS**

48. The Plaintiffs incorporate the allegations of the proceeding paragraphs as if fully set forth herein.

49. Although it cannot be used to compel a particular outcome, mandamus is properly employed “to require a body or an officer charged with a duty to take action in the matter, notwithstanding the fact that the execution of that duty may involve some measure of discretion.” *Teasel v. Department of Mental Health*, 419 Mich 390, 410; 355 NW2d 75 (1984).

50. Under MCL 333.2441, the County Commission has a mandatory statutory duty to exercise oversight in relation to the Health Department’s regulations, including the Mask Mandate. Use of the term “shall” in the relevant statutory framework plainly establishes this fact.

51. So, while the County Commission has discretion to “approve” or “disapprove” the Health Department’s Mask Mandate, its exercise of that discretion is statutorily mandated. Put another way, then, the Health Department cannot refuse to “approve” or “disapprove” of the Mask Mandate.

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court issue a writ of mandamus compelling the County Commission to comply with its statutory duty and vote to either “approve” or “disapprove” of the Mask Mandate as required by the plain language of MCL 333.2441.

**COUNT III**  
**JUDICIAL DECLARATION: MCL 333.2451 DOES NOT AUTHORIZE**  
**THE MASK MANDATE**

52. The Plaintiffs incorporate the allegations of the proceeding paragraphs as if fully set forth herein.

53. MCL 333.2451(1) states that “[u]pon a determination that imminent danger to the health or lives of individuals exists in the area served by the local health department, the local health officer immediately shall inform the individuals affected by the imminent danger and issue an order which shall be delivered to a person authorized to avoid, correct, or remove the imminent danger or be posted at or near the imminent danger.” The statute then goes on to say this:

“The order shall incorporate the findings of the local health department and require immediate action necessary to avoid, correct, or remove the imminent danger. The order may specify action to be taken or prohibit the presence of individuals in locations or under conditions where the imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger.” *Id.*

54. Therefore, the authority granted by MCL 333.2451(1) is only triggered “[u]pon a determination that an imminent danger to the health or lives of individuals exists in the area served by the local health department.” And, without any such determination, the Health Department has no authority to issue an order under that statute.

55. Under MCL 333.2441, every valid order “shall incorporate the findings of the local health department.” Quite simply, then, any determination that an “imminent danger” exists must be set forth in the order to which it relates.

56. The Public Health Code specifically defines “imminent danger” as “a condition or practice which could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided.” MCL 333.2451.

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57. Here, the Health Department made numerous findings related to COVID-19, the Delta variant, and the efficacy of mask wearing as a mitigation technique in connection with the Mask Mandate. But, the Mask Mandate does not contain any determination that “an imminent danger to the health or lives of individuals exists in [Ottawa County].” Nor does it contain any factual findings that could support a determination of that type. That is, the Mask Mandate contains no specific findings that:

- a. COVID-19 (including the Delta variant) “could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided”;
- b. Any student or person in an Ottawa County school is at risk of “imminent” or “immediate” harm as that term is used in the Public Health Code; or
- c. Absent a preemptive, blanket Mask Mandate, harm would result before any of the normal, statutorily allowable enforcement mechanisms (i.e., a regulation promulgated with notice and public hearing) could be completed.

58. Therefore, on its face, the findings and determinations contained in the Health Department’s Mask Mandate were insufficient to trigger the authority delegated by MCL 333.2451.

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court enter an order declaring that:

- a. Any authority provided by MCL 333.2451 isn’t triggered unless the Health Department identifies the presence of an “imminent danger” that is supported by adequate findings;
- b. In this instance, the Health Department failed to determine that an “imminent danger” exists, and also failed to make any findings that could support the existence an “imminent danger” for the purposes of MCL 333.2451;
- c. Since the Health Department failed to make the requisite findings and determinations, it failed to trigger any authority under MCL 333.2451; and
- d. Since the Health Department failed to trigger any authority under MCL 333.2451, the statute does not provide a basis for the Mask Mandate. And, to the extent the departments Mask Mandate relies on MCL 333.2451, it is both invalid and unenforceable.

