

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

RESURRECTION SCHOOL; CHRISTOPHER
MIANECKI, individually and as next friend on
behalf of his minor children C.M., Z.M., and N.M.;
and STEPHANIE SMITH, individually and as
next friend on behalf of her minor child F.S.,
Plaintiffs,

v.

ROBERT GORDON, in his official capacity as the
Director of the Michigan Department of Health
and Human Services; DANA NESSEL, in her
official capacity as Attorney General of the State
of Michigan; LINDA S. VAIL, in her official
capacity as the Health Officer of Ingham County;
and CAROL A. SIEMON, in her official capacity
as the Ingham County Prosecuting Attorney,
Defendants.

COMPLAINT

Plaintiffs Resurrection School, Christopher Mianecki, individually and as next friend on behalf of his minor children C.M., Z.M., and N.M., and Stephanie Smith, individually and as next friend on behalf of her minor child F.S. (collectively referred to as “Plaintiffs”), by and through undersigned counsel, bring this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof allege the following upon information and belief:

INTRODUCTION

1. Since the beginning of March, 2020, Michigan Governor Gretchen Whitmer has exercised control over almost all areas of life. From March through the filing of this Complaint in October, the Governor has issued *one hundred and ninety-two* executive orders, citing the spread of COVID-19 as justification for this extraordinary exercise of authority. The Michigan Supreme Court has since held the majority of the Governor’s orders unconstitutional under the Michigan Constitution, noting the “sweeping scope” of her policies and that her actions “rest[ed] on an assertion

of power to reorder social life.” *In re Certified Questions From U.S. Dist. Court, W. Dist. of Mich., S. Div.*, No. 161492, 2020 WL 5877599, at *15 (Mich. Oct. 2, 2020) (hereinafter “*In re Certified Questions*”).

2. The Michigan Supreme Court expressed hope that its “decision leaves open many avenues for the Governor and Legislature to work together to address this challenge and we hope that this will take place.” *Id.* at *3, n.1; *see also House of Representatives & Senate v. Governor*, No. (Mich. Oct. 12, 2020) (“It should again be emphasized . . . that our decision today, like our decision in *In re Certified Questions*, leaves open many avenues for our Governor and Legislature to work together in a cooperative spirit and constitutional manner to respond to the COVID-19 pandemic.”). Unfortunately, Governor Whitmer and the Defendants have ignored this direction and continue to mandate more unilateral and draconian orders that “reorder social life” and claim that an “emergency” requires their issuance. *See In re Certified Questions* at *15.

3. Defendants have issued multiple orders over the past weeks, necessitating this lawsuit.

4. Plaintiffs—like students and schools from across the state—have engaged in in-person classroom education since August of 2020, with extensive health and safety protocols in place. Pursuant to the Return to Learn legislation passed by both houses of the Michigan legislature and signed by the Governor, Plaintiffs operated under its approved plan for approximately two months, successfully deterring the spread of COVID-19 in their small, non-public school. Now, however, citing emergency authority, Defendants require elementary school children to wear masks throughout the entire school day, regardless of whether the children are safely distanced from one another and regardless of how the mandate affects the children’s ability to learn or fully engage in religious education. Defendants’ orders ***add up to seven additional hours of continuous masking for students as young as five years old.***

5. This civil rights action is brought under the First, Fifth, and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, and the Michigan Constitution, challenging Defendants' orders mandating the wearing of masks, as set forth in this Complaint.

6. Plaintiffs seek a declaration that the enactment and enforcement of the challenged orders violate their fundamental rights secured by the United States and Michigan Constitutions and an order enjoining the same. Plaintiffs also seek an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988, and other applicable laws.

JURISDICTION AND VENUE

7. This action arises under the Constitution and laws of the United States. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has supplemental jurisdiction over the state law claim pursuant to 28 U.S.C. § 1367(a).

8. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, by *Ex parte Young*, 209 U.S. 123 (1908), and by the general legal and equitable powers of this Court.

9. Plaintiffs' claim for an award of their reasonable costs of litigation, including attorneys' fees and expenses, is authorized by 42 U.S.C. § 1988 and other applicable law.

10. Plaintiffs' claim for nominal damages against Defendant Vail is authorized by 42 U.S.C. § 1983.

11. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District, and all Plaintiffs and Defendants reside or conduct business in this District.

PARTIES

12. Plaintiff Resurrection School is a small, Catholic, non-public school located in Lansing, Michigan. Resurrection School is operated by Resurrection Parish Lansing, a non-profit

incorporated under Michigan law. Resurrection School serves elementary school-aged children, including students in grades kindergarten through fifth grade. Resurrection School is led by and is a ministry of the Church of the Resurrection, a Catholic church within the Diocese of Lansing, Michigan. Plaintiff Resurrection School follows and teaches according to the Catholic faith.

13. Plaintiffs C.M., Z.M., and N.M. are all students at Resurrection School. C.M. is a kindergartner, Z.M. is a third grader, and N.M. is a fifth grader. Plaintiff Christopher Mianecki is an adult citizen of the United States, a resident of Michigan, and the father of Plaintiffs C.M., Z.M., and N.M. Plaintiff Mianecki brings this action individually and on behalf of his minor children C.M., Z.M., and N.M., as their next friend.

14. Plaintiff F.S. is a fourth grader in the Diocese of Lansing. Plaintiff Stephanie Smith is an adult citizen of the United States, a resident of Michigan, and the mother of F.S. Plaintiff Smith brings this action individually and on behalf of her minor child F.S., as her next friend.

15. All Plaintiffs are located in Ingham County and would be protected by the injunctive relief sought herein.

16. Defendant Richard Gordon is the Director of the Michigan Department of Health and Human Services. In his official capacity, Defendant Gordon issued an emergency order on October 9, 2020 (“MDHHS Order”). A copy of the MDHHS Order, which serves as one of the bases for Plaintiffs’ Complaint, is attached as Exhibit 1. Defendant Gordon is sued in his official capacity.

17. Defendant Dana Nessel is the Attorney General of Michigan. As the Attorney General, Defendant Nessel has the authority to enforce the challenged orders set forth in this Complaint. Defendant Nessel is sued in her official capacity.

18. Defendant Linda S. Vail is the Health Officer for the Ingham County Health Department. In her official capacity, Defendant Vail issued an emergency order on October 4, 2020

(“County Order”). A copy of the County Order, which serves as one of the bases for Plaintiffs’ Complaint, is attached as Exhibit 2. Defendant Vail is sued in her official capacity.

19. Ingham County passed a resolution approving the County Order on October 13, 2020. A copy of the resolution is attached as Exhibit 3.

20. Defendant Carol A. Siemon is the Ingham County Prosecuting Attorney. Defendant Siemon is responsible for criminally prosecuting the challenged orders set forth in this Complaint. Defendant Siemon is sued in her official capacity.

STATEMENT OF FACTS

Resurrection School

21. Resurrection School is a Catholic school that has adopted a virtue curriculum and disciplinary policies that honor the dignity of every student, and it provides an education based upon the teachings of the Catholic faith.

22. In accordance with the teachings of the Catholic faith, Resurrection School believes that every human has dignity and is made in God’s image and likeness. Unfortunately, a mask shields our humanity. And because God created us in His image, we are masking that image. Masks also make us anti-social. They interfere with relations. As the Catholic faith teaches, we are relational beings. And our existence as relational beings points to the Holy Trinity. A mask is disruptive to this essential element of the Catholic faith, and it is disruptive to the teaching of young children for these and other reasons. Plaintiffs share these deeply held religious beliefs.

23. Resurrection School seeks to instill confidence in its students and encourage social interactions that replicate the life and teachings of Jesus Christ.

24. For example, Resurrection School seeks to impart the virtue of mercy through actions of forgiveness. For example, when a student has wronged or hurt another student, a teacher guides the student through the reconciliation process and facilitates a face to face apology with the

student who was harmed. A mask interferes with this important human interaction—an interaction that is essential to the spiritual well-being of the students.

25. Resurrection School sees moments of conflict, whether working on a difficult concept, struggling with reading or a complex math concept, or disagreement between students, as moments to evangelize.

26. Resurrection School is devoted to helping all students, especially students who inspire others through persisting and learning with exceptionalities, such as learning disabilities, an extra twenty-first chromosome, or setbacks from a troubled childhood.

27. Resurrection School is proud of instilling the love and wonder of a Catholic, classical curriculum and guiding its students in a multi-disciplinary approach that infuses the Catholic faith into every facet of the students' day.

28. The students are the focus and reason for the existence of Resurrection School. The faculty works for the betterment, education, and divinization of their students, as the ultimate goal of Catholic education is to prepare each child to become a Saint.

29. Resurrection School partners with the students' parents, who are the first educators of their children according to the Catechism of the Catholic Church. Accordingly, Resurrection School listens to parents in its school community, and it strives to give voice and the appropriate authority to them.

30. The Resurrection School parent community, in large measure, deeply disagrees with and objects to Defendants' orders that require their children to cover their faces while engaged in the process of learning, even while socially distanced in the classroom.

31. Plaintiffs seek to take responsible measures to ensure health and safety. However, they also desire normalization, friendship, an enriching education, and a healthy spiritual life.

Plaintiffs Mianecki and C.M., Z.M., and N.M., and Plaintiffs Smith and F.S.

32. Plaintiff C.M. is a kindergartner at Resurrection School.

33. Plaintiff Z.M. is a third grader at Resurrection School.

34. Plaintiff N.M. is a fifth grader at Resurrection School.

35. Plaintiff F.S. is a fourth grader in the Diocese of Lansing.

36. As part of their religious exercise, Plaintiffs Mianecki and Smith want their respective children, C.M., Z.M., N.M., and F.S., to receive a Catholic education. As the persons who have the paramount right to direct the education of their children pursuant to the Catechism of the Catholic Church, including the religious education of her children, Plaintiffs Mianecki and Smith have chosen Catholic schools for their children.

