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OPINION, U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT (FEBRUARY 6, 2024)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TERPSEHORE MARAS,

Plaintiff-Appellant,

P.M., a minor, by and through her parent, Terpsehore Maras,

Plaintiff,

v.

MAYFIELD CITY SCHOOL DISTRICT BOARD OF EDUCATION; RON FORNARO, in his individual and official capacities as a member of the Mayfield City School District Board of Education; SUE GROSZEK, in her individual and official capacities as a member of the Mayfield City School District Board of Education; AL HESS, in his individual and official capacities as a) member of the Mayfield City School District Board of Education; GEORGE J. HUGHES, in his individual and official capacities as a member of the Mayfield City School District Board of Education; JIMMY TERESI, in his individual and official capacities as a member of the Mayfield City School District Board of Education; DR. MICHAEL J. BARNES, in his individual and official capacities as Superintendent of the Mayfield City School District,

Defendants-Appellees.

No. 22-3915

On Appeal from the United States District Court
for the Northern District of Ohio

Before: WHITE, NALBANDIAN, and MURPHY,
Circuit Judges.

MURPHY, Circuit Judge. Terpsehore Maras and her school-aged daughter sued their local school district to enjoin the mask mandate it imposed during the COVID-19 pandemic. Maras lacked counsel. The district court thus dismissed the suit because it refused to let her represent her daughter. On appeal, the parties debate weighty questions about when parents who cannot afford lawyers may sue to protect their children's rights. But we need not answer those questions. The school district has since rescinded its mask mandate, and Maras's daughter has now graduated from high school. So this case is moot. We affirm the dismissal on that alternative ground.

I

Maras's daughter, P.M., attended a public school within the Mayfield City School District in northeast Ohio during the COVID-19 pandemic. In September 2020, the District's school board adopted a policy that, with limited exceptions, allowed its superintendent to require staff, students, and visitors "to wear appropriate face masks/coverings on school grounds" during "times of elevated communicable disease community spread[.]" Policy, R.1-7, PageID 35.

On August 20, 2021, at the start of the next school year, the superintendent alerted the school community that the District would implement this

mask mandate for the 2021-2022 school year. Five days later, the five-member board and interested parties discussed this mandate at a board meeting. Although the board questioned whether Maras could speak at the meeting, it eventually allowed her to do so. The board nevertheless adopted the mandate over Maras's objection.

The next month, Maras filed this suit on behalf of herself and her daughter against the school district, its superintendent, and its board members (whom we will refer to collectively as the "District"). Maras alleged that the District violated federal and state procedural due-process requirements by imposing the mask mandate for the 2021-2022 school year without providing an adequate "opportunity for public discussion." Compl., R.1, PageID 23, 25. She also alleged that the District's mandate violated federal and state substantive due-process limitations on state action.

Maras immediately moved for a temporary restraining order to enjoin the mask mandate. The court held a hearing and allowed Maras to argue her position. But it denied her motion. *P.M. ex rel. Maras v. Mayfield City Sch. Dist. Bd. of Educ.*, 2021 WL 4148719, at *4 (N.D. Ohio Sept. 13, 2021). When doing so, the court found it "questionable" whether Maras could litigate this suit on behalf of her daughter without an attorney. *Id.* at *3.

After this decision, the parties filed several pleadings. Continuing to represent P.M., Maras amended her complaint to add claims under the Ninth and Tenth Amendments. The District moved to dismiss her new complaint. It argued that Maras, a nonlawyer, could not represent her daughter and that her claims failed on their merits anyway. With this

motion pending, Maras moved to file a second amended complaint and for the appointment of counsel.

The district court resolved these motions in a single order. It granted the District's motion to dismiss, holding that Maras could not represent P.M. This resolution, the court reasoned, allowed it to avoid the constitutional merits because Maras seemed to bring all of her claims solely on her daughter's behalf. The court also denied Maras's motion to file a second amended complaint on the same ground. The court lastly declined Maras's request for the appointment of a lawyer.

After obtaining counsel on her own, Maras appealed. Her lawyer raised three arguments on appeal: that the district court should have given Maras more time to obtain counsel; that it overlooked Maras's pursuit of her own claims (not just her daughter's); and that the law should allow her to protect her daughter's rights.

The parties' briefs raise important questions about the ability of parents with limited means to vindicate the constitutional rights of their children. In opinions with little discussion, we have held that non-lawyer parents generally may not represent their children. *See Cavanaugh ex rel. Cavanaugh v. Cardinal Loc. Sch. Dist.*, 409 F.3d 753, 755 (6th Cir. 2005), *abrogated on other grounds by Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516 (2007); *Shepherd v. Wellman*, 313 F.3d 963, 970 (6th Cir. 2002). Another court, by contrast, has taken a more nuanced view of this subject. *See Raskin ex rel. JD v. Dallas Indep. Sch. Dist.*, 69 F.4th 280, 283-86 (5th Cir. 2023); *id.* at 288-99 (Oldham, J., dissenting in part and concurring in the judgment).

Yet oral argument revealed that this dispute might no longer present a live controversy. So we asked for supplemental briefing on mootness. This briefing has disclosed two developments since Maras sued the District. The District lifted its mask mandate in February 2022. And P.M. graduated from high school in June 2023.

II

The Constitution gives us jurisdiction to exercise the federal "judicial Power" only over "Cases" or "Controversies." U.S. Const. art. III, § 2. A lawsuit must satisfy this case-or-controversy requirement from beginning to end. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997). At the outset, plaintiffs must prove that they have "standing" by establishing three things: that they have suffered (or will suffer) an injury, that the defendants' conduct caused (or will cause) the injury, and that the requested relief will remedy it. *See Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90 (2013). These three requirements must continue to exist while plaintiffs prosecute their suit in the trial court and on appeal. *See id.* at 91. If new facts during the litigation eliminate the plaintiffs' injury or bar the court from granting any real-world relief, the court must dismiss the case as moot. *See Davis v. Colerain Township*, 51 F.4th 164, 174 (6th Cir. 2022); *Resurrection Sch. v. Hertel*, 35 F.4th 524, 528 (6th Cir. 2022) (en banc).

Courts tailor these standing and mootness requirements to the relief that plaintiffs seek. *See Thompson v. Whitmer*, 2022 WL 168395, at *2 (6th Cir. Jan. 19, 2022). Consider a request for an injunction. If plaintiffs seek to enjoin the defendants' conduct,

they must show that the harmful conduct will likely injure them in the future—not just that it has harmed them in the past. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 105-10 (1983). A forward-looking injunction will do nothing to remedy a completed harm. *See id.* Next, even if the plaintiffs show this future injury at the start of their suit, the defendants might stop engaging in the conduct during the litigation. That voluntary choice can sometimes eliminate the plaintiffs' future injury and moot their request for an injunction. *See Already*, 568 U.S. at 91; *Davis*, 51 F.4th at 174. This type of mootness problem often arises when plaintiffs sue a government to challenge a law or regulation and the government decides to repeal the challenged law or regulation in the meantime. *See Davis*, 51 F.4th at 174; *Resurrection Sch.*, 35 F.4th at 528; *Thompson*, 2022 WL 168395, at *3.

That said, courts have long recognized the risk that defendants who have stopped their challenged conduct only to moot the case might restart their "old injurious ways" once the court dismisses the suit. *Davis*, 51 F.4th at 174-75; *see DeFunis v. Odegaard*, 416 U.S. 312, 318 (1974) (per curiam) (citing cases). To prove that their voluntary cessation has mooted a suit, then, defendants must meet a demanding test. They must prove that it is "absolutely clear" that the challenged conduct cannot "reasonably be expected to recur." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000).

We have highlighted two questions to ask when deciding whether a government has satisfied this test. Question One: Has the government rescinded the challenged legal requirement in a "formal" way?

Davis, 51 F.4th at 175. If so, the case is more likely moot because that type of repeal makes it more difficult to reimpose the requirement. *See Thomas v. City of Memphis*, 996 F.3d 318, 324 (6th Cir. 2021). We, for example, found a free-speech challenge to a township rule barring "disrespectful" speech at board meetings moot after the board repealed the rule "in a formal 'legislative-like' meeting." *Davis*, 51 F.4th at 175.

Question Two: Did the government repeal the challenged requirement for a reason unrelated to the suit? *See id.* If so, the case is again more likely moot because this evidence shows that the government did not issue the repeal for a bad-faith reason to avoid judicial review. *See id.* In *Resurrection School*, for example, our en banc court found a challenge to a COVID-19-related mask mandate moot because the State lifted the mandate due to changed facts, including reduced COVID-19 case counts and increased COVID-19 vaccination rates. *See* 35 F.4th at 529.

We reach the same conclusion in this case. The District's school board voted to repeal its mask mandate in February 2022. It did so at a "legislative-like" board meeting, and the vote led to a "formal" change to the District's written policies. *Davis*, 51 F.4th at 175. More importantly, the District's decision to lift the mask mandate had nothing to do with Maras's case. The board issued the repeal months after Maras had sued and after the district court had held that her suit would likely fail. *See Resurrection Sch.*, 35 F.4th at 529. The board's decision also rested on changed facts. As the District's superintendent explained, the federal government had approved a COVID-19 vaccine for

children, and the case counts "had fallen significantly." Barnes Aff. at 2. Given the availability of vaccines, the superintendent did not plan to recommend that the board reimpose the mandate again—whether or not COVID-19 case counts later rose. Since its repeal, moreover, the board has taken no action to reimpose the mandate.

If anything, this case has an added fact that makes it easier than *Resurrection School*. Even when a school policy or procedure remains in full force, our caselaw often treats a student's challenge to that policy or procedure as moot once the student has graduated. *See Yoder v. Univ. of Louisville*, 526 F. App'x 537, 543 (6th Cir. 2013); *Fialka-Feldman v. Oakland Univ. Bd. of Trs.*, 639 F.3d 711, 713-16 (6th Cir. 2011); *McPherson v. Mich. High Sch. Athletic Ass'n, Inc.*, 119 F.3d 453, 458 (6th Cir. 1997) (en banc); *Ahmed v. Univ. of Toledo*, 822 F.2d 26, 27-28 (6th Cir. 1987); *see also DeFunis*, 416 U.S. at 316-20. And here, Maras's daughter, P.M., graduated from high school in June 2023.

To be sure, the District's mask mandate applied not just to students but also to "visitors" who entered school grounds. Policy, R.1-7, PageID 35. So maybe Maras or her daughter could have retained a sufficient stake in this suit if the mandate remained in place and they planned to continue visiting a school in the District. *See Washegesic v. Bloomingdale Pub. Schs.*, 33 F.3d 679, 681-83 (6th Cir. 1994). But we need not decide whether P.M.'s graduation *alone* rendered the request for injunctive relief moot. At the least, this development makes it even more "reasonable" to conclude that the District's repeal of the mandate has eliminated any potential future harm that the

mandate might cause Maras or her daughter. *Resurrection Sch.*, 35 F.4th at 528 (citation omitted). In addition, a constitutional challenge to a school district's mask mandate by a mere visitor (who voluntarily enters school grounds) might present a different type of "legal controversy" than the same challenge by a student (who must attend school). *Id.* at 529. In sum, the combination of the mandate's repeal and P.M.'s graduation has rendered this case moot.

Maras resists this conclusion on three grounds. *First*, she argues that her complaint asked for damages and that this request keeps her constitutional claims alive. She is right on the law: Courts must decide mootness and standing issues on a remedy-by-remedy basis. *See Davis*, 5 F.4th at 171; *Thompson*, 2022 WL 168395, at *2, *4. So even if the District's repeal of the mandate mooted a request for injunctive relief for a future harm, it would not moot a request for monetary relief for a past harm. *See Thompson*, 2022 WL 168395, at *4; *see also Blau v. Ft. Thomas Pub. Sch. Dist.*, 401 F.3d 381, 387-88 (6th Cir. 2005).

But Maras is wrong on the facts: her amended complaint nowhere requested damages. In its "prayer for relief," this complaint asked the district court to enjoin the District from enforcing the mandate and to declare the mandate unconstitutional. Am. Compl., R.19, PageID 518-19. It did not request money for prior injuries. And just as a request for damages does not suffice to seek an injunction, *see Crosby v. Univ. of Ky.*, 863 F.3d 545, 558 (6th Cir. 2017), so too a request for an injunction does not suffice to seek damages. Confirming our reading of the complaint, Maras disclaimed seeking damages at the temporary-

restraining-order hearing: "I'm not suing the school district for money." Tr., R.33, PageID 860.

Maras counters with stray references to the word "damage" or "harm" in her amended complaint. In one paragraph, the complaint alleged that Maras was "aggrieved" by the "injury, loss, and damage suffered by P.M." from the mask mandate. Am. Compl., R.19, PageID 511. In other paragraphs, Maras alleged that she and her daughter had been "harmed" by the mandate. *Id.*, PageID 512-13, 517. Yet nobody would read these generic allegations in the complaint's "facts" section as a request for damages against the District or its officials. So the allegations did not give proper notice to the defendants that they might face financial liability. *Cf. Shepherd*, 313 F.3d at 967-68; *Moore v. City of Harriman*, 272 F.3d 769, 772 (6th Cir. 2001) (en banc). All told, Maras's belated damages request designed merely "to avoid otherwise certain mootness" cannot keep this suit alive. *Arizonans for Official English*, 520 U.S. at 71.

Second, Maras argues that the District has the power to reimpose the mask mandate "at any time[.]" Appellant's Supp. Br. 5-6. Yet Maras cites no objective evidence suggesting that the District will do so. To the contrary, the superintendent stated under oath that the availability of vaccines has eliminated the need for the mandate. And Maras's mere "speculation" that the District may someday reimpose the mandate does not alone suffice to withstand a mootness finding. *Thomas*, 996 F.3d at 328; *see also, e.g.*, *U.S. Navy SEALs 1-26 v. Biden*, 72 F.4th 666, 674 (5th Cir. 2023); *Nat'l Black Police Ass'n v. District of Columbia*, 108 F.3d 346, 349 (D.C. Cir. 1997).

Third, Maras argues that her suit is not moot because "she is still a member of the community and has an interest in the policies enacted by the school board[.]" Appellant's Supp. Br. 6–7. But her status as a "concerned" Mayfield citizen does not give her the right to sue the local government to vindicate her "value interests." *Hollingsworth v. Perry*, 570 U.S. 693, 707 (2013) (quoting *Diamond v. Charles*, 476 U.S. 54, 62 (1986)). Instead, she must identify a future harm arising from the policies that she challenges. *Diamond*, 476 U.S. at 66-67. She cannot do so now that the District has repealed its mask mandate and her daughter has graduated.

This case is moot. We thus affirm the district court's dismissal on that alternative ground.

JUDGMENT, U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT (FEBRUARY 6, 2024)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TERPSEHORE MARAS,

Plaintiff-Appellant,

P.M., a minor, by and through her parent, Terpsehore Maras,

Plaintiff,

v.

MAYFIELD CITY SCHOOL DISTRICT BOARD OF EDUCATION; RON FORNARO, in his individual and official capacities as a member of the Mayfield City School District Board of Education; SUE GROSZEK, in her individual and official capacities as a member of the Mayfield City School District Board of Education; AL HESS, in his individual and official capacities as a) member of the Mayfield City School District Board of Education; GEORGE J. HUGHES, in his individual and official capacities as a member of the Mayfield City School District Board of Education; JIMMY TERESI, in his individual and official capacities as a member of the Mayfield City School District Board of Education; DR. MICHAEL J. BARNES, in his individual and official capacities as Superintendent of the Mayfield City School District,

Defendants-Appellees.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION THEREOF, it is ORDERED that the district court's dismissal of the case is AFFIRMED on the alternative ground that it is moot.

ENTERED BY ORDER OF THE COURT

/s/ Kelly L. Stephens
Clerk

ORDER, U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT (OCTOBER 31, 2023)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TERPSEHORE MARAS,

Plaintiff-Appellant,

and

P.M., a minor, by and through her parent, Terpsehore Maras,

Plaintiff,

v.

MAYFIELD CITY SCHOOL DISTRICT BOARD OF EDUCATION; RON FORNARO, in his individual and official capacities as a member of the Mayfield City School District Board of Education; SUE GROSZEK, in her individual and official capacities as a member of the Mayfield City School District Board of Education; AL HESS, in his individual and official capacities as a) member of the Mayfield City School District Board of Education; GEORGE J. HUGHES, in his individual and official capacities as a member of the Mayfield City School District Board of Education; JIMMY TERESI, in his individual and official capacities as a member of the Mayfield City School District Board of Education;

DR. MICHAEL J. BARNES, in his individual and official capacities as Superintendent of the Mayfield City School District,

Defendants-Appellees.

No. 22-3915

On Appeal from the United States District Court for the Northern District of Ohio

Before: WHITE, NALBANDIAN, and MURPHY, Circuit Judges.

The panel invites the parties to file supplemental briefing on any legal and factual issues pertaining to the question whether this case is moot. The parties' supplemental briefs should not exceed 10 pages and should be submitted within two weeks of this order."

ENTERED BY ORDER OF THE COURT

/s/ Deborah S. Hunt
Clerk

Issued: October 31, 2023

ORDER, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO (SEPTEMBER 30, 2022)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

P.M., a Minor, By and Through Her Parent, TERPSEHORE MARAS, Pro Se,

Plaintiff,

v.

MAYFIELD CITY SCHOOL DISTRICT BOARD OF EDUCATION, ET AL.,

Defendants.

Case No.: 1:21 CV 1711

Before: Solomon OLIVAR, JR., United States District Judge.

ORDER

Currently pending before the court in the above-captioned case is Defendants'—Mayfield City School District Board of Education (the "Board"), Mayfield City School District Superintendent Dr. Michael J. Barnes ("Superintendent Barnes"), and individual Board members Ron Fornaro, Sue Grozek, Al Hess, George Hughes and Jimmy Teresi (collectively,

"Defendants")—Motion to Dismiss Plaintiff's Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) ("Motion to Dismiss"). (ECF No. 21.) Also pending before the court is Plaintiff's—P.M., a minor, by and through her parent Terpsehore Maras ("Maras")—Motion to Amend her Complaint ("Motion to Amend") and Motion for Appointment of Counsel ("Motion for Counsel"), pursuant to Federal Rule of Civil Procedure 15(a) and 28 U.S.C. § 1915, respectively. (ECF No. 25). For the following reasons, the court grants Defendants' Motion to Dismiss (ECF No. 21) and dismisses Plaintiff's Amended Complaint (ECF No. 19), rendering Defendants' prior Motion to Dismiss (ECF No. 7)—in regard to Plaintiff's original Complaint (ECF No. 1)—moot. Furthermore, for the following reasons, the court denies Plaintiff's Motion to Amend and Motion for Counsel (ECF No. 25), and denies Plaintiff's Motion for Permission to Utilize the Electronic Filing System. (ECF No. 12).

