

STATE OF INDIANA) IN THE ALLEN _____ COURT
)
) SS:
COUNTY OF ALLEN) CAUSE NO.

CHRIS AND NATALIE FORBING, on behalf of)
two minor children, MIKE BELL, on behalf of)
three minor children, JACQUELYN AND ERIC)
CHRISTMAN, on behalf of four minor children,)
ANDREW FRISINGER, on behalf of three)
minor children,)

Plaintiffs,)

v.)

GOVERNOR ERIC HOLCOMB, in his official)
capacity as Governor of the State of Indiana,)
INDIANA STATE DEPARTMENT OF)
HEALTH, KRISTINA BOX, M.D., in her official)
capacity as Commissioner of the Indiana State)
Department of Health, ALLEN COUNTY)
DEPARTMENT OF HEALTH, MATTHEW)
SUTTER, M.D., in his official capacity as)
Commissioner of the Allen County Department)
of Health, NORTHWEST ALLEN COUNTY)
SCHOOLS, CHRIS HIMSEL, Ph.D., in his)
official capacity as Superintendent of the)
Northwest Allen County Schools, TANYA)
PICKETT, in her official capacity as Assistant)
Principal of Carroll High School, NORTHWEST)
ALLEN COUNTY SCHOOLS BOARD OF)
TRUSTEES, ELIZABETH HATHAWAY, in her)
official capacity as Vice President of the)
Northwest Allen County Schools Board of)
Trustees, KRISTI SCHLATTER, in her official)
capacity as Secretary of the Northwest Allen)
County Schools Board of Trustees, and)
RONALD FELGER, in his official capacity as)
member of the Northwest Allen County Schools)
Board of Trustees,)

Defendants.)

COMPLAINT

The plaintiffs, Chris and Natalie Forbing, Mike Bell, Jacquelyn and Eric Christman, and Andrew Frisinger, each on behalf of their minor children, state for their Complaint against the Defendants: Eric Holcomb, in his official capacity as Governor of the State of Indiana; Indiana State Department of Health ("Department of Health"), Kristina Box, MD, in her official capacity as Health Commissioner of the Indiana Department of Health; Allen County Department of Health ("ACDH"); Matthew Sutter, MD, in his official capacity as Health Commissioner of ACDH; Northwest Allen County Schools ("NACS"); Chris Himsel, Ph.D., in his official capacity as Superintendent of NACS ("Superintendent Himsel"); Tanya Pickett, in her official capacity as Assistant Principal of Carroll High School; Northwest Allen County Schools Board of Trustees ("School Board"); Elizabeth Hathaway, in her official capacity as Vice President of the School Board; Kristi Schlatter, in her official capacity as Secretary of the School Board; and Ronald Felger, in his official capacity as member of the School Board.

INTRODUCTION

Eighteen months into the COVID-19 pandemic, Americans have returned to normal life. Businesses have reopened. The streets and public spaces, once eerily silent, now bustle with activity. High school, collegiate, and professional athletes once played in empty venues. Today, they compete in sold-out stadiums overflowing with unmasked, raucous crowds. It seems that everywhere America is moving forward and beyond the COVID-19 restrictions that shuttered countless businesses and transformed daily life.

Everywhere, that is, **except** our K-12 schools.

Students remain subject to arbitrary, irrational, and unscientific rules regarding face masks, contact tracing, and quarantines—measures that serve no legitimate government purpose at this stage beyond foisting an endless state of emergency on K-12 students, teachers, and staff. Through a complex web of Executive Orders, Department of Health policies, and local health department guidance, school districts like NACS have excluded thousands of healthy students from school because they **may** be asymptomatic carriers or **may** develop symptoms later. However, experience shows that healthy students rarely develop a COVID-19 infection during quarantine, which is intended to span the COVID-19 incubation period. Moreover, COVID-19 presents a statistically **lower** mortality risk to K-12 students than influenza, car accidents, or drowning.

For two school years, the Defendants have imposed illegal and unconstitutional mask mandates, contact tracing, and quarantine procedures on NACS students. Administrators and staff are charged with enforcing Department of Health policies and unofficial ACDH directives. Teachers, bus drivers, and other NACS representatives are placed in the unenviable position of enforcing mask mandates - not because scientific data show they will slow the spread of COVID-19, but because the Governor and Department of Health claim they will apply less stringent quarantine standards to compliant schools. Meanwhile, the Department of Health has promoted a two-tier system that excuses students from quarantine measures if they “voluntarily” provide proof of COVID-19 vaccination.

The Plaintiffs, on behalf of their children, seek declaratory and injunctive relief to protect their constitutional rights to attend school. It's time for NACS to focus on educating students, not enforcing the Governor, Department of Health, or ACDH's unlawful mandates.

PARTIES

1. The Plaintiffs Chris and Natalie Forbing are parents of two minor children, A.F. and L.F. ("Forbing Plaintiffs"), residing in Fort Wayne, Indiana.

2. The Plaintiff Mike Bell is a parent of three minor children, G.B., A.B., and I.B. ("Bell Plaintiffs"), residing in Churubusco, Indiana.

3. The Plaintiffs Eric and Jacquelyn Christman are parents of five minor children, G.C., L.C., C.C., H.C., and H.C. ("Christman Plaintiffs"), residing in Fort Wayne, Indiana.

4. The Plaintiff Andrew Frisinger is a parent of three minor children, S.F., G.F., and E.F. ("Frisinger Plaintiffs"), residing in Fort Wayne, Indiana.

5. The Bell, Christman, Forbing, and Frisinger Plaintiffs are students in the NACS District.

6. Defendant Eric Holcomb is the Governor of the State of Indiana. The Governor is sued in his official capacity.

7. Defendant Indiana Department of Health ("Department of Health") is an agency of the State of Indiana.

8. Defendant Kristina Box, M.D. is the Commissioner of the Department of Health. Dr. Box is sued in her official capacity.

9. Defendant Allen County Department of Health ("ACDH") is an agency of Allen County, Indiana.

10. Defendant Matthew Sutter, M.D. is the ACDH Health Commissioner. Dr. Sutter is sued in his official capacity.

11. The Defendant Northwest Allen County Schools ("NACS") is a public school corporation located in Fort Wayne, Indiana. NACS provides educational services to over 7,500 students in the following schools:

- Carroll High School
- Carroll Middle School
- Maple Creek Middle School
- Arcola Elementary School
- Aspen Meadow Elementary School
- Cedar Canyon Elementary School
- Eel River Elementary School
- Hickory Center Elementary School
- Huntertown Elementary School
- Perry Hill Elementary School
- Oak View Elementary School

12. Defendant Chris Himsel, Ph.D. ("Superintendent Himsel"), is the NACS Superintendent. Superintendent Himsel is sued in his official capacity.

13. Defendant Tanya Pickett is the Assistant Principal at Carroll High School. Ms. Pickett is sued in her official capacity.

14. Defendant Northwest Allen County School Board of Trustees ("School Board") is the entity responsible for establishing NACS policies and procedures.

15. Defendant Elizabeth Hathaway is Vice President of the School Board. She is sued in her official capacity.

16. Defendant Kristi Schlatter is Secretary of the School Board. She is sued in her official capacity.

17. Defendant Ronald Felger is a member of the School Board. He is sued in his official capacity.

STATEMENT OF FACTS

A. COVID-19 PRESENTS LITTLE OR NO RISK TO K-12 STUDENTS.

18. The novel coronavirus SARS-CoV-2, which can cause the disease COVID-19 ("COVID"), is a contagious virus spread mostly through person-to-person contact and the air. Smriti Mallapaty, *The Coronavirus is Most Deadly if You Are Older and Male*, NATURE (Aug. 28, 2021). COVID primarily threatens those over 70, or those with comorbidities such as obesity and diabetes. *Id.* Individuals under 50 face a negligible threat from COVID, on par with the types of risks people take every day, such as driving a vehicle. *Id.*

19. Just under 50,000 Americans under 18 passed away during the COVID pandemic. 331 died of COVID – less than half as many who died of pneumonia, and a fraction of those who likely died from car crashes or drowning. David Wallace-Wells, *The Kids Are Alright*, NEW YORK MAGAZINE (Jul. 12, 2021). Some estimate that half of COVID hospitalizations among children resulted from mandatory testing upon admission. Children are routinely admitted while having COVID, not because of COVID. Richard

Harris, *In Kids, the Risk of COVID and the Flu Are Similar – But the Risk Perception Isn't*, NPR.org (May 21, 2021).