37. Plaintiff Smith has chosen to send her son to Catholic school where F.S. can receive the education Plaintiff Smith desires for her son.

38. Plaintiff Mianecki has chosen Resurrection School as the place where C.M., Z.M., and N.M. can receive the Catholic education he sees as instrumental for his children's religious and educational formation.

39. Plaintiff F.S. has suffered from breathing issues since he was an infant, in part due to severe allergies.

40. Plaintiff F.S.'s parents, including Plaintiff Smith, have taken F.S. to receive medical care throughout his childhood. Plaintiff F.S. is highly susceptible to respiratory infections that quickly turn into additional infections such as bronchitis.

41. Plaintiff F.S.'s family moved into a home with radiant heat to help F.S. with his breathing and health issues.

42. When the government began mandating the wearing of masks outside the home, Plaintiff Smith discussed with F.S.'s pediatrician whether F.S. qualified for a medical exemption.

His pediatrician determined, that while F.S. does suffer from breathing issues, allergies, and health complications, he did not satisfy the requirements to obtain a medical exemption.

43. Plaintiff F.S. can only tolerate a mask for a short period of time.

44. Upon wearing a mask for more than thirty minutes, Plaintiff F.S. has difficulty breathing. Consequently, he constantly pulls at his mask, often removing it from his nose and mouth.

45. Plaintiff F.S. cannot wear a mask beyond thirty minutes without being distracted by it.

46. Plaintiff F.S.'s parents, including Plaintiff Smith, had to remove F.S. from the classroom due to the challenged orders because F.S. cannot tolerate wearing a mask.

47. Wearing a mask in the classroom makes it impossible for Plaintiff F.S. to receive a religious education.

48. Plaintiff F.S. wishes to return to the classroom with his classmates, and Plaintiff Smith wants F.S. to return. However, the challenged orders mandating the wearing of masks make it impossible for F.S. to do so.

49. Plaintiff F.S.'s parents, including Plaintiff Smith, paid tuition for the 2020-21 school year based upon the initial safety plan put in place by the Diocese of Lansing in accordance with the Return to Learn legislation. Plaintiff Smith is currently paying for a religious education for her son that he cannot receive because he has to be educated at home where he is not required to wear a mask. Also, Plaintiff Smith is unable to provide the religious education that attending a Catholic school provides.

50. The challenged orders single out children who cannot tolerate masks, making them unable to participate in religious education.

51. Plaintiff Mianecky moved his wife and family to Lansing, Michigan and specifically chose for his children, Plaintiffs C.M., Z.M., and N.M., to attend and receive their religious education and formation at Resurrection School.

52. At the start of the school year in August 2020, Plaintiffs C.M., Z.M., and N.M. were beginning to engage in Catholic fellowship with their classmates and form relationships with other children based upon the teachings and example of Jesus Christ. Mandating Plaintiff Mianecky's young children to wear facial coverings is hindering the formation of these bonds and prevents the body of Christ from freely associating.

53. Kindergartner, Plaintiff C.M., is particularly shy and quiet around those she does not know well. Wearing a facial covering impedes her ability to be heard, to socialize, to engage in religious fellowship, and it impedes her ability to acclimate to new surroundings and new people. Plaintiff C.M.'s teacher has voiced that Plaintiff C.M. is quiet in the classroom.

54. Plaintiff C.M. experiences difficulty and concerning discomfort when wearing a facial covering.

55. Plaintiff C.M. has large tonsils and a sensitive gag reflex which lowers her tolerance for wearing a facial covering for any extended period of time.

56. Plaintiff C.M. does not possess the fine motor skills to handle a facial covering properly due to her age. It is difficult for Plaintiff C.M., a kindergartner, to keep the facial covering clean or even from falling onto the floor.

57. Plaintiff C.M.'s inability to properly handle a facial covering creates an increased likelihood that bacteria and viruses could present on the facial covering or on Plaintiff C.M.'s hands and skin.

58. Plaintiff C.M. has difficulty with speech and has trouble pronouncing certain letters correctly. Wearing a facial covering exacerbates her struggles with speech and impedes her teacher's

ability to see her mouth to determine if her mouth is in the proper position to say letters and sounds correctly.

59. Plaintiff Z.M. also battles with speech problems.

60. Plaintiff Z.M. has clinically recognized speech issues. He has been monitored and aided by speech therapists for several years.

61. Plaintiff Z.M.'s speech is difficult to understand, sometimes even for individuals who know him well.

62. For Plaintiff Z.M., wearing a facial covering impedes his ability to be heard and to be understood by others in the classroom, including his teacher.

63. Plaintiffs C.M., Z.M., and N.M. struggle with focus. Facial coverings cause C.M., Z.M., and N.M. distraction, further causing them to touch their faces and their facial coverings frequently.

64. Plaintiff Mianeki has observed Plaintiffs C.M., Z.M., and N.M. wearing facial coverings for short periods of time at Catholic Mass.

65. When wearing facial coverings, Plaintiffs C.M., Z.M., and N.M struggle to engage in and celebrate the Mass. Plaintiffs C.M., Z.M., and N.M. fiddle with their facial coverings, take them off and then put them back on improperly, and lose attention and focus on what is around them. Plaintiffs C.M., Z.M., and N.M. have more trouble than usual paying attention during Mass. Indeed, the facial coverings make it practically impossible for them to do so. The same is true in the classroom. Wearing a mask diverts Plaintiffs C.M., Z.M., and N.M.'s attention away from the lesson taught in class.

66. Plaintiffs C.M., Z.M., and N.M. suffer from seasonal allergies for which they take medication. The medication, however, does not eliminate all of their symptoms.

67. Facial coverings negatively affect Plaintiffs C.M.'s, Z.M.'s, and N.M.'s ability to breathe effectively.

68. Plaintiff Mianecki has observed that after his children wear facial coverings, even on a very limited basis, the coverings have felt wet from saliva and allergy related sneezing or coughing.

69. The breadth and scope of the challenged orders are shocking. Indeed, the orders would make it a crime for F.S., C.M., Z.M., and N.M. to meet with a friend from a different household outside of school hours to play if they did not wear a mask and even if they were meeting in the privacy of their own homes.

70. The challenged orders similarly place burdens upon Plaintiff Smith's and Plaintiff Mianecki's ability to associate with others, whether for family gatherings, religious purposes, or other social reasons by limiting the size of these associations and by requiring the wearing of masks.

71. Catholic teaching supports the classroom being a special place for evangelization by providing a social atmosphere that is conducive to learning and personal growth.

72. Upon information and belief, no peer reviewed studies exist demonstrating the effectiveness of non-medical facial coverings for children.

73. There have been no peer reviewed studies concerning how sanitary it is for young children, given their motor skills development, to wear non-medical facial coverings.

74. There are known inter-personal, cognitive developmental, and pedagogical benefits to seeing a person's face and not having a student's face covered, especially while learning and communicating in a classroom setting.

75. Methods that strive to promote safety but have a deleterious effect on a child's social and emotional development do not promote the health and well-being of the whole child as Catholic social teaching strives to do.

76. Defendants' orders mandating all students, even as young as kindergarten-age students, to uniformly wear masks communicates the message that COVID-19 continues to be a terrifying and deadly threat, even when sitting in a K-5th grade classroom while socially distanced. Plaintiffs oppose this message. Moreover, science and data do not support this message or the mask mandate.

77. For many individuals, including Plaintiffs, the excessive or unreasonable mandated wearing of a face mask has become a symbol of oppression and an attempt by the government to control the citizenry. This view was recently expressed by the below political cartoon published in the Wall Street Journal:



78. For many, including Plaintiffs, forcing them to wear a face mask is forcing them to convey a message with which they disagree even when socially distanced in private homes or non-public schools. Wearing a mask conveys the message that the wearer has surrendered his or her freedom to the government, particularly in light of the facts of this current declared pandemic. During this current political climate, a mask has become a symbol. And because a mask has become a political symbol, the wearing of a mask is a form of symbolic speech. Consequently, via the mask mandates, Defendants are compelling Plaintiffs to engage in a form of expression and to convey a message with which they disagree.

79. The mask mandate presumes that all people are diseased and thus makes the wearer contribute to a false public statement that all people are in fact diseased.

80. Plaintiffs also object to the mask mandate because it violates their privacy interests, including their right to bodily integrity and personal autonomy free from government interference.

81. A mask is required for everyone, even though the vast majority of individuals required to wear one are healthy or are not in a group with a high risk of contracting COVID-19, such as kindergarten through fifth grade students. And while science and data show that the vast majority of Americans are healthy, the mask mandate presumes that all citizens are diseased unless proven healthy. The mask mandate forces every Michigander, including Plaintiffs, to become the government's patient without the citizen's consent.

82. The mask mandate creates a false public impression that private citizens must rely on the government for their safety, thereby allowing Defendants to use the mandate as a tool for maintaining power and authority.

83. Plaintiffs do not want to be compelled to articulate any messages by being forced to wear masks, particularly when the children are trying to learn in their classrooms.

Defendants Criminalize Gatherings and Not Wearing Masks

84. From early March to October 2020, Governor Whitmer took unprecedented unilateral executive action by issuing more than 192 executive orders, the vast majority without the support of the legislature.

85. On March 11, 2020, Governor Whitmer issued Executive Order 2020-04, which proclaimed a state of emergency under both the Emergency Management Act (EMA), Mich. Comp. Laws § 30.403, and the Emergency Powers of the Governor Act of 1945 (EPGA), Mich. Comp. Laws § 10.31. The Executive Order identified the COVID-19 pandemic as the basis for the declaration of a state of emergency under both statutory schemes.