I. Background

A. Factual Background

The following facts are adopted from Plaintiff's prior Complaint (ECF No. 1) and Motion for Temporary Restraining Order ("Motion for TRO") (ECF No. 3). In Plaintiff's present Amended Complaint (ECF No. 19), she reasserts her prior allegations, outlined in her first Complaint and Motion for TRO, while alleging additional violations of her daughter's constitutional rights, and attaching accompanying exhibits to support her allegations. (ECF No. 19.) Plaintiff's allegations are set forth below.

On September 3, 2020—as communities across the United States continued to struggle with the ongoing COVID-19 pandemic ("pandemic")—the Board duly approved and enacted Policy No. 8450.01 (the "Policy"). (*See* Def.'s TRO Opp'n at PageID #272, ECF No. 6-1.) In pertinent part, the Policy states, "[t]he Board may require that students shall wear a face mask unless they are unable to do so for a health or developmental reason. Efforts will be made to reduce any social stigma for a student who, for medical or developmental reasons, cannot and should not wear a mask." (*Id.*) On August 4, 2021, Superintendent Barnes and the Board, following the recommendations of the Ohio Departments of Education and Health ("ODE" and "ODH", respectively), issued a face mask recommendation for all students, staff, and visitors, that was consistent with the Centers for Disease Control and Prevention's ("CDC") guidance. (Mot. at PageID #531-32, ECF No. 21-1.) On August 5, 2021, the CDC—concerned with rapidly increasing COVID-19 cases—recommended universal masking for all students, teachers and faculty, regardless of their vaccination status. (*Id.*) Shortly thereafter, on August 20, 2021, pursuant to the Policy— and in accordance with CDC and ODH guidance and recommendations—Superintendent Barnes submitted a recommendation to the Board—that was later adopted on August 25, 2021, after a school board meeting and parental feedback—that the District implement a mask mandate for all students, teachers and faculty.

In the midst of these rapidly changing developments, Plaintiff, a resident of Mayfield whose child attends Mayfield City Public Schools, takes issue with the Board's implementation of the mask mandate.

(Pls.' Mem. in Supp. for TRO at PageID #226, ECF No. 3.) In addition to highlighting perceived procedural errors by the District, Ms. Maras alleges that the District's mask policy causes immediate and irreparable health risks to students, staff, and the community at large. (*Id.* at PageID #228.)

B. Procedural Background

Plaintiff initiated this action on September 2, 2021, when she filed her Complaint (ECF No. 1) and Motion for TRO. (ECF No. 3). On September 13, 2021, the court issued its Order (ECF No. 10), denying Plaintiff's Motion for TRO. (ECF No. 3). Thereafter, Plaintiff filed her Amended Complaint (ECF No. 19)—the subject of the court's present Order—on October 1, 2021, alleging the following causes of action on behalf of her daughter: (1) violation under 42 U.S.C. § 1983 of Plaintiff's Procedural Due Process rights under the 5th and 14th Amendments (count one); (2) violation of 42 U.S.C. § 1983 for violation of Plaintiff's Substantive Due Process rights under the Fourteenth Amendment (count two); (3) violation of Plaintiff's Ninth Amendment rights (count three); (4) violation of Plaintiff's Tenth Amendment rights (count four); (5) violation of Ohio Constitution Article I, § 21 (count five); (6) violation of Plaintiff's Procedural Due Process under Ohio Constitution Article I, § 16 (count six); and (7) violation of Plaintiff's Substantive Due Process rights under Ohio Constitution Article I, § 16 (count seven). (*See* ECF No. 19.)

Defendants filed their Motion to Dismiss (ECF No. 21) in regard to Plaintiff's Amended Complaint (ECF No. 19) on October 15, 2021. In response, Plaintiff filed her Declaration in Opposition (ECF No. 22)

and Memorandum of Law in Opposition (ECF No. 23) on October 29, 2021. Defendants filed their Reply (ECF No. 24) on November 5, 2021. Subsequently, Plaintiff filed her Motion to Amend and Motion for Counsel (ECF No. 25) on December 16, 2021. Defendants filed their Opposition to Plaintiff's Motion for Counsel (ECF No. 26) on December 16, 2021, and their Opposition to Plaintiff's Motion to Amend (ECF No. 27) on December 29, 2021. Plaintiff filed her Reply (ECF No. 28) in support of both of her Motions (ECF No. 25) on February 14, 2022.

II. Standards of Review

A. Federal Rule of Civil Procedure 12(b)(1)

Rule 12(b)(1) of the Federal Rules of Civil Procedure provides for dismissal when the court lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). A motion to dismiss pursuant to Rule 12(b)(1) may take the form of either a facial or a factual attack. *United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir. 1994). Facial attacks challenge the sufficiency of the pleading itself. *Id.* When adjudicating a motion to dismiss based upon a facial attack, the court must accept all material allegations of the complaint as true and must construe the facts in favor of the non-moving party. *Id.* (citing *Scheuer v. Rhodes*, 416 U.S. 232, 235-37 (1974)). Factual attacks, by contrast, challenge the factual predicate for subject matter jurisdiction, regardless of what is or might be alleged in the pleadings. *Id.* With such a challenge, no presumption of truthfulness applies to the factual allegations, and the court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case. *Id.* (citing *Ohio Nat'l Life Ins. Co. v. United States*, 922 F.2d 320,

325 (6th Cir. 1990)). Regardless of the type of attack, the plaintiff bears the burden of establishing that subject-matter jurisdiction exists. *See Giesse v. Sec'y of Dept. of Health & Human Servs.*, 522 F.3d 697, 702 (6th Cir. 2008). Lack of subject-matter jurisdiction is a non-waivable, fatal defect. *See Von Dunser v. Aronoff*, 915 F.2d 1071, 1074-75 (6th Cir. 1990).

Defendants' Rule 12(b)(1) challenge presents a factual attack on this court's subject matter jurisdiction with respect to Plaintiff's retaliation claim in Count II. (Defs.' Mem. in Supp. at PageID #111, ECF No. 4-1; *see also Cartwright v. Garner*, 751 F.3d 752, 759 (6th Cir. 2014) (explaining that "[a] factual attack challenges the factual existence of subject matter jurisdiction.") Accordingly, in deciding whether the court has subject matter jurisdiction over Barnes's retaliation claim in Count II, the court does not presume that Barnes's factual allegations in Count II are true, and is free to weigh evidence to confirm the existence of the factual predicates for subject matter jurisdiction. *Glob. Tech., Inc. v. Yubei (XinXiang) Power Steering Sys. Co.*, 807 F.3d 806, 810 (6th Cir. 2015).

B. Federal Rule of Civil Procedure 12(b)(6)

The court examines the legal sufficiency of a plaintiff's claims under Federal Rule of Civil Procedure 12(b)(6). The United States Supreme Court clarified the law regarding what a plaintiff must plead in order to survive a motion made pursuant to Rule 12(b)(6) in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). When determining whether the plaintiff has stated a claim upon which relief can be granted, the court must construe the complaint in the light most favorable to the

plaintiff, accept all factual allegations as true, and determine whether the complaint contains "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. The plaintiff's obligation "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 555. Even though a complaint need not contain "detailed" factual allegations, its "[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the Complaint are true." *Id.* A court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

C. Motion to Amend

Under Federal Rule of Civil Procedure 15(a)(1), a party "may amend its pleading once as a matter of course" within the prescribed time period. In "all other cases," Rule 15(a)(2) provides that "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). The Supreme Court has held that, in the absence of factors such as "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment," leave to amend should be freely granted. *Foman v. Davis*, 371 U.S. 178, 182 (1962). The Sixth Circuit has further explained that "the case law in this Circuit manifests liberality in allowing amendments" to pleadings. *Newberry v. Silverman*, 789 F.3d 636, 645 (6th Cir. 2015) (citation and quotation marks

omitted); *see also Seals v. Gen. Motors Corp.*, 546 F.3d 766, 770 (6th Cir. 2008) (holding district court did not abuse discretion by allowing amended answer after summary judgment motions had been briefed).

III. Law and Analysis

A. Motion to Dismiss

In their Motion (ECF No. 21), Defendants assert two bases for dismissal of Plaintiff's Amended Complaint. First, Defendants argue that Plaintiff lacks standing to bring her action because it is well-settled in this Circuit that a *pro se* plaintiff may not bring an action on their child's behalf, stating that, "Plaintiff is not an attorney and she is thus prohibited from asserting a claim *pro se* on her daughter's behalf. This alone requires dismissal of the Complaint." (Mot. at PageID #533, 21-1.) Next, Defendants maintain that Plaintiff has failed to state a claim for relief under each of her causes of action. (*Id.* at PageID #535-543.) Plaintiff counters by asserting that she possesses standing to bring her case because "[a]s the mother of P.M., [she] is empowered to assert her own fundamental constitutional rights." (Mot. at PageID #578, ECF No. 23.) Next, she argues that her present allegations are well-pled and therefore sufficient to survive Defendants' Motion to Dismiss (ECF No. 21) because, "[t]he applicable 'plausibility standard' is certainly not akin to a 'probability requirement' . . . the test here is whether well-pled allegations give rise to plausible claims. Nothing more is needed, and such standard is respectfully met in this case." (*Id.* at PageID #582.) After reviewing the parties' arguments and relevant case law, the court finds Defendants' position well-taken.

Standing

As noted, Defendants argue that Plaintiff lacks standing because she cannot appear *pro se* and assert claims on behalf of her minor daughter. (Mot. at PageID #533, ECF No. 21-1.) To bolster their position, Defendants cite to numerous Sixth Circuit decisions where the court dismissed *pro se* parents' actions brought on behalf of their minor children. (*Id.* at PageID #533-34.) Plaintiff counters by contending that as the parent of her minor child, she is entitled to bring her daughter's claims. Moreover, Plaintiff states that, "[u]nder the authority of longstanding Supreme Court precedent, Plaintiff can also assert fundamental liberty rights as regards the upbringing of her daughter derived from the Ninth Amendment given such rights are deeply rooted in the traditions and conscience of our people as to be ranked as fundamental." (*Id.*)

Courts have considered the issue of whether a *pro se* parent may assert their minor children's claims as one of standing. *See Sanders v. Palmer*, No. 09-10847, 2010 WL 1286473, at *4 (E.D. Mich. Mar. 31, 2010); *Adams ex rel. D.J.W. v. Astrue*, 659 F.3d 1297, 1299 (10th Cir. 2011). The Sixth Circuit has held that, "parents cannot appear *pro se* on behalf of their minor children because a minor's personal cause of action is her own and does not belong to her parent or representative." *Shepherd v. Wellman*, 313 F.3d 963, 970 (6th Cir. 2002.) The court has explained that, "[t]he rule against non-lawyer representation protects the rights of those before the court by preventing an ill-equipped layperson from squandering the rights of the party he purports to represent." *Bass v. Leatherwood*, 788 F.3d 228, 230 (6th Cir. 2015). Accordingly, courts

have routinely dismissed actions brought by *pro se* parents asserting their children's claims. *See Moses v. Gardner*, No. 15- 5971, 2016 WL 9445913 (6th Cir. May 24, 2016); *McCoy v. Akron Police Dep't*, No. 5:21 CV 51, 2021 WL 1857119 (N.D. Ohio May 10, 2021).

E.B. by and through Bawidamann v. Northmont City School District Board of Education, No. 3:21-cv-255, 2021 WL 4321146, at *1, 3 (S.D. Ohio Sept. 23, 2021) is illustrative of this principle. In that case, the *pro se* plaintiff brought claims on his children's behalf against the defendants, seeking declaratory relief to vacate and set aside the defendants' mask mandate and alleging various constitutional violations. *Id.* However, before even addressing the merits of the plaintiff's action, the court dismissed the case, holding that the plaintiff lacked standing to bring his action. *Id.* More specifically, the court stated that, "[a]ll of the claims in this action are brought, *pro se*, by a non-attorney parent on behalf of his minor children. In such a situation, dismissal without prejudice is proper." *Id.* (internal citations omitted.)

Plaintiff's present case demands the same result. All of Plaintiff's claims are brought in her capacity as a *pro se* parent on behalf of her minor daughter. Therefore, under well-established precedent in this Circuit, Plaintiff lacks standing to bring her action, making dismissal appropriate. Furthermore, Plaintiff's argument—that she is entitled to bring this case as a parent—is unpersuasive because, "a minor's personal cause of action is her own and does not belong to her parent or representative." *Shepherd*, 313 F.3d at 970–71. Because Plaintiff lacks standing, her action cannot proceed. Accordingly, the court need not address whether Plaintiff has alleged sufficient facts to state

a plausible claim for relief to withstand Defendants' Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (ECF No. 21.) Therefore, the court dismisses Plaintiff's Complaint (ECF No. 19).

B. Motion to Amend

Plaintiff seeks to amend her Complaint pursuant to Federal Rule of Civil Procedure 15(a)(2). (Mot. at PageID #632, ECF No. 25.) Plaintiff states that she "seeks leave to amend her Complaint to continue pursuing her action against the Ohio Governor" and "[to withdraw] previously asserted direct claims of Plaintiff's minor daughter and the addition of allegations regarding bullying carried on by teachers of Plaintiff's minor daughter." (*Id.* at PageID #635.) Defendants counter by arguing that Plaintiff seeks to amend her Complaint to omit any allegations regarding her daughter's right to pursue an education and to withstand dismissal by curing any perceived weaknesses in her allegations that were identified in Defendants' Motion to Dismiss (ECF No. 21). (Opp'n at PageID #742, ECF No. 27.) Moreover, Defendants state that, "[n]one of the proposed amendments to Plaintiff's First Amended Complaint render Plaintiff's claims against Defendants viable. As set forth in [Defendants' Motion to Dismiss (ECF No. 21)], there are neither factual nor legal grounds supporting Plaintiff's claim that [Defendants'] mask policy violates her constitutional rights. Plaintiff's revised allegations in [her Second Amended Complaint] do not alter that conclusion." (*Id.* at PageID #743.) After reviewing the parties' arguments and relevant case law, the court finds Defendants' position well-taken for the following reasons.

Federal Rule of Civil Procedure 15(a) states that:

(a) Amendments Before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matte r o f course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Fed. R. Civ. P. 15(a). After the court issued its Order (ECF No. 10), denying Plaintiff's Motion for TRO (ECF No. 3), Plaintiff simply filed her present Amended Complaint 29 days after her Original Complaint (ECF No. 1), in violation of Rule 15(a)(1), and before the court had addressed Defendants' prior pending Motion to Dismiss (ECF No. 7). It appears to the court that Plaintiff sought to survive Defendants' prior Motion to Dismiss (ECF No. 7) by amending her Complaint in an attempt to make her claims more plausible. Plaintiff appears to be doing the same now by seeking leave to amend her Complaint so that she may bolster her allegations in response to arguments raised by Defendants in their Motion to Dismiss (ECF No. 21). By doing so, Plaintiff is essentially playing a cat and

mouse game with Defendants, using amended Complaints as a means to outmaneuver Defendants and cure any perceived weaknesses in her claims. The court condemns this practice and denies Plaintiff's Motion to Amend (ECF No. 25) for the following reason.

While the court "should freely grant leave when justice so requires[,]" Plaintiff's second proposed amended Complaint (ECF No. 25-4) is futile because it cannot withstand a motion to dismiss, as it suffers from the same crucial flaw: that Plaintiff, appearing *pro se*, may not pursue claims on her daughter's behalf. *See Rose v. Hartford Underwriters Ins. Co.*, 203 F.3d 417, 420 (6th Cir. 2000) (stating that, "[a] proposed amendment is futile if the amendment could not withstand a motion to dismiss."). Plaintiff's addition of Governor Mike DeWine and subtraction of her Procedural Due Process claims do not push her allegations any closer to the plausibility threshold. Instead, Plaintiff simply reiterates her contention that Defendants' mask mandate not only poses a serious health risk to her daughter, but also violates her daughter's constitutional rights. (*See generally* Proposed Second Am. Compl., ECF No. 25-4.) However, courts in this Circuit have routinely held that plaintiff's substantive constitutional claims regarding school district mask mandates are unlikely to succeed on the merits. *See K.B. v. Calloway Cnty School Dist. Bd. of Educ.*, No. 5:21-cv-148 (TBR), 2021 WL 4888850 (W.D. Ky. Oct. 18, 2021) (dismissing the plaintiff's TRO order because plaintiff's constitutional claims were unlikely to succeed on the merits); *N.R. by and through Ratliff v. Pike Cnty School District Bd. of Educ.*, No. 21-78-HRW, 2022 WL 837724 (E.D. Ky. Mar. 17,

2022); *Lewandowski on behalf of T.L. v. Southgate Cmty. Schools Bd. of Educ.*, No. 21-12317, 2022 WL 125536 (E.D. Mich. Jan. 12, 2022). Thus, what remains of Plaintiff's second proposed Amended Complaint (ECF No. 25) is largely the same Complaint, and is futile in light of the court's present decision on Defendants' Motion to Dismiss (ECF No. 21). Accordingly, the court dismisses Plaintiff's Motion to Amend (ECF No. 25) because Plaintiff's second proposed Amended Complaint (ECF No. 25-4) is futile.

C. Motion for Appointed Counsel

Next, Plaintiff requests that this court grant her counsel pursuant to 28 U.S.C. § 1915(d). (Mot. at PageID #638, ECF No. 25-1.) Plaintiff attaches a supporting Declaration (ECF No. 25-2) and states that she "is indigent and unable to afford legal counsel to pursue this matter. Moreover, this action involves complex issues and is the sort of 'exceptional' case that would benefit from the use of legal counsel." (*Id.*) Defendants counter on several bases. First, Defendants maintain that Plaintiff has not complied with Local Rule 83.10, specifically Appendix J—which provides that "[a] party requesting pro bono representation shall submit an Affidavit . . . to verify that the party cannot afford legal counsel in the case"—because Plaintiff has not submitted an affidavit verifying her indigent status. (Opp'n at PageID #736-37, ECF No. 26); *see also* N.D. Ohio L.R. 83.10, App. J. Second, Defendants argue that "Plaintiff has not identified any exceptional circumstances" justifying her appointment of counsel. (*Id.*) Finally, Defendants allege that Plaintiff is not in reality *pro se*, instead, Defendants suggest that Plaintiff is already utilizing professional legal services based on the quality of her

pleadings—a practice known as "ghost writing"—and therefore appointing Plaintiff counsel in this case would be unnecessary. After considering the parties' arguments and relevant case law, the court finds Defendants' argument well-taken.

