

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY

GEORGE M. BORELLO, NEW YORK SENATOR,
JOHN SYRACUSE, 14TH DISTRICT LEGISLATOR,
NY PARENTS TO UNMASK CHILDREN INC.,
ST. JOHN EV. LUTHERAN CHURCH & SCHOOL,
NICOLE BLENKER as p/n/g of O.B.,
CHARISSE CALLAHAN as p/n/g of B.C.,
A.C., M.C. and Q.C.,
CHRISTIN FISHER as p/n/g of B.F. and E.F.,
ANGELA SCHUSTER as p/n/g of S.S., and
KELLY SKELTON as p/n/g of W.S.,

VERIFIED PETITION

Index No. _____

Petitioners,

For Judgment Pursuant to Article 78 of the CPLR,

v.

NEW YORK STATE DEPARTMENT OF HEALTH,

HOWARD A. ZUCKER, in his official capacity
as the Commissioner of Health for the State of New York, and

KATHLEEN COURTNEY HOCHUL, in her official capacity
as the Governor of the State of New York.

Respondents.

SPACE INTENTIONALLY LEFT BLANK

INTRODUCTION

The founders of this country, as expressed in the United States Constitution, which was ratified in 1788, and then more recently at the State of New York Constitutional Convention held in Albany, New York in 1938, set out the basic principles of our democratic government that have withstood the test of time.

While there have been occasional deviations from those sacred principles over the past 233 years (e.g. *Dredd Scott* determination that African Americans could not be citizens, the *Korematsu* holding justifying the Japanese internment camps during World War II, and forced sterilization in *Buck v. Bell*, to name a few), each branch of government, the executive, legislative and judiciary, have performed their respective functions as they are Constitutionally required to do.

Unfortunately, and incredibly, with the appearance of the COVID-19 virus in late 2019 and early 2020, the basic principle of separation of powers has seemingly vanished. Throughout this country, and indeed throughout the world, the legislative and judiciary branches have stepped back and allowed the executive branch at all levels of government to assume sole control of both executive and legislative governmental functions when it concerns the coronavirus and the COVID-19 pandemic, and has unconstitutionally taken fundamental decision-making away from the individual. People have been deprived of the right to make decisions about their own health, and that of their children; they can no longer use their judgment and apply the advice of their personal physicians respecting their health, and that of their children. The government has seized control of such Constitutionally guaranteed rights.

Trying to surmise how and why this has occurred includes consideration of the following issues: (1) the exaggerated fear of death fueled by politicians and propagandized by irresponsible media; (2) the complexity of the science and medicine involved which many of our citizens,

legislative bodies, and even the judiciary are not taking the time necessary to properly understand; and (3) the irrational and elusive goal of completely eliminating the virus at any cost, including economic devastation, physical and psychological scarring to millions of our innocent populace, and the loss of the personal freedoms that our forefathers and their successors gave their lives to preserve and protect. It is as if the State of New York has not experienced and survived over thirty (30) pathogenic outbreaks of such diseases as smallpox, cholera, typhoid and others with far higher mortality rates than COVID-19, educating the public, but leaving it to people to decide for themselves what measures to take, and allowing commerce to continue unfettered.

The Petitioners in this action are urging this Court for the reasons set out below, to set aside the New York State Department of Health regulations requiring the use of facemasks for school children, teachers, staff, and visitors, as set out in 10 NYCRR § 2.60, who are age two (2) and older, regardless of vaccination status, starting with Pre-Kindergarten through the completion of Twelfth Grade.

As set forth with more particularity below, the reasons for this action include, but are not limited to:

- 1) There is no medical emergency that justifies the use of the Department of Health's regulations as it applies to Pre-Kindergarten through Twelfth Grade;
- 2) The remedy requiring the use of facemasks for all students, teachers, staff and visitors aged two (2) and up will not accomplish the stated goal;
- 3) The Respondents failed to make the requisite factual findings to invoke the emergency rulemaking procedure;
- 4) The Respondents failed to comply with the State Administrative Procedure Act ("SAPA") § 202; and

- 5) The New York State Department of Health Commissioner's directive to nearly 3 million students, tens of thousands of teachers, staff and visitors is an invalid exercise of his authority and requires legislative action by the full NYS Senate and Assembly.

PETITION

Petitioners, as and for their Verified Petition against Respondents NEW YORK STATE DEPARTMENT OF HEALTH ("Respondent DOH"), HOWARD A. ZUCKER, in his official capacity as the Commissioner of Health for the State of New York ("Respondent Zucker") and KATHLEEN COURTNEY HOCHUL, in her official capacity as the Governor of the State of New York ("Respondent Hochul") (collectively, "Respondents"), by and through their undersigned counsel, hereby respectfully allege as follows:

NATURE OF ACTION

1. Petitioners commence this special proceeding on behalf of themselves and their minor children, under and pursuant to Article 78 of the New York Civil Practice Law and Rules ("CPLR").
2. Petitioners' children, who are students duly enrolled in various schools throughout the State of New York, are compelled to comply with Respondent DOH's face-covering regulation, Respondent Zucker's directive implementing the same and are subject to civil penalties should Petitioners fail to comply.
3. Petitioners seek a declaratory judgment vacating, voiding, and annulling the emergency regulation set forth at 10 NYCRR § 2.60, and an injunction prohibiting Respondents from enforcing the same.

4. In addition, Petitioners seek a declaratory judgment that “Commissioner’s Determination on Indoor Facemasking Pursuant to 10 NYCRR § 2.60” (the “Directive”) is invalid, and seek an injunction prohibiting Respondents from enforcing the same.

5. As set forth below, the emergency regulation empowering Respondent Zucker to mandate the continued use of face coverings in New York schools and imposing civil penalties for failure to comply, 10 NYCRR § 2.60, was adopted as an emergency measure, despite the Respondent DOH’s failure to comply with lawful procedure for emergency adoption of regulations pursuant to SAPA.

6. Further, this measure is arbitrary and capricious given the absence of any emergency justifying the use of emergency adoption procedures rather than the standard rulemaking law and its commensurate notice and comment and open debate requirements.

7. Respondents’ actions are affecting some TWO MILLION NINE HUNDRED THOUSAND (2,900,000) students who are currently enrolled at pre-kindergarten to twelfth grade schools throughout the State of New York and is of genuine urgency.

8. The minor Petitioners, all of whom are students at pre-kindergarten to twelfth grade schools throughout the State of New York, are required to comply with the emergency regulation requiring mask usage at school, regardless of vaccination status.

9. Most of the minor Petitioners are under twelve (12) years of age and are therefore unable to be vaccinated and thus, must comply with the mask requirement whenever in a public place and/or setting, including schools.