86. On October 2, 2020, the Michigan Supreme Court answered two certified questions posed by this Court. The Court clarified that the Governor no longer possessed authority under the

EMA and the EPGA to continue to issue “emergency” executive orders, and any order issued after April 30, 2020 was invalid. *In re Certified Questions From United States Dist. Court , W. Dist. of Michigan, S. Div.*, No. 161492, 2020 WL 5877599 (Mich. Oct. 2, 2020); *see also House of Representatives & Senate v. Governor*, No. (Mich. Oct. 12, 2020).

87. In response to the Michigan Supreme Court’s October 2, 2020 decision, Governor Whitmer publicly stated that she would re-issue her unlawful orders through other means, such as through the Michigan Department of Health and Human Services and local health departments, such as the Ingham County Health Department.

88. Nonpublic Michigan schools, as well as many public schools, have been open in person since August 2020. Since opening and to the date of this filing, circumstances have not substantiated any emergency action within the kindergarten through fifth grade student population.

89. Despite this fact, the Governor issued Executive Order 2020-185 that would have gone into effect on October 5, 2020 and would have required that all kindergarten through fifth grade students wear masks for the entirety of the school day, even when the young children are socially distanced at their desks. A copy of this order is attached at Exhibit 4.

90. Executive Order 2020-185 was not reasonable or necessary.

91. Executive Order 2020-185 falsely stated that “[i]t is now crystal clear that COVID-19 can be deadly to younger children.”

92. Despite this statement, data and science support that it is *extremely* rare for COVID-19 to be deadly to younger children.

93. On a national level, the Centers for Disease Control and Prevention (CDC) reports that the death rate of COVID-19 for students in the five to seventeen years-old age range is less than 0.1%. *See* <https://web.archive.org/web/20201020044548/https://covid.cdc.gov/covid-data-tracker/#demographics> (last visited Oct. 20, 2020).

94. The American Academy of Pediatrics' data supports and is consistent with that of the CDC, showing: "Mortality (42 states and NYC reported) - Children were 0%-0.26% of all COVID-19 deaths, and 17 states reported zero child deaths. In states reporting, 0%-0.16% of all child COVID-19 cases resulted in death." *See* <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/children-and-covid-19-state-level-data-report/> (last visited Oct. 13, 2020).

95. In Michigan, from January 1 to October 16, 2020, there has only been one death associated with COVID-19 in children ages five through fourteen. *See* https://www.mdch.state.mi.us/osr/Provisional/CvdTable2.asp?fbclid=IwAR35plM6oxH3Cg6Tnwp_9uLKn82gHyfsgnNR7TMbIuMv-09uJdund7DVaNQ (last visited Oct. 20, 2020).

96. Upon information and belief, the one fatal case in the five to fourteen age range was not contracted in school or from other children, and the child also suffered from meningitis and brain swelling at the time of the COVID-19 diagnosis.

97. Executive Order 2020-185 also falsely claimed that "[g]iven the higher incidence of cases among children in recent months," the situation has amounted to an emergency requiring "the use of masks in the classroom even for younger students." Data and science do not support this claim.

98. Younger students in grades K-5 have not contracted COVID-19 at a higher rate. Children in grades pre-school through fifth grade, to date, account for only approximately 2% of all COVID-19 cases reported in the schools. *See* https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173_102480---,00.html (last visited Oct. 20, 2020).

99. Currently, the State of Michigan has documented 5,816 cases of COVID-19 as being associated with a school population. Only 151 of those cases arose from pre-schools and elementary schools. *See* https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173_102480---,00.html (last visited Oct. 20, 2020).

100. As of October 20, 2020, approximately 98% of documented COVID-19 cases associated with a school outbreak in the State of Michigan occurred in children in sixth grade through college. *See* https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173_102480---,00.html (last visited Oct. 20, 2020).

101. Prior to the Michigan Department of Health and Human Services' October 5, 2020 mandate (MDHHS Order), there was no statewide requirement that children in grades kindergarten through fifth grade wear masks in the classroom.

102. Yet, the kindergarten through fifth grade age group did not contract or spread COVID-19 at a higher rate than older children or adults. In fact, the data and science consistently demonstrate that this age group is less likely to contract COVID-19 and significantly less likely to contract a serious case.

103. Since the beginning of the 2020 school year, a statewide mandatory mask provision has been in place for all regions in Phase 4 for students in sixth grade through college in all areas of the school, at all times.

104. Since the beginning of the 2020 school year, a statewide mandatory mask provision has required all teachers, staff, and administrators (not students) to wear facial coverings in Phase 4 regions.

105. In Ingham County, only three schools have documented COVID-19 cases since the beginning of the 2020 school year. And by far, the largest outbreak, consisting of 1,622 cases, occurred at Michigan State University, which requires facial coverings at all times and engages in virtual, *off campus* instruction. *See* https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173_102480---,00.html (last visited Oct. 20, 2020).

106. Particular to instruction of the youngest students in grades kindergarten through fifth grade, the CDC explains that facial masks present challenges, particularly for younger students in

early elementary school and students with special healthcare or educational needs, developmental or emotional disabilities, mental health conditions, or sensory concerns or tactile sensitivity. *See* <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/cloth-face-cover.html> (last visited Oct. 13, 2020).

107. When children are socially distanced from one another while in the classroom, CDC guidelines do not even recommend facial coverings, and it only classifies the use of facial coverings as “may be considered.” *See* <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/cloth-face-cover.html> (last visited Oct. 13, 2020).

108. Similarly, the World Health Organization (WHO) and the United Nations Children’s Emergency Fund (UNICEF) advise a multi-faceted approach to the use of masks for children from six years of age to eleven, based upon factors such as: the potential impact of wearing the mask on learning and psychosocial development in consultation with the child’s teachers, parents, caregivers, and/or medical providers; the transmission rate of COVID-19 where the child resides; the ability of the child to appropriately use a facial covering; and the cleanliness and laundering of the facial covering. *See* <https://www.who.int/news-room/q-a-detail/q-a-children-and-masks-related-to-covid-19> (last visited Oct. 13, 2020).

109. The WHO and UNICEF do not recommend the use of masks on children who are five years of age. *See* <https://www.who.int/news-room/q-a-detail/q-a-children-and-masks-related-to-covid-19> (last visited Oct. 13, 2020).

110. On June 30, 2020, the Governor, the COVID-19 Task Force on Education, and the Return to School Advisory Council released the Michigan Return to School Roadmap, recommending but not requiring facial coverings for young children in grades K-5. *See* https://www.michigan.gov/documents/whitmer/MI_Safe_Schools_Roadmap_FINAL_695392_7.pdf (last visited Oct. 13, 2020).

111. The Michigan Return to School Roadmap described safety protocols and required schools and districts “to develop detailed district or building-level plans.” *See* https://www.michigan.gov/documents/whitmer/MI_Safe_Schools_Roadmap_FINAL_695392_7.pdf (last visited Oct. 13, 2020).

112. The Roadmap described when facial coverings were required to be worn, described safety protocol for sanitization, personal hygiene practice, and proper spacing and movement, among other health and safety protocol.

113. The Roadmap stated that “[a]ll students in grades K-5 must wear facial coverings unless students remain with their classes throughout the school day and do not come into close contact with students in another class.” https://www.michigan.gov/documents/whitmer/MI_Safe_Schools_Roadmap_FINAL_695392_7.pdf (last visited Oct. 13, 2020).

114. On August 20, 2020, the Michigan Legislature passed, and the Governor signed, Michigan’s Return to Learn law that states:

A requirement that the district, in consultation with a local health department, as that term is defined in section 1105 of the public health code, MCL 333.1105, and district employees, develop districtwide guidelines concerning methods for delivering pupil instruction for the 2020-21 school year that are based on local data that are based on key metrics. However, regardless of the guidelines developed under this subdivision, a determination concerning the method for delivering pupil instruction remains with the district. As used in this subdivision, “key metrics” means, at a minimum, all of the following:

- (i) The trend of COVID-19 cases or positive COVID-19 tests, hospitalizations due to COVID-19, and the number of deaths resulting from COVID-19 over a 14-day period.
- (ii) COVID-19 cases for each day for every 1 million individuals.
- (iii) The percentage of positive COVID-19 tests over a 4-week period.
- (iv) Health care capacity strength.
- (v) Testing, tracing, and containment infrastructure with regard to COVID-19.

P.A. 149, § 98a(1)(g) (Mich. 2020).

115. Plaintiff Resurrection School and the Diocese of Lansing submitted its COVID-19

Plan with appropriate methods for delivering pupil instruction for the 2020-21 school year, including protocols for when facial coverings would be required; how to increase personal hygiene and enhance sanitization; timing the movement of students; limiting guests; requiring teachers to exclusively teach at the school buildings; using cohorts and pods to minimize contact; gaining insight and help from the parent community to keep the school community safe outside of the school building; and establishing health screening protocol, all the while remaining devoted to providing a safe, healthy, and effective learning and faith-filled learning atmosphere.

116. Resurrection School's plan exceeded the standards set forth by the Roadmap. In addition to establishing personal hygiene, screening, social distancing, and sanitization protocol, Resurrection School took additional precautions such as creating a traffic schedule so no classes would interact in common areas throughout the day. Class cohorts were further broken down into pods, so students would only interact in a pod with three other students. UV-C lights and air filtration systems were installed in each room to kill airborne containments. And the school uses a commercial grade antimicrobial fogger to disinfect common areas at least three times a day.

117. To date, Resurrection School has avoided any outbreaks within its school due to following this strict protocol.

118. Nonetheless, on September 25, the Governor announced that she would be changing school protocols by issuing Executive Order 2020-185, requiring all kindergarten through fifth grade students to wear facial coverings in the classrooms.

119. Executive Order 2020-185 was set to go into effect on October 5, 2020. On October 2, 2020, however, the Michigan Supreme Court issued its opinion in *In re Certified Questions*, nullifying the Governor's authority to issue this order.

120. In response, the Governor did not seem deterred from the opinion and stated that she would carry out her executive orders through alternative avenues, such as through the Michigan

Department of Health and Human Services and local health departments, invoking ostensive authority from Michigan's Public Health Code.