B. THE GOVERNOR IMPOSED CLOSURES AND RESTRICTIONS ON SCHOOLS AND BUSINESSES.

20. Beginning in March 2020, the Governor issued a series of executive orders pursuant to Indiana's Emergency Management and Disaster Law, Ind. Code § 10-14-3-1 *et seq.* ("EMDL"). On March 6, the Governor issued Executive Order (EO) 20-02 declaring a public health emergency for the Corona Virus Disease 2019 Outbreak.¹ The Governor extended his initial declaration for over 18 months. EO 20-17, 20-25, 20-30, 20-34, 20-38, 20-41, 20-44, 20-47, 20-49, 20-52, 21-03, 21-05, 21-08, 21-11, 21-14, 21-16, 21-18, 21-22.

21. On March 19, 2020, the Governor closed all K-12 schools through May 1, 2020. EO 20-05. The Governor later closed schools for the duration of the year. EO 20-16.

22. On March 23, 2020, the Governor imposed limitations on public gatherings, suspended non-essential activities and services, prohibited in-person visits to bars and restaurants, and suspended non-essential surgical procedures. EO 20-08, ¶ 4.

23. On April 23, 2020, the Governor prohibited public and private gatherings. EO 20-08, ¶ 5.

24. On May 1, 2020, the Governor outlined plans to reopen Indiana businesses in several stages. EO 20-26. K-12 schools remained closed.

¹ The Governor's Executive Orders are available online at: www.in.gov/gov/newsroom/executive-orders/

25. On July 22, 2020, then-Attorney General Curtis Hill issued Advisory Opinion 2020-6 stating that the Governor exceeded his statutory and constitutional authority when he issued a statewide mask mandate. A true and accurate copy of Adv. Op. No. 2020-6 is attached as **Exhibit A**.

**C. THE FDA ISSUED AN EMERGENCY USE
AUTHORIZATION FOR USE OF FACE MASKS BY THE PUBLIC.**

26. In April 2020, the FDA issued an Emergency Use Authorization (“EUA”) to authorize use of face masks by members of the general public, pursuant to section 564 of the Federal, Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb-3 (the “Act”), to prevent the spread of COVID. Letter from RADM Denise M. Hinton, Chief Scientist of the FDA, April 24, 2020 (“FDA Letter”). A true and accurate copy of the FDA Letter is attached as **Exhibit B**.

27. A face mask is a regulated “device” under section 201(h) of the Act and corresponding rules. *See* FDA Letter; *see also* 21 C.F.R. 878.4040 (regulating Class I 510(k)-exempt devices (non-surgical masks)). Recent FDA guidance states:

The FDA regulates face masks, including cloth face coverings, and surgical masks as medical devices when they are marketed for medical purposes. Medical purposes include uses related to COVID-19, such as face masks to help stop the spread of disease, surgical masks, and surgical masks with antimicrobial/antiviral agents. Face masks marketed to the general public for general non-medical purposes, such as for use in construction and other industrial applications, are not medical devices.

FDA, “Face Masks, Including Surgical Masks, and Respirators for COVID-19,” available at: <https://www.fda.gov/medical-devices/coronavirus-COVID-19-and-medical->

[devices/face-masks-including-surgical-masks-and-respirators-COVID-19](#) (accessed September 9, 2021).

D. THE GOVERNOR, DEPARTMENT OF HEALTH, AND NACS IMPOSED RESTRICTIONS FOR ON-SITE LEARNING DURING THE 2020-2021 SCHOOL YEAR.

28. On July 30, 2020, the Governor announced that, subject to certain exceptions, face masks would be required for students in grades 3-12 and adults while inside, or on a school bus. EO 20-39. For the entire 2020-2021 school year, students in NACS and around the State of Indiana were subject to a series of executive orders concerning masking and other restrictions, including distancing, contact tracing, and quarantines.

29. In the Fall of 2020, NACS began on-site learning pursuant to the NACS Reopening Plan. A true and accurate copy of the NACS Reopening Plan dated as of September 2, 2020, is attached as **Exhibit C**.

30. The NACS Reopening Plan provided guidance for students or employees who test positive for COVID ("Confirmed COVID Case"); are exposed to COVID "by encountering a close contact with a person confirmed to have COVID" ("Possible COVID Case"); and "experience COVID-like symptoms (**possible COVID**)" ("Presumed COVID Case"). *Id.*, pp. 7-8, paras 3-6. The Reopening Plan also provided guidance for "siblings, household members and other close contacts" of Presumed COVID Cases. *Id.*, p. 9, ¶ 7.

31. NACS applied the following rules to Confirmed COVID Cases:

3. If a student or employee tests **positive for COVID-19**, then the student or employee will need to adhere to the following guidance:

- a. Contact the school nurse to ensure that required reporting to the ACDH occurs.
- b. If healthy enough to do so, students may use Canvas to access and complete learning activities.
- c. According to the ISDH, if an individual tests **positive for COVID and is symptomatic**, then before returning to school, the diagnosed person must isolate at home for at least 10 days from the inception of when the first symptoms began **AND** be fever free without the use of fever reducing medications for at least 24 hours **AND** with improvement in symptoms. Siblings, other household members, and close contacts to the individual testing positive should adhere to item #4 within this section.
- d. According to the ISDH, if an individual tested **positive for COVID and has no symptoms**, then before returning to school, the diagnosed person must isolate at home for at least 10 days from the day the testing sample was collected. If symptoms develop, then the individual must follow the guidance in the previous item (c). Siblings, other household members, and close contacts to the individual testing positive should adhere to item #4 within this section.

Id., pp. 7-8, ¶ 3 (emphasis in original).

32. NACS applied the following rules to Possible COVID Cases:

4. If a student or employee is **exposed to COVID-19** by encountering a close contact with a person confirmed to have COVID-19, then the student or employee will need to adhere to the following guidance:

- a. Contact the school nurse to ensure that required reporting to the ACDH occurs.
- b. To prevent falling behind during a quarantine, students may use Canvas to access and complete learning activities. At the middle/high school level, livestreaming of some classes may be available.
- c. According to the ISDH, if a person is **exposed to** someone with COVID-like symptoms (possible COVID), **even after testing negative for COVID-19**, then the exposed individual will need to adhere to the following guidance:
 - i. Must quarantine for 14 days after the last contact with the person confirmed to have COVID-19 (positive COVID test results).
 - ii. If the **exposure** is to a household member and the person **confirmed to have COVID-19 cannot properly isolate** away from others in the home, then the individual must quarantine for 14 days **AFTER** the last day of isolation for the person who was confirmed to have COVID-19.

- iii. An individual who was in **quarantine**, then tests **positive for COVID-19**, must remain home for at least 10 days since the inception of when the first symptoms began **AND** be fever free without the use of fever reducing medications for at least 24 hours **AND** with improvement in symptoms.
 - iv. Before the exposed individual who has COVID-like symptoms may return to school/work, each of the previous criterion items (i, ii, **AND** iii) must be met.
 - v. If the quarantined individual who has symptoms does not receive a negative COVID test, then siblings, other household members, and close contacts to the quarantined individual who has COVID-like symptoms also should quarantine, see item #4.
- d. According to the ISDH, if an **exposed individual has no symptoms**, then the exposed individual will need to adhere to the following guidance:
- i. Must quarantine for 14 days after the last contact with the person confirmed to have COVID-19.
 - ii. If the exposure is to a household member and the person confirmed to have COVID-19 cannot properly isolate away from others in the home, then the individual must quarantine for 14 days **AFTER** the last day of isolation for the person who was confirmed to have COVID-19.
 - iii. If the exposed individual experiences symptoms during the quarantine, then the individual should adhere to the criterion listed in the previous item (c).
 - iv. If symptoms do not develop during the time of the quarantine, then the person may return to school/work after completing the quarantine described in the previous items (i **AND** ii).

Id., p. 8, ¶ 4 (emphasis in original).

33. NACS applied the following rules to **Presumed COVID Cases**:

5. According to the ISDH, if a student or employee experiences COVID-like symptoms (**possible COVID**) and is **not tested** for COVID-19, then the individual will need to adhere to the following guidance:
- a. If healthy enough to do so, students may use Canvas to access and complete learning activities for the day.
 - b. Must isolate at home for at least 10 days since the inception of when the first symptoms began **AND** be fever free without the use of fever reducing medications for at least 24 hours **AND** with improvement in symptoms.
 - c. Siblings and other household members quarantine for 14 days and adhere to the criterion listed in the previous item #4.