**COUNT IV**  
**JUDICIAL DECLARATION: MCL 333.2453 DOES NOT AUTHORIZE**  
**THE MASK MANDATE**

59. The Plaintiffs incorporate the allegations of the proceeding paragraphs as if fully set forth herein.

60. MCL 333.2453 says this:

If a local health officer determines that control of an epidemic is necessary to protect the public health, the local health officer may issue an emergency order to prohibit the gathering of people for any purpose and may establish procedures to be followed by persons, including a local governmental entity, during the epidemic to ensure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code. MCL 333.2453(1).

61. The authority triggered by this statute requires a determination that control of an epidemic is necessary to protect the public health.

62. Once triggered, MCL 333.2453(1) authorizes a local health department to issue “emergency” orders that either: (i) “prohibit the gathering of people for any purpose”; or (ii) “establish procedures to be followed by persons, including a local governmental entity, during the epidemic to ensure continuation of essential public health services and enforcement of health laws.”

63. The Mask Mandate does not prohibit the gathering of people for any purpose.

64. Moreover, the Health Department made no findings that the Mask Mandate was necessary to “ensure” or was in any way related to the “continuation of essential public health services and enforcement of health laws.”

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court enter an order declaring that:

- a. The portion of MCL 333.2453 that authorizes local health officers to “prohibit the gathering of people for any purpose” does not authorize a blanket preemptive Mask Mandate;

- b. Under the plain language of MCL 333.2453, a local health officer's scope of authority to "establish procedures to be followed by persons, including a local governmental entity, during the epidemic" is limited to procedures that are necessary "to ensure continuation of essential public health services and enforcement of health laws"; and
- c. Since the Health Department failed to make the findings required to trigger its authority to "establish procedures to followed by persons, including a local governmental entity, during the epidemic," MCL 333.2453 does not provide a basis for the Mask Mandate. And, to the extent that the Mask Mandate relies on MCL 333.2453, it is invalid and unenforceable.

**COUNT V**

**JUDICIAL DECLARATION: MICH ADMIN CODE R 325.175(4) DOES NOT AUTHORIZE  
THE MASK MANDATE**

65. The Plaintiffs incorporate the allegations of the proceeding paragraphs as if fully set forth herein.

66. Mich Admin Code R 325.175(4) says this:

"When a local health officer confirms or reasonably suspects that a student or individual attending school or a group program has a communicable disease, the health officer may, as a disease control measure, exclude from attendance any individuals lacking documentation of immunity or otherwise considered susceptible to the disease until such time as the health officer deems there to be no likely further risk of disease spread."

67. Here, the Health Department's Mask Mandate order contains no finding that it has "confirm[ed] or reasonably suspect[s] that a student or an individual attending school or a group program" in an Ottawa County school has a "communicable disease." So, the authority provided by Rule 325.175(4) hasn't been triggered.

68. Furthermore, even if the Health Department's authority under Rule 325.175(4) was somehow triggered, that Rule only permits the Health Department to "exclude from attendance any individuals lacking documentation of immunity or otherwise considered susceptible to the disease."

69. A mask requirement does not "exclude" anyone from attendance. So, for this additional reason, Rule 325.175(4) doesn't authorize the Health Department's Mask Mandate.

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WHEREFORE, the Plaintiffs respectfully request that this Honorable Court enter an order declaring that:

- a. The authority provided by Rule 325.175(4) isn't triggered until the Health Department confirms or reasonably suspects that someone attending a school program has a communicable disease;
- b. The Health Department's Mask Mandate doesn't find that any actual or suspected cases of COVID-19 exist in an Ottawa County school. So, the findings articulated in the Mask Mandate are insufficient to trigger Rule 325.175(4);
- c. While Rule 325.175(4) allows the Health Department "exclude" individuals with communicable diseases from attending school programs, it does not allow for a preemptive, blanket mask mandate; and
- d. Since Rule 325.175(4) does not allow the Health Department to issue a preemptive blanket mask mandate, it cannot serve as a basis for the Mask Mandate.
- e. To the extent that the Mask Mandate relies on Rule 325.175(4), it is invalid and unenforceable.