121. On October 4, 2020, Defendant Linda S. Vail signed an order on behalf of the Ingham County Health Department requiring, *inter alia*, that students wear facial coverings at all times. See Exhibit 2 ("County Order"). The order invokes MCL 333.2253 as its statutory basis and criminalizes the failure to follow the mandates of the County Order. While there are some limited exceptions to the order, the order contains no exceptions for engaging in religious education or helping students learn to read, or otherwise engage in the learning process.

122. On October 5, 2020, Defendant Gordon, the Director of the Michigan Department of Health and Human Services, created an order requiring all students and staff of schools to wear masks through the entirety of the school day, even when socially distanced in the classroom and trying to engage in the learning process.

123. The October 5 Order was rescinded. On October 9, 2020, Director Gordon issued a revised order on behalf of the Michigan Department of Health and Human Services, requiring all students to wear facial coverings throughout the entire school day. See Exhibit 1 ("MDHHS Order"). The order contains exemptions for voting at a polling location, for engaging in a religion service for the purpose of religious worship, and other very limited exceptions. There is not, however, any exemption in the order for engaging in religious education, helping students to learn to read, or otherwise for the learning process.

124. Defendant Gordon noted in his Facts Sheet pertaining to his October 9, 2020 emergency order, attached at Exhibit 5, that his mandate to require facial coverings of all students in Michigan follows the Governors' unconstitutional executive orders "as much as possible" in order "[t]o reduce confusion."

125. The Governor's first facial covering requirement stated that schools were to enforce

the facial covering mandate and their students through “disciplinary mechanisms.” https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98455-535121--,00.html (last visited Oct. 13, 2020).

126. Plaintiffs sincerely believe that it would not be virtuous, moral, or in line with Catholic teaching to punish and discipline young students for not having the fine motor skills to properly handle facial coverings, for needing to remove their facial coverings in order to engage in the educational process, for needing to remove their facial coverings because it is hurtful or distracting, or for removing their facial covering to better participate in religious formation.

127. In order to enforce the challenged orders, Resurrection School would have to change its disciplinary policies based upon their faith, the pursuit of virtue, and reasons that are integral to the school’s Catholic identity.

128. The challenged orders require Plaintiffs to either violate their sincerely held religious beliefs or face criminal prosecution.

129. The challenged orders provide numerous exceptions from their facial coverings requirement, such as being at a public gathering at a polling place or worshipping at a religious service. However, Defendants fail to exempt Plaintiffs for engaging in religious education in a completely non-public classroom with extreme sanitization and social distancing policies in place. Consequently, this broadly enforced order is arbitrary in its application.

130. Both Defendant Gordon and Defendant Vail asserted that a present emergency necessitated issuing the orders. This assertion is not based on facts. It is not based on science or data.

131. There is no emergency within this age group, kindergarten through fifth grade that requires the challenged orders.

132. In order for a matter affecting health to be considered an emergency, the WHO

requires an emergency threshold. WHO defines emergency threshold as the “[m]ortality rate above which an emergency is said to be occurring. Usually taken as a crude mortality rate of 1 per 10,000 per day, or as an under-five mortality rate of 2 per 10,000 per day (ODI/HPN paper 52, 2005, Checchi and Roberts).” *See* <https://www.who.int/hac/about/definitions/en/> (last visited Oct. 13, 2020).

133. The average daily mortality rate for deaths associated with COVID-19 in the State of Michigan the week immediately prior to Defendants’ orders was 11 per an estimated 9,986,857 or 0.01 per 10,000. Furthermore, the mortality rate was zero for children in the age range of kindergarten through fifth grade. The mortality rate in Michigan for children ages five to fourteen since the beginning of January 1, 2020 until today is 0.008 per 10,000. *See* https://www.mdch.state.mi.us/osr/Provisional/CvdTable2.asp?fbclid=IwAR35plM6oxH3Cg6Tnwp_9uLKn82gHyfsgnNR7TMbIuMv-09uJdund7DVaNQ (last visited Oct. 20, 2020).

134. The challenged orders are arbitrary and capricious, and they are causing Plaintiffs irreparable harm.

FIRST CLAIM FOR RELIEF

(Freedom of Religious Exercise – First Amendment & Mich. Const. Art. I, § 4)

135. Plaintiffs hereby incorporate by reference all stated paragraphs.

136. By reason of the aforementioned orders, acts, policies, practices, customs, and/or procedures created, adopted, and enforced under color of state law, Defendants have deprived Plaintiffs of their right to free exercise of religion in violation of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 and the Michigan Constitution, Article I, § 4 (1963).

137. The challenged orders alter the curriculum and disciplinary policies set forth by Plaintiff Resurrection School as a means of religious education in the non-public classroom; the orders punish and impose discipline on schools and students for exercising their religious beliefs;

and the orders interfere with and thwart religious education in the classroom. Defendants' actions injure Plaintiffs by chilling their religious activity through the threat of discipline and sanctions for failure to comply with the challenged orders. Indeed, Defendants' orders force Resurrection school to implement a disciplinary policy to enforce the wearing of facial coverings that is hostile to the sincerely held religious beliefs upon which the school was founded. Defendants' orders require that Resurrection School ignore the well-being of the whole child and diminish parental authority, contravening the Catechism of the Catholic Church, or face sanctions and penalties for failure to comply with the challenged orders. The Hobson's choice posed by Defendants' orders is unconstitutional and prohibits Resurrection School from freely exercising its Catholic faith and achieving its mission of providing a Catholic education for the parents and students it serves.

138. The challenged orders prevent Plaintiff Smith from providing the religious education she wants for her minor child, F.S., and from F.S. receiving this religious education, in violation of their rights to the free exercise of religion protected by the United States and Michigan Constitutions.

139. The challenged orders prevent Plaintiff Mianeki from providing the religious education he wants for his minor children, C.M., Z.M., and N.M., and the orders prevent C.M., Z.M., and N.M. from receiving this religious education in violation of their rights to the free exercise of religion protected by the United States and Michigan Constitutions.

140. Because the challenged orders provide for certain secular exemptions, they are not neutral laws of general applicability, and the orders do not satisfy strict scrutiny.

141. As a direct and proximate result of Defendants' violation of the First Amendment and Article I, § 4 of the Michigan Constitution, Plaintiffs have suffered, and will continue to suffer, irreparable harm, including the loss of their fundamental constitutional rights, entitling them to declaratory and injunctive relief. Additionally, Plaintiffs are entitled to nominal damages for the past loss of their constitutional rights as against Defendant Vail.

SECOND CLAIM FOR RELIEF

(Unlawful Exercise of Authority under Michigan Law)

142. Plaintiffs hereby incorporate by reference all stated paragraphs.

143. The MDHHS Order and the County Order are unenforceable because Defendants lack the authority to issue them under the Michigan Public Health Code.

144. MCL 333.2453 authorizes a local health officer to issue an emergency order only upon finding that doing so is necessary.

145. MCL 333.2453 provides a local health officer authority to (1) prohibit a public gathering or (2) establish procedures “to insure continuation of essential public health services and enforcement of public health laws.”

146. Defendants’ orders requiring masks for young children in kindergarten through fifth grade are unauthorized by state law. Defendants’ orders are not orders prohibiting gatherings nor are they procedures to insure public health services. Instead, the challenged orders are orders requiring the general public to wear masks or face criminal prosecution. Defendants are not authorized to issue orders for this purpose, or to place such conditions on public life, or to determine how instruction must be delivered and received within the classrooms of religious schools.

147. Michigan Public Health Laws “shall not be construed to vest authority in the department for programs or activities otherwise delegated by state or federal law or rules to another department of state government.” MCL 333.1114.

148. Return to Learn legislation, passed by both houses and signed by the Governor, set forth a requirement for schools to submit its learning plan for the 2020-21 school year that included its safety protocols and methods for in person instruction. Resurrection School submitted its plans in accordance with the law, and their plans were approved.

149. The Return to Learn legislation delegates the ultimate decision for how instruction

will be received, including how facial coverings will or will not be used in the classroom during the educational process, with the school districts.

150. Defendants' orders constitute an attempt to undo and negate the legislature's delegation of authority to the educators over how safety protocols will be observed and implemented while achieving the pedagogical goals of the school. This authority was not delegated to health department officials. Defendants' orders have no legal force or effect and cannot void the Return to Learn legislation or the school plans submitted and approved under this legislation.

151. There is no emergency upon which Defendants may act to enforce their orders, and the Defendants' orders do not comport with and are not authorized under the Michigan Public Health Code.

152. Defendants' orders are unreasonable and arbitrary.

153. Plaintiffs have no adequate remedy at law for the continuing unlawful action by the Defendants.

THIRD CLAIM FOR RELIEF

(Separation of Powers & Non-delegation Clauses – Mich. Const. Art. III, § 2 & Art. IV, § 1)

154. Plaintiffs hereby incorporate by reference all stated paragraphs.

155. Defendants' orders are unconstitutional and unenforceable against Plaintiffs because they are based on impermissible delegations of legislative authority in violation of the Michigan Constitution.

156. The Separation of Powers Clause in the Michigan Constitution provides that “[t]he powers of the government are divided into three branches: legislative, executive, and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.” Mich. Const. art. III, § 2 (1963).

157. Article IV § 1 of the Michigan Constitution prohibits delegation of legislative power

to protect the public from the misuse of power ostensibly delegated under a Michigan statute.

158. A delegation of power through legislation cannot be lawful if it permits executive lawmaking. If a delegation of authority to the executive branch is not sufficiently specific or fails to establish prescribed boundaries, or if the executive branch acts beyond specific boundaries in the legislation, the executive's actions are constitutionally invalid.