10. Notably, this emergency regulation, on its face, imposes more onerous requirements for mask wearing than existed under Respondent DOH’s Interim Guidance *during* the declared state of emergency.

11. Moreover, as explained in further detail herein, Petitioners are not at risk of dying from the coronavirus.

12. The Court should, respectfully, vacate, void, and annul this regulation and declare Respondent Zucker's implementation of the same, invalid, as it is in excess of the Respondent DOH's jurisdiction, is in violation of lawful procedure, and is arbitrary and capricious under Article 78 of the CPLR.

PARTIES

13. At all times relevant hereto, Petitioner NICOLE BLENKER was and is a resident of the County of Erie, State of New York.

14. Petitioner NICOLE BLENKER is a parent and natural guardian of O.B.

15. At all times relevant hereto, Petitioner O.B. was and is a minor child and resident of the County of Erie, State of New York.

16. At all times relevant hereto, Petitioner CHARISSE CALLAHAN was and is a resident of the County of Erie, State of New York.

17. Petitioner CHARISSE CALLAHAN is a parent and natural guardian of B.C., A.C., M.C. and Q.C.

18. At all times relevant hereto, Petitioners B.C., A.C., M.C. and Q.C. were and are minor children and residents of the County of Erie, State of New York.

19. At all times relevant hereto, Petitioner CHRISTIN FISHER was and is a resident of the County of Erie, State of New York.

20. Petitioner CHRISTIN MARIE FISHER is a parent and natural guardian of B.F. and E.F.

21. At all times relevant hereto, Petitioners B.F. and E.F. were and are minor children and residents of the County of Erie, State of New York.

22. At all times relevant hereto, Petitioner ANGELA SCHUSTER was and is a resident of the County of Erie, State of New York.

23. Petitioner ANGELA SCHUSTER is the parent and natural guardian of S.S.

24. At all times relevant hereto, Petitioner S.S. was and is a minor child and resident of the County of Erie, State of New York.

25. At all times relevant hereto, Petitioner KELLY SKELTON was and is a resident of the County of Erie, State of New York.

26. Petitioner KELLY SKELTON is a parent and natural guardian of W.S.

27. At all times relevant hereto, Petitioner W.S. was and is a minor child and resident of the County of Erie, State of New York.

28. At all times relevant hereto, Petitioner ST. JOHN EV. LUTHERAN CHURCH & SCHOOL was and is a not-for-profit corporation with a principal place of business located at 6950 Ward Road, North Tonawanda, New York 14120, whereat it operates a pre-kindergarten through eighth-grade school.

29. At all times relevant hereto, Petitioner NY PARENTS TO UNMASK CHILDREN INC., was and is a not-for-profit corporation with an office located in County of Erie, New York.

30. At all times relevant hereto, Petitioner GEORGE N. BORELLO, NEW YORK SENATOR was and is a senator in the 57th Senate District.

31. At all times relevant hereto, Petitioner JOHN SYRACUSE, 14th DISTRICT LEGISLATOR was and is the Vice Chairman of the Legislature in Niagara County.

32. At all times relevant hereto, Respondent NEW YORK STATE DEPARTMENT OF HEALTH was and is an agency of the New York State Government with a principal place of business located at Corning Tower, Empire State Plaza, Albany, New York 12237.

33. At all times relevant hereto, Respondent HOWARD A. ZUCKER, in his official capacity as the Commissioner of Health for the State of New York, was and is the Commissioner of Health for the State of New York.

34. At all times relevant hereto, Respondent KATHLEEN COURTNEY HOCHUL, in her official capacity as the Governor of the State of New York, was and is the Governor of New York State.

JURISDICTION AND VENUE

35. This Court has jurisdiction over this special proceeding under and pursuant to CPLR § 7804, and the common law of the State of New York.

36. Albany County is a proper venue for this proceeding under CPLR §§ 7804 (b) and 506 (b) because it is a county within the judicial district where Respondents made the determination complained of or refused to perform the duty specifically enjoined upon them by law, or where the proceedings were brought or taken in the course of which the matter sought to be restrained originated, or where the material events otherwise took place, or where the principal offices of the Respondents are located.

37. Petitioners were not, and are not required to serve a Notice of Claim on Respondents prior to the commencement of this special proceeding, as Petitioners seek only

equitable/injunctive relief, and Respondents need not conduct any investigation of Petitioners' claims set forth below.

BACKGROUND

Absence of State Disaster Emergency

38. The State Disaster Emergency, with respect to the COVID-19 pandemic, was declared on March 7, 2020 by former Governor of New York State, Andrew Mark Cuomo ("Governor Cuomo"), and expired over a year later, on June 24, 2021.

39. Former Governor Cuomo's basis for permitting the State Disaster Emergency to expire was "New York's dramatic progress against COVID-19, with the success in vaccination rates, and declining hospitalization and positivity statewide".¹

40. As stated by former Governor Cuomo in his press release announcing the expiration of the State Disaster Emergency:

Since March of 2020, a variety of actions had been taken by executive order to assist in the rapid response to the pandemic by state agencies, local governments, hospitals, and businesses by both temporarily suspending or modifying laws as well as utilizing temporary directives. Hospitals were able to add space and staffing, meetings were authorized to occur virtually, and various deadlines were extended to accommodate a changed landscape

[...]

New York went from one of the worst infection rates to the lowest infection rate in the country, and it was all because of the efforts of New Yorkers who were smart, united and did what they needed to do throughout this entire pandemic

[...]

Now we're starting to write a new chapter for a post-COVID New York--the state disaster emergency is ending and we can focus on reimaging, rebuilding and renewing our state. This doesn't mean COVID is gone, we still have to get more

¹ See Governor Cuomo Announces New York Ending COVID-19 State Disaster Emergency on June 24, Press Release, <https://www.governor.ny.gov/news/governor-cuomo-announces-new-york-ending-covid-19-state-disaster-emergency-june-24> (last read, September 14, 2021)

New Yorkers vaccinated, but we are getting back on track and starting to live life once again.

41. Governor Cuomo's press release indicated that, despite the expiration of the State Disaster Emergency, the Centers for Disease Control and Prevention's ("CDC") federal masking guidance would remain in effect, including masks for unvaccinated individuals, all riders on public transit, and in certain settings, such as health care, nursing homes, correctional facilities, and homeless shelters. In particular, Governor Cuomo's press release was silent on masking guidelines for children in schools.

42. On August 24, 2021, Governor Cuomo resigned from his role as the Governor of the State of New York and Kathleen C. Hochul assumed the position of Governor of the State of New York.