- d. If an **alternate diagnosis is confirmed** by a healthcare provider, such as influenza or strep throat, then isolation or quarantine of close contacts is not necessary. The individual with an alternate diagnosis may return to school as directed by the healthcare provider **AND** after being fever free without the use of fever reducing medications for at least 24 hours.
6. According to the ISDH, if a student or employee experiences COVID-like symptoms (**possible COVID**) and tests **negative** for COVID-19, then the individual will need to adhere to the following guidance:
 - a. If healthy enough to do so, students may use Canvas to access and complete learning activities for the day.
 - b. May return after being fever free without the use of fever reducing medications for at least 24 hours, unless otherwise advised by a healthcare provider.
 - c. If an **alternate diagnosis** is confirmed by a physician, such as influenza or strep throat, the individual with an alternate diagnosis may **return to school as directed by the physician AND** after being fever free without the use of fever reducing medications for at least 24 hours.
 - d. Siblings, household members and other close contacts can return to school if the tested person's results are negative.

Id., p. 8-9, ¶¶ 5-6 (emphasis in original).

34. NACS applied the following rules to **siblings and household members of**

Presumed COVID Cases:

7. According to the ISDH, siblings, household members and other close contacts should adhere to the following guidance:
 - a. If a student or employee **resides with** another household member who develops COVID-like symptoms (**possible COVID**), then the student or employee will need to quarantine as outlined in item #4.
 - b. If a student, staff member, or other household member has COVID-like symptoms (**possible COVID**) and **does not get tested or is awaiting test results**, then siblings and other household members are considered close contacts and quarantine as outlined in item #4.
 - c. If the symptomatic student, staff member, or other household member **tests positive** for COVID-19, then siblings and other household members are considered close contacts and quarantine as outlined in item #4.
 - d. If the symptomatic student, staff member, or household member **tests negative** for COVID-19, then siblings and other household members **may end quarantine** and return to school/work based on the symptomatic person's negative test results.

e. If the symptomatic student, staff member, or household member has **documentation from a physician** with a return date and **confirming an alternate diagnosis** of the symptoms, then the siblings and household members **may end quarantine** and return to school/work based on the alternate diagnosis of the symptomatic person.

Id., p. 9, ¶ 7 (emphasis in original).

35. The NACS Reopening Plan also confirmed that the ACDH would have final authority on all quarantine decisions:

NACS, in collaboration with the ACDH, will contact and inform those who may have had a close contact with someone who has COVID-19 or a high-risk exposure, are in need of staying home, and need to follow the ISDH guidance related to quarantine or self-monitoring. **The ACDH will make quarantine decisions.** To maintain privacy among those who may be isolated or quarantined when communicating about COVID-19 cases, NACS will adhere to privacy provisions in federal laws such as, but not limited to, the ADA, HIPAA, and FERPA.

Id., p. 7, ¶ 6 (emphasis added).

E. **IN THE FALL OF 2020, THE GOVERNOR RELAXED RESTRICTIONS ON BUSINESSES, BUT NOT SCHOOLS.**

36. On September 24, 2020, the Governor relaxed capacity requirements for bars and restaurants, while purportedly requiring patrons to remain seated while eating or drinking. EO 20-43. The Governor continued requiring face masks and other restrictions for K-12 students. *Id.*, ¶ 8.

37. In October 2020, due to increased quarantines, one NACS middle school transitioned to remote learning for the final week before fall break.

38. On December 3, 2020, due to increased quarantines, NACS announced that all middle school and high school students would transition to remote learning for the

remainder of the calendar year. Elementary students continued receiving on-site instruction.

39. The Governor continued imposing masking, quarantine, and social distance restrictions on students throughout the 2020-2021 school year. EO 21-02, 21-06, 21-15.

F. THE DEPARTMENT OF HEALTH CREATED A TWO-TIER SYSTEM FOR VACCINATED AND UNVACCINATED STUDENTS.

40. Effective July 1, 2021, the Governor authorized local school boards to implement “whatever measures and restrictions deemed necessary and prudent” to address COVID. EO 21-15, p. 5, ¶ 5.a. The Governor encouraged school boards “to follow CDC guidance and any guidance to be issued by the Indiana Departments of Health and Education.” *Id.*

41. The Department of Health continued recommending extensive masking, social distancing, quarantine, and social distancing policies. Looking ahead to the 2021-2022 school year, vaccination status would determine whether a student could enjoy a normal educational experience, or be subject to these measures.

42. The Department of Health aggressively marketed the Pfizer-BioNTech shot to minors during the Summer of 2021. A true and accurate copy of a sample letter mailed to students and Department of Health marketing materials are attached as **Exhibit D**. While the Department of Health extolled the benefits of the Pfizer shot, the Department failed to inform students, including the Plaintiffs, that the shot remained subject to emergency-use authorization.

43. The Department of Health also released graphics showing two sets of rules based on vaccination status. A true and accurate copy of the Department of Health's policy is attached as **Exhibit E**. The guidance exempted vaccinated students from mandatory mask and quarantine rules unless symptoms developed. *Id.*

44. On June 25, 2021, the undersigned counsel sent notices to the Governor, Dr. Box, Superintendent Himself, and the NACS School Board concerning proposed policies applying different standards for face masks and quarantines to vaccinated and unvaccinated students. A true and accurate copy of the June 25 letter sent on behalf of Forbings Plaintiffs is attached as **Exhibit F**. The letter states in pertinent part:

We remind the Governor, the Department, and the NACS Superintendent and Board that, "even in a pandemic, the Constitution cannot be put away and forgotten." *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68 (2020). The Department's current guidance violates state and federal law and bedrock constitutional principles. Parents should not be required to file lawsuits to protect these core values. We respectfully request that the Department reconsider its guidance for the 2021-2022 school year, and that the Governor consider these matters in crafting any future executive orders.

Id., p. 1. Neither the Governor nor Dr. Box responded.

G. NACS QUARANTINED THE CHRISTMAN PLAINTIFFS AS PRESUMED, AND SIBLINGS OF PRESUMED, COVID CASES.

45. NACS resumed fall classes on August 11, 2021. A true and accurate copy of the NACS 2021-2022 COVID-Mitigation Procedures is attached as **Exhibit G**.

46. NACS applied the following rules to **Confirmed COVID Cases**:

If a student or employee tests **positive for SARS-COV2/COVID-19**, then the student or employee will need to adhere to the following guidance as required by the IDOH:

- a. Contact the school nurse to ensure that reporting to the ACDH occurs in compliance with 410 IAC 1-2.5.
- b. If healthy enough to do so, the student may use Canvas to access and complete learning activities.
- c. According to the IDOH, if an individual tests **positive for SARS-COV2/COVID-19 and is symptomatic**, then before returning to school, the diagnosed person must isolate at home for at least 10 days from the inception of when the first symptoms began **AND** be fever free without the use of fever reducing medications for at least 24 hours **AND** experience improvement in symptoms. Siblings, other household members, and close contacts to the individual testing positive will need to quarantine as required by the IDOH.
- d. According to the IDOH, if an individual tested **positive for SARS-COV2/COVID-19 and has no symptoms**, then before returning to school, the diagnosed person must isolate at home for at least 10 days from the day the testing sample was collected. If symptoms develop, then the individual must follow the guidance in the previous item (c). Siblings, other household members, and close contacts to the individual testing positive will need to quarantine as required by the IDOH.

NACS 2021-2022 COVID-Mitigation Procedures, p. 8, ¶ 2.a-d.

47. NACS applied the following rules to **Presumed COVID Cases**:

If a student or employee **exhibits symptoms of COVID-19/SARS-COV2 without being otherwise explained**, then as determined by the IDOH:

- a. The individual must isolate at home for at least 10 days from the inception of when the first symptoms began **AND** be fever free without the use of fever reducing medications for at least 24 hours **AND** experience improvement in symptoms.
- b. If the individual exhibiting the COVID-19/SARS-COV2 symptoms tests **negative for SARS-COV2/COVID-19 or receives an alternate diagnosis from a physician**, then the individual may return to school after being fever free without the use of fever reducing medications for at least 24 hours **AND** experience improvement in symptoms.

NACS 2021-2022 COVID-Mitigation Procedures, p. 8, ¶ 3.a-b.