159. Defendants' orders violate the Separation of Powers and the Non-delegation Clauses of the Michigan Constitution. The provisions of the Michigan Public Health Code that Defendants rely upon to issue their emergency orders fail to provide proper standards to guide or allow a proper delegation of legislative authority to the executive branch. This delegation of authority is completely open-ended and overly broad; it permits unbridled law making by the executive branch. The statute has no temporal, durational, substantive, or legislative checks.

160. As interpreted by Defendants in the challenged orders, the Michigan Public Health Code gives them carte blanche authority to regulate, condition, and restrict all manners of interactions in the non-public classroom, all methods and modes of religious education, and all human interaction between students. Accordingly, Defendants' orders are unenforceable. Defendants have failed to follow the Return to Learn legislation and the Michigan Public Health Code.

161. Defendants' orders are also unreasonable and arbitrary, and in violation of the Separation of Powers Clause as applied to Plaintiffs.

162. Plaintiffs have no adequate remedy at law for this continuing unlawful action by Defendants.

FOURTH CLAIM FOR RELIEF

(Due Process – Fourteenth Amendment & Mich. Const. Art. I, § 17)

163. Plaintiffs hereby incorporate by reference all stated paragraphs.

164. The challenged orders violate Plaintiffs' substantive due process rights secured by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 and the Mich. Const. Art. I, § 17.

165. The right to privacy protects the personal autonomy and bodily integrity of Plaintiffs Mianeck, C.M., Z.M., N.M., Smith, and F.S. from intrusion by the government. The mask mandates of the challenged orders violate these Plaintiffs' right to privacy in violation of the Fourteenth Amendment and the Michigan Constitution.

166. The challenged orders unreasonably interfere with the liberty of parents and guardians, including Plaintiffs, to direct the upbringing and education of their children in violation of the Fourteenth Amendment and the Michigan Constitution.

167. Because Defendants' executive orders impinge upon Plaintiffs' fundamental rights and impose arbitrary distinctions and prohibitions on Plaintiffs' conduct, they violate substantive due process as applied to Plaintiffs.

168. Defendants arbitrarily exempt public voting gatherings and public religious worship services from their orders but fail to exempt non-public schools that disallow guests and follow strict safety plans

169. Defendants' orders are not narrowly tailored and do not serve a compelling state interest.

170. As a direct and proximate result of Defendants' violation of the Fourteenth Amendment and the Michigan Constitution as set forth in this Complaint, Plaintiffs have suffered irreparable harm, including the loss of their fundamental constitutional rights, entitling them to

declaratory and injunctive relief. Plaintiffs are also entitled to nominal damages against Defendant Vail.

FIFTH CLAIM FOR RELIEF

(Equal Protection – Fourteenth Amendment)

171. Plaintiffs hereby incorporate by reference all stated paragraphs.

172. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of State law, Defendants have deprived Plaintiffs of the equal protection of the law guaranteed under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

173. As set forth in this Complaint, the challenged orders deprive Plaintiffs of their fundamental rights and freedom. The orders provide exceptions for other activity and conduct that is similar in its impact and effects, but not for Plaintiffs' constitutionally protected activities. The challenged measures lack any rational basis, are arbitrary and capricious, have no real or substantial relation to the objectives of the order, and are a palpable invasion of rights secured by fundamental law in violation of the Equal Protection Clause.

174. When the government treats an individual disparately as compared to similarly situated persons and that disparate treatment burdens a fundamental right, targets a suspect class, or has no rational basis, such treatment violates the equal protection guarantee of the Fourteenth Amendment. As set forth in this Complaint, the challenged orders violate the equal protection guarantee of the Fourteenth Amendment.

175. As a direct and proximate result of Defendants' violation of the equal protection guarantee of the Fourteenth Amendment as set forth in this Complaint, Plaintiffs have suffered irreparable harm, including the loss of their fundamental constitutional rights, entitling them to declaratory and injunctive relief. Plaintiffs are also entitled to nominal damages against Defendant Vail.

SIXTH CLAIM FOR RELIEF

(First Amendment—Freedom of Speech)

176. Plaintiffs hereby incorporate by reference all stated paragraphs.

177. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiffs of their right to freedom of speech in violation of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

178. The freedom of speech is not confined to verbal expression but includes conduct that is sufficiently imbued with elements of communication. That is because the Constitution looks beyond written or spoken words as mediums of expression and recognizes that symbolism is an effective way of communicating ideas. Conduct, such as the wearing of a face mask during this politicized pandemic, is sufficiently communicative because it conveys a particularized message and the likelihood is great that the message will be understood by those who view it.

179. Wearing a face mask during this current and highly politicized pandemic has become a form of expression. The wearing of a face mask, when socially distanced or when the situation and condition make doing so extreme or unreasonable, is for many, including Plaintiffs, a symbol of oppression and government tyranny. It is a sign that the wearer is willing to surrender his or her freedoms to the government. Plaintiffs oppose this message and thus they oppose the requirement to wear a face mask because it conveys this message. Moreover, Plaintiffs oppose the mask mandate because science and data have shown that wearing a face mask pursuant to the mandate is not medically required or necessary, and it is harmful to the wearer.

180. The mask mandate, as set forth in this Complaint, is compelling Plaintiffs to express a message with which they disagree in violation of their rights protected by the First Amendment.

181. As a direct and proximate result of Defendants' violation of the right to freedom of speech under the First Amendment as set forth in this Complaint, Plaintiffs have suffered irreparable harm, including the loss of their fundamental constitutional rights, entitling them to declaratory and injunctive relief. Plaintiffs are also entitled to nominal damages against Defendant Vail.

SEVENTH CLAIM FOR RELIEF

(Right to Freedom of Association—First Amendment)

182. Plaintiffs hereby incorporate by reference all stated paragraphs.

183. By reason of the aforementioned orders, acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiffs of their right to freely associate secured by the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

184. Defendants' orders hinder, prevent, inhibit, and interfere with Plaintiffs' right to associate by engaging in religious education, religious fellowship, religious practice and worship, and protected speech.

185. As a direct and proximate result of Defendants' violation of Plaintiffs' First Amendment right to freedom of association as set forth in this Complaint, Plaintiffs have suffered irreparable harm, including the loss of their fundamental constitutional rights, entitling them to declaratory and injunctive relief. Plaintiffs are also entitled to nominal damages against Defendant Vail.

WHEREFORE, Plaintiffs ask this Court:

A) to declare that Defendants orders violate Plaintiffs' fundamental constitutional rights and Michigan law as set forth in this Complaint;

B) to enjoin Defendants' enforcement of the challenged orders as set forth in this Complaint;

- C) to award Plaintiffs nominal damages as against Defendant Vail;
- D) to award Plaintiffs their reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law; and
- E) to grant such other and further relief as this Court should find just and proper.

Respectfully submitted,

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Exhibit 1



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNORDEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSINGROBERT GORDON
DIRECTOR

October 9, 2020

Emergency Order Under MCL 333.2253 – Gathering Prohibition and Face Covering Order

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine for this disease. COVID-19 spreads through close human contact, even from individuals who may be asymptomatic. On March 10, 2020, the Michigan Department of Health and Human Services (“MDHHS”) identified the first two presumptive-positive cases of COVID-19 in Michigan. Throughout the pandemic, Michigan has used a range of public health tools and guidance to contain the spread of COVID-19 and protect the public health, including via the Governor’s authority under the Emergency Management Act and the Emergency Powers of Governor Act. On Friday, October 2, 2020, the Michigan Supreme Court concluded that the Governor was not authorized to issue executive orders addressing COVID-19 after April 30, 2020.

Michigan was one of the states most heavily impacted by COVID-19 early in the pandemic, with new cases peaking at nearly 2,000 per day in late March. Strict preventative measures and the cooperation of Michiganders drove those numbers down dramatically, greatly reducing the loss of life. Although fewer than 100 new cases per day were reported in mid-June, cases have increased since that time, and recently nearly 1,000 new cases have been reported per day. To protect vulnerable individuals, ensure the health care system can provide care for all health issues, and prevent spread in schools as we head into the influenza season, we must not permit the spread of COVID-19 to increase. This necessitates continued use of mitigation techniques to restrict gatherings and require procedures in order to reduce the spread of the virus. In the absence of the Governor’s executive orders, it is necessary to issue orders under the Public Health Code addressing these topics.

Michigan law imposes on MDHHS a duty to continually and diligently endeavor to “prevent disease, prolong life, and promote public health,” and gives the Department “general supervision of the interests of health and life of people of this state.” MCL 333.2221. MDHHS may “[e]xercise authority and promulgate rules to safeguard properly the public health; to prevent the spread of diseases and the existence of sources of contamination; and to implement and carry out the powers and duties vested by law in the department.” MCL 333.2226(d).

In recognition of the severe, widespread harm caused by epidemics, the Legislature has granted MDHHS specific authority, dating back a century, to address threats to the public health like that posed by COVID-19. MCL 333.2253(1) provides that “[i]f the director determines that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code.” See also *In re Certified Questions*, Docket No. 161492 (Viviano, J., concurring in part and dissenting in part, at 20) (“[T]he 1919 law passed in the wake of the influenza epidemic and Governor Sleeper’s actions is still the law, albeit in slightly modified form.”); see also *id.* (McCormack, C.J., dissenting, at 12). Enforcing Michigan’s health laws, including preventing disease, prolonging life, and promoting public health, requires limitations on gatherings and the establishment of procedures to control the spread of COVID-19. This includes limiting the number, location, size, and type

of gatherings, and instituting mitigating measures like face coverings, to prevent ill or infected persons from infecting others.

Considering the above, and upon the advice of scientific and medical experts employed by MDHHS, I have concluded pursuant to MCL 333.2253 that the COVID-19 pandemic continues to constitute an epidemic in Michigan. I further conclude that control of the epidemic is necessary to protect the public health and that it is necessary to establish procedures to be followed during the epidemic to ensure the continuation of essential public health services and enforcement of health laws. As provided in MCL 333.2253, these emergency procedures are not limited to the Public Health Code.