43. On August 24, 2021, Respondent Hochul issued a press release, wherein she directed Respondent DOH to "[i]nstitute a universal mask requirement in all schools, public and private, as determined necessary at the discretion of the Commissioner".²

44. To date, Respondent Hochul has not issued any Executive Orders declaring a State Disaster Emergency pertaining to COVID-19.

Petitioners' previous challenge of 10 NYCRR §§ 66-3 and § 2.60

45. Because the Federal CDC guidance is not binding on the State of New York, and the State Disaster Emergency has expired, for such guidance to remain in effect it would need to be lawfully enacted as a statute pursuant to the procedures set forth in the Constitution of the State

² See On First Day in Office, Governor Hochul Announces Comprehensive Plan to Help Ensure a Safe, Productive Return to Schools This Fall, Press Release, https://www.governor.ny.gov/news/first-day-office-governor-hochul-announces-comprehensive-plan-help-ensure-safe-productive?utm_content=universal-mask-mandate-for-all-students-staff-ny-schools&utm_source=secretary&utm_medium=post&utm_term=cta2 (last read, September 14, 2021)

of New York, or perhaps lawfully adopted as a regulation pursuant to the State Administrative Procedure Act.

46. Given the necessity of statutory or regulatory authority for such social distancing and mask guidance, on June 23, 2021, Respondent DOH amended its emergency regulations regarding face coverings, which continues to apply to individuals such as Petitioners' minor children and students throughout the State of New York.

47. As set forth in 10 NYCRR § 66-3.1 (a), effective as of June 23, 2021:

Any person who is over age two and able to medically tolerate a face-covering shall be required to cover their nose and mouth with a mask or face-covering when in a public place and unable to maintain, or when not maintaining, social distance, unless such person is fully vaccinated, meaning two or more weeks have elapsed since such person received the final dose of any COVID-19 vaccine approved by the United States Food and Drug Administration (FDA) or authorized by the FDA for emergency use; provided the person is not present in a pre-kindergarten to twelfth grade school, public transit, homeless shelter, correctional facility, nursing home, health care setting, or other setting where mask use is otherwise required by federal or state law or regulation.

48. As set forth in 10 NYCRR § 66-3.2, effective as of June 23, 2021, individuals and entities are subject to penalties for violations of § 66-3.1:

A violation of any provision of this Subpart is subject to all civil and criminal penalties as provided for by law. Individuals or entities that violate this Subpart are subject to a maximum fine of \$1,000 for each violation. For purposes of civil penalties, each day that an entity operates in a manner inconsistent with the Subpart shall constitute a separate violation under this Subpart.

49. 10 NYCRR § 2.60, effective as of June 23, 2021, provides for enforcement of these regulations:

For purposes of civil enforcement, the provisions of Subpart 66-3 of this Title are incorporate herein, and a violation of the provisions of Subpart 66-3 shall be deemed a violation of this Chapter. All local health officers shall take such steps as may be necessary to enforce the provisions of Subpart 66-3 in accordance with the Public Health Law and this Chapter.

50. In an Article 78 petition filed on June 29, 2021, Petitioners challenged the validity of the emergency regulations, 10 NYCRR §§ 66-3 and 2.60 (*see Blenker et al. v. State of New York et al.*, *Index No. 905504-21*).

51. Respondents in *Index No. 905504-21* took the position that the emergency regulations at issue were “under review” and likely to be amended. Accordingly, the briefing schedule for *Index No. 905504-21* was adjourned on multiple occasions.

52. On August 27, 2021, by way of Respondent DOH filing a Notice of Emergency Adoption (“Notice”) with the Secretary of State, 10 NYCRR §§ 66-3 was repealed and 2.60 was repealed and replaced in the form of a new 10 NYCRR § 2.60.

53. Due to the Respondents’ adaptation of a new emergency regulation in the form of 10 NYCRR § 2.60, the action in *Index No. 905504-21* was discontinued as moot, without prejudice.

10 NYCRR § 2.60 and Commissioner Zucker’s Determination on Indoor Masking

54. As set forth in the amended 10 NYCRR § 2.60(a), effective August 27, 2021:

- (a) As determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread, any person who is over age two and able to medically tolerate a face-covering may be required to cover their nose and mouth with a mask or face-covering when: (1) in a public place and unable to maintain, or when not maintaining, social distance; or (2) in certain settings as determined by the Commissioner, which may include schools, public transit, homeless shelters, correctional facilities, nursing homes, and health care settings, and which may distinguish between individuals who are vaccinated against COVID-19 and those that are not vaccinated. The Commissioner shall issue findings regarding the necessity of face-covering requirements at the time such requirements are announced.

(emphasis added)

A true and accurate copy of said Notice of Emergency Adoption is annexed hereto as **EXHIBIT A.**

55. On August 27, 2021, pursuant to 10 NYCRR § 2.60(a), Respondent Zucker issued his determination on indoor masking, stating in relevant part:

“After careful review and consideration of CDC recommendations for face coverings/masks in school settings, I hereby adopt such recommendations, imposing them as requirements, where applicable, until this determination is modified or rescinded. Accordingly, universal masking of teachers, staff, students, and visitors to P-12 schools over age two and able to medically tolerate a face covering/mask and regardless of vaccination status, is required until this determination is modified or rescinded. Such requirement is subject to applicable CDC-recommended exceptions.”

A true and accurate copy of said Directive is annexed as **EXHIBIT B.**

56. Currently, CDC recommends indoor face-masking for all children aged two (2) and older.³

Respondent Department of Health Enacted 10 NYCRR § 2.60 in Violation of Lawful Procedure and in Excess of its Jurisdiction

57. There is a clear public interest in governmental entities complying with lawful procedure for enacting statutes, laws, rules, and regulations, particularly when they impose penalties on individuals and entities for non-compliance.

58. In the State of New York, the standard agency rulemaking procedure provides for notice and comment of proposed regulations, which invites public participation, and requires governmental accountability and transparency (*see generally* State Administrative Procedure Act §§ 201-207).

³ *see* Guidance for COVID-19 Prevention in K-12 Schools, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html> (last read, September 14, 2021)

59. Recognizing that exigent circumstances sometimes require expedited rulemaking, the New York State Legislature enacted State Administrative Procedure Act § 202(6), which provides a mechanism for emergency adoption of regulations, but nevertheless has strict procedural requirements to prevent abuse of the procedure, i.e., evading the public participation that is otherwise required in rulemaking.

60. Pursuant to State Administrative Procedure Act § 202(6)(a), “[i]f an agency finds that the immediate adoption of a rule is necessary for the preservation of the public health, safety or general welfare and that compliance with the [non-emergency rulemaking] requirements of subdivision one of this section would be contrary to the public interest, the agency may dispense with all or part of such requirements and adopt the rule on an emergency basis.”