**REQUEST FOR RELIEF**

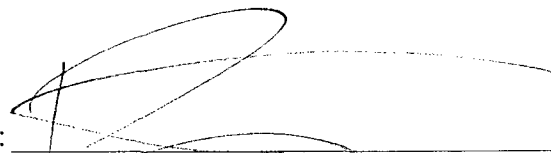
WHEREFORE, for the reasons stated above, the Plaintiffs respectfully request that this Honorable Court:

- a. Order "a speedy hearing" of this action and "advance it on the calendar" of the docket under MCR 2.605(D);
- b. Issue a judgment providing the declaratory relief articulated in each of the counts above;
- c. Issue a writ of mandamus compelling the County Commission to comply with its statutory duty and vote to either "approve" or "disapprove" of the Mask Mandate; and
- d. Grant any other relief deemed to be equitable and just.



Date: September 20, 2021

By:



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Justin F. Roebuck

20th Circuit Court

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# EXHIBIT A



miOttawa Department of  
**Public Health**

Lisa Stefanovsky, M.Ed.

*Health Officer*

Paul Heidel, M.D., M.P.H.

*Medical Director*

**STATE OF MICHIGAN**  
**OTTAWA COUNTY DEPARTMENT OF PUBLIC HEALTH**

**August 20, 2021**

In the Matter of:

COVID-19 Prevention through the Wearing of Face Masks in Educational Settings  
within Ottawa County, Michigan:

The Administrative Health Officer of the Ottawa County Department of Public Health makes the following factual determinations and issues this Order pursuant to the Michigan Public Health Code, MCL 333.2451 and 333.2453, as well as R. 325.175(4), which is an administrative rule promulgated by the Michigan Department of Health and Human Services pursuant to MCL 333.2226(d). Factual findings include:

1. The virus (SARS-CoV-2) that causes COVID-19 spreads mainly from person-to-person, primarily through respiratory droplets produced when an infected person or carrier coughs, sneezes, or talks. These droplets can enter the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Spread is more likely to occur when people are in close contact with one another (within about 6 feet).
2. The Delta variant of the SARS-CoV-2 virus is the dominant variant in Michigan and is significantly more contagious than the original form that entered the United States in winter 2020. Current research indicates the Delta variant may cause more serious illness in persons of all ages, including children. West Michigan cases have already emerged in which previously healthy infants, children, and teens have faced hospitalization, life support, life-threatening complications (Multisystem Inflammatory Syndrome in Children) and chronic symptoms (Long COVID-19).
3. COVID-19 infections and COVID-19 hospitalizations are increasing among children in the United States, with over 120,000 children testing positive the week of August 6-12, according to a report from the American Academy of Pediatrics (AAP). This is an increase from the week prior when just over 93,000 child COVID-19 cases were reported. According to the Centers for Disease Control and Prevention (CDC), as of August 16, 2021 the rate of new hospital admissions among children 0-17 years of age increased to 0.41 new admissions per 100,000 population, the highest recorded since August of 2020. In States experiencing surges, hospital new admission rates per 100,000 population for children are as high as 3.41 in Alabama, 1.06 in Georgia, and 1.28 in Florida; indicating that a surge in Michigan could easily result in an increased hospitalization rate among children.
4. Although vaccinations prevent most infections, slow community transmission, and

reduce the risk of severe outcomes due to COVID-19 disease, COVID-19 remains a public health issue that impacts local institutions, particularly in educational settings where students younger than twelve (12) years of age are ineligible to receive vaccination, are required to receive an education and are at school five days each week for many hours each day.