48. NACS applied the following rules to **Potential COVID Cases**:

If a student or employee is **exposed to SARS-COV2/COVID-19** by encountering a close contact with a person confirmed to have SARS-COV2/COVID-19, then the

student or employee will need to adhere to the following guidance as required by the IDOH:

a. Contact the school nurse to ensure that reporting to the ACDH occurs in compliance with 410 IAC 1-2.5.

...

c. As required by the IDOH, if a person is **exposed to** someone confirmed to have SARS-COV2/COVID-19, then the exposed individual will need to quarantine for 14 days after the last contact with the person confirmed to have SARS-COV2/COVID-19 (positive SARS-COV2/COVID-19 test results).

i. As determined by the IDOH, an **asymptomatic individual may be exempt** from quarantine if s/he **voluntarily chooses to present proof of vaccination**.

ii. As determined by the IDOH, if the exposed individual **does NOT experience symptoms** and tests negative for SARS-COV2/COVID-19 using a PCR-type test on days 5, 6, or 7 or a BinaxNow-type test on day 8, then the exposed individual **may return on the eighth (8th) day if NO SYMPTOMS** were experienced during the quarantine period. If the individual chooses to return to school on day 8 after testing negative with no symptoms, then as determined by the IDOH, the individual must adhere to the following protocols:

- 1) The individual must wear a mask at all times, except while eating or drinking, while at school and school activities throughout the remaining days of the quarantine period; and
- 2) The individual must maintain a physical distance of 6 feet or more from others whenever practical while at school and school activities throughout the remaining days of the quarantine period.

...

iii. As determined by the IDOH, if the exposed individual **does NOT experience symptoms** during the first ten (10) days of the quarantine period, then the exposed individual **may return on the eleventh (11th) day if NO SYMPTOMS** were experienced during the quarantine period. If the individual chooses to return to school on day 11 after experiencing no symptoms, then as determined by the IDOH, the individual must adhere to the following protocols:

- 1) The individual must wear a mask at all times, except while eating or drinking, while at school and school activities throughout the remaining days of the quarantine period; and
- 2) The individual must maintain a physical distance of 6 feet or more from others whenever practical while at school and

school activities throughout the remaining days of the quarantine period.

...

NACS 2021-2022 COVID-Mitigation Procedures, p. 8-9, ¶ 4.a, c (emphasis in original).

49. On Monday, August 16, Plaintiff Jacquelyn Christman notified Perry Hill Elementary School that her youngest daughter, H.C., would be staying home with a slight fever. NACS administrators advised Mrs. Christman that, consistent with Department of Health mandates, her other four children, in grades 1, 7, 9, and 11, must quarantine unless they provide proof of vaccination or a negative COVID test.

50. Mrs. Christman contacted the Department of Health. She was informed that local school districts, not the Department of Health, determined quarantine policy. Mrs. Christman relayed this information to Superintendent Himsel.

51. Superintendent Himsel advised Mrs. Christman that NACS is in Allen County, and the ACDH follows the Department of Health guidelines. Therefore, at the direction of ACDH, NACS quarantined H.C. for having COVID-like symptoms and NACS quarantined her siblings for being “exposed” to COVID.

52. Superintendent Himsel reiterated that NACS would exclude the Christman Plaintiffs from school unless they provided a negative COVID test, an alternative diagnosis from a medical provider, or proof of vaccination.

53. On August 18, the undersigned counsel sent a written objection, noting that H.C. was not a “confirmed” COVID case; her siblings were not “Close Contacts” of a COVID case, and therefore, none of the Christman Plaintiffs should be subject to

quarantine, testing, or reporting. A true and accurate copy of the August 18 letter is attached as **Exhibit H**.

54. In response, counsel for NACS advised the undersigned counsel that, based on conversations with Superintendent Himsel, H.C. was excluded because she had a loss of taste or smell. Mrs. Christman never told Superintendent Himsel, the Perry Hill principal, or any other NACS administrator that H.C. had a loss of taste or smell.

55. On August 20, the undersigned counsel sent a follow-up letter explaining that H.C. never had a loss of taste or smell and reaffirmed that NACS lacked legal authority to exclude the Christman Plaintiffs from school. A true and accurate copy of the August 20 letter is attached as **Exhibit I**.

56. Counsel for NACS advised that, based on conversations with Superintendent Himsel, Perry Hill's Principal mistakenly advised Superintendent Himsel that H.C. had a loss of taste or smell. On information and belief, Perry Hill's principal never told Dr. Himsel that H.C. lost her sense of taste or smell.

57. The Christman Plaintiffs were required to retain the services of an attorney to avoid exclusion from school. Otherwise, five more students would have been quarantined without legal justification.

H. IN A SURPRISE VOTE, NACS REINSTITUTED A MASK MANDATE.

58. On August 30, 2021, the NACS Board held a regular meeting at Carroll High School. During Superintendent Himsel's report, one Board member read a prepared statement and then motioned to reinstitute a mask mandate.

59. The NACS Bylaws and Procedures provide for a collaborative process whereby the Superintendent, Board President, and other members of the School Board identify issues to be included on a meeting agenda. *See* NACS Bylaws & Policies (“NACS Bylaws”), 0166 Agenda, p. 20, available at: <https://www.nacs.k12.in.us/common/pages/DisplayFile.aspx?itemId=21697313>.

60. The Board President, blindsided by his colleagues’ motion, objected to their “sneaky” behavior. In a 3-2 vote, a majority of the NACS Board voted to reinstitute masks at NACS schools, beginning on September 1.

I. NACS REJECTED THE FORBING PLAINTIFFS’ RELIGIOUS EXEMPTION FOR MASKS.

61. On September 1, Mrs. Forbing presented Tanya Pickett, Assistant Principal at Carroll High School, with religious exemptions on behalf of her sons A.F. and L.F. True and accurate copies of the Forbing Plaintiffs’ religious exemptions are attached as **Exhibit J**.

62. Assistant Principal Pickett verbally denied the exemption request, stating that NACS does not allow them. When Mrs. Forbing asked for a written response, Assistant Principal Pickett advised that “the district lawyers will contact you.” Mrs. Forbing received no further contact on the matter.

63. NACS excluded A.F. from school on September 1 and September 2 for refusing to wear a mask. Plaintiff L.F. was threatened that if he failed to comply with the mask mandate, he could be barred from extracurricular activities.

**J. THE GOVERNOR AND DEPARTMENT OF HEALTH
AMENDED K-12 GUIDELINES TO COMPEL MASKING.**

64. On September 1, 2021, the Governor updated guidance for K-12 schools. EO 21-24. The Governor directed Dr. Box and the Department of Health to:

evaluate, and modify where warranted, the quarantine provisions for 1) individuals who are close contacts of a COVID-19 infected person in K-12 educational institutions and childcare facilities that 2) adhere to measures and protocols to control COVID-19 set forth in [the Department of Health's] orders and guidance.

Id., ¶ 6(b)(ii). The Department of Health updated its guidance by imposing less stringent quarantine procedures on schools imposing masks ("EVERYONE Masked") than those allowing for mask choice ("Anyone UNMASKED"). A true and accurate copy of the referenced Department of Health guidance is attached as **Exhibit K**.

65. The amended guidelines only apply in the classroom, not in the lunchroom, or in band, choir, or extra-curricular activities. *Id.*

CLAIMS FOR RELIEF

COUNT ONE

Violation of Emergency Disaster Management Law, IC 10-14-3-1 *et seq.*

66. The Plaintiffs restate and reallege paragraphs 1-65.

67. The EMDL states in pertinent part:

(a) Because of the existing and increasing possibility of disasters or emergencies of unprecedented size and destructiveness that may result from manmade or natural causes, to ensure that Indiana will be adequately prepared to deal with disasters or emergencies or to prevent or mitigate those disasters where possible, generally to provide for the common defense, to protect the public peace, health, and safety, and to preserve the lives and property of the people of the state, it is found and declared to be necessary:

(1) to provide for emergency management under the department of

homeland security;

(2) to create local emergency management departments and to authorize and direct disaster and emergency management functions in the political subdivisions of the state;

(3) to confer upon the governor and upon the executive heads or governing bodies of the political subdivisions of the state the emergency powers provided in this chapter;

(4) to provide for the rendering of mutual aid among the political subdivisions of the state, with other states, and with the federal government to carry out emergency, disaster, or emergency management functions; and

(5) to authorize the establishment of organizations and the implementation of steps that are necessary and appropriate to carry out this chapter.