61. It is pursuant to this emergency rulemaking procedure that Respondent Department of Health attempted to enact the emergency masking and social distancing regulations at issue in this proceeding, which are codified at 10 NYCRR § 2.60.

62. Here, however, Respondent Department of Health failed to comply with the lawful procedures for adoption of emergency regulations as set forth in State Administrative Procedure Act § 202(6)(d).

63. On August 26, 2021, Respondent DOH filed with the New York State Secretary of State a Notice of Emergency Adoption regarding “Prevention of COVID-19 Transmission.”

64. To invoke the emergency adoption procedures of State Administrative Procedure Act § 202(6), an agency must first set forth a finding of emergency. However, in violation of State Administrative Procedure Act § 202(6)(d)(iv), the Notice of Emergency Adoption fails to contain the findings required by State Administrative Procedure Act § 202(6)(a), to wit:

[t]hat the immediate adoption of a rule is necessary for the preservation of the public health, safety or general welfare and that compliance with the

requirements of subdivision one of this section would be contrary to the public interest.

65. Respondent DOH's Notice of Emergency Adoption includes a section entitled "Emergency Justification," which is devoid of any explicit statements regarding these factors, much less statements that could be considered to fully describe the findings with specificity.

66. The final sentence of the Emergency Justification, ostensibly intended as work-around of State Administrative Procedure Act, is insufficient by its own text. That sentence states: "Accordingly, pursuant to the State Administrative Procedure Act Section 202(6), a delay in the issuance of these emergency regulations would be contrary to public interest".

67. State Administrative Procedure Act § 202(6)(d)(iv) requires more than conclusory findings. Rather, it requires "[a] statement fully describing the specific reasons for such findings and the facts and circumstances on which such findings are based," (emphasis added) including, "at a minimum":

- a description of the nature and, if applicable, location of the public health, safety or general welfare need requiring adoption of the rule on an emergency basis;
- a description of the cause, consequences, and expected duration of such need;
- an explanation of why compliance with the requirements of subdivision one of this section would be contrary to the public interest; and
- an explanation of why the current circumstance necessitates that the public and interested parties be given less than the minimum period for notice and comment provided for in subdivision one of this section.

68. Even generally, nothing within the Emergency Justification could amount to a statement fully describing the specific elements set forth in § 202 (6) (d) (iv). Instead, the Emergency Justification amounts to a boilerplate statement that includes a myriad of inaccuracies regarding the present situation in New York.

69. For example, the Emergency Justification states that “New York State first identified cases on March 1, 2020 and has since become the national epicenter of the outbreak.” New York State has not been the national epicenter of the COVID-19 outbreak for more than a year.

70. The Emergency Justification further relies upon former Governor Cuomo’s Executive Order declaring a State Disaster Emergency, which expired June 24, 2021, and can no longer be sufficient, in and of itself, to provide emergency justification (assuming it ever could).

71. The Emergency Justification does not address most of the regulations at issue, including the continued necessity of masking in schools, public transit, homeless shelters, correctional facilities, etc.

72. The Emergency Justification simply states:

“With the emergence of the Delta variant, a strain twice as transmissible as the SARS-CoV-2 strain, this does not mean that COVID-19 is gone. Cases have risen 10-fold since early July, with the Delta variant accounting for 95% of recent sequenced positives in New York State”

73. Even if, as Respondents assert, the emergence of the Delta variant warrants an emergency regulation, such emergency regulation must comply with State Administrative Procedure Act § 202(6)(d)(iv). Respondent DOH’s two (2) conclusory sentences regarding the Delta variant are not specific reasons that would satisfy the issuance of an emergency regulation impacting millions of children in the State of New York.

74. This Petition does not challenge the existence of the COVID-19 pandemic, nor the impact that it has had on the lives of citizens of the State of New York. It also does not challenge that, following Governor Cuomo’s declaration of emergency in March of 2020, emergency action was, at times, necessary to safeguard the health and safety of the citizens of this State.

75. However, there must be an end point to that emergency justification, and the former Governor Cuomo's declaration of the end to the State Disaster Emergency appears to be a logical end point.

76. Respondent has resisted at every turn the production of scientific testing, contact tracing data, and the bases for the implementation of the "emergency measures" throughout the pandemic.

77. Respondent DOH's conclusory statement on the Delta COVID-19 variant is not enough to justify an emergency regulation. To wit, Respondent Hochul has issued no Executive Orders in relation to the Delta variant.

78. If Respondent Department of Health believed such an emergency still existed or would still exist following the end of the declared State Disaster Emergency, it could and should have complied with the specific requirements of the State Administrative Procedure Act by stating its reasons with the requisite particularity. Its failure to do so is fatal to the attempted adoption of 10 NYCRR § 2.60.

79. In addition to its failure to comply with State Administrative Procedure Act § 202(6)(d)(iv), the Notice of Emergency Adoption fails to comply with:

- a. State Administrative Procedure Act § 202 (6) (d) (ii), which requires the notice to "state whether the notice shall also constitute a notice of proposed rule making for the purposes of subdivision one of this section, and if so, give the date, time and place of any public hearing or hearings which are scheduled",
- b. State Administrative Procedure Act § 202 (6) (d) (iii), which requires the notice to "state whether the notice shall also constitute a notice of revised rule making for the purposes of subdivision four-a of this section, and if so, include all information required by such subdivision," and
- c. State Administrative Procedure Act § 202 (6) (d) (vi), which requires the notice to contain "the specific date the emergency rule will expire."

80. Simply stated, statutory law of the State of New York requires, even in an emergency, agencies to comply with lawful procedure when adopting regulations.

**Respondent Zucker Lacks the Authority to Issue
a Facemask Mandate for Children in School**

81. Furthermore, by way of enacting 10 NYCRR § 2.60, the Department of Health has unlawfully given one man – Respondent Zucker – the broad power to issue a face mask mandate. To wit, upon his sole discretion, Respondent Zucker, a member of an administrative agency, has issued a law requiring millions of NYS schoolchildren to don facemasks all day while attending school.

82. Respondent DOH lacks the authority to confer legislative power to a single person.

83. Respondent DOH cites Public Health Law (“PHL”) § 206 as the authority by way of which the Department of Health can delegate its power to its commissioner.

84. Respondent DOH’s reliance on PHL § 206 is misplaced. While PHL § 206 authorizes Respondent Department of Health to “[d]eal with any matter for the preservation and improvement of the public health,” the statute does not authorize Respondent DOH to convey this power to a single member of its agency.

85. Moreover, PHL § 206 cannot be construed to encompass the policy-making activity at issue here without running afoul of the Constitutional separation of powers doctrine.