Appointment of counsel in a civil case is not a constitutional right. *Lavado v. Keohane*, 992 F.2d 601, 605 (6th Cir. 1993) (citing *Mekdeci v. Merrell Nat'l Labs.*, 711 F.3d 1510, 1522 n. 19 (11th Cir. 1983). District courts possess broad discretion to appoint counsel for indigent civil litigants. 28 U.S.C. § 1915(e)(1) (stating that, "[t]he court may request an attorney to represent any person unable to afford counsel."); *see also Reneer v. Sewell*, 975 F.3d 258, 261 (6th Cir. 1992) (stating that, "[t]he appointment of counsel to civil litigants is a decision left to the sound discretion of the district court, and this decision will be overturned only when the denial of counsel results in "'fundamental unfairness impinging on due process rights.'"') (internal citations omitted). A district court's appointment of counsel to an indigent litigant in a civil case may be justified only by exceptional circumstances. *Lavado*, 992 F.3d at 606. In determining whether a case presents exceptional circumstances, courts consider "the type of case and the abilities of the plaintiff to represent himself" and the "complexity of the factual and legal issues involved." *Id.* Appointment of civil counsel is inappropriate when a *pro se* plaintiff's chances of success are extremely slim. *Id.* (citing *Mars v. Hanberry*, 752 F.2d 254, 256 (6th Cir. 1985)). Reviewing Plaintiff's case, the court determines that this case does not present exceptional circumstances because plaintiff's chances of success are extremely slim. As previously noted, courts have routinely determined that a plaintiff's

chances of succeeding on their constitutional claims challenging school districts' mask mandates are unlikely. *See supra* Part B. Furthermore, the court is not persuaded that this case presents exceptionally complicated legal issues because courts within this Circuit, and around the country, have held that similar and identical claims are not legally cognizable. *Id.* Accordingly, the court determines that Plaintiff's case does not present exceptional circumstances justifying the appointment of counsel under 28 U.S.C. § 1915(d). Thus, the court denies Plaintiff's Motion. (ECF No. 25).

D. Motion for Permission to Utilize Electronic Filing

Plaintiff moves for permission to utilize electronic filing, requesting that "the Court grant them access to the Court's Electronic Filing System so that they may enjoy the same rights as the defendants' attorneys and all other litigants who are afforded the opportunity to experience the time-saving and cost-effective benefits associated with electronic filing." (Mot. at PageID #464, ECF No. 12.) In light of the court's ruling, Plaintiff's Motion is futile, as the case is dismissed for lack of jurisdiction and Plaintiff's Motion to Amend is denied. Additionally, the court notes that Plaintiff has previously abused the filing system by submitting hundreds of irrelevant documents to the clerk's office. Accordingly, the Motion (ECF No. 12) is denied.

IV. Conclusion

For the foregoing reasons, the court grants Defendants' Motion to Dismiss (ECF No. 21) and dismisses Plaintiff's Complaint (ECF No. 19), rendering

Defendants' prior Motion to Dismiss (ECF No. 7) moot. Furthermore, the court denies Plaintiff's Motion to Amend and Motion for Counsel (ECF No. 25) and Plaintiff's Motion for Permission to Utilize the Electronic Filing System (ECF No. 12).

IT IS SO ORDERED.

/s/ Solomon Oliver, Jr.
United States District Judge

September 29, 2022

**AMENDED COMPLAINT,
U.S. DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO
(OCTOBER 1, 2021)**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

P.M., a minor, by and through her parent, Terpsehore Maras,

Plaintiffs,

v. Case No.: 1:21-cv-01711-SO

MAYFIELD CITY SCHOOL DISTRICT BOARD OF EDUCATION; DR. MICHAEL J. BARNES, in his individual capacity and in his official capacity as Superintendent of the Mayfield City School District; and RON FORNARO, SUE GROSZEK, AL HESS, GEORGE J. HUGHES, and JIMMY TERESI, all in their individual capacities and in their capacities as members of the Mayfield City School District Board of Education,

Defendants.

FIRST AMENDED, SUPPLEMENTAL, AND RESTATED COMPLAINT WITH DEMAND FOR JURY TRIAL

Plaintiffs, P.M. a minor, by and through her parent, Terpsehore Maras, pro *se,* hereby file this

First Amended, Supplemental, and Restated Complaint with Demand for Jury Trial against Defendants, Mayfield City School District Board of Education ("School Board"); Dr. Michael J. Barnes, in his individual capacity and in his official capacity as Superintendent of the Mayfield City School District; and Ron Fornaro, Sue Groszek, Al Hess, George J. Hughes, and Jimmy Teresi, all individual elected officials sued in their individual capacity and in their capacity as members of the School Board (collectively, "Defendants"). In support of the claims set forth herein, Plaintiffs allege and aver as follows:

INTRODUCTION

Through the unlawful actions of Defendants, Plaintiff Terpsehore Maras has been deprived of her right to care for and maintain custody and control of her minor child, P.M. Specifically, by implementing an unconstitutional universal mask mandate despite have no sound scientific basis for doing so, Defendants have ordered P.M. to involuntarily participate in a healthcare service in violation of Article 1, § 21 of the Ohio State Constitution, whereby P.M. is required to wear a mouth covering and to subject herself to contract tracing.

As a result, solely at the discretion of Defendants, P.M. is required to undergo the perpetual implementation of the collection of healthcare information under the guise of a purported state of emergency. Such an unbridled assault on P.M.'s civil liberties should not and must not be allowed to stand. Despite the Court's order denying Plaintiffs'

request for a Temporary Restraining Order, Plaintiffs herein place the Court and Defendant on notice that they will be filing an updated request for injunctive relief in the coming days based on the updated information and arguments contained herein.

In addition, the United States Court of Appeal for the Sixth Circuit has noted, "In reviewing a Complaint, the Court must construe the pleading in the light most favorable to the Plaintiff'," *Bibbo v. Dean Witter Reynolds, Inc.*, 151 F.3d 559, 561 (6th Cir, 1998), Yet, in reliance on outdated and constitutionally repugnant Sixth Circuit ease law, Defendants' attorneys, and even the Court itself, have suggested that Plaintiff Terpsehore Maras has no legally cognizable right to defend the legal interests of her minor child, P.M.—even though P.M. is not recognized by the judicial system as having the ability to bring her own lawsuit against the Defendants due to her status as a minor.

The absurd result of such a position would be that Ohioan parents would not be able to represent their minor children *pro se* and instead would have to bear the often exorbitant expense of hiring an attorney to represent the children. Therefore, although parents in Ohio have the financial obligations for and are vicariously liable for the actions of their minor children, they are prohibited from protecting the legal interests of the minor children to which they are financially and vicariously responsible. Such a scenario is devoid of any modicum of rationality.

Moreover, Article I, § 21 of the Ohio State Constitution expressly prohibits federal, state, and local laws or rules from compelling, directly or

indirectly, any person, employer, or health care provider to participate in a health care system. Thus, the Constitution of the State of Ohio unambiguously affords individuals like Terpsehore Maras the right to seek redress from the courts when unconstitutional actions, whether directly or indirectly, infringe upon the rights of Ohioans. Because the universal mask mandate unconstitutionally places P.M. in danger of suffering irreparable and immediate injury, including by suffering an overall possible simultaneous drop in oxygen saturation of the blood and increase in carbon dioxide, which contributes to an increased noradrenergic stress response, with heart rate increase and respiratory rate increase and, in some cases, a significant blood pressure increase,

CHANGES FROM ORIGINAL COMPLAINT

Plaintiffs reallege the allegations set forth in their original Complaint as if stated in full herein. As a summary of the changes made in this new filing, Plaintiffs note the following:

- Plaintiffs have added an introduction section to briefly touch on their new constitutional arguments and to address the Defendants' contention that Plaintiff Terpsehore Maras does not have standing to represent her minor child *pro se* to challenge the Defendants' dangerous and scientifically unsound universal mandate.
- Plaintiffs allege additional causes of action under the Ninth and Tenth Amendments to the United States Constitution

as well as Article I, § 21 of the Ohio State Constitution.

- Plaintiffs substitute the document designated as Exhibit O, the original Affidavit of Stephen O. Petty and accompanying exhibits, for an updated version of Mr. Petty's Affidavit with updated exhibits.
- Plaintiffs attach as Exhibit Q, *in globo,* the affidavits of hundreds of fellow Americans in support of Plaintiffs' allegations.
- Plaintiffs formally request a Trial by Jury.

PARTIES

1. Plaintiff P.M. is a minor child who resides in Mayfield City School District ("MCSD"), in Cuyahoga County, Ohio. Plaintiff P.M. is and was at all times relevant hereto a student at a Mayfield City School District public school. Suit is brought herein on P.M.'s behalf by her mother, Plaintiff Terpsehore Maras.

2. Plaintiff Terpsehore Maras is an adult individual who is a resident and taxpayer in the Mayfield City School District, in Cuyahoga County, Ohio. Plaintiff Terpsehore Maras is the parent of Plaintiff P.M.

3. Defendant Mayfield City School District Board of Education (the "School Board" or the "Board") is a public entity which, acting under color of law, is responsible for the formulation and implementation of all official governmental laws, policies,

regulations and procedures in effect for the Mayfield City School District.

4. Defendant Dr. Michael J. Barnes was at all relevant times the Superintendent of the Mayfield City School District; in that capacity, acting under color of law, he is responsible for the implementation of all official governmental laws, policies, regulations arid procedures governing the Mayfield City School District. He is sued in his official and individual capacities.

5. Defendant Ron Fornaro is a Cuyahoga County resident and member of the School Board, sued here in his individual and representative capacity. Mr. Fomaro is currently the President of the School Board.

6. Defendant Sue Groszek, is a Cuyahoga County resident and member of the School Board, sued here in her individual and representative capacity.

7. Defendant Al Hess is a Cuyahoga County resident and member of the School Board, sued here in his individual and representative capacity.

8. Defendant George J. Hughes is a Cuyahoga County resident and member of the School Board, sued here in his individual and representative capacity.

9. Defendant Jimmy Teresi is a Cuyahoga County resident and member of the School Board, sued here in his individual and representative capacity. Mr. Teresi is currently the Vice President of the School Board.

10. At all relevant times hereto, the School Board and the individual Defendants were acting under color of state law.

JURISDICTION AND VENUE

11. Plaintiffs incorporate the foregoing paragraphs as if set forth in full herein,

12. This Court has subject matter jurisdiction over Plaintiffs' claims under 28 U.S.C. § 1331, 28 U.S.C. §§ 1343(a)(3), (4), 28 U.S.C. § 1367, 28 U.S.C. § 2201, and 42 U.S.C. § 1983.

13. There exists an actual and justiciable controversy between Plaintiffs and Defendant requiring resolution by this Court.

14. Plaintiffs have no adequate remedy at law.

15. Venue is proper before the United States District Court for the Northern District of Ohio under 28 U.S.C. § 1391 because all parties reside or otherwise are found herein, and all acts and omissions giving rise to Plaintiffs' claims occurred in the Northern District of Ohio.

FACTS

16. Plaintiffs incorporate the foregoing paragraphs as if set forth in full herein.

A. Mayfield School District Board of Education

17. Plaintiffs incorporate the foregoing paragraphs as if set forth in full herein.

18. The Mayfield School District Board of Education is "composed of five citizens who are representatives of the residents of Gates Mills, Highland Heights, Mayfield Heights and Mayfield Village. Board members are elected 'at large' on a nonpartisan ballot and serve for staggered terms of four years." https://www.mayfieldschools.org/BoardofEducation.aspx.

19. The five individuals currently serving as School Board Members are Defendants Ron Fornaro, Sue Groszek, Al Hess, George I Hughes, and Jimmy Teresi.

20. Defendant Dr. Michael J. Barnes, Superintendent of the District, holds a doctorate degree in Leadership & Organizational Development, a master's in Secondary School Administration, and a bachelor's degree in Political Science.

21. Defendant Ron Fornaro, the President of the School Board, has a Bachelor of Science in Business Administration. On January 10, 2018, Mr. Fornaro signed an Oath of Office swearing to support the Constitution of the United States and the Constitution of the State of Ohio, and to faithfully and impartially discharge his duties as a Vice-President of the School Board (though he is now President of the School Board) to the best of his ability, and in accordance with the laws "now in effect and hereafter to be enacted." See Exhibit A.

22. Defendant Sue Groszek has a bachelor's degree in deaf education. On January 8, 2020, Ms, Groszek signed an Oath of Office swearing to support the Constitution of the United States and the Constitution of the State of Ohio, and to faithfully

and impartially discharge her duties as a Board Member to the best of her ability, and in accordance with the laws "now in effect and hereafter to be enacted." See Exhibit B.

23. Plaintiffs cannot confirm whether Defendant Al Hess holds a college degree. On January 8, 2020, Mr. Hess signed an Oath of Office swearing to support the Constitution of the United States and the Constitution of the State of Ohio, and to faithfully and impartially discharge his duties as a Board Member to the best of his ability, and in accordance with the laws "now in effect and hereafter to be enacted." See Exhibit C.

24. Defendant George J. Hughes has a bachelor's degree in criminology. On January 10, 2018, Mr. Hughes signed an Oath of Office swearing to support the Constitution of the United States and the Constitution of the State of Ohio, and to faithfully and impartially discharge his duties as a Board Member to the best of his ability, and in accordance with the laws "now in effect and hereafter to be enacted." See Exhibit D.

25. Plaintiffs cannot confirm whether Defendant Jimmy Teresi, the Vice President of the School Board, holds a college degree. On January 10, 2018, Mr. Teresi signed an Oath of Office swearing to support the Constitution of the United States and the Constitution of the State of Ohio, and to faithfully and impartially discharge his duties as a Board Member (though he is now Vice-President of the School Board) to the best of his ability, and in accordance with the laws "now in effect and hereafter to be enacted." See Exhibit E.

26. This five-member School Board unanimously appointed Defendant Dr. Michael J. Barnes to serve as Superintendent of Schools, effective July 1, 2021.

27. As Superintendent, Dr. Barnes is charged with the administration of the MCSD.

B. Relevant Policies of the Mayfield School District Board of Education

28. Code po0118 of Section 0000 of the School Board's policy manual, titled "PHILOSPOHY OF THE BOARD", provides,

> The Board's philosophy of education gives direction to the educational program and daily operations of the District. (AD)
>
> The primary responsibility of the Board is to establish purposes, programs and procedures which produce the educational achievement needed by District students, The Board must accomplish this while also being responsible for wise management of resources available to the District. The Board must fulfill these responsibilities by functioning primarily as a legislative body to formulate and adopt policy, by selecting an executive officer to implement policy and by evaluating the results; further, it must carry out its functions openly, while seeking the involvement and contributions of the public, students, and staff in its decision-making processes.

> In accordance with these principles, the Board seeks to achieve the following goals to:
>
> * * *
>
> formulate Board Policies which best serve the educational interests of each student
>
> * * *
>
> maintain effective communication with the school community, the staff; and the students in order to maintain awareness of attitudes, opinions, desires, and ideas
>
> * * *
>
> conduct Board business openly, soliciting and encouraging broad-based involvement in the decision-making process by public students and staff
>
> * * *

http://..com/oh/mayoh/Board.nsf/goto? open&id= BETTSC6DA 88E (emphasis added).

29. In addition, the Board's Policy Manual at Section 000, Code po0121 provides,

> The United States Constitution leaves to the individual state's responsibility for public education.
>
> The Ohio General Assembly is under mandate by the Constitution of Ohio to provide for the organization, administration and control of a public school system supported by public funds. The Ohio State Constitution also calls for a State Board of

> Education and a Superintendent of Public Instruction.
>
> The General Assembly has outlined the duties of the State Board of Education and the Chief State School Officer. It has also established a State Department of Education (through which policies and directives of the State Board and Superintendent of Public Instruction are administered) and has established specific types of school districts.
>
> The Mayfield City School District is classified as a city school district governed by a locally elected Board of Education, hereinafter referred to as the "Board", which is constituted and governed by Code Title 33 of the Revised Code of the State of Ohio.

http://go.boarddocs.com/oh/mayoh/Board.nsf/goto?open&id=BETTSD6DA898.

30. Furthermore, for its "STATEMENT OF PH1LOSPHY", the Policy Manual at Section 0000, Code po2110 declares,

> The Board of Education believes that the purpose of education is to facilitate the development of the potential of each student. In a free society, every individual has both the right and responsibility to make choices and decisions for himself/herself and for society. A prerequisite for every member of such a society in meeting those responsibilities is competence in the use of the rational

> thought processes needed to make intelligent, ethical choices and decisions. If our society, as originally conceived, is to survive and function effectively. its young people need to be prepared to exercise their rights and their responsibilities in ways that benefit them and the society. Likewise, if individuals are to be able to achieve their life goals in a free society, they need to be competent to choose among the myriad alternatives that are and continue to be available to them.

http://go.boarddocs.com/oh/mayoh/Board.nsf/goto?open&id=BETTUY6DAC2C (emphasis added).

31. The Board Policy also provides in Section 0000, po0131, in pertinent part,

> Proposals regarding Board policies and operations may originate at any of several sources, including students, community residents, employees, Board members, the Superintendent, consultants or civic groups. A careful and orderly process is used when examining policy proposals prior to Board action.
>
> The formulation and adoption of written policies constitute the basic method by which the Board exercises its leadership in the operation of the District. The study and evaluation of reports concerning the execution of its written policies constitute the basic method by which the Board exercises its control over District operations.

http://go..com/oh/mayoh/Board.nsf/goto?open&id=BETTSJ6DA8CC. (Emphasis added).

32. Moreover, Section 8000, Code po8420.01, titled "PANDEMICS AND OTHER MEDICAL EMERGENCIES", provides, in pertinent part,

> A pandemic is an outbreak of an infectious disease. The Board of Education directs the Superintendent to set up a Pandemic Response Team ("PRT") to develop a Pandemic Plan in coordination with local government and law enforcement officials.
>
> * * *
>
> The Pandemic Plan should be reviewed annually by the PRT and updated as appropriate.

http://go.boarddocs.com/oh/mayoh/Board.nsf/goto?open&id=BETU686DB887.

33. Additionally, Mayfield Board Policy 8450.01, adopted by the Board on September 23, 2020 and attached hereto as Exhibit F, explains that the Superintendent's decision to require protective facial covering during pandemic and epidemic events was made "through Board of Education plans/resolution(s) in alignment with public health officials and/or in accordance with government edicts and including any Pandemic Plan developed by the District's Pandemic Response Team under Policy 8420.01." Notably, the Policy states, "Facial masks/coverings generally should not include surgical masks or respirators unless medically indicated (as those should be reserved for

healthcare workers) or masks designed to be worn for costume purposes." *Id.* (emphasis added).

34. Finally, Mayfield Board Policy Section 1000, po1130, titled "CONFLICT OF INTEREST", provides, in pertinent part,

> A. The proper performance of school business is dependent upon the maintenance of unquestionably high standards of honesty, integrity, impartiality, and professional conduct by Board of Education's members, and the District's employees, officers, and agents. Further, such characteristics are essential to the Board's commitment to earn and keep the public's confidence in the School District. For these reasons, the Board adopts the following guidelines to assure that conflicts of interest do not occur. These guidelines apply to all District employees, officers and agents, including members of the Board. These guidelines are not intended to be all inclusive, nor to substitute for good judgment on the part of all employees, officers, and agents.
>
> 1. No employee, officer, or agent shall engage in or have a financial interest, directly or indirectly, in any activity that conflicts or raises a reasonable question of conflict with his/her duties and responsibilities in the school system.