(b) It is also the purpose of this chapter and the policy of the state to:

(1) coordinate all emergency management functions of this state to the maximum extent with the comparable functions of:

(A) the federal government, including the federal government's various departments and agencies;

(B) other states and localities; and

(C) private agencies of every type;

so that the most effective preparation and use may be made of the nation's manpower, resources, and facilities for dealing with any disaster that may occur;

(2) prepare for prompt and efficient rescue, care, and treatment of persons victimized or threatened by disaster;

(3) provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;

(4) clarify and strengthen the roles of the:

(A) governor;

(B) state agencies; and

(C) local governments;

in the prevention of, preparation for, response to, and recovery from disasters;

(5) authorize and provide cooperation between departments of government in:

(A) disaster prevention;

(B) preparedness;

(C) response; and

(D) recovery;

(6) authorize and provide coordination of activities relating to:

(A) disaster prevention;

(B) preparedness;

(C) response; and

(D) recovery;
by agencies and officers of Indiana, and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate; and
(7) provide a disaster management system embodying all aspects of pre-disaster preparedness, disaster operations, and post-disaster response.

Ind. Code § 10-14-3-7.

68. “The governor shall declare a disaster emergency by executive order or proclamation if the governor determines that a disaster has occurred or that the occurrence or the threat of a disaster is imminent.” Ind. Code § 10-14-3-12(a).

69. A “disaster” is “an occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural phenomenon or human act.” Ind. Code § 10-14-3-1.

70. The EMDL requires that any executive orders issued by the Governor “indicate the nature of the disaster, the area or areas threatened, and the conditions which have brought the disaster about **or that make possible termination of the state of disaster emergency.**” Ind. Code § 10-14-3-12(a)(2) (emphasis added).

71. Indiana Code section 10-14-3-12 provides a detailed list of gubernatorial powers during a disaster emergency:

(c) During the continuance of any state of disaster emergency, the governor is commander-in-chief of the organized and unorganized militia and of all other forces available for emergency duty. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or regulations. This section does not restrict the governor’s authority to delegate or assign command authority by orders issued at the time of the disaster emergency.

(d) In addition to the governor’s other powers, the governor may do the following while the state of emergency exists:

- (1) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency if strict compliance with any of these provisions would in any way prevent, hinder, or delay necessary action in coping with the emergency.
- (2) Use all available resources of the state government and of each political subdivision of the state reasonably necessary to cope with the disaster emergency.
- (3) Transfer the direction, personnel, or functions of state departments and agencies or units for performing or facilitating emergency services.
- (4) Subject to any applicable requirements for compensation under section 31 of this chapter, commandeer or use any private property if the governor finds this action necessary to cope with the disaster emergency.
- (5) Assist in the evacuation of all or part of the population from any stricken or threatened area in Indiana if the governor considers this action necessary for the preservation of life or other disaster mitigation, response, or recovery.
- (6) Prescribe routes, modes of transportation, and destinations in connection with evacuation.
- (7) Control ingress to and egress from a disaster area, the movement of persons within the area, and the occupancy of premises in the area.
- (8) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles.
- (9) Make provision for the availability and use of temporary emergency housing.
- (10) Allow persons who:
 - (A) are registered as volunteer health practitioners by an approved registration system under IC 10-14-3.5; or
 - (B) hold a license to practice:
 - (i) medicine;
 - (ii) dentistry;
 - (iii) pharmacy;
 - (iv) nursing;
 - (v) engineering;
 - (vi) veterinary medicine;
 - (vii) mortuary service; and
 - (viii) similar other professions as may be specified by the governor;to practice their respective profession in Indiana during the period of the state of emergency if the state in which a person's license or registration was issued has a mutual aid compact for emergency management with Indiana.

(11) Give specific authority to allocate drugs, foodstuffs, and other essential materials and services.

72. The EMDL does not authorize the Governor, expressly or impliedly, to mandate medical treatment or intervention, including face masks, in K-12 schools.

73. The EMDL does not authorize the Governor, expressly or impliedly, to mandate quarantines to exclude healthy students from K-12 schools.

74. The EMDL does not authorize the Governor, expressly or impliedly, to mandate invasive contact-tracing procedures as a condition of attending K-12 schools.

75. The EMDL does not authorize the Governor, expressly or impliedly, to mandate a two-tier structure with different quarantine rules for K-12 students based on whether they have received one, two, or more COVID shots.

76. In the Governor's most recent Executive Order (21-24), he continues requiring K-12 educational institutions to perform contact tracing and report all "known positive COVID cases" to state and local health departments.

77. In practice, based on the Department of Health and ACDH's recommendations, this has resulted in excessive, illegal, and unconstitutional quarantines, contract tracing based on presumed COVID cases, and now, mandatory masking.

78. The Governor has exceeded his statutory authority under the EMDL.

79. As the Department of Health, ACDH, and NACS rely on authority delegated from the Governor, their actions are likewise not authorized under the EMDL.

80. The Plaintiffs are entitled to declaratory relief under Indiana Code section 34-14-1-1.

COUNT TWO
Violation of Distribution of Powers Clause

81. The Plaintiffs restate and reallege paragraphs 1-65.

82. As stated in paragraphs 66-80, the Governor exceeded his statutory authorization under the EMDL.

83. Alternatively, if the Court determines that the EMDL authorized the Governor's actions, then the EMDL is unconstitutional.

84. Article 3 of the Indiana Constitution states, "The powers of the Government are divided into three separate departments; the Legislative, the Executive, including the Administrative, and the Judicial: and no person, charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided." IND. CONST. art. 3, § 1 ("Distribution of Powers Clause").

85. The Distribution of Powers Clause must be strictly construed to prevent "commingling of three essentially different powers in the same hands." *Rush v. Carter*, 468 N.E.2d 236, 238 (Ind. Ct. App. 1984).

86. "[T]he only permissible deviation from strictly separate governmental powers arises when the Constitution itself permits it." *Homer v Curry*, 125 N.E.3d 584, 612 (Ind. 2019).

87. The legislature cannot confer unlimited power on the Governor.

88. The EMDL grants the Governor unilateral authority to declare a “disaster emergency.” Ind. Code § 10-14-3-12(a)

89. The EMDL grants the Governor unilateral authority to renew a state of emergency until he determines that “the disaster has been dealt with to the extent that emergency conditions no longer exist.” Ind. Code § 10-14-3-12(a)

90. Under the “nondelegation doctrine,” the legislative branch is limited in its authority to transfer its lawmaking powers to administrative agencies in the executive branch.

91. “It is black-letter law that generally, administrative agencies are creatures of statute, and only the legislature has the broad power to provide for their creation. Administrative boards, agencies, and officers have no common law or inherent powers, but only such authority as is conferred upon them by statutory enactment.” *Vehslage v. Rose Acre Farms, Inc.*, 474 N.E.2d 1029, 1033 (Ind. Ct. App. 1985).

92. “The legislature may only delegate rule-making powers to an administrative agency if that delegation is accompanied by sufficient standards to guide the agency in the exercise of its statutory authority.” *Gunderson v. State, Indiana Department of Natural Resources*, 90 N.E.3d. 1171, 1186 (Ind. 2018).

93. The EMDL is unconstitutional because it delegates legislative authority to the Governor.

94. To the extent the Governor conferred such powers on the Department of Health, ACDH, or NACS, the exercise of such powers would be unconstitutional.

95. Almost two years into the pandemic, Indiana has approved and hosted state and national sporting events, concerts, and activities; allowed bars and restaurants to resume operations; and generally returned to “normal life” in most areas outside K-12 education.

96. Extensive restrictions on K-12 students, including masking, quarantines of healthy students, and invasive contact-tracing, are an unconstitutional exercise of authority under the EMDL.

COUNT THREE
Due Course of Law - Masks

97. The Plaintiffs restate and reallege paragraphs 1-65.

98. Article 1, Section 12 of the Indiana Constitution states that “every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law.” IND. CONST. art. 1, § 12 (“Due Course of Law Clause”). The civil remedies provided under Indiana’s Due Course of Law Clause are identical to those provided under the federal due process clause. *McIntosh v. Melroe Co., a Div. of Clark Equipment Co., Inc.*, 729 N.E.2d 972, 976 (Ind. 2000). Due process protections bar state action that would deprive a person of life, liberty, or property without due process of law. *J.S. v. Ind. Dep’t of Child Servs. (In re: L.S.)*, 82 N.E.3d 333 (Ind. Ct. App. 2017).