86. To date, there has been no law passed by the legislature that requires children to wear facemasks all day while attending school.

87. Respondent DOH has, as an administrative agency, the authority to fill in the gaps of broad legislation describing the overall policies to be implemented. It does not, however, have the authority to write legislation on a clean slate, creating its own comprehensive set of rules

without the benefit of legislative guidance. *See Matter of Vapor Tech. Assn. v. Cuomo*, 66 Misc 3d 800, 807 [Sup. Ct., Albany County 2020].

88. The emergency regulation at issue, 10 NYCRR § 2.60, does not fill in the gaps left by broad legislation but rather, is an attempt to give a single individual, Respondent Zucker, the deference and arbitrary power to set a state-wide policy, mandating children to wear facemasks in schools.

89. The power to issue a law impacting millions of children is reserved, Constitutionally, only to the legislature and not to an administrative agency of the executive branch.⁴

90. Accordingly, Respondent Zucker's Directive, the "Determination on Indoor Facemasking Pursuant to 10 NYCRR § 2.60" is invalid because Respondent Zucker lacks the legal authority to issue a Directive of this nature.

Respondent Zucker's Determination is Meritless

91. While Respondent Zucker's Directive is invalid as a matter of law, the Directive is also devoid of any factual merit and/or scientific support.

92. Respondent Zucker's Directive relies upon three (3) studies that purportedly show that facemask wear correlates to a substantial decrease in COVID-19 transmissions:

- a. "Mask use during an outbreak aboard the USS Theodore Roosevelt, a close, congregate environment, was associated with 70% decrease in risk of infection.
- b. A study from Thailand documented that those who reported mask use during high-risk exposures experienced a more than 70% reduced risk of acquiring the disease compared to those who did not report such mask use during high-risk exposures.

⁴ By this statement, Petitioners do not waive the assertion of Constitutional rights reserved to the People conferred by the Ninth and Tenth Amendments to the United States Constitution, as opposed to the State.

- c. A study in China demonstrated that mask use by both the index patient and family contacts before symptom onset reduced secondary transmission within households by 79%.” *See Exhibit B.*

93. As explained in the Expert Affirmation of Michael Kirsch, M.D., PhD, attached hereto as **Exhibit C**, and the Expert Affirmation of Clayton J. Baker, M.D., C.M., attached hereto as **Exhibit D**, the studies cited by Respondent Zucker are deeply flawed and cannot justify the imposition of a facemask mandate for children in school.

94. In his Expert Affirmation, Dr. Baker explains that the three (3) studies cited by Respondent Zucker are of low quality, because they are retrospective, subject to strong bias and encompass small sample sizes. *See Exhibit D pp 4-5.*

95. In turn, Dr. Kirsh summarized the assertions made in the USS Theodore Roosevelt study: “[m]embers of the medical department, who wore personal protective equipment when evaluating crew members had a somewhat lower attack rate of 16.7% (8 cases among 48 personnel) than the overall crew, despite being at highest risk as a result of exposure in a small space” *See Exhibit C p.5.*

96. Dr. Kirsch also explains that the findings of the USS Theodore Roosevelt Study are inapplicable to children because the study was conducted on *adults* living in close quarters. Dr. Kirsch states: “[t]he cohort studied were, as described, military aged adults housed in close quarters. Rapid spread of the virus in this circumstance is not unexpected. In fact, the conclusion of the paper states that these conditions are more confined and that typically enlisted crew members sleep in open bays packed with dozens of tightly spaced bunks, and work in densely populated areas. These conditions probably facilitated the transmission.” *id.* p.4.

97. Dr. Kirsch concluded his analysis of the USS Theodore Roosevelt Study by stating, “[u]nique conditions in which this outbreak occurred and spread, this study, in no way negates the

evidence seen around the world among school age children of their near zero risk of spread or severe infection". *id.* p.5 (emphasis added).

98. Dr. Kirsch also explained the shortcomings of the Thailand study, relied upon by Respondent Zucker. According to Dr. Kirsch, the study was procedurally flawed, in part because it "[o]nly looked at false positives versus negatives [] the study does not independently separate the proposed benefit of mask wearing from the well-known benefit of hand washing" *id.* p.7.

99. Lastly, Dr. Kirsch commented on the flaws of the China study cited by Respondent Zucker. Dr. Kirsch explained that the China study looked at intra-family transmission of the virus, which is not applicable to the school environments at issue in the instant case and therefore, cannot be used to justify all-day mask wearing by schoolchildren. *id.* p.8.

100. Accordingly, Respondent Zucker lacks the power to issue a state-wide mandate and moreover, Respondent Zucker's facemask mandate is devoid of factual merit and/or scientific support.

**The Emergency Regulation and Commissioner Zucker's Directive Are
Unnecessary for the Protection of the Public Health and Welfare**

101. Voices across the medical and political spectrums have challenged the continued necessity of mask mandates, particularly given the potential harm on the physical and mental health of children caused by the continued use of masks, when compared to the limited potential benefit of continuing mask use.

102. On June 4, 2021, Respondent Zucker sent a letter to CDC Director Rochelle P. Walensky, M.D., MPH, indicating New York State's intent to modify its guidance to no longer

mandate masks in schools.⁵ Respondent Zucker wrote: “[i]ndoors, mask use will be strongly encouraged but not required for students”.

103. Respondent Zucker’s intent to do away with the school mask mandate altogether establishes, at the very least, that there is no emergency justification for a continued mask mandate.

104. On May 26, 2021, multiple experts authored a *Washington Post* opinion article, entitled “It’s time for children to finally get back to normal life”, wherein they assert that the risk to children is too low to justify the remaining restrictions they face, and that “[s]chools should lift mask requirements for children, especially outdoors” (emphasis added).⁶

105. The authors are unreservedly qualified to make this science-supported assertion. Tracy Beth Høeg is a physician, an epidemiologist and an associate researcher at the University of California at Davis. Lucy McBride is a practicing internist in Washington, D.C. Allison Krug is an epidemiologist in Virginia Beach. Monica Gandhi, an infectious-disease physician, is a professor of medicine at the University of California at San Francisco.