2. Employees, officers, and agents shall not engage in business, private practice of their profession, the rendering of services, or the sale of goods of any type where advantage is taken of any professional relationship they may have with any student, client, or parents of such students or clients in the course of their employment or professional relationship with the School District.

* * *

C. Employees, officers, and agents can not participate in the selection, award, or administration of a contract supported by a Federal grant/award if s/he has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his/her immediate family, his/her partner, or an organization which employs or is about to employ any of the parties described in this section, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

Employees, officers and agents can not solicit or accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. Unsolicited items of nominal value, however, may be accepted. The Ohio Licensure Code of Professional Conduct stipulates

> the nominal value of gifts to be less than $25.
>
> * * *
>
> E. Employees, officers and agents must disclose any potential conflict of interest which may lead to a violation of this policy to the School District. Upon discovery of any potential conflict of interest, the School District will disclose, in writing, the potential conflict of interest to the appropriate Federal awarding agency or, if applicable, the pass-through entity.
>
> The District will also disclose, in a timely manner, all violations of Federal criminal law involving fraud, bribery or gratuity that affect a Federal award to the appropriate Federal awarding agency or, if applicable, the pass-through entity.

See attached Exhibit G (emphasis added).

C. MCSD's COVID-19-Based Measures

35. Through Board Action 0202-060, the Board unanimously adopted the following resolution, attached hereto as Exhibit II:

> The Mayfield Board of Education recommended to adopt the suspension of community communications due to the Coronavirus as delineated in the public content section:
>
> WHEREAS, On March 11th, 2020 the World Health Organization officially declared that COVID-19, a novel

coronavirus, to be a pandemic. Shortly afterward, Governor Mike DeWine issued Executive Order 2020-01D declaring Ohio to be in a state of emergency, The Ohio Department of Health also ordered that all K-12 schools be closed to students at least through May 1, 2020. Similarly, residents have been ordered to remain at home until that date to slow the spread of the disease.

* * *

WHEREAS, on March 25th, 2020 the Ohio General Assembly passed an emergency measure through House Bill 197 which temporarily authorizes boards of education and other local government agencies to hold remote meetings during the duration of a health emergency. The provisions of HB 197 will remain in effect until December 1, 2020 or until the COVID-19 emergency ceases, whichever comes first,

* * *

WHEREAS, the Mayfield Board of Education continues to work diligently to address the many challenges that COVID-19 has caused and is likely to cause in the future as well as complying with and modeling behaviors consistent with the stay at home order.

NOW, THEREFORE, BE IT RESOLVED by the Mayfield Board of Education that it suspends community communications/public comments section of its

regular meeting agendas until the COVID-19 emergency ceases.

Exhibit H (emphasis added),

36. In June 2021, the MCSD, through Defendant Michael J. Barnes, issued a "Plan for Safe Return to In-person Instruction". See Exhibit L In its "Policy for Mitigation Strategies Section", the MCSD states, "We are anticipating that the health and safety protocols will continue to be. practiced during the 2021-22 school year. This, of course, depends on orders from the Governor and the Board of Health. These guidelines are changing, but you can anticipate that we will require wearing masks and social distancing when in hallways, classrooms, common spaces and cafeterias," at p. 2. The Plan also included a statement that "The Mayfield City School District seeks public input regarding the District's plans for a safe return to in-person instruction for the 2021-22 school year. Please call 440.995.6800." *Id,* at p, 4.

37. On August 4, 2021, the MCSD, through Defendant Dr. Michael J. Barnes, issued a Mask Recommendation to Mayfield teachers, staff, parents, and students, in which the MCSD stated,

Our goals for our students, staff, and community:

- Maintain a healthy and safe environment
- Keep our students learning in person, together, in our schools
- Provide choice

> Late this summer, the Centers for Disease Control and Prevention (CDC), the American Academy of Pediatrics (AAP) and Ohio Department of Health (ODH) released updated recommended guidance on the safe return to school for students and staff. There are several key takeaways that serve as the foundation for the Mayfield City School District's reopening plan this school year
>
> Face masks in grades Pre-K-12 are strongly recommended for our students, teachers and staff.
>
> - Wearing a face mask may greatly reduce the risk of students, teachers and staff having to quarantine if a COVID-19 positive case/s are reported in any of our Mayfield schools.
> - I t is your right to wear or not wear a face mask. We support either decision. Please be respectful of the choice of our students, teachers and staff.

See Exhibit J, The Mask Recommendation also provides, in pertinent part,

> 2. As of this date, there is no state-wide required masking mandate for the 2021-2022 school year for staff or students,
> 3. The Mayfield City School District supports all students or staff members in their choice to wear a face mask. It is important to note that the Ohio Department of Health strongly recommends

> masks be worn indoors by all individuals who are not fully vaccinated (age 2 years and older). The CDC and CCBH as of August 3, 2021, now recommend that all individuals (vaccinated or not) wear a mask while indoors where community transmission is high.

Id. at pp. 1-2 (emphases in original). In addition, the Mask Recommendation states that "Wearing a face mask may greatly reduce the risk of students, teachers and staff having to quarantine if a COVID-19 positive case/s are reported in any of our Mayfield schools. We will continue to monitor the guidance and recommendations of the Centers for Disease Control and Prevention, State of Ohio and Cuyahoga County Board of Health." *Id.* at p. 2 (emphasis in original),

38. On August 21, 2021, Defendant Dr. Michael J. Barnes sent an e-mail to Mayfield teachers, staff, parents, students and community (the "mask mandate") stating as follows:

> Earlier this week, the district issued a face mask mandate in Grades Pre-K-5 to protect our younger students who are ineligible for a COVID-19 vaccine, along with a strong recommendation for students in grades 6-12 to wear a face mask.
>
> The decision to issue a mandate to students 12 years and younger was supported by the survey the district conducted August 12-14th. Those survey results also indicated most parents intended for their

children in grades 6-12 to wear a mask while in school.

Students returned to campus during phase-in schedules, beginning August 16th with all students on campus at full capacity on August 18th. During this week, school officials have observed very few students in grades 6-12 wearing face masks. This is concerning. Our priorities for this school year are to maintain the health and safety of our school community and continue learning in person, in school, together.

Therefore, pursuant to Mayfield Board Policy 8450.01 Mayfield City Schools will mandate face masks in all school buildings for all students, teachers, staff and visitors in grades Pre-K-12, effective Monday, August 23rd. We will review the mandate weekly and give updates at regular Board of Education meetings.

The district's Pre-K-12 face mask mandate for students, staff and visitors in our schools is our best organizational strategy to support and protect our students' academic time and to maintain a stabilized learning environment.

***

See attached Exhibit K (emphases added.)

D. Plaintiffs Place Defendants on Notice of Lawsuit.

39. Upon receiving the Superintendent's e-mail, Plaintiff, Terpsehore Maras, e-mailed a response to the Defendants informing them that she would be filing a lawsuit due to the Defendants' violation of Ohio's open meetings laws and violation of the United States and Ohio Constitutions through their commission of unauthorized restrictions of liberty; identification of a minor as a potential public health risk with no jurisdiction; identification and declaration of a minor as a potential public health risk with no evidence; declaration of mandates to restrict a minor's liberty with no legal jurisdiction; declaration of mandates that have no legal jurisdiction to restrict civil liberties; declaration of mandates restricting liberties with no prior public comment; declaration of mandates imposing dress code that does not align with dress code regulations; declaration of mandates as medical experts; and deprivation of students' and parents' civil liberties with no authority." See Exhibit L.

40. In her letter, Ms. Maras also informed Defendants that she was sending a copy of the letter to Ohio Attorney General David Yost, a copy of which letter is attached hereto as Exhibit M.

41. Ms. Maras concluded her letter by noting that she would be seeking a temporary restraining order unless the purported "mandate" was not rectified by the close of business on August 23, 2021. See Exhibit M.

E. August 25, 2021 Regular Meeting of the School Board

42. Thereafter, on August 23, the School Board issued its agenda for its next regular meeting, scheduled for Wednesday, August 25. See Exhibit N. The agenda indicated that the mask mandate would be discussed at the meeting. *id.*

43. At the August 25, 2021, meeting, Plaintiff, Terpsehore Maras, approached the School Board members to speak during open discussion of the mandate despite objections from the School Board that Ms. Maras did not have the right to speak since she did not submit an application to speak. In fact, Ms. Maras had arrived at the meeting location and completed an application to speak long before the mask mandate discussion commenced but no one from the School Board accepted Ms. Maras's application to speak.

44. Once she was finally permitted to speak, which was at the end of the mask mandate discussion, Ms. Maras first notified the School Board that upon learning the School Board would be discontinuing public comments during virtual meetings due to COVID, she e-mailed the Board members to ask why public comments were being disabled given that, to her knowledge, COVID cannot be transmitted via a computer or telephone. Ms. Maras suited at the meeting that the Board never replied to her e-mail and that she was never invited to comment on the Superintendent's decision to reinstate to mask mandate on August 20.

45. Ms. Maras also informed Defendants that she was in possession of pictures recently taken of

the Defendants at parties not wearing masks. Moreover, she explained that went she arrived at the Superintendent's office on August 23 to hand-deliver the notice of intent to sue, she encountered three individuals, the Assistant Superintendent, the Assistant to Superintendent Michael J. Barnes, and a third employee, who were not wearing masks despite the mask mandate requiring them to do so.

46. Ms. Maras, referring to guidance from the Center for Disease Control and Prevention ("CDC"), also pointed out that in contravention to the School Board's masks mandate for students in grade Pre-K through 5, the CDC holds the position that masks mandates for children that young are detrimental and have zero efficacy.

47. In addition, Ms. Maras noted that the Board likely violated its Conflict Interest Policy (see Exhibit G) through its provision of a lottery award to a student enrolled in a Mayfield City School District school. Specifically, Defendant Ron Fornaro is employed through the Ohio Lottery Commission and serves under the Director and Staff of the Ohio Lottery Commission as an Instant Ticket Product Manager. Mr. Fornaro also shares a seat on the Mayfield Schools Foundation as the Board of Education's appointee. See https://mayfieldschoolsfoundation.org/board-bios. Mr. Fornaro's family itself has been interest of many Mayfield city alleged nepotism controversies. For example, see https://www.cleveland.com/hillcrest/2014/04/mayfield___depar.html. In addition, Upon information and belief, the Foundation itself has engaged in a number of conflicts of interest outside of Mr. Fornaro's Ohio Lottery connection, such as connections to Chris

Smith whose firm, ThenDesign Architecture, has received money from Mayfield city schools for architectural projects, and connections to Mary Beth Mac, who is a Program Manager at the Cleveland Clinic Community Relations. The Mayfield Schools Foundation's Board also retains Defendant George Hughes, who sits on that board as a community member. *Id.* Curiously, and beyond what should be a statistical anomaly, a Mayfield High School student was announced the winner of the Vax-a-million lottery in an entry that was participated by 132,000 Ohioans between the ages of 12-17, The lottery was operated through the Ohio Lottery Commission and the Ohio Department of Health. Ms. Maras stated her belief that the granting of a lottery award to a student in a school district served by Mr. Fornaro's was likely a conflict of interest, which would have resulted in the Board violated its policy (see Exhibit G).

48. Ms. Maras concluded her public comments at the School Board meeting by informing Defendants that she would be removing each of the Defendants in accordance with law for misconduct and that she would be retaining the assistance of an expert environmental toxicologist who is qualified to speak to the health and safety benefits of masks.

F. The Masking Requirement Causes Immediate and Irreparable Harm to Students, Staff, and Community

49. In his Affidavit, attached hereto as Exhibit O, Stephen E. Petty, an expert in the field of Industrial Hygiene who has testified as to the futility and danger caused by an individual wearing

a mask in order to avoid transmitting or becoming infected with. Covid-19, states the following:

* * *

2. Since April 14, 1996, I have owned and operated EES Group, Inc., a consultancy corporation specializing in health and safety and forensics.

3. I hold relevant industry certifications including board certifications as a C.I.H. (Certified Industrial Hygienist), a C.S.P. (Certified Safety Professional), and a P.E. (Professional Engineer) in six states (Florida, Kentucky, Ohio, Pennsylvania, Texas, and West Virginia). My curriculum is attached hereto as Exhibit i.

4. I have served as an expert in personal protective equipment and related disciplines in approximately 400 legal cases. I am certified in and have provided testimony as an expert in these areas. My list of representative cases is attached hereto as Exhibit ii.

5. For example, I am currently serving as an expert in the Monsanto Roundup and 3M PFAS litigation. Recently I testified in four trials for the DuPont C8 litigation.

6. I taught Environmental and Earth Sciences as an adjunct professor at Franklin University.

7. I hold nine U.S. patents relating to heating, ventilation and air conditioning (HVAC) systems.

8. I am a current member in good standing of the following relevant associations: American Industrial Hygiene Association (AIHA), American Board of Industrial Hygiene (ABIH), American Conference of Governmental Industrial Hygienists (ACGIH), American Institute of Chemical Engineers (AIChE), American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE); Member ASHRAE 40 Std. and TC 2.3, and Sigma Xi.

9. I am an expert in the field of Industrial Hygiene, which is the science and art devoted to the anticipation, recognition, evaluation, and control of those environmental factors or stressors—including viruses—arising in or from the workplace, which may cause sickness, impaired health and well-being, or significant discomfort among workers or among the citizens of the community.

10. Industrial Hygiene is fundamentally concerned with the proper methods of mitigating airborne/dermal hazards and pathogens, as well as with the design and use of engineering controls, administrative controls, and personal protective equipment, among other things.

11. Medical doctors, virologists, immunologists, and many public health professionals are not qualified experts in these areas by virtue of those aforementioned credentials.

12. On May 7, 2021, the Centers for Disease Control (CDC) updated its guidance, providing that the primary mechanism for transmission of Covid-19 is through airborne aerosols, and not, as previously stated, by touching contaminated surfaces or through large respiratory droplets, as also stated during previous periods of the pandemic (https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/sars-cov-2-transmission.html).

13. Airborne viral aerosols can consist of a single viral particle or multiple viral particles clumped together, and usually smaller than 5μ (microns) in size. By comparison, droplets are >5μ to >10μ in size.

14. The area of a micron by a micron is approximately 1/4,000th of the area of the cross-section of a human hair and 1/88th the diameter of a human hair. Covid particles are 1/10 of a micron or —1/40,000th of the area of a cross section of a human hair and —1/880th the diameter of a human hair.

15. A recent University of Florida study capturing air samples within an enclosed

automobile cabin occupied by a Covid-positive individual showed that the only culturable Covid-19 virus samples obtained were between 0.25μ to 0.5μ in size. Particles smaller than 5μ are considered very small and/or very fine or aerosols (https://www.ijidonline.com/action/showPdf?pii=S1201-9712%2821%2900375-1).

16. Very small particles do not fall by gravity in the same rate that larger particles do and can stay suspended in still air for a long time, even days to weeks.

17. Because they stay suspended in concentration in indoor air, very small particles can potentially accumulate and become more concentrated over time indoors if the ventilation is poor.

18. Very small airborne aerosols pose a particularly great risk of exposure and infection because, since they are so small, they easily reach deep into the lung. This explains in part why Covid-19 is so easily spread, and why so little Covid-19 is required for infection.

19. Exposure to airborne aerosols is a function of two primary parameters: concentration and time. Less is better regarding both parameters.

20. For many reasons, personal protective equipment (PPE) is the <u>least</u> desirable way to protect people from very small airborne aerosols. Moreover, masks

are not PPE since they cannot be sealed and do not meet the provisions of the Occupational Safety and Health Administration (OSHA) Respiratory Protection Standard (RPS), namely 29 CFR 1910.134 https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910. 134).

21. Regarding PPE, facial coverings do not effectively protect individuals from exposure to very small airborne aerosols. A device referred to as a respirator is required to provide such protection.

22. The AIHA, in its September 9, 2020 Guidance Document for COVID-19 noted that the acceptable relative risk reduction methods must be >90%; masks were shown to be only 10% and 5% (see Figure 2) and far below the required 90% level (https://aiha-assets.sfo2. digitaloceanspaces.com/AIHA/resources/ Guidance-Documents/Reducing-the-Risk-of-COVID-19-using-Engineering-Controls-Guidance-Document.pdf).

23. Similarly, Shah et al, 2021, using ideally sealed masks and particles 1 micron in size, reported efficiencies for the more commonly used cloth masks and surgical masks of 10% and 12% respectively. No mask can be perfectly sealed, thus "real world" effectiveness would be even lower (https://aip.scitation.org/doi/ pdf/10.1063/5.0057100).

24. Industrial hygienists refer to a "Hierarchy of Controls" that are typically implemented to minimize exposures, including exposures to very small airborne aerosols like Covid-19.

25. Regarding practical or "engineering" controls, industrial hygienists focus on practices that dilute, destroy, or contain airborne hazards (or hazards in general).

26. PPE—especially facial coverings—do not dilute, destroy, or contain airborne hazards. Therefore, facial coverings are not contained in the Industrial Hygiene (IH) Hierarchy of Controls. Even respirators (part of the PPE Category and not masks) are in the last priority on the Hierarchy of Controls.

27. Facial coverings are not comparable to respirators. Leakage occurs around the edges of ordinary facial coverings. Thus, ordinary facial coverings do not provide a reliable level of protection against inhalation of very small airborne particles and are not considered respiratory protection.

28. For example, during the seasonal forest fires in the summer of 2020, the CDC issued public guidance warning that facial coverings provide no protection against smoke inhalation. That is because facial coverings do not provide a reliable level of protection against the small particles of ash contained in smoke. Ash

particles are substantially larger than Covid-19 aerosolized particles.

29. I have reviewed the policy of the Mayfield City School District (MCSD) regarding the use of masks.

30. Ordinary facial coverings like the ones required by the MCSD mask policy do not meet any of the several key OSHA Respiratory Protection Standards for respirators.

31. Because of the gaps around the edges of facial coverings required by MCSD's policy, they do not filter out Covid-19 aerosols. The policy stating masks will be worn without gaps defies known science that masks worn today cannot be sealed and always have gaps.

32. The effectiveness of a cloth facial covering falls to zero when there is a 3% or more open area in the edges around the sides of the facial covering.

33. Most over-the-counter disposable facial coverings including cloth and/or over-the-counter disposable surgical masks have edge gaps of 10% or more. When adult-sized facial coverings are used by children, edge gaps will usually greatly exceed 10%.

34. Even short breaks (*e.g.* to eat) expose individuals to Covid-19 aerosols in indoor spaces.

35. Ordinary cloth facial coverings like the ones required by the MCSD's mask requirement do not provide any filtering benefit relative to particles smaller than 5μ if not sealed.

36. Substantial mitigation of Covid-19 particles could be immediately achieved by:

a. opening windows and using fans to draw outdoor air into indoor spaces (diluting the concentration of aerosols),

b. setting fresh air dampers to maximum opening on HVAC systems,

c. overriding HVAC energy controls,

d. increasing the number of times indoor air is recycled,

e. installing needlepoint ionization technology to HVAC intake fans, and

f. installing inexpensive ultraviolet germicide devices into HVAC systems.