99. Indiana’s Framers expressly recognized an unalienable right to liberty. IND. CONST., Art. 1, § 1. William Blackstone described liberty as “the power of locomotion” and the “legal and uninterrupted enjoyment of life, his limbs, his body, his health, and his reputation.” William Blackstone, *Commentaries on the Laws of England*, pp. 125, 130 (2d

ed. 2002); *see also Kerry v. Din*, 576 U.S. 86, 91-92 (2015) (discussing same). “No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.” *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251 (1891).

100. Mandatory masking of the Plaintiffs violates their fundamental liberty interests to move about freely, to the uninterrupted use of their bodies, and fundamentally, to breathe freely.

101. Restricting or impacting a person’s breathing – especially that of a child in younger stages of language development and socialization – impacts his or her fundamental liberty interests.

102. NACS has reimposed a mask mandate at the express or implied direction of ACDH, the Department of Health, and the Governor.

103. The mandate does not arise from “clear and unquestionable authority of law.”

104. Rather, NACS reimposed the mask mandate in a surprise vote, without including the item on the agenda, or even discussing the matter with the entire NACS Board. The actions by a majority of the NACS Board plainly violated the Board’s Bylaws, which state in pertinent part:

The Superintendent shall prepare and submit to each Board member a written agenda prior to each regular meeting and each special meeting, unless otherwise directed by the Board. The agenda shall list the various matters to come before the Board and shall serve as a guide for the order of procedure for the meeting.

Individual Board members may include items on the agenda upon the concurrence of the Board President. The Board President shall communicate any additional agenda items to the Superintendent prior to the finalization of the agenda. The agenda of the regular meeting and/or special meetings shall be accompanied by a report from the Superintendent on information relating to the Corporation with such recommendations as s/he shall make....

The agenda for each regular meeting shall be mailed or delivered to each Board member so as to provide proper time for the member to study the agenda. Generally, the agenda should be mailed no later than three (3) days prior to the meeting, or delivered so as to provide least twenty-four (24) hours before the meeting, consistent with provisions calling for special meetings. Prior to the meeting, a copy of the agenda shall be posted at the entrance to the meeting location. The Board shall transact business according to the agenda prepared by the Superintendent and submitted to all Board members in advance of the meeting...

NACS Bylaws & Policies, 0166 Agenda, pp. 20-21, available at: [Northwest Allen County Schools \(nacs.k12.in.us\)](http://nacs.k12.in.us).

105. The Plaintiffs possess “a constitutionally protected liberty interest in refusing unwanted medical treatment.” *Schmidt v. Mutual Hospital Servs., Inc.*, 832 N.E.2d 977, 979 (Ind. Ct. App. 2005) (citing trial court decision applying *Cruzan v. Director, Mo. Dep’t of Health*, 497 U.S. 261 (1990)). “The common law recognizes the right of the individual to refuse medical treatment in appropriate circumstances.” *In re Lawrence*, 579 N.E.2d 32, 46 (Ind. 1991) (DeBruler, J., concurring). “A person has a strong interest in being free from nonconsensual invasion of his bodily integrity, and a constitutional right of privacy that may be asserted to prevent unwanted infringement of bodily integrity. Thus a competent person has a general right to refuse medical treatment in appropriate circumstances, to be determined by balancing the individual interest against the

countervailing State interests, particularly the State interest in the preservation of life.”
Id. (citing *In re Spring*, 405 N.E.2d 115, 119 (Mass. 1980)).

106. Medical treatment can alleviate a condition or illness or be preventative in nature. *See, e.g., Lutheran Hospital of Indiana, Inc. v. State Dept. of Public Welfare*, 623 N.E.2d 450, 456 (Ind. Ct. App. 1993) (distinguishing between preventative care and emergency care).

107. The Defendants have required and/or recommended face masks for the stated purpose of preventing transmission of COVID.

108. Pursuant to federal law, face masks are “medical devices” that have been approved for the general public by emergency-use authorization. *See* FDA Letter; *see also* 21 C.F.R. 878.4040 (regulating Class I 510(k)-exempt devices (non-surgical masks)).

Recent FDA guidance confirms:

The FDA regulates face masks, including cloth face coverings, and surgical masks as medical devices when they are marketed for medical purposes. Medical purposes include uses related to COVID, such as face masks to help stop the spread of disease, surgical masks, and surgical masks with antimicrobial/antiviral agents. Face masks marketed to the general public for general non-medical purposes, such as for use in construction and other industrial applications, are not medical devices.

FDA, “Face Masks, Including Surgical Masks, and Respirators for COVID-19,” available at: [Face Masks, Including Surgical Masks, and Respirators for COVID-19 | FDA](#) (accessed September 7, 2021).

109. K-12 students have a right to a religious exemption from medical treatment. *See* Compl., Count IV, ¶¶ 116-126, below.

110. Defendants ignore these protections by mandating masks, quarantines, and contact-tracing procedures.

111. Before the COVID pandemic, face masks were rarely used by the general public in the United States.

112. On information and belief, the Defendants lack long-term data showing the safety and efficacy of face masks among K-12 students, particularly in younger grades.

113. On information and belief, the Defendants lack long-term data showing the impact of face masks on students' educational, social, and emotional development.

114. Emerging data shows that face masks produce several unwanted, adverse reactions. *See, e.g.,* Kai Kisielinski, et al., "Is a Mask That Covers the Mouth and Nose Free from Undesirable Side Effects in Everyday Use and Free of Potential Hazards?", *INT. J. ENVIRON. RES. PUBLIC HEALTH* (Apr. 20, 2021), available at: <https://pubmed.ncbi.nlm.nih.gov/33923935/>.

115. The Defendants, individually or collectively, cannot compel the Plaintiffs to wear a medical device.

COUNT FOUR
Violation of Religious Exemption Statute, IC 20-34-3-2

116. The Plaintiffs restate and reallege paragraphs 1-65.

117. K-12 students have a right to a religious exemption from medical treatment.

118. Indiana Code Section 20-34-3-2 states in pertinent part: "Except as otherwise provided, a student may not be required to undergo any **testing, examination, immunization, or treatment** required under this chapter or IC 20-34-4 when the child's

parent objects on religious grounds.” Ind. Code § 20-34-3-2(a) (emphasis added). Medical treatment includes preventative care.

119. Indiana requires only that the objection be: (1) made in writing; (2) signed by the child's parent; and (3) delivered to the child's teacher or to the individual who might order a test, an exam, an immunization, or a treatment absent the objection. *Id.*

120. The Defendants have required and/or recommended face masks for the stated purposes of preventing transmission of COVID.

121. Pursuant to federal law, face masks are “medical devices” that have been approved for the general public by emergency-use authorization.

122. Face masks, like immunizations, are purportedly intended as preventative medical treatment and, therefore, within the scope of Indiana’s religious exemption statute. *See* Ind. Code § 20-34-3-2(a) (providing religious exemption to “testing, examination, immunization, or treatment”).

123. The Forbing Plaintiffs requested a religious exemption from the NACS face mask requirement.

124. NACS, by and through its agent, Defendant Tanya Pickett, denied the Forbing Plaintiffs’ request.

125. Instead, NACS excluded the Forbing Plaintiffs from school unless and until they complied with the mask mandate.

126. NACS willfully violated Indiana Code section 20-34-3-2 by denying the Forbing Plaintiffs’ religious exemption.

COUNT FIVE
Violations of Indiana Quarantine Laws (IC 16-41-9-1.5 *et seq.*)

127. The Plaintiffs restate and reallege paragraphs 1-65.

128. NACS, relying on guidance from the ACDH and acting at the express or implied direction of the Governor and Department of Health, imposes mandatory quarantines, excluding students from school because they present one or more “COVID-like symptoms.”

129. A public health authority’s quarantine power is circumscribed by Indiana’s statutory protections for K-12 students. For purposes of IC 16-41-9, “public health authority” includes, among others, the State Department of Health Commissioner, her deputy, or the local health officer. Ind. Code § 16-18-2-298.5(a).

130. A local health officer may exclude from school a student “who has a serious communicable disease that (1) is transmissible through normal school contacts; and (2) who poses a substantial threat to the health and safety of the school community.” Ind. Code § 16-41-9-3(a).

131. A public health authority may petition the circuit or superior court for an order imposing isolation or quarantine on an individual who “**has been infected with**” or “**has been exposed to**” a serious communicable disease, and the individual is “**likely to cause the infection of an uninfected individual** if the individual is not restricted in the individual’s ability to come into contact with an uninfected individual.” 16-41-9-1.5(a) (emphasis added).