106. As noted in the article, “[o]n average, fewer than 0.01 percent of Americans are currently infected, and the chance of an asymptomatic person transmitting to a close contact is about 0.7 percent. That yields a scant 0.00007 percent chance that any close contact will transmit infection to a child. If the contact is outdoors, the risk appears to be more than 1,000 times lower.” (*Id.*)

107. On September 2, 2021, Vinay Prasad M.D., MPH, practicing hematologist-oncologist and Associate Professor in the Department of Epidemiology and Biostatistics at the University of California San Francisco, authored an article in *The Atlantic*, wherein he stated that

⁵ https://www.governor.ny.gov/sites/default/files/2021-06/Letter_from_NYSDOH.pdf (last read, September 14, 2021)

⁶ It’s time for children to finally get back to normal life <https://www.washingtonpost.com/opinions/2021/05/26/its-time-children-finally-get-back-normal-life/> (last read, September 14, 2021)

the educational cost of face coverings is far better established than the benefits of face mask mandates for children.⁷

108. Dr. Prasad noted that “[n]o scientific consensus exists about the wisdom of mandatory-masking rules for schoolchildren. The World Health Organization, which recommends that children 12 and older wear masks under the same circumstances that adults do, specifically advises against masking children aged five (5) and younger. Many European nations have taken the agency’s advice. The United Kingdom has emphasized rapid testing instead of masking and has not required elementary-school students or their teachers to wear a face covering. (*Id.*)

109. Dr. Prasad’s conclusion illustrates the heavy-handedness of Respondents’ face-masking mandate for children “[u]nfortunately, scientists have failed to conduct the kind of randomized trials that can provide more reliable answers. Here schools, counties, or districts would be assigned a mandatory or optional masking policy, and researchers could simply track their experience to determine which schools had more coronavirus spread. Kids wouldn’t be banned or prohibited from wearing masks, but rather the policy of making all kids wear masks would be rigorously tested.” (*Id.*)

110. Respondent DOH’s face-masking mandate for school-aged children is especially egregious in light of the fact that the side-effects of mask wear are well documented. In research published by the International Journal of Environmental Research and Public Health, the researchers were able to demonstrate that both healthy and sick people can experience Mask-Induced Exhaustion Syndrome (MIES), with typical changes and symptoms that are often observed in combination, such as an increase in breathing dead space volume, increase in breathing

⁷ See Vinay Prasad, *The Downsides of Masking Young Students Are Real The Downsides of Masking Young Students Are Real*, The Atlantic, <https://www.theatlantic.com/ideas/archive/2021/09/school-mask-mandates-downside/619952/> (last read, September 14, 2021)

resistance, increase in blood carbon dioxide, decrease in blood oxygen saturation, increase in heart rate, increase in blood pressure, decrease in cardiopulmonary capacity, increase in respiratory rate, shortness of breath and difficulty breathing, headaches, dizziness, feeling hot and clammy, decreased ability to concentrate, decreased ability to think, drowsiness, decrease in empathy perception, impaired skin barrier function with itching, acne, skin lesions and irritation overall perceived fatigue and exhaustion.⁸

111. While the side-effects of facemask wear are well documented, there are no rational benefits from requiring children in school to wear facemasks.

112. In a randomized control study conducted in Denmark, researchers found that surgical face masks offer no significant protective effect for their wearer and the public.⁹

113. As Dr. Baker explains in his Affirmation, the participants in the Denmark study were supplied with high quality surgical masks that were equivalent or superior to N95 masks in terms of filtration characteristics. *see* Exhibit D, p.7 Moreover, Dr. Baker explains that “[t]he participants were given detailed instruction on proper mask use, including changing of worn or damaged masks, and they were interviewed to measure compliance”. *Id.*

114. Dr. Baker states that the Denmark study “[l]ikely represents a near best-case scenario in terms of high-quality mask use, likely far outstripping mandated masking among K-12 schoolchildren in public schools using masks of highly variable quality and condition.” *Id.*

115. Nevertheless, according to the Denmark study, even high quality surgical masks offer no significant protection.

⁸ Kai Kisielinsk, *Is a Mask That Covers the Mouth and Nose Free from Undesirable Side Effects in Everyday Use and Free of Potential Hazards?* (<https://pubmed.ncbi.nlm.nih.gov/33923935/>) (last read, September 14, 2021)

⁹ Henning Bundgaard, DMSc, *Effectiveness of Adding a Mask Recommendation to Other Public Health Measures to Prevent SARS-CoV-2 Infection in Danish Mask Wearers* (https://www.acpjournals.org/doi/full/10.7326/M20-6817?rfr_dat=cr_pub++0pubmed&url_ver=Z39.88-2003&rfr_id=ori%3Arid%3Acrossref.org#) (last read, September 14, 2021)

116. Moreover, its well known that the particle size of a COVID-19 virus is approximately 0.1 micron, which is significantly smaller than the particle diameters (8-30 microns) of surgical and fabric masks.¹⁰ Accordingly, there is no scientific basis to claims that facemasks prevent the spread of COVID-19.

117. Dr. Michael P. Santa Maria, Ph.D., in his Expert Affidavit, attached hereto as **Exhibit E**, further discusses the lack of a scientific basis to require children to wear face masks in school. Dr. Santa Maria states that “[e]mpirical data to support routine mask wearing to guard against COVID-19 transmission in school settings and other settings are weak and the effectiveness of adding a mask recommendation to other public health measures to prevent SARS-CoV-2 infection in Danish mask wearers is questionable.”¹¹

118. Dr. Santa Maria explains that “[e]vidence from the CDC demonstrates that the majority of COVID-19 cases are acquired through community transmission, and several studies suggest that transmission among students is extremely rare.” *Id.*

119. Dr. Santa Maria’s findings are affirmed in a study published by the University of Louisville, which explains that mask mandates and use are not associated with slower state-level COVID-19 spread during COVID-19 growth surges. The study states: “[c]ase growth was not significantly different between mandate and non-mandate states at low or high transmission rates, and surges were equivocal. Mask use predicted lower case growth at low, but not high transmission rates.”¹²

¹⁰ University of British Columbia, What size particle is important to transmission of COVID-19, (<https://www.aerosol.mech.ubc.ca/what-size-particle-is-important-to-transmission/>) (last read, September 15, 2021).

¹¹ Exhibit C, p. 5 September 15, 2021)

¹² C Raina MacIntyre, Abrar Ahmad Chughtai *A rapid systematic review of the efficacy of face masks and respirators against coronaviruses and other respiratory transmissible viruses for the community, healthcare workers and sick patients* (<https://pubmed.ncbi.nlm.nih.gov/32512240/>) (last read, September 14, 2021).

120. Moreover, face mask mandates imposed by Respondents are unnecessary for the protection of children's public health and welfare because COVID-19 is not a danger for children.

121. From June to September 2, 2021, a total of three (3) Erie County residents under the age of forty (40) have died from COVID-19.¹³

122. Since the onset of the COVID-19 pandemic in 2020, only thirty-one (31) children residing in New York State have died from COVID-19.¹⁴ This represents 0.00065% of the school-aged population of New York State.