37. All of the above-referenced techniques are more effective and meet standard industrial hygiene hierarchy of controls (practices) for controlling exposures in place for nearly 100 years. The use of cloth facial coverings do not fit within these basic hierarchy of controls since masks are not PPE and cannot be sealed, There are no OSHA standards for facial coverings (masks) as respiratory protection.

38. Extended use of respiratory PPE is not indicated without medical supervision.

39. As explained in a recent April 20, 2021 paper by Kisielinski et al, attached hereto as Exhibit iii and entitled "Is a Mask That Covers the Mouth and Nose Free from Undesirable Side Effects in Everyday Use and Free of Potential Hazards?" that was published in the *International Journal of Environmental Research and Public Health* (https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8072811/), the following negative effects from wearing masks was reported in the literature:

Increased risk of adverse effects when using masks:

Internal Diseases

COPD
Sleep Apnea Syndrome
Advanced Renal Failure
Obesity
Cardiopulmonary Dysfunction
Asthma

Psychiatric Illness

Claustrophobia
Panic Disorder
Personality Disorders
Dementia
Schizophrenia
Helpless Patients
Fixed and Sedated Patients

Neurological Diseases
Migraines and Headache Sufferers
Patients with Intracranial Masses
Epilepsy

Pediatric Diseases
Asthma
Respiratory Diseases
Cardiopulmonary Diseases
Neuromuscular Diseases
Epilepsy

ENT Diseases
Vocal Cord Disorders
Rhinitis and obstructive Diseases

Occupational Health Restrictions
Moderate/Heavy Physical Work

Dermatological Diseases
Acne
Atopic

Gynecological restrictions
Pregnant Women

Figure 5. Diseases/predispositions with significant risks, According to the literature found, when using masks. indications for weighing up medical mask exemption certificates.

Example statements made in the paper include the following: "The overall possible resulting measurable drop in oxygen saturation (02) of the blood on the one hand and the increase in carbon dioxide (CO2) on the other contribute to an increased

noradrenergic stress response, with heart rate increase and respiratory rate increase, in some cases also to a significant blood pressure increase." Exhibit iii, p. 25. In fact, "Neither higher level institutions such as the WHO or the European Centre for Disease Prevention and Control (ECDC) nor national ones, such as the Centers for Disease Control and Prevention, GA, USA (CDC) or the German RKI, substantiate with sound scientific data a positive effect of masks in the public (in terms of a reduced rate of spread of COVID-19 in the population)." Exhibit iii, p. 24, for these reasons, students who are required to wear masks pursuant to a mandate suffer immediate and irreparable injury, loss, or damage.

40. A recent summary of the literature on these topics was produced on September 4, 2021 and is attached is Exhibit iv; in summary it proves that:

a. PPE is the least desirable way to protect people from very small airborne aerosols,

b. Facial coverings as required by the MCSD's policy are not recognized as PPE since they cannot be sealed and are not covered by the OSHA RPS.

c. If PPE were to be used for protection, respirators, not facial coverings as required by the MCSD's policy are needed to provide any effective protection from very small airborne aerosols.

d. Very small aerosol particles are more likely to be a greater cause of disease than respiratory droplets because they can evade PPE and reach deep into the lungs, whereas respiratory droplets have to work against gravity in order to travel up a person's nose into the sinus and typically rapidly fall to the ground.

f. Based on cited literature, individuals who are required to wear masks pursuant to a mandate have the known potential to suffer immediate and irreparable injury, loss, and damage due to the overall possible resulting measurable drop in oxygen saturation of the blood on one hand and the, increase in carbon dioxide on the other, which contribute to an increased noradrenergic stress response, with heart rate increase and respiratory rate increase and in some cases a significant blood pressure increase.

g. As demonstrated, it seems rational (i.e. prudent person) and scientifically corroborated (in accordance with indisputable, Industrial Hygiene Science/Engineering evidence) that facial coverings/masking DO NOT "prevent the spread of communicable diseases" even close to the relative risk reduction guidance stated by AMA.

Also, from an industrial hygiene exposure control perspective. I am confident that, beyond a reasonable doubt, facial coverings/masking DO NOT "prevent the spread of communicable diseases," in this

case SARS CoV-2 and its collection of symptoms known as COVID-19 based on the literature since masks cannot be sealed. Further, even N-95 respirators, which can be sealed, are not recommended by a key manufacturer (3-M) to stop biological infectious diseases "The respirator . . . cannot eliminate the risk of infection, illness, or disease."

h. Finally, from an Industrial hygiene (i.e., exposure control) standpoint, much better alternatives to controlling exposure are available (i.e., engineering controls of dilution — ventilation with increased fresh air and destruction), and should be used to minimize exposures as opposed to masks.

50. Plaintiffs note that the state of Ohio was given $4,475,243.513 pursuant to the American Rescue Plan ("ARP") Act of 2021 by agreeing to implement the federal guidelines set forth by the CDC for COVID-19 mitigation efforts. See the attached letter from the U.S. Secretary of Education, attached hereto as Exhibit P. *See also*, https://oese.ed.gov/files/2021/07/Ohio-ARP-ESSER-State-Plan-Highlights-v2-071421.pdf. The letter links to the CDC guidelines available at https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy. html. The guidelines suggest that a school board would forfeit ARP allocations by making masks optional, and states that have prohibited mask mandates in schools have received letter notifying them that they will not receive ARP funds, Accordingly, it seems Defendants

have a financial incentive for implementing the mask mandate, despite that such a requirement serves no scientific purpose and subjects individuals who wear masks to the health risks discussed above.

51. Plaintiffs attach as Exhibit Q, *in globo*, the affidavits of hundreds of fellow Americans in support of Plaintiffs' allegations. Courts across the nation can continue to expect to receive the pleadings of angry parents who are angered by the arbitrary and nonsensical measures being implemented by school boards under the guise of caring for American children when, in fact, it appears many individuals associated with these schools boards are receiving financial incentives for unnecessarily and unconstitutionally masking children. Such an injustice will not be allowed to stand.

52. Plaintiff Terpsehore Maras, in her own capacity and on behalf of her minor child, P.M., is aggrieved by the immediate and irreparable injury, loss, and damage suffered by P.M. because P.M. is required to wear a mask pursuant to the School Board's mask mandate, which is not only unsupported by science, but which also results in the possible resulting measurable drop in oxygen saturation of the blood on one hand and the increase in carbon dioxide on the other, which contributes to an increased noradrenergic stress response, with heart rate increase and respiratory rate increase and, in some cases, a significant blood pressure increase.

COUNT I-42 U.S.C. § 1983-Violation of Procedural Due Process (5th and 14th Amendments) Against All Defendants

53. Plaintiffs incorporate the foregoing paragraphs as if set forth in full herein.

54. In order establish a claim under section 1983 of the Civil Rights Act, a plaintiff must prove a Defendant: (a) acted under the color of state law; (b) proximately causing; (c) the Plaintiff to be deprived of a federally protected right. 42 U.S.C. § 1983.

55. In the instant case, Defendants unquestionably acted under the color of state law.

56. Each Individual Defendant is an elected, voting member of the Mayfield City School District Board of Education with the exception of Defendant Dr. Michael J. Barnes, who is the Superintendent of the Mayfield City School District.

57. Under the Fifth Amendment to the Constitution, no person may be deprived of life, liberty, or property without due process of law. U.S. Const. Ann., Amendment V.

58. The Fourteenth applies the protections of the Fifth Amendment to state actors. U.S. Const. Ann., Amendment XIV.

59. Plaintiffs have constitutionally protected interests in the benefits that come from the not being subject to the Board's mask mandate, including the ability to pursue an education without being subjected to health risks that are not offset by any scientifically provable benefits.

60. Defendants' implementation of the mask policy unlawfully deprives Plaintiffs of these and other constitutionally-protected interests without due process of law. Such deprivation occurred with no notice or meaningful opportunity to be heard as the Superintendent instated the mask mandate prior to offering an opportunity for public discussion. Such deprivation was arbitrary, capricious, based on ignorance without inquiry into facts, and in violation of the School Board's own policies and other applicable laws. Such deprivation violates the Fifth and Fourteenth Amendments of the Unites States Constitution.

61. Plaintiffs were harmed and continue to be irreparably harmed by these unlawful acts, including by suffering an overall possible simultaneous drop in oxygen saturation of the blood and increase in carbon dioxide, which contributes to an increased noradrenergic stress response, with heart rate increase and respiratory rate increase and, in some cases, a significant blood pressure increase.

COUNT II-42 U.S.C. § 1983-Violation of Substantive Due Process (Fourteenth Amendment) — Against All Defendants

62. Plaintiffs incorporate the foregoing paragraphs as if set forth in full herein.

63. In the instant case, Defendants unquestionably acted under the color of state law.

64. Each individual Defendant is an elected, voting member of the Mayfield City School District Board of Education with the exception of Defendant

Dr. Michael J. Barnes, who is the Superintendent of the Mayfield City School District.

65. Under the Fourteenth Amendment to the Constitution, and as established by state law including the state created danger doctrine, Plaintiffs have a fundamental right to a public education and to an education in a safe and healthy environment.

66. Plaintiffs were harmed and continue to be irreparably harmed by these unlawful acts, including by suffering an overall possible simultaneous drop in oxygen saturation of the blood and increase in carbon dioxide, which contributes to an increased noradrenergic stress response, with heart rate increase and respiratory rate increase and, in some cases, a significant blood pressure increase.

COUNT III-Violation of Ninth Amendment Against All Defendants

67. Plaintiffs incorporate the foregoing paragraphs as if set forth in full herein.

68. Under the Ninth Amendment to the Constitution, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

69. Nothing in the United States Constitution states or even suggest that parents of minor children do not have the right to seek redress in the courts in order to protect the health and safety of their children, and thus, Plaintiff Terpsehore Maras retains this right to protect her minor child, Plaintiff P.M.

70. By relying on scientifically unfound and constitutionally repugnant guidance by federal government agencies and enacting an oppressive a dangerous universal mask mandate in misguided reliance on the information provided by the federal government, Defendants have violated Plaintiffs' Ninth Amendment rights by usurping Plaintiff Terpsehore Maras' right to protect the health and safety of her minor child.

COUNT IV-Violation of Tenth Amendment Against All Defendants

71. Plaintiffs incorporate the foregoing paragraphs as if set forth in full herein.

72. Under the Tenth Amendment to the Constitution, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

73. The Supreme Court of the United States has determined that overreach by the federal government has in the past violated the Tenth Amendment of the United States Constitution found that federal overreach has in the past violated the Tenth Amendment. *See Printz v. United States*, 521 U.S. 898 (1997).

74. Defendants have violated Plaintiffs' Tenth Amendment rights infringing upon their rights, along with the rights of other students, parents, and school staff through violating Plaintiff s rights under Article 1, § 21 of the Ohio Constitution, pertaining to the preservation of the freedom to choose health care and health care coverage.

COUNT V-Violation of OH Const. Art. I, § 21 Against All Defendants

75. Plaintiffs incorporate the foregoing paragraphs as if set forth in full herein.

76. Article 1, § 21 of the Ohio Constitution, pertaining to the preservation of the freedom to choose health care and health care coverage, provides,

(A) No federal, state, or local law or rule shall compel, directly or indirectly, any person, employer, or health care provider to participate in a health care system.

(B) No federal, state, or local law or rule shall prohibit the purchase or sale of health care or health insurance.

(C) No federal, state, or local law or rule shall impose a penalty or fine for the sale or purchase of health care or health insurance.

(D) This section does not affect laws or rules in effect as of March 19, 2010; affect which services a health care provider or hospital is required to perform or provide; affect terms and conditions of government employment; or affect any laws calculated to deter fraud or punish wrongdoing in the health care industry.

(E) As used in this Section,

(1) "Compel" includes the levying of penalties or fines.

(2) "Health care system" means any public or private entity or program whose function or purpose includes the management of, processing of, enrollment of individuals for, or payment for, in full or in part, health care services, health care data, or health care information for its participants.

(3) "Penalty or fine" means any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge or any named fee established by law or rule by a government established, created, or controlled agency that is used to punish or discourage the exercise of rights protected under this section.

77. Article I, § 21 of the Ohio State Constitution expressly prohibits federal, state, and local laws or rules from compelling, directly or indirectly, any person, employer, or health care provider to participate in a health care system. Thus, the Constitution of the State of Ohio unambiguously affords individuals like Terpsehore Maras the right to seek redress from the courts when unconstitutional actions, whether directly or indirectly, infringe upon the rights of Ohioans.

78. Because the universal mask mandate unconstitutionally places P.M. in danger of suffering irreparable and immediate injury, including by suffering an overall possible simultaneous drop in oxygen saturation of the blood and increase in carbon dioxide, which contributes to an increased noradrenergic stress response, with heart rate increase and respiratory rate increase and, in some

cases, a significant blood pressure increase, the universal mask mandate implemented by Defendants violates Plaintiffs' rights under Article 1, § 21 of the Ohio State Constitution.

COUNT VI-Violation of Procedural Due Process (OH Const. Art. I, § 16) Against All Defendants

79. Plaintiffs incorporate the foregoing paragraphs as if set forth in full herein.

80. Article 1, § 16 of the Ohio Constitution provides, "All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law."

81. Article 1, § 16 of the Ohio Constitution affords the people of Ohio with right to be free from violations of the procedural due process rights, and no person may be deprived of life, liberty, or property without due process of law.

82. Plaintiffs have constitutionally protected interests in the benefits that come from the not being subject to the Board's mask mandate, including the ability to pursue an education without being subjected to health risks that are not offset by any scientifically provable benefits.

83. Defendants' implementation of the mask policy unlawfully deprives Plaintiffs of these and other constitutionally-protected interests without due process of law. Such deprivation occurred with

no notice or meaningful opportunity to be heard as the Superintendent instated the mask mandate prior to offering an opportunity for public discussion. Such deprivation was arbitrary, capricious, based on ignorance without inquiry into facts, and in violation of the School Board's own policies and other applicable laws. Such deprivation violates Article 1, § 16 of the Ohio Constitution.

84. Plaintiffs were harmed and continue to be irreparably harmed by these unlawful acts, including by suffering an overall possible simultaneous drop in oxygen saturation of the blood and increase in carbon dioxide, which contributes to an increased noradrenergic stress response, with heart rate increase and respiratory rate increase and, in some cases, a significant blood pressure increase.

COUNT VII-Violation of Substantive Due Process (OH Const. Art. I, § 16) Against All Defendants

85. Plaintiffs incorporate the foregoing paragraphs as if set forth in full herein.

86. Article 1, § 16 of the Ohio Constitution provides, "All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law."

87. Article 1, § 16 of the Ohio Constitution affords the people of Ohio with right to be free from violations of the procedural due process rights, and

no person may be deprived of life, liberty, or property without due process of law.

88. Under Article 1, § 16 of the Ohio Constitution, and as established by state law including the state created danger doctrine, Plaintiffs have a fundamental right to a public education and to an education in a safe and healthy environment.

89. Plaintiffs were harmed and continue to be irreparably harmed by these unlawful acts, including by suffering an overall possible simultaneous drop in oxygen saturation of the blood and increase in carbon dioxide, which contributes to an increased noradrenergic stress response, with heart rate increase and respiratory rate increase and, in some cases, a significant blood pressure increase.

RESERVATION OF RIGHTS

Plaintiffs herein expressly reserve their rights in regards to any additional claims to which they may be entitled under federal law as well as under the laws of the State of Ohio, including claims arising from any violations of Ohio's Open Meetings Laws or other actions of misconduct that may have been committed by Defendants. Plaintiffs expressly place Defendants on notice of Plaintiffs' intention to initiate removal proceedings at the state court level against Defendants as a result of the infractions Defendants have committed, as described herein.

REQUEST FOR A JURY TRIAL

Plaintiffs herein expressly request that this matter be tried by a jury in regards to all such triable issues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court grant the following relief:

a. Assume jurisdiction of this action;

b. Vacate and set aside the Defendants' mask mandate as well as any other action taken by Defendants to institute the mask mandate and implement the provisions of the mask policy;

c. Declare that the Defendants' masking policy is void and without legal force or effect;

d. Declare that the institution of the mask policy and actions taken by Defendants to implement the mask policy are arbitrary, capricious, based on ignorance due to failure to inquire into facts, otherwise not in accordance with law, and without observance of required procedures;

e. Declare that the mask policy and the actions taken by Defendants to implement the mask policy are in violation of the Constitution and contrary to the laws of the United States and the State of Ohio;

f. Temporarily restrain, as well as preliminarily and permanently enjoin Defendants, their agents, servants, employees, attorneys, and all persons in active conceit or participation with any of them, from implementing or enforcing the mask policy and from taking any other action to implement the masking policy

that is not in compliance with applicable law;

g. Grant Plaintiffs' request for a trial by jury of all such triable issues in this matter; and

h. Grant such other and further relief as may be just, equitable, and proper including without limitation, an award of attorneys' fees and costs to Plaintiffs.

Respectfully submitted this 1st day of October, 2021.

/s/ Terpsehore Maras

410 Superior Ave., #14597
Cleveland, OH 44114

Terpsehore Maras, Individually and on behalf of her minor child P.M.

TRANSCRIPT OF TEMPORARY RESTRAINING ORDER PROCEEDINGS, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO (OCTOBER 1, 2021)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

P.M., a minor, by and through her parent, Terpsehore Maras,

Plaintiff,

v.

MAYFIELD CITY SCHOOL DISTRICT BOARD OF EDUCATION, ET AL.,

Defendants.

Case No.: 1:21-cv-1711

Before: The Honorable Solomon OLIVER, JR., United States District Judge

Thursday, September 9, 2021, 11:16 A.M.

THE COURT: This is Judge Oliver.

How is everybody?

MR. FEHER: Good morning, Your Honor.

Tom Feher.

Very good, thank you.

THE COURT: Thank you.

Just one moment.

(Pause).

MS. MARAS: Your Honor, good morning.

THE COURT: Good morning.

MS. MARAS: Good morning, Your Honor.

I was just made aware that there was filings, and I don't have access to the electronic filing system because the Court requires me to file for an application.

So before we start I just would like to ask for two things.

One, if you can speak clearly and pause between talks because I'm using an amplifying device that delays the speech because I'm hard of hearing. So I don't want to sound rude and come up speaking over someone and, therefore, I apologize in advance if I speak loud.

And then the other one is I believe since the Court requires me as a citizen to have access to my Court as a pro se litigant only on paper and I'm unable to use the electronic filing system to access, I would therefore respectfully request, Your Honor, if you could afford me the same rights that defendants' counsel has to file and access documents in this case with the same timely privilege which will aid me in providing the evidence and documents that I will be citing during the hearing because apparently another attorney made their appearance and they filed something, and I have no access to that.

And no one e-mailed it to me, and my information is on the documents that I filed.

THE COURT: All right. I will get back to you, but let me—let me start first, and I'll address everything that you wish—you wish me to address.

MS. MARAS: Thank you, Your Honor.

THE COURT: Let me just—yeah.