I therefore order that:

1. Definitions.

- (a) “Child care organizations” means that term as defined by section 1(b) of the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.111(b)) and day, residential, travel, and troop camps for children (as defined by Rule 400.11101 of the Michigan Administrative Code).
- (b) “Close contact” means being within six feet of an individual for fifteen minutes or longer.
- (c) “Face covering” means a covering that covers at least the nose and mouth.
- (d) “Food service establishment” means that term as defined in section 1107(t) of the Food Law, 2000 PA 92, as amended, MCL 289.1107(t).
- (e) “Employee” means that term as defined in section 2 of the Improved Workforce Opportunity Wage Act, 2018 PA 337, as amended, MCL 408.932, and also includes independent contractors.
- (f) “Gathering” means any occurrence where two or more persons from more than one household are present in a shared space.
- (g) “Organized sports” means competitive athletic activity requiring skill or physical prowess and organized by an institution or by an association that sets and enforces rules to ensure the physical health and safety of all participants (“sports organizer” or “sports organizers”).
- (h) “Region 6” means that region as defined in Attachment A to this order.
- (i) “Symptoms of COVID-19” means fever, an uncontrolled cough, new onset of shortness of breath, or at least two of the following not explained by a known medical or physical condition: loss of taste or smell, muscle aches, sore throat, severe headache, diarrhea, vomiting, or abdominal pain.

2. Attendance limitations at gatherings.

- (a) The restrictions imposed by this section do not apply to the incidental gathering of persons in a shared space, including an airport, bus station, factory floor, food service establishment, shopping mall, public pool, or workplace.
- (b) Gatherings are permitted only as follows:
 - (1) Indoor gatherings of up to 10 persons occurring at a residence are permitted (face coverings are strongly recommended for such gatherings);

- (2) Indoor gatherings of up to 10 persons occurring at a non-residential venue are permitted provided each person at the gathering wears a face covering except as provided in section 6 of this order;
- (3) Indoor gatherings of more than 10 and up to 500 persons occurring at a non-residential venue are permitted only to the extent that the organizers and venue:
 - (A) In venues with fixed seating, limit attendance to 20% of seating capacity of the venue, provided however that gatherings at up to 25% of seating capacity are permitted in Region 6;
 - (B) In venues without fixed seating, limit attendance to 20 persons per 1,000 square feet in each occupied room, provided however that gatherings of up to 25 persons per 1,000 square feet in each occupied room are permitted in Region 6;
 - (C) Require that each person at the gathering wears a face covering except as provided in section 6 of this order.
- (4) Outdoor gatherings of up to 100 persons occurring at a residence are permitted (face coverings are strongly recommended for such gatherings);
- (5) Outdoor gatherings of up to 100 persons occurring at a non-residential venue are permitted provided that each person at the gathering wears a face covering except as provided in section 6 of this order;
- (6) Outdoor gatherings of more than 100 and up to 1,000 persons occurring at a non-residential venue with fixed seating are permitted only to the extent that the organizers and venue:
 - (A) In venues with fixed seating, limit attendance to 30% of seating capacity;
 - (B) In venues without fixed seating, limit attendance to 30 persons per 1,000 square feet, including within any distinct area within the event space;
 - (C) Require that each person at the gathering wear a face covering except as provided in section 6 of this order.
- (c) Gatherings are permitted for the following purposes notwithstanding the requirements of subsection (b) of this section:
 - (1) Voting or election-related activities at polling places;
 - (2) Training of law enforcement, correctional, medical, or first responder personnel, insofar as those activities cannot be conducted remotely;
 - (3) Gatherings for the purpose of engaging in organized sports held in accordance with section 8 of this order;
 - (4) Students in a classroom setting or children in a daycare setting.
- (d) Organizers and venues hosting gatherings permitted under subsection (b) of this section must ensure that persons not part of the same household maintain six feet of distance from one another, including by designing the gathering to encourage and maintain distancing.

3. **Capacity restrictions.** In addition to the attendance limitations imposed by section 2 of this order, the following gathering restrictions apply:
- (a) Except in Region 6, a gathering at a retail store, library, or museum may not exceed 50% of total occupancy limit established by the State Fire Marshal or a local fire marshal.
 - (b) Gatherings at recreational sports and exercise facilities, such as gymnasiums, fitness centers, recreation centers, exercise studios, bowling centers, roller rinks, ice rinks, and trampoline parks are prohibited under any of the following circumstances:
 - (1) If they exceed 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal;
 - (2) If there is less than six feet of distance between each workout station.
 - (c) Gatherings in waiting rooms at outpatient health-care facilities, veterinary clinics, personal care services, and other businesses are prohibited unless the facility implements a system to ensure that persons not of the same household maintain six feet of distance (this system should include a policy that patients wait in their cars for their appointment to be called, if possible).
 - (d) Gatherings at professional sports and entertainment facilities, including arenas, cinemas, concert halls, performance venues, sporting venues, and stadiums and theaters, are prohibited unless the venue is designed to ensure that patrons not of the same household maintain six feet of distance (e.g. stagger group seating upon reservation, close off every other row, etc.).
 - (e) Gatherings at outdoor pools may not exceed 50% of bather capacity limits described in Rule 325.2193 of the Michigan Administrative Code.
 - (f) Gatherings at indoor pools may not exceed 25% of bather capacity limits described in Rule 325.2193 of the Michigan Administrative Code.
 - (g) Gatherings at non-tribal casinos may not exceed 15% of total occupancy limits established by the State Fire Marshal or a local fire marshal.
4. **Protection of workers.**
- (a) Gatherings of employees in the workplace are prohibited under any of the following circumstances:
 - (1) Except in Region 6, if not strictly necessary to perform job duties, provided however that, where gatherings are necessary, employees must still maintain six feet of distance from one another where practicable;
 - (2) If employees not otherwise required to wear face coverings cannot maintain six feet of distance from others;
 - (3) If employees not otherwise required to wear face coverings occupy the same indoor shared space, such as conference rooms, restrooms, and hallways;
 - (b) Employees who are subject to a recommendation to isolate or quarantine consistent with CDC guidance; have been instructed to remain home by a health or public health professional; or who are awaiting a COVID-19 test or the results of a COVID-19 test after having symptoms of COVID-19, must not be present in a gathering at work until the

employee is advised by a health or public health professional that they may return to work, or the following conditions are met:

- (1) 24 hours have passed since the resolution of fever without the use of fever-reducing medications; and
 - (2) 10 days have passed since their symptoms first appeared or since they were administered a COVID-19 test that yielded the positive result, if applicable; and
 - (3) Other symptoms have improved.
- (c) Employers must not require workers to gather with other persons at work in violation of this order.
- (d) All businesses or operations that require their employees to gather with other persons for work must conduct a daily entry self-screening protocol for all employees or contractors entering the workplace, including, at a minimum, a questionnaire covering symptoms of COVID-19 and suspected or confirmed exposure to people with possible COVID-19.

5. Face covering requirement at gatherings.

- (a) A person responsible for a business, government office, school, or other operation, or an agent of such person, must not allow indoor gatherings of any kind unless they require individuals in such gatherings (including employees) to wear a face covering, subject to the exceptions in section 6 of this order. For schools in Region 6, the wearing of face coverings is strongly recommended, but not required.
- (b) A person responsible for a business, government office, school, or other operation, or an agent of such person, may not assume that someone who enters the operation without a face covering falls in one of the exceptions specified in section 6 of this order, including the exception for individuals who cannot medically tolerate a face covering. An individual's verbal representation that they are not wearing a face covering because they fall within a specified exception, however, may be accepted.
- (c) All child-care organizations must not permit gatherings unless face coverings are worn by:
- (1) All staff and all children 2 years and older when on a school bus or other transportation provided by the child-care organization or camp;
 - (2) All staff and all children 4 years and older when in indoor hallways and common areas. Face coverings should be encouraged for children 2 years and older when in indoor hallways; and
 - (3) All staff and all children 5 years and older when in classrooms, homes, cabins, or similar indoor settings. Face coverings should be encouraged for children 2 years and older when in these settings.
- (d) A person responsible for establishments open to the public, or an agent of such person must:
- (1) Post signs at entrances instructing customers of their legal obligation to wear a face covering when inside the store; and
 - (2) Post signs at entrances informing customers not to enter if they are or have recently been sick.

6. **Exceptions to face covering requirements.** Although a face covering is strongly encouraged even for individuals not required to wear one (except for children under the age of 2), the requirement to wear a face covering in sections 2, 5 and 6 of this order do not apply to individuals who:
 - (a) Except as otherwise provided in section 5 of this order, are younger than 5 years old (and, per guidance from the CDC, children under the age of 2 should not wear a face covering);
 - (b) Cannot medically tolerate a face covering;
 - (c) Are eating or drinking while seated at a food service establishment;
 - (d) Are exercising outdoors and able to consistently maintain six feet of distance from others;
 - (e) Are swimming;
 - (f) Are receiving a service for which temporary removal of the face covering is necessary;
 - (g) Are entering a business or are receiving a service and are asked to temporarily remove a face covering for identification purposes;
 - (h) Are communicating with someone who is deaf, deafblind, or hard of hearing and whose ability to see the mouth is essential to communication;
 - (i) Are actively engaged in a public safety role, including but not limited to law enforcement, firefighters, or emergency medical personnel, and where wearing a face covering would seriously interfere in the performance of their public safety responsibilities;
 - (j) Are at a polling place for purposes of voting in an election;
 - (k) Are engaging in a religious service;
 - (l) Are giving a speech for broadcast or to an audience, provided that the audience is at least six feet away from the speaker;
7. **Food service establishments.** Food service establishments must prohibit gatherings in all the following circumstances:
 - (a) In indoor common areas in which people can congregate, dance, or otherwise mingle;
 - (b) If there is less than six feet of distance between each party;
 - (c) If they exceed 50% of normal seating capacity;
 - (d) Anywhere alcoholic beverages are sold for consumption onsite, unless parties are seated and separated from one another by at least six feet, and do not intermingle.
 - (e) If they involve any persons not seated at a table or at the bar top (customers must wait outside the food service establishment if table or bar top seating is unavailable);
 - (f) Until the food service establishment has been deep cleaned consistent with Food and Drug Administration and CDC guidance, in the event that an employee of the food service establishment is confirmed positive for COVID-19 or shows symptoms of COVID-19 while at work.