123. For comparison, nineteen percent (19%) of school-aged children in New York State live below the poverty level.¹⁵ Fourteen percent (14%) of households with children cannot afford to buy enough food for their families.¹⁶

124. In spite of these statistics, Respondents have not issued emergency regulations to combat childhood hunger. Instead, Respondents have invoked draconian measures to protect children from COVID-19, which by all accounts, does not harm children.

**AS AND FOR A FIRST CAUSE OF ACTION
PURSUANT TO ARTICLE 78 OF THE CPLR**

125. Petitioners repeat and re-allege each and every allegation in the preceding paragraphs of this Verified Petition, as if fully set forth herein.

¹³ COVID-19 Case Data (<https://www2.erie.gov/health/index.php?q=covid-19-case-data-mortality-data-and-vaccination-estimates>) (last read, September 15, 2021)

¹⁴ Workbook: NYS-COVID19-Tracker (<https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-Fatalities?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n>) (last read, September 14, 2021)

¹⁵ CHIRS Dashboard (https://webbil.health.ny.gov/SASStoredProcess/guest?_program=%2FEBI%2FPHIG%2Fapps%2Fchir_dashboard%2Fchir_dashboard&p=it&ind_id=Ng99) (last read, September 14, 2021)

¹⁶ Hunger & Poverty in America - Food Research & Action Center (frac.org) (Hunger & Poverty in America - Food Research & Action Center (frac.org)) (last read, September 14, 2021)

126. Respondent DOH, in adopting 10 NYCRR § 2.60, is proceeding, or is about to proceed, in excess of jurisdiction.

127. Respondent DOH adopted 10 NYCRR § 2.60 in violation of lawful procedure.

128. Respondent DOH's adoption of 10 NYCRR § 2.60 was affected by an error of law.

129. Respondent DOH's adoption of 10 NYCRR § 2.60 was arbitrary and capricious.

130. Respondent DOH's adoption of 10 NYCRR § 2.60 was an abuse of discretion.

131. Petitioners and their minor children have been adversely affected by the adoption of 10 NYCRR § 2.60 in that they will be forced to comply with the requirements of said provisions while attending school, and will be subject to the civil penalties set forth therein in the event they fail to comply with the same.

AS AND FOR A SECOND CAUSE OF ACTION
PURSUANT TO ARTICLE 78 OF THE CPLR

132. Petitioners repeat and re-allege each and every allegation in the preceding paragraphs of this Verified Petition, as if fully set forth herein.

133. Respondent Zucker, in issuing "Commissioner's Determination on Indoor Facemasking Pursuant to 10 NYCRR § 2.60", dated August 27, 2021, is proceeding, or is about to proceed, in excess of jurisdiction.

134. Respondent Zucker's issuance of "Commissioner's Determination on Indoor Facemasking Pursuant to 10 NYCRR § 2.60", dated August 27, 2021, is in violation of lawful procedure.

135. Respondent Zucker's issuance of "Commissioner's Determination on Indoor Facemasking Pursuant to 10 NYCRR § 2.60", dated August 27, 2021, was affected by an error of law.

136. Respondent Zucker's issuance of "Commissioner's Determination on Indoor Facemasking Pursuant to 10 NYCRR § 2.60", dated August 27, 2021, was arbitrary and capricious.

137. Respondent Zucker's issuance of "Commissioner's Determination on Indoor Facemasking Pursuant to 10 NYCRR § 2.60", dated August 27, 2021, was an abuse of discretion.

138. Respondent and their minor children have been adversely affected by the issuance of "Commissioner's Determination on Indoor Facemasking Pursuant to 10 NYCRR § 2.60", dated August 27, 2021 in that they will be forced to comply with the requirements of said provisions while attending school, and will be subject to the civil penalties set forth in 10 NYCRR § 2.60 the event they fail to comply with the same.

WHEREFORE, Petitioners respectfully request judgment from this Court as follows:

1. On their First Cause of Action:

- a. An order vacating, voiding and annulling the emergency regulation 10 NYCRR § 2.60 on the grounds that such emergency rule does not conform with the provisions of the State Administrative Procedure Act;
- b. An order vacating, voiding and annulling the emergency regulation 10 NYCRR § 2.60 on the grounds that such emergency rule is arbitrary and capricious;
- c. Upon declaring null and void and vacating 10 NYCRR § 2.60, enjoining Respondent Department of Health from enforcing the same until such time as lawful and valid regulations are duly promulgated; and
- d. Preliminarily during the pendency of this proceeding, and permanently thereafter, enjoining and restraining Respondents from enforcing or applying the mask mandates contained in 10 NYCRR § 2.60 against Petitioners.

2. On their Second Cause of Action:

- a. An order vacating, voiding and annulling "Commissioner's Determination on Indoor Facemasking Pursuant to 10 NYCRR § 2.60", on the grounds that Respondent Zucker lacks the authority to issue such determination;
- b. An order vacating, voiding and annulling "Commissioner's Determination on Indoor Facemasking Pursuant to 10 NYCRR § 2.60" on the grounds that such emergency rule is arbitrary and capricious; and

- c. Upon declaring null and void and vacating "Commissioner's Determination on Indoor Facemasking Pursuant to 10 NYCRR § 2.60", enjoining the Respondent Zucker from enforcing the same until such time as lawful and valid regulations are duly promulgated.
3. Awarding Petitioners their costs and disbursements in this special proceeding; and
4. Awarding such other and further relief to Petitioners as this Court may deem just, proper, and equitable in this special proceeding.

DATED: September 17, 2021
Amherst, New York

Respectfully submitted,



COREY J. HOGAN, ESQ.
HOGANWILLIG, PLLC

Attorneys for Petitioners

2410 North Forest Road, Suite 301

Amherst, New York 14068

Telephone No.: (716) 636-7600

Email: chogan@hoganwillig.com

VERIFICATION OF PETITION

STATE OF NEW YORK)
) ss:
 COUNTY OF ERIE)

George M Borrello being duly sworn, states that I am a Petitioner in the within Proceeding. I have read the foregoing Petition and know the contents thereof. The contents are true to my knowledge, except as to matters therein stated to be alleged upon information and belief and to those matters, I believe them to be true.

George M Borrello
 (type name here, signature above)
 George M Borrello

Sworn and subscribed before me
 this 16th day of September, 2021.