This is on the record, and this is the case of Terpsehore—how do you pronounce your first name? MS. MARAS: Terpsehore.

THE COURT: Terpsehore Maras versus Mayfield City School District Board of Education, and the case number is 1:21-cv-1711.

And this case involves all the defendants of—other defendants other than the Mayfield City School District Board of Education, and there are a number of them so I won't go through all those.

This complaint was filed pro se on September 2nd, 2021.

At that time Ms. Maras called the office and she wanted to know why the Court wasn't proceeding on that right away.

I indicated that there were requirements under the Rule that she indicate what attempts she made to contact the other side, and that I'd prefer to have someone on the other side, if we could get them in a reasonable time frame. And I indicated that that could be the superintendent or other people in the school system or it could be counsel, but it was my practice to try to get people on the line.

And she had not really made any case that I should proceed ex parte as, you know, but there are circumstances where, with TROs, the Court would proceed without hearing from the other side, but I don't think those circumstances existed in this particular case.

So that's where we started. And she assured me that she would work to try to get papers out to the school system, and because I assured her that the fact that she had sat in a meeting before the School Board and she indicated that she was going to sue wasn't sufficient in terms of the notice that would be required here under Rule 65 if—once she had sued.

So once she understood that, she moved ahead to make sure, as I understand it, that those papers were delivered by someone to the superintendent or assistant superintendent or others at the School Board.

And thereafter, the counsel for the school district made their—their appearance, and they—they have now filed this morning a memorandum in opposition to plaintiff's motion for temporary restraining order and cross-motion to dismiss for lack of standing, and they have also attached to that an Exhibit A which is the affidavit of the superintendent Dr. Michael J. Barnes.

So all of that information, including plaintiff's now initial submission to the Court, the complaint and other materials, is before the Court.

It is true that with a temporary restraining order, that it's anticipated under the Rules and case law that those cases be given quick attention and

turnaround because of the nature of the matters which are asserted or allegedly asserted.

And so I'm doing that on the quickest time that I could, assuring that I had the issues properly explained before me.

And so that's where we are.

So—

MS. MARAS: Your Honor, may I object, please? May I object, Your Honor? Because the Court should not consider that document because I haven't even seen it yet, and I didn't even know.

THE COURT: Would you please stop talking and let me finish? I'm going to give you an opportunity to speak.

Now, I've spoken to you on the telephone a number of times and I've tried to be patient and to tell you the procedure. I'll allow you to do whatever you want, but I'm not done saying how we're going to proceed.

You've got to have some patience. You'll have an opportunity to speak.

Those matters are before me. They are on the docket. They are there, and that's what I'm saying, factually they are there.

Now, we can move from there.

Let me have the parties introduce themselves, and then we'll move through the process.

So you're representing yourself or—and/or your minor child, at least that's what you intend to do here.

Is that right?

MS. MARAS: Yes, Your Honor.

THE COURT: Okay. Just state your name for the record.

MS. MARAS: My name is Terpsehore Maras.

THE COURT: All right. And then let me have counsel for the defendants introduce themselves for the record.

MR. FEHER: Your Honor, this is Tom Feher, and I'm on with my partner Stephanie Chmiel from Thompson Hine on behalf of all the defendants.

THE COURT: All right. Thank you.

You weren't able—you didn't have time or you weren't able to Xerox a copy—not Xerox, but fax a copy of your memo to the plaintiffs?

MR. FEHER: Your Honor, we did not have any contact information for the plaintiff.

The pleadings that she filed did not include an e-mail, and had a phone number that was stricken out, so we filed it on the system this morning.

We are happy to, if we have the e-mail for her, send them over immediately.

THE COURT: Okay.

MS. MARAS: Your Honor, may I?

My information and contact information were on the cover sheet that was filed, the civil cover sheet that was filed. It had my address, my mailing address, my phone number and e-mail.

THE COURT: Okay. I don't see that on the docket sheet, but why don't you give them—do you have a fax number or—

MS. MARAS: I do not have a fax number.

My e-mail is on the documentation that they were provided. The school also has all my communication and all my information as provided as well.

I don't believe any attempt was made to provide to me those documents, Your Honor. And I actually penned in my phone number and wrote it in there that the Court had requested me when I filed my documents.

THE COURT: All right. Well, let's just move from where we are now to see whether we can't—what is your phone number, first of all?

MS. MARAS: My telephone number is XXXXXXXX, and I would request the Court not to consider the documents that they filed under Rule 5 because it requires the service of all Court filings.

THE COURT: Would you please stop? Just keep your mouth closed for a minute. I'm going to allow you to talk and I'm going to allow both sides.

I'm going to be fair to you, but you have to learn that you can't just blurt out. I'm going to give you an opportunity to speak.

What did you say your number is?

XXXXX, is that what you said, XXXXXXX?

MS. MARAS: Yes, Your Honor.

THE COURT: XXXXXX.

MS. MARAS: Yes, Your Honor.

THE COURT: Okay. And put on the record your e-mail.

I understand you say you gave it or you put it on another document, but just let's have it now again.

MS. MARAS: The e-mail on the docket that I put is MayfieldParentsUnion@Gmail.Com.

THE COURT: That's your e-mail?

MS. MARAS: Yes. This is the e-mail that I'm using for correspondence in respect to this case.

THE COURT: Well—

MS. MARAS: I'm not comfortable with a public record.

THE COURT: That doesn't go to you?

MS. MARAS: It goes to me, yes. That is my e-mail account.

THE COURT: Mayfield Parents Union, go ahead, keep going.

MS. MARAS: @Gmail.com.

THE COURT: MayfieldParentsUnion@Gmail.Com.

Is there a Mayfield parents union, or is that yours?

MS. MARAS: It's mine. It's my personal e-mail account.

THE COURT: But you—but you've taken liberties there because you're saying it's a parents union.

Is there such a thing?

MS. MARAS: Oh, no. No. It's just a parody on it because it's for my Court filings.

This is the e-mail address that I'm comfortable making public on public records because these are all public records for correspondence regarding this case.

THE COURT: Okay. I'm not sure whether someone for the next conference joined now.

I had one set up and I'd ask my courtroom deputy to try to reach the people who are on the 11:30 because I've been running behind this morning.

If you're not on this criminal-not criminal case.

If you're not on this case I have in front of me, Maras versus Mayfield City School District, I'd ask that you leave right now and we'll work it out and have my courtroom deputy give you a call.

Somebody joined the conference just now. Who joined? Someone just joined the conference. Who joined?

(Pause).

THE COURT: All right. So that's—that's your e-mail, you say, MayfieldParentsUnion@Gmail.Com.

MS. MARAS: Yes, Your Honor.

THE COURT: And if counsel were to e-mail you right now with a copy of the document, you could receive it.

MS. MARAS: Your Honor, I will be able to receive it in a timely fashion—I'll have to log in—but I won't be able to have the time to review it while we're on the call.

THE COURT: I didn't ask you that.

If you would answer the question I—

MS. MARAS: Yes, I can access the e-mail, yes, Your Honor.

THE COURT: That if they, if they put together a PDF or whatever that contains the documents, you can receive those right now, right where you are.

MS. MARAS: I believe so, if it's sent to the correct address, yes.

MR. FEHER: Your Honor, I've just e-mailed the documents to the address we were given.

THE COURT: Okay. I'm not saying you have to read those documents now, but I want you to verify that you received those right now.

MS. MARAS: One moment.

Your Honor, one moment while I log in.

THE COURT: Okay.

(Pause).

MS. MARAS: Your Honor, this is Ms. Maras.

I've received an e-mail and there are two documents that are downloading, but I demand to have time to review them.

THE COURT: How much do you want? Middle of next week?

MS. MARAS: Yes.

THE COURT: Now, you filed a motion for temporary restraining order.

Do you understand that?

MS. MARAS: I do understand that, sir, but I feel like I'm being ambushed, Your Honor, because I didn't have access to these documents. They're

claiming my information wasn't on there, and they have my communications.

I feel like this is done purposely because they know that as a pro se litigant I don't have access to the electronic filing system.

The Court that is supposed to be for the people don't allow access to it, to have access to these things. It's really not just.

THE COURT: Well, I'm giving you access now.

Let me say this. When we do a TRO, we can use informal means to get information out. That's what I was asking you to—

MS. MARAS: Okay.

THE COURT: That's what I was asking you to do when I told you to get some information to the school district.

Because everything is done on an expedited basis, it means that I can hear from the parties even if I don't have any submissions from them at all, and I can hear from them even if they have not been formally served as long as they have notice and I can get them on the phone, because we're trying to make sure that people's interests are represented.

So this, this stage here, the motion for temporary restraining order, is one where information can be formal, informal, it can be by paper, it can be through speaking, it can be whatever because the process is geared toward moving fast.

It's not unusual for a party, if they have a chance, to file something in response. It is true that you

are not a lawyer and you're not on the ECF and there are certain problems—Electronic Filing System—that there are certain problems that are encountered, that we encounter when that's the case.

You didn't get counsel, you weren't apparently able to get counsel, and so I respect the fact that you're attempting to proceed on your own.

They have raised some very serious issues here regarding your motion—you didn't call it a motion—but your motion for temporary restraining order.

And so you probably do want to look at that and decide if you can respond or how you can respond because they have put—their main argument is that you can't even bring this case and that you don't have standing to do it; that you have no—then they go on to put on the record things that counter all the arguments you've made.

So you probably do want—you do probably want to read this and then go from there.

MS. MARAS: Your Honor.

THE COURT: Oh, and I—don't, don't interrupt me.

MS. MARAS: I was just going to say if you can speak a little bit louder because I can't hear you. I'm sorry.

THE COURT: Okay. I'm all right with that request then. I apologize. I didn't mean to be so sharp, but I just didn't want you continuing to interrupt me.

Are you prepared, will you be prepared at 3:00 o'clock today to—or 3:30 today to, after you've read the matter, to go forward?

MS. MARAS: Yes, Your Honor.

I feel confident that any argument that they may have brought forward is—I do feel confident in not only the factual evidence but the violations of the Constitution because the bottom line, there's irreparable harm when we have our civil liberties violated.

And our Ohio State Constitution, there are two Articles in it I will be citing that will, in essence, render moot any argument that they have presented.

THE COURT: Well, why don't you wait for that?

Okay. So read the papers.

Mr. Feher.

MR. FEHER: Yes, sir.

THE COURT: Ms. Chmiel, can you be available at 3:30?

MR. FEHER: Yes, Your Honor.

THE COURT: I think it's better we go ahead and hear the matter today, if we can, and so we'll give her an opportunity, which I think is fair, to read your papers.

I'm not going—I don't anticipate it will take us really very long to hear the parties out since Ms. Maras has filed her papers and you filed your papers. I have really a lot of information in front of me.

And so it's just an opportunity this afternoon maybe taking up to one-half hour together for the parties to highlight their positions and so forth so that I can be in position to make a ruling.

Ms. Maras, does that sound right to you?

MS. MARAS: Yes, Your Honor.

Is it possible that I will be able to file a response?

It may be not posed in a manner because I don't have a massive law firm to put it together, but I would like to file a response and a motion to strike and dismiss anything that they have. If I can have that Court access to the Pacer account that I just set up, I would be able to file that, too.

I'm more than happy, so that way I can submit the evidence that I wanted to cite today.

THE COURT: Well, why don't you just be prepared to make your arguments and tell us about whatever it is that you want to say?

MS. MARAS: The evidence I have?

THE COURT: No, I—you know, I don't know how you—I don't know how you're going to—we keep going back and forth.

You've got your material on the record.

MS. MARAS: I have more material.

THE COURT: You want me to put this off and not make this a temporary restraining order? That's what you're asking.

MS. MARAS: Well, Your Honor, Your Honor, I'd like the temporary restraining order, but I'd like to file a motion to dismiss their motion to dismiss.

I want the TRO. That's what we need to decide.

But I do have further evidence that I wanted to introduce during this call, and if you'd like me to I can send that electronically, too. That way we can be referencing the CDC documentation, the OSHA documentation and other organizations' documentation that will render their statements made—which I can only assume because I haven't read it yet—render them moot under Ohio State laws and Constitution.

THE COURT: Okay. Now, you're using some language that's not appropriate legal language, but I think I know what you mean, that you want to file a motion to dismiss their motion to dismiss.

There's no such thing in the law.

MS. MARAS: Yes. Sorry.

THE COURT: What did you say?

MS. MARAS: I'm so sorry. I'm just trying to be proper.

THE COURT: Yeah, I understand.

But we're not going to take a very long time this afternoon because I've got the papers.

If you want this to be a temporary restraining order, we have to keep it that way. We can't just keep going back and forth, back and forth, back and forth.

Do you think you can—how quickly can you file whatever you want to file and get a copy over to—

MS. MARAS: Well, if I have access to be able to communicate to yourself, Your Honor, and the

parties, I would be able to send that out from—by 3:00 o'clock.

It won't take—it won't take very long for me to respond to, I guess.

It depends—I mean, they have a whole law firm and I'm one mere citizen—so that I can respond to each and every claim that they are making.

THE COURT: Okay. Well, you can do that verbally.

MS. MARAS: Okay.

THE COURT: Because I'm not going to take a long time this afternoon, I'm just going to tell you, because you both filed papers.

You want a temporary restraining order. That means that we move quickly. It means that we're not going to go through it like it's a full case.

MS. MARAS: Yes, sir.

THE COURT: You either want that or you don't.

And so—and you're going to have to calm down. And if you can get—if you can—I'm not giving you—I'm not getting involved in Pacer.

MS. MARAS: Your Honor, I actually feel—I feel confident that we can go forward right now without even looking at it, and they can feel free to go ahead because, if it's okay with the Court, I can submit the evidence to, you know, counsel, whatever arguments they have put forward to dismiss my motion for TRO, I feel confident in that because that will not change.

THE COURT: Well, we're going forward at 3:30.

MS. MARAS: Thank you. Thank you.

THE COURT: And if you want to file something, you file whatever you want.

Make sure the other side gets it.

MS. MARAS: Through their e-mail, I'm assuming, Your Honor? Through their e-mail that I will send it to them.

And will I send it to yourself as well so that you can be able to view it?

THE COURT: You can send it, you can send it to my courtroom deputy.

MS. MARAS: Is that the e-mail that sent me the phone log-in details, Your Honor?

THE COURT: Yes.

MR. FEHER: I believe that's correct.

THE COURT: All right. Then do that.

MS. MARAS: Okay. Sharon Romito, correct, Your Honor?

THE COURT: Right. Right.

MS. MARAS: All right.

THE COURT: You don't have to get it on the docket, but just send her a copy, send a copy to them.

We're going forward at 3:30.

MR. FEHER: Thank you, Your Honor.

MS. MARAS: Yes, Your Honor.

THE COURT: All right. I'll hear from you all.

(Proceedings recessed at 11:41 a.m.)

Thursday, September 9, 2021, 3:37 P.M.

THE COURT: There was one person that joined the conference that didn't identify herself. Who is that?

Someone joined the conference that didn't identify themselves, they are a person that joined the conference. All the other persons had names.

MR. FEHER: Your Honor, I—this is Tom Feher. I don't know if you heard my name, but I did say it.

THE COURT: I did.

MR. FEHER: Okay.

MS. MARAS: I didn't. I didn't hear your name, Tom.

That's what I thought he was referring to, Tom. I heard Stephanie and my child's name and the court reporter. I didn't hear Tom either.

THE COURT: Yeah, I heard—I heard him.

It's okay. But this is not, you know, there's nothing secret about this, but this is a conference that was between the lawyers and the parties in the case.

There was not anybody else that was authorized to be on the line, so I want you to bear—I want anybody who is on the line to bear that in mind because if you're on the call and you're not invited, I'll have to consider that.

So in any event, let's proceed.

THE OPERATOR: A participant has left the conference.

MS. MARAS: I'm sorry. Who left? I'm still here.

MR. FEHER: Tom is still here.

THE COURT: Okay.

MS. CHMIEL: Stephanie is still here.

THE COURT: Okay. So somebody left, right?

I thought somebody was here and didn't respond, so I just wanted to make sure.

We don't have anything to hide here. This case is a matter of public record. Whatever I decide will be a matter of public record.

This is being taken down by the court reporter and so forth, and if someone wanted to buy the transcript, they can buy that. So that's not the issue.

But we don't need secret people lurking on the telephone when we're trying to have a conversation. That's the only reason I asked the question.

All right. Again we're back to the case of P.M., plaintiff, and plaintiff Ms. Terpsehore Maras. I may mispronounce that, but it's T-E-R-P-S-E-H-O-R-E, and last name Maras, M-A-R-A-S, versus the Mayfield City School District Board of Education.

We had started this conference on the motion for TRO this morning.

I adjourned the conference so that Ms. Maras would have the opportunity to read the memorandum in opposition filed by the defendant, also which included a cross-motion to dismiss for lack of standing. And I indicated to her that they have attached an affidavit to that.

It seemed only fair that she should have an opportunity to review what the lawyers had filed on behalf of the defendant before we proceeded, and so I agreed to her request that I not consider that

material until she had a chance to respond—not respond, but to view it.

Ms. Maras also indicated the fact that she might desire to file something further in the case.

I authorized her to do so if she wanted, and that she could direct it by e-mail to counsel for defendants because she was not able to file electronically, and that she could also, for any additional things she would want to file, by sending an e-mail copy to my courtroom deputy.

I inquired of my courtroom deputy before we came back out this afternoon as to whether she had received anything further from Ms. Maras, and she indicated that she had not.

So I would assume that there are no additional documents before the Court to consider along with the arguments of counsel and the parties this afternoon.

Is that correct, Ms. Maras?

MS. MARAS: Your Honor, that's incorrect.

Actually I sent off—I'm one person and not a lawyer. I don't have the money to hire a lawyer. And I sent it off trying to make it easily readable, so you can read it as easily as possible.

It's in your inbox. I've already received a reader receipt that it was delivered, because I also sent it to myself in my other e-mail, and that was received as well.

THE COURT: Okay. What time did you send that?

MS. MARAS: I will tell you. I think it was at 3:28.

THE COURT: Okay.

MS. MARAS: It was before you joined the call.

THE COURT: Yeah, well, perhaps that was incorrect.

MS. MARAS: Okay.

THE COURT: That was this very moment, you know.

So you sent a copy of that to opposing counsel?

MS. MARAS: Yes, Your Honor.

MR. FEHER: Your Honor, we have—I have on my screen two e-mails from Mayfield Parents Union, one at 3:34 and one at 3:41.

THE COURT: Okay. Let me ask my law clerk to see if the courtroom deputy has whatever she has filed.

We can proceed though. Let me just see if she has that.

(Pause).

THE COURT: Okay. I just inquired of my courtroom deputy who indicates that she did receive an e-mail just now, and what she received was something entitled, "Mercola, M-E-R-C-O-L-A, Take Control of Your Health," and then it was an article, I guess, entitled, "Masks Are a Ticking Time Bomb."

Is that what you sent?

MS. MARAS: Your Honor, there's two e-mails.