8. **Organized sports.** Gatherings for the purpose of organized sports are permitted in accordance with this section. Organizers and venues of organized sports must ensure that:
- (a) Athletes wear a face covering (except when swimming) or consistently maintain six feet of social distance (except for occasional and fleeting moments) when training for, practicing for, or competing in an organized sport. For example, an athlete participating in a football, soccer, or volleyball game would not be able to consistently maintain six feet of distance, and therefore would need to wear a face covering. Sports organizers must ensure that athletes comply with this section for each organized sporting event.
 - (b) They consider the [guidance](#) issued by this Department regarding how a sport can be played safely.
 - (c) For organized sports competitions, sports organizers must ensure either that the live audience is limited to the guests of the athletes (requiring face coverings for non-athletes consistent with section 6), with each athlete designating up to two guests, or that the event complies with gathering requirements of section 2(b) in this order.
 - (d) For indoor organized sports, sports organizers must ensure that no concessions are sold at the venue.
 - (e) Notwithstanding any other provision of this order, professional sports leagues and teams, including professional athletes engaged in individual sports, may engage in professional sports operations, provided that:
 - (1) The activities are conducted under a COVID-19 safety plan that is consistent with any guidance from the CDC and this Department; and
 - (2) Participants maintain six feet of distance from one another to the extent compatible with the sporting activity.

9. **Contact Tracing.**

- (a) Gatherings are prohibited at the following facilities unless the facility maintains accurate records, including date and time of entry, names of patrons, and contact information, to aid with contact tracing, and denies entry for a gathering to any visitor who does not provide, at a minimum, their name and phone number:
 - (1) All businesses or operations that provide barbering, cosmetology services, body art services (including tattooing and body piercing), tanning services, massage services, or similar personal care services;
 - (2) Sports and entertainment facilities (except outdoor, unticketed sporting events), including arenas, cinemas, concert halls, performance venues, sporting venues, stadiums and theaters, as well as places of public amusement, such as amusement parks, arcades, bingo halls, bowling centers, skating rinks, and trampoline parks;
 - (3) Gymnasiums, fitness centers, recreation centers, exercise facilities, exercise studios, bowling centers, roller rinks, ice rinks, and like facilities.
- (b) All businesses or operations that provide in-home services, including cleaners, repair persons, painters, and the like must not permit their employees to gather with clients unless the business maintains accurate appointment records, including date and time of service, name of client, and contact information, to aid with contact tracing.

10. Implementation.

- (a) Nothing in this order should be taken to modify, limit, or abridge protections provided by state or federal law for a person with a disability.
- (b) Under MCL 333.2235(1), local health departments are authorized to carry out and enforce the terms of this order.
- (c) Law enforcement officers, as defined in the Michigan Commission on Law Enforcement Standards Act, 1965 Public Act 203, MCL 28.602(f), are deemed to be “department representatives” for purposes of enforcing this order, and are specifically authorized to investigate potential violations of this order. They may coordinate as necessary with the appropriate regulatory entity and enforce this order within their jurisdiction.
- (d) Neither a place of religious worship nor its owner is subject to penalty under this order for allowing religious worship at such place. No individual is subject to penalty under this order for engaging in religious worship at a place of religious worship.
- (e) Consistent with MCL 333.2261, violation of this order is a misdemeanor punishable by imprisonment for not more than 6 months, or a fine of not more than \$200.00, or both.
- (f) The October 5, 2020 order entitled Gathering Prohibition and Mask Order is rescinded. Nothing in this order shall be construed to affect any prosecution based on conduct that occurred before the effective date of this order.
- (g) Consistent with any rule or emergency rule promulgated and adopted in a schedule of monetary civil penalties under MCL 333.2262(1) and applicable to this order, violations of this order are punishable by a *civil* fine of up to \$1,000 for each violation or day that a violation continues.
- (h) If any provision of this order is found invalid by a court of competent jurisdiction, whether in whole or in part, such decision will not affect the validity of the remaining part of this order.

This order is effective immediately, and remains in effect through October 30, 2020. Persons with suggestions and concerns are invited to submit their comments via email to COVID19@michigan.gov.

Date: October 9, 2020



Robert Gordon, Director

Michigan Department of Health and Human Services

Attachment A

Region definitions. For purposes of this order, Michigan comprises eight separate regions.

- (a) Region 1 includes the following counties: Monroe, Washtenaw, Livingston, Genesee, Lapeer, Saint Clair, Oakland, Macomb, and Wayne.
- (b) Region 2 includes the following counties: Mason, Lake, Osceola, Clare, Oceana, Newaygo, Mecosta, Isabella, Muskegon, Montcalm, Ottawa, Kent, and Ionia.
- (c) Region 3 includes the following counties: Allegan, Barry, Van Buren, Kalamazoo, Calhoun, Berrien, Cass, Saint Joseph, and Branch.
- (d) Region 4 includes the following counties: Oscoda, Alcona, Ogemaw, Iosco, Gladwin, Arenac, Midland, Bay, Saginaw, Tuscola, Sanilac, and Huron.
- (e) Region 5 includes the following counties: Gratiot, Clinton, Shiawassee, Eaton, and Ingham.
- (f) Region 6 includes the following counties: Manistee, Wexford, Missaukee, Roscommon, Benzie, Grand Traverse, Kalkaska, Crawford, Leelanau, Antrim, Otsego, Montmorency, Alpena, Charlevoix, Cheboygan, Presque Isle, and Emmet.
- (g) Region 7 includes the following counties: Hillsdale, Lenawee, and Jackson.
- (h) Region 8 includes the following counties: Gogebic, Ontonagon, Houghton, Keweenaw, Iron, Baraga, Dickinson, Marquette, Menominee, Delta, Alger, Schoolcraft, Luce, Mackinac, and Chippewa.

Exhibit 2



Linda S. Vail, MPA, Health Officer

**EMERGENCY ORDER (2020-21) FOR CONTROL OF EPIDEMIC
FACIAL COVERINGS**

This Order is made pursuant to Section 2453 of the Public Health Code, being MCL 333.2453.

In response to the ongoing public health emergency and the risk posed by a resurgence of COVID-19, matters concerning the public health of the residents of Ingham County have been brought to the attention of the Ingham County Health Officer. The Local Health Officer has determined that controls are necessary to reduce transmission of COVID-19 and to protect the public's health in Ingham County based on the following facts:

- A communicable disease, novel Coronavirus, which causes COVID-19 has been identified and can be transmitted from person to person.
- In order to control and limit the spread of the novel Coronavirus, it is necessary to prevent infected people from coming into contact with uninfected people.
- The spread of COVID-19 can be reduced with cloth face coverings, social distancing, and staying home when sick.
- Center for Disease Control and Prevention advises that cloth face coverings are recommended as a simple barrier to help prevent respiratory droplets from traveling into the air and onto other people when the person wearing the cloth face covering coughs, sneezes, talks, or raises their voice. This is called source control.

It is hereby ordered that:

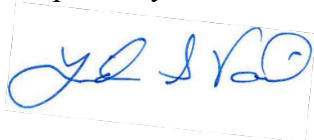
1. Any individual who leaves their home or place of residence must wear a face covering over their nose and mouth in the following instances:
 - a. When in any indoor public space; this includes all students in grades kindergarten through twelve; and
 - b. When outdoors and unable to consistently maintain a distance of six feet or more from individuals who are not members of their household; and
 - c. When waiting for or riding on public transportation, while in a taxi or ride-sharing vehicle, school bus or when using a private car service as a means of hired transportation.
 - d. Athletes training for, practicing for, or competing in an organized sport must wear a facial covering (except when swimming) or consistently maintain 6 feet of social distance (except for occasional and fleeting moments).
2. Although a face covering is strongly encouraged even for individuals not required to wear one, the requirement to wear a face covering does not apply to individuals who:
 - a. Are younger than five years old, though children two years old and older are strongly encouraged to wear a face covering, pursuant to guidance from the Centers for Disease Control and Prevention ("CDC");
 - b. Cannot medically tolerate a face covering;
 - c. Are eating or drinking while seated at a food service establishment;
 - d. Are receiving a service for which temporary removal of the face covering is necessary to perform the service;

- e. Are entering a business or are receiving a service and are asked to temporarily remove a face covering for identification purposes;
 - f. Are communicating with someone who is hearing impaired or otherwise disabled and where the ability to see the mouth is essential to communication;
 - g. Are actively engaged in a public safety role, including but not limited to law enforcement, firefighters, or emergency medical personnel, and where wearing a mask would seriously interfere in the performance of their public safety responsibilities;
 - h. Are at a polling place for purposes of voting in an election;
 - i. Are officiating at a religious service; or
 - j. Are giving a speech for broadcast or an audience.
3. To protect workers, shoppers, and the community, no business that is open to the public may provide service to a customer or allow a customer to enter its premises, unless the customer is wearing a face covering as required by this order.
4. Businesses that are open to the public must post signs at entrance(s) instructing customers of their obligation under this order to wear a face covering while inside.
5. The protections against discrimination in the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et seq., and any other protections against discrimination in Michigan law, apply in full force to individuals who wear a face covering under this order.
6. No individual is subject to penalty under section 7 of this order for removing a mask while engaging in religious worship at a house of religious worship. Consistent with guidance from the CDC, congregants are strongly encouraged to wear face coverings during religious services.
7. Consistent with MCL 333.2261 and 764.15(1), willful violation of any emergency order constitutes a misdemeanor punishable by imprisonment for not more than 6 months, or a fine of not more than \$200, or both. An individual may be arrested if violation occurs in the presence of a police officer, or the police officer has reasonable cause to believe individual has violated a rule or order.