Wendy E. Crino
 Notary Public
 WENDY E. CRINO
 Notary Public, State of New York
 Qualified in Chautauqua County
 Reg. No. 01CR6197221
 My Commission Expires Nov. 24, 2024



(113141885,1)

HOGANWILLIG
 Attorneys at Law

1

2410 NORTH FOREST ROAD, SUITE 301 | AMHERST, NEW YORK 14204
 Phone: 716-636-3255 | Toll Free: 800-636-3255 | Fax: 716-636-3255 | www.hoganwillig.com

VERIFICATION OF PETITION

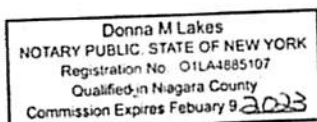
STATE OF NEW YORK)
 Niagara) ss:
COUNTY OF ERIE)

John Syta being duly sworn, states that I am a Petitioner in the within Proceeding. I have read the foregoing Petition and know the contents thereof. The contents are true to my knowledge, except as to matters therein stated to be alleged upon information and belief and to those matters, I believe them to be true.


(type name here, signature above)

Sworn and subscribed before me
this 5th day of September, 2021.

Donna M Lakes
Notary Public



[13141885.1]

1

HOGANWILLIG

Attorneys at Law

2410 NORTH FOREST ROAD | SUITE 301 | AMHERST, NEW YORK 14068

Phone: 716.636.7600 | Toll Free: 800.636.5255 | Fax: 716.636.7606 | www.hoganwillig.com

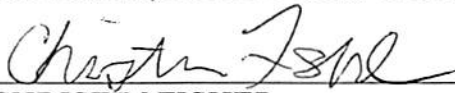
VERIFICATION OF PETITION

STATE OF NEW YORK)

) ss:

COUNTY OF ERIE)

CHRISTIN FISHER, being duly sworn, states that I am a Petitioner in the within Proceeding. I have read the foregoing Petition and know the contents thereof. The contents are true to my knowledge, except as to matters therein stated to be alleged upon information and belief and to those matters, I believe them to be true.


CHRISTIN FISHER

Sworn and subscribed before me
this 15th day of September, 2021.


Notary Public

Mark McNiskin
Notary Public, State of New York
Qualified in Erie County (No. 01MC6411425)
My Commission Expires November 23, 2021

VERIFICATION OF PETITION

STATE OF NEW YORK)

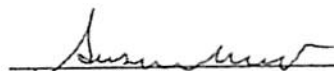
) ss:

COUNTY OF ERIE)

ANGELA SCHUSTER, being duly sworn, states that I am a Petitioner in the within Proceeding. I have read the foregoing Petition and know the contents thereof. The contents are true to my knowledge, except as to matters therein stated to be alleged upon information and belief and to those matters, I believe them to be true.


ANGELA SCHUSTER

Sworn and subscribed before me
this 9 day of September, 2021.


Notary Public

SUSANNE M. GALBRAITH
Notary Public, State of New York
Qualified in Erie County
No. 01GA6271253
My Commission Expires 10/29/2024

STATE OF NEW YORK)
) ss:
COUNTY OF ERIE)

NICOLE BLENKER, being duly sworn, states that I am a Petitioner in the within Proceeding. I have read the foregoing Petition and know the contents thereof. The contents are true to my knowledge, except as to matters therein stated to be alleged upon information and belief and to those matters, I believe them to be true.

Nicole Blenker
NICOLE BLENKER

Sworn and subscribed before me
this 9th day of September, 2021.

Gloria A. Lugo
Notary Public

Gloria M. Roth
Notary Public, State of New York
Qualified in Erie County
My Commission Expires July 31, 2025

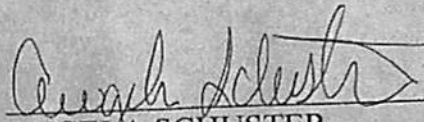
VERIFICATION OF PETITION

STATE OF NEW YORK)

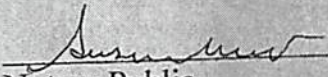
) ss:

COUNTY OF ERIE)

ANGELA SCHUSTER, being duly sworn, states that I am a Petitioner in the within Proceeding. I have read the foregoing Petition and know the contents thereof. The contents are true to my knowledge, except as to matters therein stated to be alleged upon information and belief and to those matters, I believe them to be true.


ANGELA SCHUSTER

Sworn and subscribed before me
this 9 day of September, 2021.


Notary Public

SUSANNE M. GALBRAITH
Notary Public, State of New York
Qualified in Erie County
No. 01GA6271253
My Commission Expires 10/29/2024

VERIFICATION OF PETITION

STATE OF NEW YORK)) ss:
COUNTY OF ERIE)

CHARISSE CALLAHAN, being duly sworn, states that I am a Petitioner in the within Proceeding. I have read the foregoing Petition and know the contents thereof. The contents are true to my knowledge, except as to matters therein stated to be alleged upon information and belief and to those matters, I believe them to be true.


CHARISSE CALLAHAN

Sworn and subscribed before me
this 10th day of September, 2021.

Notary Public

MARJORIE ELLEN YALE
Notary Public, State of New York
Qualified in Erie County
Reg. No. 01YA6310043
My Commission Expires 8/1/22

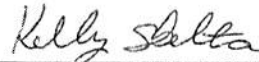
VERIFICATION OF PETITION

STATE OF NEW YORK)

) ss:

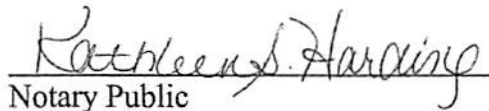
COUNTY OF ERIE)

KELLY SKELTON, being duly sworn, states that I am a Petitioner in the within Proceeding. I have read the foregoing Petition and know the contents thereof. The contents are true to my knowledge, except as to matters therein stated to be alleged upon information and belief and to those matters, I believe them to be true.



KELLY SKELTON

Sworn and subscribed before me
this 10th day of September, 2021.


Notary Public

KATHLEEN S. HARDING #01HA6011412
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES FEB. 11 20 23

{H3133432.1}

1


HOGANWILLIG
Attorneys at Law

2410 NORTH FOREST ROAD | SUITE 301 | AMHERST, NEW YORK 14068
Phone: 716.636.7600 | Toll Free: 800.636.5255 | Fax: 716.636.7606 | www.hoganwillig.com


VERIFICATION OF PETITION

STATE OF NEW YORK)
) ss:
 COUNTY OF Niagara

Roger Carr, being duly sworn, states that I am an authorized representative of Petitioner St. John Lutheran Church and School in the within Proceeding. I have read the foregoing Petition and know the contents thereof. The contents are true to my knowledge, except as to matters therein stated to be alleged upon information and belief and to those matters, I believe them to be true.

 (Signed)
Roger Carr (Print)

Sworn and subscribed before me
 this 14th day of September, 2021.


 Notary Public
 Notary Public, State of New York
 Qualified in Niagara County
 My Commission Expires Feb. 5, 2022