That was an attachment that didn't attach to the original e-mail, and it was sent subsequently.

There was another e-mail that was sent, and I believe the title was "Maras versus MCSD, Case

Number 1:21-1711," where there's two attachments, the reply brief and Exhibit 2.

THE COURT: Okay. You said you sent something to me at 3:28.

Opposing counsel said what they received was a bit later than that, and they have two things they received.

Would that be correct, Ms. Maras?

MS. MARAS: Yes, Your Honor. Correct.

They go through different servers, so I can send it now and your server might get it a minute or two later.

So your court reporter-your Court should have two e-mails. There's an e-mail that was sent right before the Mercola. The Mercola was sent after the original e-mail.

THE COURT: Okay. I'll just—

MS. MARAS: Yes.

THE COURT: I'll just look to get that. We can go ahead and proceed.

MS. MARAS: You're not going to see it? Okay.

THE COURT: Okay. So you—I'll—okay. So you filed a motion—I don't know if you would title it a motion—but in essence a motion for temporary restraining order, and it has to do with a requirement that students wear masks in the Mayfield City School District.

And you listed your child as the plaintiff and you also listed yourself. And you purported to sue on

behalf of your child because your child's a minor. So that's—that's the background of it.

And so I've reviewed your papers, I've reviewed those of the defendant.

What I thought I would do is give each side about five minutes or so to highlight the most important points of your argument.

MS. MARAS: I—

THE COURT: And—let me finish.

You're going first.

MS. MARAS: Sorry, there was a delay, I apologize.

It's my device. Sorry.

THE COURT: Okay. You're going to go first because it's your motion, and I'm going to be asking some questions, too.

So but you sued for a temporary restraining order, and, as you know, there are certain requirements you have to meet to get that relief because it's only temporary. And it's because—and the reason why we grant temporary relief is because if one were to wait until the overall lawsuit to be final, then the person who is denied the relief, if they had irreparable harm, that would be a tough circumstance.

And so the idea is to give people a chance to come forward, not on a full record, but on less than a full record to convince the Court that the Court should step in early, even before deciding the case on the merits, and to rule in their favor and to hold that ruling and let them hold that—let that

ruling apply until the Court can decide the whole case.

And clearly we're not prepared to decide the whole case because there's nothing—the pleadings are not complete. No discovery has been done, and no motions have been filed other than regarding at this preliminary stage.

So we've got to meet that high burden, plaintiff has to meet a very high burden in order to get me to rule right now on this record.

With that in mind, Ms. Maras, can you just highlight—I now have got your papers—the constitutional provisions or theories that you're relying upon? And then we'll get to facts.

Which claims are you bringing? On what—what aspect of the Constitution?

MS. MARAS: Your Honor, I just wanted to say the document that I sent you has a few motions in there as my reply brief.

The first motion is to request for the temporary restraining order and the motion to dismiss, that there's two separate motions that the Court should bifurcate because the pending motion for the temporary is the only motion properly before the Court.

I'm entitled to have time under Rule 7.1 to actually respond to the motion to dismiss. Usually the opposing party has 30 days, right? But obviously the local rule, if the Court was to find that it was not dispositive, then I should still have 14 days to—

THE COURT REPORTER: I'm sorry, could you repeat that?

MR. FEHER: Dispositive.

MS. MARAS: I'm sorry, I'm hard of hearing so sometimes I articulate things not to the standard, so I apologize for that.

So normally I would be allowed by law at least 14 days to respond, so that was my first motion in the document that I sent that you don't have in front of you, Your Honor.

And then the second motion is that I requested a ruling on the oral motion for permission to access the Court's electronic filing system, Pacer, so that I could be—I could have the same, you know, access and privileges that the attorneys have, which I haven't been afforded.

So I wanted to address those two before I get into the TRO status of the case, of course.

THE COURT: All right. I want you to address what I want you to address, and that's what you have to understand.

I'm not going to be sitting here all afternoon going off on side tangents.

You filed a motion for a temporary restraining order. Therefore, you've asked me to put down all the work that I have in other cases and give attention to yours.

MS. MARAS: Thank you.

THE COURT: I'm willing to give the case the attention it deserves, but I can't keep having you putting off what I'm trying to resolve.

I want to talk about the temporary restraining order.

I understand, I don't have any problem with you're saying that you'd like time to respond to the motion to dismiss or any of those other kinds of things because you don't want your case dismissed right now.

I'll address those before I conclude, and I don't have a problem with you raising those issues. I just wish you would address things, though, in the order which I'm trying to proceed.

And then if there are additional things you want to raise, you may do that.

That's all I'm trying to do.

So if you would just stick to the motion for temporary restraining order and assume that, you know, if you're concerned about me dismissing your case today without your having a chance to respond, which I thought you were doing, that's—that's fine. And I understand that concern.

Right now put that aside. Just for the sake of argument, assume I'm not going to dismiss your case today on the merits, but that I'm going to rule on your motion for temporary restraining order.

So just limit yourself to that.

MS. MARAS: Yes. Thank you, Your Honor.

And I apologize. I don't do this for a living so I don't know the rules, so I really apologize for that, and thank you for that clarification.

So your question to me is why should I have a TRO? Well, it's that I have established that it's likely to succeed which I'm pretty positive on because I have attached evidence for that, and that I would suffer irreparable harm.

Now, irreparable harm—

THE COURT: Just stop for a moment.

You're going to get to those, but you're going to answer the question that I—

MS. MARAS: The constitutional, that's what I'm getting at. The irreparable harm is the constitutional rights right here—

THE COURT: Okay.

MS. MARAS: —because I believe the TRO is justified under the U.S. and Ohio Constitution.

All laws which are repugnant to the Constitution are null and void, and that's established in the case *Marbury*. All laws which are repugnant to the Constitution are null and void.

So on that basis, on that basis, the Ohio Constitution, Article I, Section 21, is where the Mayfield City School District has compelled both plaintiffs to participate in a health care system involuntarily.

Article 1, Section 21, Section-Part A says, "No federal, state or local law or rule shall compel, directly or indirectly, any person, employer or health care provider to participate in a health care system."

Under that same Article I, Section 21, it defines "Health care system" in very precise manner. And

specifically here, we're focusing on the fact that a health care system means that they are providing—that they are obtaining health care data or health care information from the participant.

The defendants, in essence, are collecting and sharing health care data of the plaintiffs in respect to mask wearing, contact tracing, and vaccination status without permission, and compelling all students to participate by compulsion, which is a direct violation of the State of Ohio Constitution.

And that is something—

THE COURT: Let me ask—wait.

Let me ask you a question, because unless you have a federal constitutional violation, as I understand it, you can't even raise an Ohio one.

MS. MARAS: Correct. Correct.

THE COURT: So tell me your federal—

MS. MARAS: My federal one. The harm—yes.

The harm to the plaintiff is irreparable because the actual or threatened violation is that of a core constitutional right, and it's presumed irreparable.

And that's seen by the Federal Courts from *Siegel versus LePore*, and *Deerfield Beach*; it was *Deerfield Medical Center versus City of Deerfield Beach*.

The purpose of the whole temporary restraining order is to, indeed, safeguard that, and that's where we are going to, where they are violating

her civil liberty to just have a healthy and safe environment, which she's entitled to.

We also—

THE COURT: Let me—

MS. MARAS: Go ahead. Sorry.

THE COURT: Let me stop you again.

So you claim that there's a violation of both the Federal Constitution and the State Constitution, and you might, you know, you might have a supplemental claim under Ohio law if you had a federal claim. But if you had no federal claim, because Mayfield, which is Ohio, and you are from Ohio, I don't think you'd have a state claim.

So let's go—and I guess the other counsel can say whether they agree with me or not later on, but what—you know, the Constitution has, as you know, several provisions and they're very scurried under those provisions in the Constitution and the case law relative to those provisions.

What—what is your federal—what are your federal constitutional claims? What portions of the Constitution or what federal statutes are you relying upon to make your argument?

I know you say it's irreparable and it's harmful, but I need to know that first.

What constitutional provisions are you relying upon?

Ms. Maras?

MS. MARAS: Oh, I'm so sorry. That was my device. Your Honor, I apologize. As I said, I'm hard of hearing and my device is echoing.

So deprivation of liberty without due process, the Fourteenth Amendment.

THE COURT: Okay. What process do you think she was due?

MS. MARAS: That they actually rely on the actual science of this, because I have—they are forcing my child, first of all, they're compelling her to participate in decreasing and causing her physical and psychological harm on merits that have not been discussed.

There have been no discussions with me as the parent or the child, and that is a problem, because I feel that it's almost involuntary services, in essence, where you're supposed to just do as they say and do not question it, when we all know that science is in flux.

They used to give heroin to babies until science searched and said, "Oh, that's not good."

They had an investment. And until they could prove that there was irreparable harm people were still using—

(Court Reporter interrupts)

MS. MARAS: Could you clarify your question?

I'm not understanding.

THE COURT: The court reporter, she's trying to take down what you're saying, and she's having some difficulty getting it.

MS. MARAS: Oh, I'm sorry. Is my articulation bad? I really apologize.

Until it was realized that there was irreparable harm to health, physical or mental, many procedures have been in place.

And they see now in 2021 that there are studies that are indicating severe negative effects from mask wearing. Breathing resistance, there are studies coming out every day showing these things.

Some of them are causing cardiopulmonary dysfunction, causing asthma. You know, without a mask how much breathing is there, with the mask how much.

They're doing all these studies now because there is an issue.

And we see that there are other safer methods that can be implemented. And there was no discussion with any of the parents. It was just simply arbitrary power and directive that was provided as a blanket-as just a blanket statement.

And even in my filing that I sent, I pointed out to one portion where there was an affidavit by Dr. Barnes claiming the pediatrics are saying, well, it is not. Well, in that language, he's wrong there, too, because this is the problem, none of these masks are considered an N95 mask.

And my son himself, who has actually completed a degree in molecular and cellular biology and has been fitted for an N95, you have to go through a pulmonary function test in order to be fitted and wear that.

And right now we have children with cloth masks which have no efficacy. OSHA has stated it. The CDC has stated it. And what I see is that there's narrative from the Board that are citing people that aren't even subject matter experts.

And I understand that industrial hygienists are a link because the IAHA, which is where industrial hygienists are certified, there's only about 10,000 of them in the whole United States, and if they actually read all the CDC things that they are referring to, they will note down in the page in a footnote it makes reference to surgical masks and N95 and respirators; not cloth masks.

And that is the problem, that we are putting children in harm's way because there are actual physical effects, and let's not even get into the fact of the psychological effects.

And I know that during the complaint where I will be able to bring experts, there are child psychiatrists that will tell you that this is causing irreparable harm to their development and how they fail because children, in many studies for years now, would have to look at the face to learn and to associate.

So this is completely unprecedented, and it feels as if they don't care. But I can say that I've noticed that there's a financial incentive to implement these, so they have a financial incentive.

And just yesterday a watchdog group had received e-mails through a FOIA request indicating that the American Federation of Teachers Union had a clearly workable policy because they were

demanding that the CDC do something else because people were not getting vaccinated.

So the policies are written by people that are not subject matter experts.

THE COURT: Let me ask you, let me stop you now.

So the Fourteenth Amendment due process clause, that's one of your arguments.

MS. MARAS: Yes. Yes.

THE COURT: Do you have any other constitutional—what are they?

MS. MARAS: The deprivation of life, liberty and property that I must have is important. It requires notice and a hearing and discussion.

And I'm not suing the school district for money. What I need is the best thing that I would like is the temporary restraining order and that then to sit down and have an evidentiary hearing where we can actually have a discussion because I'm not allowed to have a discussion.

THE COURT: Now, answer my question.

You went back over the due process clause, the liberty without due process.

I asked you did you have any other constitutional arguments? Those are—that's the same one.

MS. MARAS: Yes.

In *Mitchell versus Cuomo*, 1984, there was an alleged deprivation of a constitutional right. Most Courts hold that no further showing of irreparable injury is necessary.

THE COURT: What is the constitutional right you're talking about?

That's what I'm asking.

MS. MARAS: The Fourteenth Amendment which is the deprivation of liberty.

THE COURT: And due process, right?

MS. MARAS: Yes.

THE COURT: Without—

MS. MARAS: Yes. Yes. Yes.

And I meet the requirement based on *Mitchell versus Cuomo* because I only have to show that, one, it violated and, therefore, most Courts hold that no further showing of irreparable harm is necessary, in *Mitchell versus Cuomo*, 1984.

THE COURT: Your due process is the only constitutional violation you're alleging, is that right? MS. MARAS: Well, yes, for now. For now. Life, liberty, due process, yes.

I mean *Robinson versus Attorney General* also said denying a motion for stay of preliminary injunction enjoining public health orders issued—

(Court Reporter interrupts).

THE COURT: The court reporter is having a hard time.

MS. MARAS: Yes, I'm sorry, there's an echo. I really apologize.

So *Robinson versus Attorney General*, 2020, there was denying a motion for stay of preliminary injunction enjoining public health order issued in

response to COVID-19 pandemic because it invaded constitutionally protected Fourteenth Amendment rights.

THE COURT: Okay. What case is that?

MS. MARAS: *Robinson versus Attorney General*, 957 F. 3d 1171, and 1177, Eleventh Circuit.

I have another one if you'd like from 1996.

THE COURT: No, don't give me another one right now. Let's make sure I got that one.

MS. MARAS: Yes.

THE COURT: You gave the citation.

MS. MARAS: *Robinson versus Attorney General*, 957 F. 3d 1171, that's Eleventh Circuit, Eleventh, sorry, 2020. Sorry.

THE COURT: This is the case that has to do with masks?

MS. MARAS: It has denying a motion of stay of preliminary injunction enjoining public health order issued in response to COVID-19 pandemic because it invaded constitutionally protected Fourteenth Amendment rights.

I mean all the orders in that case were—

THE COURT: Stop. Stop. Stop.

What were the facts in that case?

MS. MARAS: With the Attorney General? Hold on, let me go find out. Yeah, let me pull up my notes.

THE COURT: That's what you were doing.

MS. MARAS: Yes, Your Honor.

I'm pulling it up.

THE COURT: Is that a mask-wearing case?

MS. MARAS: Yeah, so the Governor, yeah, the Governor of Alabama declared the state in a public health emergency due to outbreak and, yes, it was about masks.

THE COURT: But the Governor of Alabama didn't require the masks, did they, back in 1920—I mean in 2020?

MS. MARAS: In 2020. This is a 2020 for the COVID-19. He declared it, yes.

THE COURT: So he—no, you make sure, you make sure you're correct.

You're saying that the Governor of Alabama—now, this, this of course is Eleventh Circuit, okay—so you said the Governor of Alabama required people to wear masks, and you're saying that the Circuit Court held that it was a violation of—

MS. MARAS: Well, I'm—

THE COURT: —of citizens' constitutional rights to do that?

MS. MARAS: No, it wasn't just masks.

Your Honor, I didn't know we were citing the law because I'm not a lawyer and I've only had two or three hours to do this because I am a single parent and I actually work, too.

So I could tell you that there was a TRO that was filed and put together because of the restrictions that were imposed on people based on a mandate in May, so that clearly states that you can't deny

a motion for stay by enjoining a public health order.

So that's basically how it is.

And masks, you know, were in that motion that was put forward in a case in 2021 versus the Secretary of the U.S. Department of Health. There actually a TRO was put forward for granting the TRO to them for mask and vaccine mandates already. So that was actually done, and this was done on just the 24th of August.

And so it was a motion was granted in *America's Frontline Doctors versus Xavier Becerra, Secretary of Department of Health and Human Services*, and they were given the TRO based on that.

THE COURT: Let me stop you, and then I'm going to- two more minutes, and then I'm going to hear from the other lawyers, the lawyers—

MS. MARAS: Um-hmm.

THE COURT: —on the other side.

Give me, if you have them, the citation of two cases—

MS. MARAS: Yes.

THE COURT: —that are very similar to yours where the School Board imposed masking requirements and where the Court held—granted a temporary restraining order against the enforcement of the wearing of the mask.

That's a very specific question.

MS. MARAS: Correct. Correct.

And that's very interesting you should ask that because I actually found that with the documents that you haven't seen yet.

In fact, in the State of Ohio, we actually have a school that since 2020 has not had masks and they actually implemented other protocols and it has been successful.

In fact, over a year not mask wearing—and this is a school with 700 students—they've only had two cases of confirmed COVID and it was outside of the school.

So what I'm trying to point out here, Your Honor—

THE COURT: Let—

MS. MARAS: Yes.

THE COURT: Let me stop you.

MS. MARAS: Um-hmm.

THE COURT: You're not answering my questions, and I'm not sure that the facts that you're citing in the cases are correct.

So I'm asking—

MS. MARAS: They're not?

THE COURT: I'm asking you a very simple question.

MS. MARAS: Uh-huh.

THE COURT: And the answer could be yes or no in terms of whether there are cases very similar—

MS. MARAS: Yes.

THE COURT: —to yours where Courts have granted temporary restraining orders against school systems or other entities like that based on, you

know, the Fourteenth Amendment violation of rights.

MS. MARAS: Yeah. I just—

THE COURT: Asking you for precedence.

MS. MARAS: Yes.

THE COURT: Because that's the way we—

MS. MARAS: Yes. Yes.

And I do cite—I just cited a TRO that was given as a restraining order to the Secretary of Health and it was issued on the 24th of August this year.

Also, a Judge in South Carolina Supreme Court struck down Columbia's public school mask mandate based on the same reasons.

So and I mean, in my filing I have a case as well that struck it down cited. It was in my exhibit where it has been struck down, too.

So there are multiple cases where they argue that your constitutional rights should succeed any arbitrary power that is being enforced.

So it's happening all across the nation, all the parents are now filing to get these done, Your Honor.

THE COURT: I haven't found those cases, but let me just tell you this. You said something about the Secretary of Health or someone granted a restraining order.

That's not your case. That's not the kind of case that we have here so—

MS. MARAS: It's about masks, Your Honor. The Wisconsin Supreme Court struck down the statewide mask mandates.

Kentucky, Boone County, struck down the government mask mandate for public schools.

South Carolina Supreme Court struck down the public school mask mandates in Columbia.

So yes, they have. There are many cases. A simple search will find that they have—

THE COURT: Okay. I'm going to give you two, two minutes more to say anything you want to say about your case or in support of your case, give you about two, two more minutes, and then I'm going to turn to the other side and give them an opportunity to speak.

And then we'll conclude.

MS. MARAS: Excellent.

Well, Your Honor, reading—reading their ambush of combined motions, I was a little bit frazzled that they tried to even take—I was actually repulsed to see that they were telling me that I don't have standing, but I do have standing.

And I was actually contemplating on voluntarily withdrawing my TRO and requesting a scheduling hearing for a—for an injunction based on that because I do have standing. And that has been proven only because there are cases that find that financial harm, and if it comes to me because of actions you've done against my child, the irrep-

arable harm that is being caused once for violation of civil liberties, of any liberties, is irreparable harm according to the law of the land.

