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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY,
STATE OF UTAH

CONCERNED COALITION, a Utah
501(c)(4) Not for Profit Corporation; A.B. as
general guardian on behalf of E.L., a minor;
A.W. as general guardian on behalf of E.W.,
a minor; H.N. and D.N. as general guardians
on behalf of L.N., a minor; J.S. as general
guardian on behalf of R.P. and S.P., minor
children; L.H. as general guardian on behalf
of C.H. and T.H., minor children; N.J. and
S.J. as general guardian on behalf of C.J. and
A.J., minor children; S.S. as general
guardian on behalf of D.S. and T.S., minor
children; K.W. as general guardian on behalf
of O.W., a minor; and C.P., and C.P., as
general guardians on behalf of minor
children M.P., L.P., and D.P.

Plaintiffs,

v.

SPENCER J. COX, in his official capacity
as GOVERNOR OF UTAH; DEIDRE
HENDERSON, in her official capacity as
LIEUTENANT GOVERNOR OF UTAH;
SEAN REYES, Utah Attorney General, and
SALT LAKE COUNTY

Defendants.

COMPLAINT SEEKING
DECLARATORY & INJUNCTIVE
RELIEF

Case No.

Judge

INTRODUCTION

The great duty of all governments is the welfare and happiness of its people. Without health a community can not well enjoy happiness or become prosperous and contented.

State ex rel. Cox v. Board of Education, 60 P. 1013, 13-14 (Utah 1900).

This is not the first time in Utah history the state has faced a public health crisis. At the turn of the twentieth century, Smallpox was spreading throughout the state prompting the Salt Lake City Board of Health and the City Board of Education to adopt resolutions excluding all unvaccinated pupils from attending public schools. One parent objected and filed suit challenging the authority of the Boards of Health and Education to issue a vaccination mandate in public schools. In 1900, the state legislature gave the Board of Health broad authority to issue public safety orders to protect the citizens of this state and required local agencies to follow those orders. The Utah Supreme Court held that the Board of Health had not only the authority but the duty to impose a vaccination mandate in public schools.

To secure public health an imperative obligation rested upon the city, through its proper board of health, to take all necessary steps to prevent the spread of contagious diseases. In endeavoring to prevent the spread of an infectious disease known to be dangerous, the board of health acted in the performance of its highest duty to the people of the city of Salt Lake. To neglect such known duty, when imposed, would be reprehensible.

Id.

Today, the state legislature has neglected its duty to prevent the spread of a dangerous infectious disease. Through newly enacted legislation, they ignored the advice of the CDC and the Salt Lake County Board of Health, choosing to exercise the power of the state to prevent public schools from imposing mask mandates. Instead of allowing local boards of health to

fulfill their duty to protect our citizens, they gutted their power to do so. Instead of requiring local agencies to follow the advice of our medical experts, the state legislature gave them plenary authority to terminate any emergency public health order for any reason.

The highly contagious Delta variant of COVID-19 is spreading rapidly among the most vulnerable in our state, children under 12 years old. Plaintiffs are K-6 special needs children and children with pre-existing conditions that place them at higher risk of serious illness and death from COVID-19 residing in Salt Lake County. Their access to healthy and safe public education is threatened by legislation that simultaneously prohibited public schools from issuing mask requirements and allowed the Salt Lake County Council to terminate an emergency public health order imposing a mask mandate in K-6 public schools. On March 24, 2021, Governor Cox signed S.B. 195, and on May 28, 2021, he signed H.B. 1007. Under H.B. 1007, school districts cannot follow CDC guidelines by requiring staff and students to wear masks. Utah Code §§ 26A-1-114(7)(d) and (9)(a)(iii) gives local county agencies the power to prevent an emergency public health order issued by a local health department from taking effect.

In Salt Lake County, the current 7-day case rate is 64% higher than it was this time last year, and among 5–11-year-olds, the case rate has increased to 261 per 100,000 versus 66 per 100,000 at this last time of year. Local infectious disease experts anticipate that decreased protective measures in schools coupled with the highly contagious Delta variant will contribute to a massive spread of COVID-19 across the State of Utah.