5. Studies of COVID-19 incidence in school districts during the 2020-2021 school year demonstrate that proper masking is the most effective mitigation strategy to prevent secondary transmission in schools when COVID-19 is circulating and when vaccination is unavailable, or there is insufficient uptake of vaccination.
6. According to the AAP, the CDC, and the Michigan Department of Health and Human Services (MDHHS), the universal use of masks in schools is a safe, essential, and proven strategy to reduce the spread of COVID-19 in schools.
7. Masks are primarily intended to reduce the emission of virus-laden droplets, which is especially relevant for asymptomatic or pre-symptomatic infected wearers who feel well and may be unaware of their infectiousness to others, and who, are estimated to account for more than 50% of transmissions. Masks also help reduce inhalation of these droplets by the wearer. The community benefit of masking for SARS-CoV-2 control is due to the combination of these effects; individual prevention benefit increases with increasing numbers of people using masks consistently and correctly.
8. On August 18, 2021, the MDHHS publicly presented an update on COVID-19 data trends across the state. That presentation included data and interpretation supporting the following statements from MDHHS:
  - a. Consistent mask use can reduce risk in the school setting. A study from North Carolina concluded that 40 - 70% of cases could be prevented through mask use.
  - b. Counties with mask mandates have experienced lower rates of illness.
9. When layered prevention strategies are applied consistently, including consistent and proper mask use, school-associated transmission of COVID-19 is reduced.
10. The preceding factual findings have been concluded after careful deliberation of the literature and review by a medical advisory workgroup consisting of local physicians and experts specializing in infectious disease control and pediatric health.
11. The wearing of face masks in schools is supported by Holland Hospital, Mercy Health Saint Mary's, Metro Health – University of Michigan Health, North Ottawa Community Health System, and Spectrum Health as important for protecting the health of our community. These local healthcare institutions continue to see the severe impacts of COVID-19 on all parts of our community, including among young people, and they share our commitment to see our community's children receive excellent in-person education in the safest environments reasonably possible.
12. The Kent County Health Department and the Ottawa County Department of Public Health are jointly making these findings to achieve a consistent regional approach to the face mask measures contained in this Order.

13. The Local Health Departments are aware of information circulating in the Community regarding alleged motivations and alleged untoward alliances regarding masking and assure the Community that the only motivations involved in this Order are the health, safety, and well-being of area children in the face of the newest variant of the novel Coronavirus, and the only alliances involved in this Order are among the Health Department professionals that share the same singular motivations.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that all Educational Institutions and all Persons in Educational Settings must adhere to the following rules:

1. The Educational Institutions shall ensure that people in pre-kindergarten through grade six consistently and properly wear a facial covering while inside any enclosed building or structure of the institution.
2. The Educational Institutions shall ensure that all persons, regardless of vaccination status, providing service to any persons in pre-kindergarten through grade six properly and consistently wear a facial covering while inside any enclosed building or structure of the institution.

**IT IS FURTHER ORDERED** that the following terms shall have the following definitions for purposes of this ORDER:

- a. "Educational Institutions" or "Educational Settings" includes youth camps, youth programs, childcare centers, preschools, primary through secondary schools, vocational schools, colleges, and universities and other organized activities outside the home where coursework is taught. This definition includes educationally affiliated extracurricular activities such as school athletics.
- b. "Fully vaccinated persons" means persons for whom at least two weeks has passed after receiving the final dose of an FDA-approved or authorized COVID-19 vaccine.
- c. "Persons in Educational Settings" means students, teachers, administrative staff, attendees, volunteers, coaches, camp leaders, and other employees or volunteers of Educational Institutions.

**IT IS FURTHER ORDERED** that this ORDER shall not apply to the following Persons:

1. Persons in the act of eating or drinking.
2. Persons under the age of four years; however, supervised masking is recommended for children who are at least two years of age.
3. Persons with developmental conditions of any age attending school for whom it has been demonstrated that the use of a face covering would inhibit the person's access to education. These are limited to persons with an Individualized Education Plan, Section 504 Plan, Individualized Healthcare Plan or equivalent.
4. Vaccinated teachers who are working with children who are hard of hearing or students with developmental conditions who benefit from facial cues.


5. Persons who have a medical reason confirmed in writing from a Medical Doctor (MD) or Doctor of Osteopathic Medicine (DO) currently licensed to practice medicine in the State of Michigan.

**IT IS FURTHER REMINDED** that:

1. On January 29, 2021, the CDC issued an ORDER that required face masks to be worn by all people while on public transportation (which included all passengers and all personnel operating conveyances) traveling into, within, or out of the United States and U.S. territories. The CDC ORDER includes school buses, both public and private.
2. On July 27, 2021, the CDC issued recommendations calling for universal indoor masking for all teachers, staff, students, and visitors to schools, regardless of vaccination status. On August 13, 2021, the MDHHS issued updated guidance stating that all schools should require universal indoor masking. The Local Health Departments Educational Institutions of these recommendations and encourage them to enact policies to this effect.
3. This order does not repeat, supersede, or rely on any current MDHHS or Federal Epidemic Orders, which are incorporated by reference herein.