132. A public health official must prove these elements by clear and convincing evidence. Ind. Code § 16-41-9-1.5(d), (f), (m). Indiana’s legislature imposed an evidentiary burden on the government akin to an involuntary commitment proceeding. *See P.B. v. Evansville State Hospital*, 90 N.E.3d 1199, 1202 (Ind. Ct. App. 2017) (“Making clear and convincing evidence the burden of proof for civil commitment proceedings communicates the importance in our legal system of decisions ordering an involuntary commitment and reduces the risk of inappropriate commitments.”).

133. The petition for isolation or quarantine must be verified. Ind. Code § 16-41-9-1.5(a). It also must include a brief description of the facts supporting the request for isolation or quarantine, including “a description of any efforts the public health authority made to obtain the individual’s **voluntary compliance** with isolation or quarantine before filing the petition.” Ind. Code § 16-41-9-1.5(a) (emphasis added).

134. Generally, the government must provide an individual with notice and an opportunity to be heard, in person or by counsel, before a court enters an order. Ind. Code § 16-41-9-1.5(b).

135. Even where exigent circumstances exist and a public health official is required to obtain an emergency order, the order lasts only 72 hours, unless it is renewed after notice to the quarantined individual and opportunity to be heard. Ind. Code § 16-41-9-1.5(k). In such cases, the public health authority must use the “least restrictive means necessary.” Ind. Code § 16-41-9-1.5(k).

136. For over a year, the Plaintiffs have been subject to a procedural and administrative maze created by the Governor's Executive Orders, the Department of Health's non-binding recommendations, and the ACDH's verbal instructions to NACS, both in meetings between local superintendents and ACDH's Commissioner and additional guidance provided on a case-by-case basis. The NACS administration is effectively operating as the enforcement arm of ACDH.

137. NACS administrators, including Defendant Superintendent Himsel, are removing students from school based on presumed, not actual, COVID cases.

138. Indiana law allows for isolation or quarantine of individuals "infected with" COVID or "exposed to" a person infected with COVID. *See* Ind. Code. § 16-41-9-1.5(a).

139. Indiana law allows for isolation or quarantine if an infected individual is "likely to cause the infection of an uninfected individual." Ind. Code § 16-41-9-1.5(a).

140. On information and belief, approximately ninety-nine percent (99%) of the Close Contacts quarantined by NACS during the 2020-2021 school year never developed COVID.

141. Thus, the evidence will show that the vast majority of healthy K-12 students who are quarantined are unlikely to develop COVID symptoms or spread COVID to classmates, teachers, or staff.

142. NACS lacks legal authority to exclude students who are presumed to have COVID.

143. NACS lacks legal authority to exclude students allegedly exposed to a presumed COVID case.

144. NACS lacks legal authority to mandate quarantines without a court order. *Cf.* Ind. Code § 16-41-9-1.5(a) (requiring a public health official to identify any efforts made to obtain “voluntary compliance” before filing a petition with the court).

COUNT SIX
Due Course of Law – Quarantines and Contract Tracing

145. The Plaintiffs restate and reallege paragraphs 1-65.

146. The Due Course of Law Clause states that “every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law.” The civil remedies provided under Indiana’s Due Course of Law Clause are identical to those provided under the federal due process clause. *McIntosh*, 729 N.E.2d at 976. Due process protections bar state action that would deprive a person of life, liberty, or property without due process of law. *Matter of L.S.*, 82 N.E.3d 333 (Ind. Ct. App. 2017).

147. “[O]ur state constitution specifically recognizes the importance of knowledge and learning and so mandates a statewide system of free public education.” *Id.* (citing IND. CONST. art. 8, § 1. A student’s interest in pursuing an education is protected by the Due Course of Law Clause (art. 1, § 12). *Lake Central School Corp. v. Scartozzi*, 759 N.E.2d 1185, 1187 (Ind. Ct. App. 2001).

148. The Defendants’ quarantine policies substantially disrupted the Plaintiffs’ educational and extracurricular opportunities during the 2020-2021 school year.

149. The Defendants' quarantine policies continue to substantially disrupt the Plaintiffs' educational and extracurricular opportunities during the 2021-2022 school year.

150. On information and belief, approximately ninety-nine percent (99%) of the Close Contacts quarantined by NACS during the 2020-2021 school year never developed COVID.

151. On information and belief, approximately ninety-eight percent (98%) of the Close Contacts quarantined by a neighboring school district during the 2020-2021 school year never developed COVID.

152. "[D]ue course of law involves a fair proceeding in which the fundamental requirements of due process are notice and an opportunity for hearing appropriate to the nature of the case... By 'fair proceeding' we mean that the person adversely affected is afforded the opportunity to respond, explain, and defend." *Lake Central*, 759 N.E.2d at 1190 (citations omitted).

153. NACS quarantined five students (the Christman Plaintiffs) because one of the siblings had a slight fever.

154. On information and belief, NACS routinely excludes other students from school under similar circumstances.

155. The Christman Plaintiffs were forced to retain the services of an attorney to fight an unlawful quarantine that infringed on their fundamental right to attend school.

156. The quarantine and contact tracing procedures are vague and ambiguous to the extent they assume a COVID diagnosis based on one or more “COVID-like symptoms.”

157. According to the CDC, COVID symptoms include:

- Fever or chills
- Cough
- Shortness of breath or difficulty breathing
- Fatigue
- Muscle or body aches
- Headache
- New loss of taste or smell
- Sore throat
- Congestion or runny nose
- Nausea or vomiting
- Diarrhea

CDC, “Symptoms of COVID-19,” available at: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (accessed Sep. 7, 2021).

158. By comparison, according to the CDC, influenza symptoms include:

- fever* or feeling feverish/chills
- cough
- sore throat
- runny or stuffy nose
- muscle or body aches
- headaches
- fatigue (tiredness)
- some people may have vomiting and diarrhea, though this is more common in children than adults.

* It’s important to note that not everyone with flu will have a fever.

CDC, “Flu Symptoms & Complications,” available at: <https://www.cdc.gov/flu/symptoms/symptoms.htm> (accessed Sep. 7, 2021).

159. The government has provided no intelligible standard for its quarantine decisions.

160. The Defendants lack legal authority to quarantine and exclude students from school for 14 days based on pure speculation that they may have COVID.

161. The Defendants lack legal authority to quarantine and exclude students from school for 14 days because they are “Close Contacts” with a presumed, but not actual, COVID case.

162. Parents are equipped to monitor the students (their children), seek medical intervention when necessary, and determine whether the students may return to school.

163. Parents made healthcare decisions for their children before the COVID pandemic.

164. Parents have made and will continue to make healthcare decisions for their children during and after the COVID pandemic.

165. State-imposed, mandatory quarantines of healthy students are unlawful.

166. The challenged quarantine procedures and contact-tracing program lack any rational basis, are arbitrary, capricious, and vague, have no real or substantial relation to the objectives of the program or mandate, and violate the Plaintiffs’ fundamental rights.

167. The policies are unconstitutionally vague because they fail to provide clear notice as to who may or may not be subject to the forced quarantine.

168. The vague policies, in turn, invite arbitrary or inconsistent enforcement decisions.

169. The policies fail to provide fair notice of the conduct that is required or prescribed, and it presumes that K-12 students have COVID based on as little as one symptom, placing undue burden on the students to undergo medical treatment or testing, or provide proof of vaccination, to prove otherwise.

170. The challenged contact tracing program fails to provide adequate notice and an opportunity to be heard before imposing onerous and punitive restrictions on students' liberty in violation of the Due Course of Law Clause.

COUNT SEVEN
Vaccine Passport Law (IC 16-39-1-1 *et seq.*)

171. The Plaintiffs restate and reallege paragraphs 1-65.

172. On April 21, 2021, Indiana's legislature passed HB 1405, which included a ban on vaccine passports.

173. Codified under Indiana Code section 16-39-11-1 *et seq.* ("Vaccine Passport Ban"), state and local units are prohibited from requiring or issuing "immunization passports" (commonly referred to as "vaccine passports") that indicate an individual's COVID immunization status.

174. An "immunization passport," means any written, electronic, or printed information regarding an individual's COVID immunization status. Ind. Code §§ 16-39-11-2, -3.

175. Despite a clear legislative policy against COVID vaccine passports, *i.e.*, compelled COVID shots for K-12 students and others, the Department of Health has imposed and continues to impose onerous quarantine policies on K-12 students who, in consultation with their parents and medical providers, elect not to get a COVID shot. *See* Ex. E.