This order takes effect immediately and will remain in effect until it is determined by the Ingham County Health Officer that the threat to the public's health and lives is no longer present.

This order may be revised as well as supplemented with specific procedures and orders in accordance with the Michigan Public Health Code.

Respectfully,



Linda Vail, Health Officer
Ingham County Health Department

October 4, 2020
Date

Exhibit 3

**OCTOBER 13, 2020
AGENDA ITEM NO. 21**

Introduced by the Human Services Committee of the:

INGHAM COUNTY BOARD OF COMMISSIONERS

**RESOLUTION OF SUPPORT FOR THE INGHAM COUNTY HEALTH OFFICER AND
THE INGHAM COUNTY HEALTH DEPARTMENT'S EFFORTS TO PREVENT THE
SPREAD OF COVID-19**

RESOLUTION #20 –

WHEREAS, The COVID-19 pandemic has affected Ingham County greatly with 3,638 positive cases and 51 deaths as of October 3, 2020; and

WHEREAS, Michigan Governor Gretchen Whitmer issued more than 180 Executive Orders under authority derived from the Emergency Powers of the Governor Act of 1945 to protect the public health during the pandemic; and

WHEREAS, the Michigan Supreme Court ruled on October 2, 2020 that Governor Whitmer lacked "the authority to declare a 'state of emergency' or a 'state of disaster' under the 1976 Emergency Management Act after April 30, 2020 and that the 1945 Emergency Powers of Governor Act is in violation of the Constitution because it "purports to delegate to the executive branch the legislative powers of state government."; and

WHEREAS, in the absence of clear direction from the Supreme Court, it is necessary for local units of government to use whatever authority is delegated to them to ensure the health of their residents and visitors during this pandemic; and

WHEREAS, The Public Health Code (Public Act 368 of 1978) provides the tools for a local health officer to protect the public's health during an epidemic; and

WHEREAS, Ingham County Health Officer Linda Vail issued the following local emergency health orders on October 4, 2020:

2020-21: Face Coverings

2020-22: Gathering Restrictions

2020-23: Bar and Restaurant Capacity

2020-24: Employee Screening

THEREFORE BE IT RESOLVED, that the Ingham County Board of Commissioners fully supports the four local emergency health orders issued by Health Officer Linda Vail on October 4, 2020.

BE IT FURTHER RESOLVED, that Ingham County Board of Commissioners fully supports all actions taken by Health Officer Linda Vail and the Ingham County Health Department, to protect the Health and safety of residents and visitors to Ingham County during the COVID-19 pandemic.

HUMAN SERVICES: Yeas: Trubac, Stivers, Tennis, Koenig, Morgan, Slaughter, Naeyaert
Nays: None **Absent:** None **Approved 10/05/2020**

Exhibit 4



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GARLIN GILCHRIST II
LT. GOVERNOR

EXECUTIVE ORDER

No. 2020-185

Amendment to the Provision of preK–12 education for the 2020–2021 school year order

This order expands the requirement to wear a mask in the classroom to all students kindergarten and up. It is now crystal clear that COVID-19 can be deadly to younger children, and that children who become infected at school can pass the virus to their parents, leading to community spread. In the absence of a widespread vaccine, wearing a covering over the nose and mouth remains the most effective tool to combat the spread of COVID-19, both in schools and the wider community.

Given the higher incidence of cases among children in recent months, and the clear effectiveness of masking as a mitigation strategy, requiring the use of masks in the classroom even for younger students is a reasonable and necessary requirement in Regions at Phase 4 of the MI Safe Start Plan.

Acting under the Michigan Constitution of 1963 and Michigan law, I find it reasonable and necessary, for the reasons outlined above, to order the following amendments to the Provision of preK–12 education for the 2020–2021 school year order, Executive Order 2020-142:

1. Section 2(b)(1)(D) is amended to provide: “All students in grades kindergarten and up when in classrooms.”
2. Section 2(b)(1)(E) is rescinded.
3. Subsection (e) is added to section 3 and provides: “School districts and nonpublic schools must publish information about any cases of a probable or confirmed COVID-19 positive individual present on school property or at a school function during the period of infection, in the manner prescribed by the Michigan Department of Health and Human Services (MDHHS). MDHHS is authorized to issue orders and directives to implement this section.”
4. This order is effective October 5, 2020 at 12:01 am.

Given under my hand and the Great Seal of the State of Michigan.



Date: September 25, 2020

Time: 3:47 pm

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE

Exhibit 5

MDHHS EPIDEMIC ORDER OCT. 9



Limits on attendance at residential gatherings.

INDOORS: UP TO 10 PERSONS

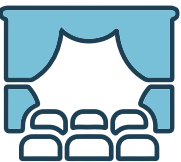
OUTDOORS: UP TO 100 PERSONS

- Indoor gatherings of up to 10 persons and outdoor gatherings of up to 100 persons at a residence are permitted (face coverings are strongly recommended).

Limits on attendance at non-residential venues.

INDOORS

- Indoor gatherings of up to 10 persons occurring at a non-residential venue are permitted provided each person at the gathering wears a face covering.
- Indoor gatherings of more than 10 and up to 500 people occurring at a non-residential venue are permitted only to the extent that the organizers and venue:
 - FOR FIXED SEATING: limit attendance to 20% of seating capacity of the venue.
 - WITHOUT FIXED SEATING: limit attendance to 20 persons per 1,000 square feet in each occupied room.
 - Require that each person at the gathering wear a face covering.



OUTDOORS

- Outdoor gatherings of up to 100 persons occurring at a non-residential venue are permitted provided that each person wears a face covering.
- Outdoor gatherings of more than 100 and up to 1,000 persons occurring at a non-residential venue with fixed seating are permitted only to the extent that the organizers and venue:
 - FOR FIXED SEATING: limit attendance to 30% of seating capacity.
 - WITHOUT FIXED SEATING: limit attendance to 30 persons per 1,000 square feet, including within any distinct area within the event space.
 - Require that each person at the gathering wear a face covering.



"Gathering" means any occurrence where two or more persons from more than one household are present in a shared space. Except for incidental gatherings in a shared space, all gatherings must include 6 feet of social distance between households.

Face coverings are still required.

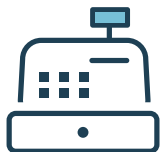
Businesses, government offices, schools, child care organizations, and other operations must not allow indoor gatherings of any kind unless they require individuals to wear a face covering. These entities may not assume that someone who enters the business without a face covering falls in one of the exceptions; but may accept an individual's verbal representation that they are not wearing a face covering because they fall within a specified exception. Exceptions can be found within the Oct. 9, 2020, Epidemic Order at [Michigan.gov/Coronavirus](https://www.michigan.gov/Coronavirus).



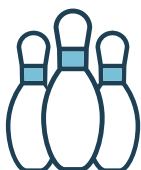
Region 6, the Traverse City region, has slightly less strict rules, which can be read in the MDHHS Oct. 9, 2020, Epidemic Order at [Michigan.gov/Coronavirus](https://www.michigan.gov/Coronavirus).



Capacity Limitations

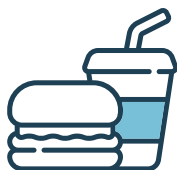


- Gatherings at public facilities, such as a retail store, library or museum, may not exceed 50% total occupancy limits.
- Gatherings at recreational sports and exercise facilities, such as gyms, fitness centers, recreation centers, bowling centers, roller and ice rinks, and trampoline parks, may not exceed 25% of total occupancy limits or are not allowed if it is not possible to maintain a distance of six feet between workout stations.
- Gatherings at professional sports and entertainment facilities, including arenas, cinemas, concert halls, performance and sporting venues, stadiums and theaters, are allowed only if the venue can ensure there is six feet of distance between patrons not of the same household.
- Gatherings at outdoor pools must not exceed 50% of capacity limits, and at indoor pools must not exceed 25% of capacity limits.
- Gatherings at non-tribal casinos may not exceed 15% of total occupancy limits.
- Workplace gatherings are prohibited under the following circumstances: it is not necessary to perform job duties; employees not wearing face coverings cannot maintain six feet of distance from others; employees not wearing face coverings occupy the same shared space; if they include any person who is experiencing COVID-19 symptoms or who is subject to a CDC recommendation to isolate or quarantine.



Food Service Establishments

INDOOR COMMON AREAS AND SEATING



- Must maintain six feet of distance between each party.
- Must not exceed 50% of normal seating capacity.
- Close indoor common areas in which people can congregate, dance, or otherwise mingle.
- Prohibit indoor gatherings anywhere alcoholic beverages are sold for consumption onsite, except for where parties are seated and separated from one another by at least six feet, and do not intermingle.



Organized Sports

FACE COVERINGS AND DISTANCE

- Athletes must wear face coverings (except when swimming) or consistently maintain six feet of distance from others.
- Follow live audience limits (two per player or as described in attendance limits).
- No concession sales.
- Follow additional guidance from MDHHS.

To read the complete MDHHS Oct. 9, 2020, Epidemic Order, visit [Michigan.gov/Coronavirus](https://michigan.gov/Coronavirus). Questions or concerns can be emailed to COVID19@michigan.gov.

Michigan Department of Health and Human Services (MDHHS) has issued this order under a law first enacted by the Michigan Legislature after the Spanish Flu of 1918, specifically to deal with epidemics. This gives the MDHHS director broad authority to take actions by emergency order to protect the public health during an epidemic. To reduce confusion following the recent Michigan Supreme Court decision, MDHHS issued orders following existing executive orders as much as possible under the different law to prevent and control the spread of COVID-19.