**THIS ORDER** is effective immediately and remains in effect until 60 days past the date COVID-19 vaccine is authorized or approved by the FDA and available to persons in pre-kindergarten through grade six, or community transmission for Ottawa County is categorized as "Low" by the CDC for at least seven consecutive days, or until further notice from the Administrative Health Officer.

August 20, 2021



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Lisa Stefanovsky, M.Ed.  
Administrative Health Officer  
Ottawa County Department of Public Health  
12251 James Street Suite 400  
Holland, MI 49424

FILED 9/20/2021

Justin F. Roebuck

20th Circuit Court

Rec: 9/20/2021 10:00 Clerk: 49107

# EXHIBIT B



# Ottawa County

Board of Commissioners

Roger A. Bergman  
Chairperson

Matthew R. Fenske  
Vice-Chairperson

Statement of Roger Bergman, Chair  
Ottawa County Board of Commissioners  
Wednesday, August 25, 2021

I was impressed with the number of citizens who showed up yesterday to express themselves, but very disappointed by the organized effort to bully and intimidate anyone who dared to speak in favor of a mask mandate in schools. County-wide epidemic orders are extremely rare and typically generate intense controversy, which is why our state legislature has insured that those decisions are made by the county health officers exclusively. There is no question that the Board of Commissioners cannot make this decision and cannot reverse this decision. Legally, the Board cannot fire the health officer for making this decision nor can it use its power of the purse to bully her into rescinding the decision. There were some legitimate issues that the Board will ask the County's health officer to address such as the timing of her decision, the type of masks that will be available to children, and how students with legitimate medical reasons can more easily obtain exemptions. I wish to remind everyone that most of the students in the United States will be in school with masks, as they were last year. The temporary area local health orders this year only apply to K-6 and, unlike last year, will not apply outdoors. The Ottawa County Board of Commissioners sincerely hope that the order will expire during the fall semester by its own terms, that we can keep the schools open this year, and that we can return to complete normalcy by the spring semester.

Roger A. Bergman

Francisco C. Garcia Joseph S. Baumann Douglas R. Zylstra Allen Dannenberg Randall J. Meppelink  
Kyle J. Terpstra James H. Holtvliet Philip D. Kuyers Gregory J. DeJong

12220 Millmore Street | West Olive, Michigan 49460 | 616-738-4898 | miOttawa.org



FILED 9/20/2021

Justin F. Roebuck

20th Circuit Court

Rec: 9/20/2021 0CClerk 4910

# EXHIBIT C



miOttawa Department of  
**Public Health**

**Lisa Stefanovsky, M.Ed.**  
Health Officer

**Gwen Unzicker, M.D.**  
Medical Director

**ATTESTATION**

**September 15, 2021**

I declare that I am the Principal or Head Administrator of \_\_\_\_\_  
School and that I have been present at the School and have enforced the Health Officer's August 20, 2021  
Order ("Order") to the best of my knowledge and belief.

I further attest that I have consistently advised parents and teachers that the limited mask mandate in the  
Order is not optional and is not a matter of parental or personal choice, rather the only exceptions to the  
face covering obligation are those contained in the Order.

I further attest that I have instructed my staff to provide a mask to any pre-K to 6<sup>th</sup> grade student who does  
not have one. Any student who does take the mask off must therefore replace it or be directed to the office  
where the parent is then called and asked to promptly pick the child up.

Finally, I attest that I have consistently corrected any violations of this Order among staff and students.

\_\_\_\_\_  
Signature of Principal or Head Administrator

\_\_\_\_\_  
Print Name

Please return a signed copy of this attestation through mail, e-mail or fax no later than **September 22, 2021**.

Attn: Educational Setting Attestation Form

Mail: Ottawa County Department of Public Health  
12251 James Street, Suite 400  
Holland, MI 49424

E-mail: [Covid19@miOttawa.org](mailto:Covid19@miOttawa.org)

Fax: 616-393-5643