176. Any K-12 students who decline a COVID shot and are later deemed “Close Contacts” of an actual or presumed COVID case are automatically excluded from school unless they undergo compelled medical testing or evaluation, or “voluntarily” present proof of vaccination.

177. In other words, NACS and other schools are directed to restrict K-12 students from attending school unless they under undergo involuntary medical testing or treatment, or they provide proof of vaccination.

178. This policy exists regardless of whether K-12 students, in consultation with their parents and medical providers, exercise their absolute right to a religious exemption under Indiana law. *See* Compl., Count IV, ¶¶ 116-126, above.

179. NACS has expressly stated that it will not accept religious exemptions.

180. The Department of Health’s policy creates a two-tier system favoring “vaccinated students” over “unvaccinated students.”

181. The Department of Health’s policy is directly contrary to the letter and spirit of Indiana’s Vaccine Passport Ban.

182. The Department of Health's policy also disregards the vaccine requirements and exemptions which predate the Vaccine Passport Ban.

183. Indiana identifies several vaccinations that, subject to legal exemptions, are required for K-12 students at various stages of development:

- (1) diphtheria;
- (2) pertussis (whooping cough);
- (3) tetanus;
- (4) measles;
- (5) rubella;
- (6) poliomyelitis;
- (7) mumps;
- (8) varicella;
- (9) hepatitis A;
- (10) hepatitis B; and
- (11) meningitis.

Ind. Code § 20-34-4-2.

184. To date, Indiana's legislature has not mandated the COVID shot.

185. The Department of Health's policy is contrary to Indiana law because it imposes greater restrictions on K-12 students declining the COVID shot than Indiana's legislature imposes on K-12 students declining any other vaccines.

186. K-12 students have an absolute right to religious exemptions under Indiana Code § 20-34-3-2.

187. Indiana law has also provided for medical exemptions in those cases where immunizations are detrimental to a student's health. Ind. Code § 20-34-3-3.

188. The Department of Health may not unilaterally abrogate religious or medical exemptions, whether explicitly (by requiring the COVID shot) or implicitly (by

requiring involuntary medical testing or treatment on those declining the COVID shot).

189. The Department of Health cannot rely on the Governor's Executive Orders to implement a policy that violates the Vaccine Passport Ban.

190. The ACDH, NACS, and other Defendants cannot enforce a policy that violates the Vaccine Passport Ban.

191. The Plaintiffs object to the Department of Health's two-tier system that imposes greater restrictions on students who exercise their legal right to decline the COVID shot.

COUNT EIGHT
Illegal Search and Seizure

192. The Plaintiffs restate and reallege paragraphs 1-65.

193. Defendants' massive contact tracing program infringes on the Plaintiffs' rights under Article 1, section 11 of the Indiana Constitution ("Section 11").

194. Section 11 offers broader protection than its federal counterpart. *See Cox v. State*, 160 N.E.3d 557, 563 (Ind. Ct. App. 2020) (discussing protections under Section 11 and the Fourth Amendment of the U.S. Constitution).

195. K-12 students have fundamental privacy interests.

196. K-12 students do not forfeit privacy interests by attending a public school. *Nw. School Corp. v. Linke*, 763 N.E.2d 972, 980 (Ind. 2002).

197. Current NACS policy, which relies on guidance from ACDH and the Department of Health, pursuant to the Governor's Executive Orders, presumes that

students have COVID if they present one or more symptoms that may or may not be attributable to COVID.

198. The NACS policy places these students (and siblings, if any) in a 14-day quarantine unless they provide a negative COVID test or alternate diagnosis, after submitting to an examination from a medical provider, or they provide proof of vaccination.

199. Thus, the current NACS policy presumes K-12 students have COVID until proven otherwise, whether based on submitting to a COVID test or disclosing other confidential health information.

200. The current contact tracing programs intrude on the Plaintiffs' legitimate expectation of privacy.

COUNT NINE
Equal Privileges and Immunities

201. The Plaintiffs restate and reallege paragraphs 1-65.

202. The Indiana Constitution provides that: "The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens." IND. CONST. art. 1, § 23.

203. Early in the pandemic, the Governor imposed strict measures related to masking, social distancing, occupancy restrictions, and limitations on non-essential business operations.

204. Although the Governor has eased restrictions on the general public, he has consistently imposed greater restrictions on schools.

205. The Defendants continue to require masking, mandatory quarantines of healthy individuals, and invasive contact-tracing in K-12 institutions.

206. As these restrictions are in practice limited to K-12 institutions, they disproportionately impact minors.

207. Equal protection generally requires impartial governing; the government cannot draw arbitrary distinctions between classes.

208. Governor Holcomb's order discriminates against K-12 students by imposing the most burdensome restrictions on the population least vulnerable to adverse COVID outcomes.

COUNT TEN
42 U.S.C. § 1983 Claim
(Defendants Dr. Box and Dr. Sutter, in their official capacities)

209. The Plaintiffs restate and reallege paragraphs 1-65.

210. Section 1983 "imposes liability on anyone who, under color of state law, deprives a person of any rights, privileges, or immunities secured by the Constitutions and laws" of the United States. 42 U.S.C. § 1983.

211. NACS imposed a 14-day quarantine on Plaintiff H.C. because she had a slight fever.

212. NACS reported Plaintiff H.C.'s information to ACDH without reasonable cause to believe Plaintiff H.C. had COVID.

213. NACS, having determined that Plaintiff H.C. was a Presumed COVID Case, imposed a 14-day quarantine on her siblings.

214. NACS lacked reasonable cause to quarantine the Christman Plaintiffs.

215. Superintendent Himsel's decision, allegedly at the direction of ACDH, to quarantine the entire Christman family was unlawful and unconstitutional.

216. The contact tracing and quarantine policies imposed by the Department of Health and ACDH are overly broad, vague, and impose undue restrictions on K-12 students' fundamental rights.

217. The contact tracing and quarantine procedures violate the Fourth Amendment of the U.S. Constitution's prohibition against unreasonable searches and seizures.

218. The contact tracing and quarantine procedures infringe on K-12 students' rights to peaceably assemble.

219. Under the current policies, without legally sufficient showing by the government, healthy K-12 students are prohibited from attending school unless they incur the expense of a medical visit and/or submit to medical testing.

220. The Plaintiffs request that the Court enjoin Dr. Box, in her capacity as Health Commissioner for the Department of Health, from continuing to implement illegal and unconstitutional contact tracing and quarantine policies.

221. The Plaintiffs request that the Court enjoin Dr. Sutter, in his capacity as Health Commissioner of ACDH, from enforcing, officially or unofficially, the Department of Health's unlawful policies.

222. The Plaintiffs request that the Court enjoin Superintendent Himsel, in his official capacity, from enforcing illegal and unconstitutional contact tracing and quarantine policies.

223. The Plaintiffs are entitled to relief under 42 U.S.C. § 1983.

224. The Plaintiffs are entitled to recover attorney's fees under 42 U.S.C. § 1988.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiffs request the following relief:

225. A declaration that the Governor and the Defendants, acting under authority granted by the Executive Orders, have exceeded authority delegated by the legislature under the Emergency Management and Disaster Law; or alternatively, a declaration that the Emergency Management and Disaster Law is an unconstitutional delegation of legislative authority to the Governor in violation of Article 3, Section 1 of the Indiana Constitution;

226. A declaration that the current mask, contact tracing, and quarantine policies implemented by the Defendants violate Indiana law and the Indiana Constitution;

227. A declaration that the Department of Health's two-tier system exempting students from quarantines if they present proof of vaccination violates Indiana's Vaccine Passport Ban;

228. A declaration that NACS and Assistant Principal Tanya Pickett violated Indiana law by denying the Forbing Plaintiffs' mask exemption;

229. A declaration that NACS and Superintendent Himself violated Indiana's quarantine laws by excluding the Christman Plaintiffs from school without reasonable cause;

230. A declaration that the current contact tracing and quarantine policies implemented by Dr. Box and Dr. Sutter violate the United States Constitution;

231. An order enjoining the Defendants from further violations of Indiana law, the Indiana Constitution, and the United States Constitution;

232. An award of costs and attorneys' fees to the Plaintiffs pursuant to Count Ten under 42 U.S.C. § 1983 and § 1988; and

233. All other just and proper relief.

Dated: September 13, 2021

Respectfully submitted,

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