But if you want to nitpick and not—and exclude all violations of both the federal and state Constitutions and even go down to that level and argue this, the irreparable harm is that they don't know what is happening.

Science is constantly in flux. Science is in flux, and if you don't have the subject matter experts to actually cite the science and implement the procedures that will keep kids healthy and happy, that is a concern.

Now, in Ohio, yes, 2012, the case of *Goss*, we have *Goss versus Lopez*, the Supreme Court said that there should be due process, and that I and my child is entitled—this is the only state where that law has happened—is entitled to have an education without putting their property rights or liberty rights at risk.

And this is, you know, one they argue whichever, but this is—this is the foundation of it because there's a Federal Constitution for my, you know, Fourteenth Amendment Section I, that no state shall make or enforce any law that shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process law. And this has happened.

We can cite Ohio Constitution 16, redress of injury; due process; the Ohio Constitution of inalienable rights, the necessity of knowledge.

And just like I said, everything that this mask mandate does, it records data, and that is a direct violation. There is a word to the statement and to the definition when they're collecting health care data of children and they are compelling them to comply with the health care system that our Constitution says should never happen no matter what law, local rule, either federal or state, they can't do that.

And right now I'm being asked to show the product because no one has attached it. I have offered expert testimony of a man that has over three hundred expert cases in court, and I presented that to the Board and they refused because they have taken the directive from non-subject matter experts and are imposing that and causing harm to my child and all the other children.

And if they're not at the position to be sued for their action and pay the medical bills that will come out of this, then they should not be implementing anything because it is very careless, and our children should be protected.

THE COURT: Thank you very much.

Thank you very much.

Let's go then to counsel for the defendants, Ms. Chmiel or Mr. Feher, whoever wishes to speak.

And just you can respond to any of her arguments, or you can go directly to your own, own point.

I do have your brief, I've read it, but if there are things you want to highlight, you may do so at this time.

MR. FEHER: Thank you, Your Honor. Obviously this is a—this is an issue that sparks a lot of emotion, both here and around the country.

I think you can appreciate that this is a difficult issue for any School Board to deal with because there is such high emotion, because there are, as is the habit today, many people out on social media talking about what they say is the science and isn't the science.

I think what is fair to say is that the Board here took an action that was, first of all, authorized by Ohio statute. The discretion for local School Boards to make these decisions has been mandated by this legislature.

We know that the School Board here promulgated a specific rule about how to deal with upcoming or future pandemics or rises in infectious cases.

We know that that's what happened here. The materials we've provided you lay out in detail many of the sources, you know, learned, accepted sources—the CDC, the Ohio Department of Health, right down to the Cleveland Clinic—and their recommendations that this mask mandate be used.

Mr.—or Dr. Barnes' affidavit has laid out the rationale for it with the understanding that there would be some people who are not happy about the mandate. That, nonetheless, the considerations regarding continuity of schooling, regarding the importance of avoiding forced out-of-school learning and the very negative effects that those have on students, those are all important considerations, and on balance they struck the decision

that said they thought a mask mandate was appropriate to keep the continuity of education.

They are not alone in that. That is what the majority of districts in this area have done. They certainly didn't arrive at it willy-nilly.

They certainly considered arguments that were made by the parents, including the plaintiff here. And there is, as far as I've been able to see in any of the papers or in any of the literature, not any serious suggestion that either the plaintiff's daughter or anybody else is at a serious medical risk for having worn a mask to school.

Certainly those students that have documented risks or whose doctors say they shouldn't wear a mask are entitled not to wear a mask. The policy has specific exceptions for them. It is tailored to accommodate any medical issues and any psychological issues.

So it is not any broader than it needs to be. It is well-reasoned.

As to the constitutional issues, we just don't—we've been unable to locate any authority to suggest that being required to wear a mask is in any way a deprivation of liberty or any other constitutional right.

And absent an allegation that the policy impinges on a constitutional right, there's obviously no basis for a 1983 claim, and there's certainly no basis for an assertion here that anybody faces irreparable harm by maintaining the status quo of wearing these masks.

The case law, I haven't had a chance to review any of the case law that the plaintiffs have cited here, although I have had a chance to look quickly at the *Robinson* case that she cited.

That is a case that had to do with the effect of shutting down elective medical procedures, people seeking abortions, which is, as we know, an established constitutional right, at least at this time. So that case really has very different facts than the case here.

And I'm, you know, whether it's *Marbury* or any of the other cases we've discussed, we're not aware of any authority that suggests that there's any constitutional impairment associated with what has gone on with this mask policy.

So we would, again, refer to the arguments in our brief.

And I would also highlight the fact that the standing issue is significant to the defendants here because the flip side of it is that if they prevail on the merits of this case, that decision will have no binding effect because—

MS. MARAS: I object. I object.

That's one of your motions to dismiss.

I object, Your Honor.

THE COURT: Please let him complete what he's doing.

I don't think he interrupted you at all. And when we get done, if there's something else you want to say in conclusion, I'll let you do it, but our practice and protocol is not to interrupt.

And so he hasn't interrupted you and he has disagreed with a lot of things that you've said, so let's let him finish.

MR. FEHER: Thank you, Your Honor.

So the issue is significant to us. And obviously standing must appear from the face of the complaint, and it's relevant to the motion for temporary restraining order because obviously if you don't have standing on the face of the complaint, you don't—you cannot demonstrate a substantial likelihood of success on the merits.

THE COURT: Let me—let me ask you a question about that.

I have had cases in the past where plaintiffs thought to not only reference themselves but others who are related or who are part, who are involved in the same set of circumstances, and we've always said exactly as you're saying, that they cannot do that, they cannot—a pro se litigant cannot represent other parties.

I understand that.

I haven't researched the law on this. So that would mean that she clearly could not represent her daughter, "daughter."

Is there a difference? She's got two plaintiffs now. One is the minor, a minor through her parent Terpsehore Maras, and that's her, and then she has another one, herself.

Would she be deemed if she was suing for herself, but because the child is a minor would she have rights there, or is the law established that she

cannot sue in her own name, through or on behalf of her—on behalf of her child?

MR. FEHER: Your Honor.

THE COURT: In other words—go ahead.

MR. FEHER: If I—if I understand the question correctly, the law is that, for several reasons, a plaintiff, an adult parent who might be entitled to proceed pro se on their own claim, may not proceed on behalf—

MS. MARAS: Your Honor, I object to discussing—I object to arguing the motion to dismiss and I'd like a standing objection. I'd like a standing objection.

THE COURT: Okay. Overruled.

And, yeah, I'll give you a chance to—your objection is already on the record so that's fine. I'll take note of that.

But I'll overrule your objection. I can hear this, and I want him to tell me what he—what he's talking about.

And I want you to understand why, because I can—I could deny—I mean, I could grant your motion to dismiss, but I don't have to grant a motion to dismiss on a preliminary injunction.

All I have to do is to say you're not likely to succeed on the merits because you would not later be able to pursue these claims on behalf of your—on behalf of your child.

And that would be part of the motion—I'm sorry—that would be part of the motion for preliminary injunction. But whether I dismiss the case or not,

I certainly can consider whether your case is likely to be dismissed when we get on the merits of it.

So I want to hear his argument on that.

MR. FEHER: Thank you, Your Honor.

I'm trying to remember where I was. Whether—an adult may proceed on their own claim for their own claim for damages individually without counsel. That's at a choice, a choice an adult can make, but because a child cannot make that decision legally, that the parent may not proceed on their behalf.

And, therefore, the case law in the Sixth Circuit and, frankly, around the country has always held, including in the context of 1983 cases, that plaintiffs—plaintiff parents may not represent the interests of their children pro se.

And in this case, the face of the complaint I think makes clear that the claim is brought on behalf of the daughter; not on behalf of Ms. Maras.

And to the extent that it might be argued to be on behalf of Ms. Maras, the law is also clear that a parent does not have a viable claim under 1983 for alleged actions that impact a family member.

So either way—

MS. MARAS: Your Honor, may I—

THE COURT: Will you please let him finish? Did he interrupt you once?

MS. MARAS: But the issue is a lawyer—that I should be a lawyer to be successful? I can cite a case from

the Sixth District that says there are exceptions to these rules.

THE COURT: Would you please hush? I hate to use those words. You know, I don't usually tell parties—

MS. MARAS: I just feel like I'm being disadvantaged because the lawyer is getting time to cite cases for you whereas I'm the plaintiff and you're telling, you know—it's okay. I apologize, Your Honor.

Please go ahead.

THE COURT: You should, because I gave you a chance and I asked you about cases and I gave you an opportunity at the end to say anything you wanted to say.

So don't—don't make—

MS. MARAS: I object to that because the motion to dismiss and standing shouldn't be discussed right now.

THE COURT: Just don't—just don't interrupt again. That's all I'm telling you.

Don't interrupt again. Don't interrupt again.

When I want you to speak, I will let you know when. And I will give you a brief opportunity at the end, but do not interrupt once more, not once.

Mr. Feher, go ahead and complete your argument. I don't want to hear another thing out of Ms. Maras while you're talking.

MR. FEHER: Thank you, Your Honor.

I think, as I said, the case law we've cited in our brief we think is very definitive on the issue.

It does go to directly the likelihood of success element of the request for a TRO, and we think that it is dispositive as well as the other matters that we've pointed out in the brief as to the deficiency of any claim, either under the Constitution or meeting the elements of Rule 65.

THE COURT: All right. Thank you. Thank you, counsel.

Ms. Maras, I'll give you one minute.

MS. MARAS: First of all, again, I'd like to state my objection to discussing the motion to dismiss without giving me the time allotted to me by the Court to even study that on the merits.

Whether issuance of an injunction would cause substantial harm to others is the question and whether public interests would be served.

Now, as far as my standing, I'm the mother of the minor and I'm also—she's—I'm on her behalf as a plaintiff. And while they argue I don't have a right and the school district argues that I have no standing, respectfully I believe I fit within an extension to the rule cited.

In *Works versus Commissioner of Social Security*, 886 F. Supp. 2d 690, Southern District of Ohio, 2012, the Court recognized an exception to the general rule of a pro se plaintiff cannot represent a minor.

In this case, the Court concluded that the same policy considerations which allow a parent to file a pro se Social Security appeal on behalf of the minor apply also in this case. Ms. Works has

presumably borne the costs of his medical treatments documented in the record, and that would also apply to me.

I have a personal stake in the action because I am a single parent and assume all medical costs related to injuries sustained by daughter.

I'm also in the process of obtaining legal counsel who is attempting to file pro hac vice so that I may have representation during my complaint.

So I do have standing because that case found that I fit that exemption.

THE COURT: Okay. Give me the case.

What is the case again?

MS. MARAS: Yes. *Works versus Commissioner of Social Security*, Southern District of Ohio, 2012.

THE COURT: What is the cite?

MS. MARAS: It says—yes, the citation is 886 F. Supp. 2d 690, and it says, "In this case the Court concludes that the same policy considerations which allow a parent to file a pro se Social Security appeal on behalf of a minor child apply in this case."

And this is relating to health, and because her costs that would be rendered from the harm that she's being caused by these statements that they're saying of citations, status quo is not the law. And nothing, no pandemic, nothing suspends the rights of our constitutional liberties. It's unconstitutional. It doesn't matter what authority they claim.

They took an oath and that's a direct violation of the U.S. Constitution and the Ohio State. You can't cancel on civil liberties because of the pandemic.

And then making a statement as, oh, there's social media, nobody cares about social media, we're talking science. I cited actual science, testing, studies, experts. And, you know, the superintendent is not a medical professional and he's not a scientist. I leave that to scientists.

THE COURT: You've got to conclude now, you may conclude.

Just conclude now. I'll give you just a very brief chance to just conclude your argument.

MS. MARAS: The lawyer made compelling arguments that the facts may be different to the case of Alabama which is the one that they only pulled out because the others were not mask mandates, but the law remains the same.

The legal principles would apply. You can distinguish every case on the facts, but the law is the law. That's the case.

And the fact that we have, you know, this motion to dismiss put together and I have a massive law firm against me, and they're telling me that I can't represent my child when it has been well-established that when it comes to health and the costs that I must bear I have every right to represent her because I cannot afford to pay ten, $15,000 for an attorney.

I'm a single parent, and I'm trying to protect my child and not cause myself financial harm because of—

THE COURT: All right.

MS. MARAS: —these mandates that are blanket statements that don't rely on actual science.

THE COURT: All right. Ms. Maras, so that that concludes the argument that I want to hear from the parties.

Let me say—say this. Mr. Feher is right and these are emotional issues, and I think for society these are difficult issues.

I know that.

And so all a Judge can do is hear the parties, gather the facts, and apply the law as the Judge understands the law to be.

It is, you know, that's what I have to do, put myself in that context. I can't let emotion, one side or the other, one way or the other, I can't let either side, emotion on either side, dictate how I will decide cases.

I've never done that in 27 years I've been on the Court, and I'm not going to do it now, but I am bound by the law as I understand it.

And so what I'm going to do, having received this information from the plaintiff, having provided an opportunity for defendants to put on their position, is decide this motion as to whether I will grant the extraordinary relief of restraining the Board of Education, Mayfield City School District Board of Education from enforcing their mask

requirement or mandate, or whether I will deny that motion, in which case they can continue to enforce it until—until the case is resolved or until a preliminary injunction would be issued in the plaintiff's favor, if there were to be such an order.

Ms. Maras, the—if a TRO is denied, then the Court is required to set the case for another preliminary proceeding, and that's a preliminary injunction proceeding.

At that point, the parties will have done perhaps some discovery, gather more information, and then the hearing would likely be held in person with witnesses being called, although the pandemic could affect that.

But that's, that would be the second stage in terms of an injunction if the TRO is denied.

If the preliminary injunction is denied—of course, if it was granted, then it would preclude them from acting until the case is over.

If that's denied, the preliminary injunction, assuming your case survived and didn't go out on a motion to dismiss, then you would ask for the injunctive relief still, but at the end of your case as relief in your case.

That's the third stage.

And so that, that would be the process.

Now, the defendants are allowed to file a motion to dismiss. This is an early stage, and I would give you an opportunity to respond to a motion to dismiss.

Now, let me say this: That the Court, of course, on its own motion can dismiss a case for lack of subject matter jurisdiction, but this, this may not pertain to subject matter jurisdiction, but whatever, I would not dismiss it until you had a chance to file an opposition to the motion to dismiss.

But I tried to explain to you that I still can consider whether or not you will be precluded based on standing because while even if I didn't dismiss your case, it's something I can consider in regard to one of the elements I have to determine in respect to the motion for temporary restraining order.

One of the things I have to determine is whether you're likely to succeed on the merits of the case. If you're not a proper party, then of course you're not going to succeed on the merits of your case. And so I can take a peek at that issue without deciding it finally, even if, even if I decided, you know, to allow you to file something later on the motion to dismiss.

Now, that may be difficult to understand, and I understand why. It is difficult for laypersons to file a lawsuit, to do research, and to pursue cases in the Court. You've already articulated this. There are lawyers on the other side who are trained in the law and how to present evidence and how to make arguments, and you don't have that training.

And so it's a much better case for a Judge to have lawyers on both sides who can sharpen the issues and can respond to my questions so that I'm in a position to resolve a case.

But you do have a right on your own part to bring a case. I've got to decide whether you have a right to bring it in this particular instance, but if you have that right, then you can represent yourself. You're not allowed to represent anyone else, as a general matter.

So I'm going to have to decide all these things, but I'm not going to—initially all I'm going to do is decide whether you should get a TRO because that's really what's in front of me right now.

And I have to go through the factors.

We've talked about some of them: Whether you are likely to succeed on the merits; whether your child would suffer—or you would suffer irreparable harm; whether it's in the public interests to grant one; and so on and so forth, those factors that you've seen, that counsel have addressed.

And that's what I've got to do. And then when I do that, it's not going to be a long order. When I do that, then I'll grant or deny the TRO.

So that's—that's where we're going, is that next step.

All right. That's all I have, Ms. Maras.

Anything else before I ask opposing counsel whether they have anything else? And then we'll conclude right now.

MS. MARAS: Yes, Your Honor.

I will be e-mailing you the information that demonstrates that I do have standing.

Also, you know, I find it troublesome that—you know, the Court is for the people, not for lawyers.

And I find it troublesome that, you know, it's being seen as if the people are not allowed in people's Court without a lawyer.

I have done extensive work protecting not only my child's interests but my own, and I would like, if possible, when you actually see my documents to provide me access for the electronic filing as well.

THE COURT: Okay.

MS. MARAS: Above all, the Constitution prevails and that is what's important. Any violation of the Constitution causes irreparable harm regardless.

THE COURT: All right. That's all.

So we'll deal with, you know, whether you should have filing status later. I told you this was a situation where I could receive papers and informally because of the nature of the circumstances. You provided papers to me, and the ones we have we'll consider.

But you can't—you can't just keep mailing papers that you want me to consider for a motion for temporary restraining order because the whole notion is it should be quick, and the parties have put it in front of me.

You can't just keep filing parties.

MS. MARAS: I—

THE COURT: So—

MS. MARAS: I agree.

I'm referring to the motion to dismiss and the standing because I wasn't aware that we were

going to be hearing that case that has been put together.

I had requested the Court to bifurcate the two, but since you're considering it and taking a peek, I would like to at least defend myself since I haven't had the appropriate time by the Court to answer that.

THE COURT: You did. You gave me a case that you told me you thought countered what they were saying, so you obviously did the research and you gave me a case, so I'll look at your case.

Mr. Feher, anything further before we conclude?

MR. FEHER: No, Your Honor.

THE COURT: All right.

Okay. Thank you, all. Appreciate your time.

MR. FEHER: Thank you, Your Honor.

Have a good day.

MS. MARAS: Thank you, Your Honor.

MS. CHMIEL: Thank you, Your Honor.

Proceedings concluded at 4:44 p.m.)

NOTICE OF APPEAL, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO (OCTOBER 28, 2022)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

P.M., a minor, by and through her parent, Terpsehore Maras, ET AL.,

Plaintiffs,

v.

MAYFIELD CITY SCHOOL DISTRICT BOARD OF EDUCATION, ET AL.,

Defendants.

Case No.: 1:21 CV 1711

Before: Hon. Solomon OLIVAR, JR., Judge.

Terpsehore Maras, individually, hereby appeals to the United States Court of Appeals for the Sixth Circuit from the final judgment entered against her in this action on September 30, 2022.

Respectfully submitted,

/s/ John T. Pfleiderer
Warner D. Mendenhall (0070165)
John T. Pfleiderer (0100195)
Mendenhall Law Group
190 North Union Street
Suite 201
Akron, Ohio 44304
Tel: (330) 535-9160
Fax: (330) 762-3423
warner@warnermendenhall.com
john@warnermendenhall.com

Daniel J. Orlando (0097424)
Weisensell, Mastrantonio & Niese, LLP
23 South Main Street, Suite 301
Akron, Ohio 44308
Tel: (330) 434-1000
dorlando@nwm-law.com

Attorneys for Plaintiff
Terpsehore Maras