Children under the age of 12 years old are particularly vulnerable. No vaccine is currently available to protect children under the age of 12 from this highly contagious disease. Children who contract COVID-19 are at risk for Multisystem Inflammatory Syndrome in Children (MIS-C). MIS-C is a condition where different body parts can become inflamed, including the heart,

lungs, kidneys, brain, skin, eyes, and gastrointestinal organs. The long-term effects of COVID-19 in children are unknown. The medical evidence on the effectiveness of masks is clear. The CDC, as part of their current preventions and protocols for reopening of K-12 schools, has unequivocally stated that mask-wearing should be universal regardless of vaccination status.

In response to the rapid and deadly spread of the Delta variant of COVID-19, the Salt Lake County Department of Health issued a Public Health Order mandating masks in K-6 public schools. The Salt Lake County Council wasted no time. Within a day, they passed a Resolution No. 5888 terminating the mask mandate, leaving plaintiffs' children and all children under the age of 12 who attend public school in Salt Lake County unnecessarily unprotected and at risk. The Council's Resolution provided no rationale for their decision. Plaintiffs must make the untenable and unconstitutional choice between keeping their children safe or sending them to school.

Article X, section 1 of the Utah Constitution guarantees Plaintiffs' children the right to attend public schools. Children with disabilities and pre-existing conditions that make them more susceptible to COVID-19 are entitled to safely learn and interact with other children and receive the same education as other children. Article I, Section 7 of the Utah Constitution guarantees the right to due process and equal protection. H.B. 1007 stripped schools of the ability to issue mask requirements for students K -12. On its face and as applied, H.B. 1007 advances no possible legitimate government interest, and fails to satisfy the "rational basis" standard of constitutional scrutiny. As applied, S.B. 195 deprives Salt Lake County's decision to terminate an emergency health order to protect K-6 public school children is irrational and serves no legitimate purpose.

Attached to this Complaint are Public Health Order of Constraint No. 2021-2, Salt Lake County Council Resolution No. 5888, affidavits from Plaintiffs A.W., J.S., S.S., N.J., S.J., K.W., C.P., C.P., L.H., and A.B., and the Declaration of Glenn S. Lipson, Ph.D., A.B.P.P.

PARTIES

1. Plaintiff, CONCERNED COALITION, is a Utah 501(c)(4) Not for Profit Corporation.
2. Plaintiff E.L.'s parent and general guardian, A.B., brings this action on behalf of E.L.E.L. is a four-year-old who has been diagnosed with a chronic autoinflammatory condition and an undiagnosed condition that causes weakness in the legs. E.L. resides with her parents in Salt Lake County.
3. Plaintiff E.W.'s parent and general guardian, A.W., brings this action on behalf of E.W.. E.W. is an at-risk seven-year-old with chronic health conditions enrolled in the Salt Lake City School District. E.W. resides with his mother in Salt Lake County and has a disability.
4. Plaintiff L.N.'s parents and general guardians, H.N. and D.N., bring this action on behalf of L.N. L.N. is an eleven-year-old with cerebral palsy enrolled in Wasatch Elementary. L.N. also receives accommodations under Section 504 of the Rehabilitation Act (504 Plan) and resides with her parents in Salt Lake County.
5. Plaintiff R.P. and S.P.'s parent and general guardian, J.S., brings this action on behalf of both minor children. R.P. is a ten-year-old with Type 1 Diabetes and S.P. is a three-year-old with expressive language delay. Both minors live with their parents in Salt Lake County.
6. Plaintiff C.H. and T.H.'s parent and general guardian, L.H., brings this action on behalf of both minor children. C.H. is a six-year-old and T.H. is a nine-year-old and they are

- both enrolled in Eastwood Elementary. C.H. was born with severe combined immunodeficiency ("SCID"). Both minors live with their parents in Salt Lake County.
7. Plaintiff C.J. and A.J.'s parents and general guardians, N.J. and S.J., bring this action on behalf of both minor children. C.J. is a ten-year-old and A.J. is a seven-year-old. Both minors are enrolled in Canyons School District. C.J. is diagnosed with asthma and A.J. has a genetic connective tissue disorder called Vascular Ehlers-Danlos Syndrome ("VEDS"). Both children live with their parents in Salt Lake County.
 8. Plaintiff D.S. and T.S. 's parent and general guardian, S.S., brings this action on behalf of the minor children. D.S. is a ten-year-old with significant health issues including a complement 2 immunodeficiency and on an IEP. T.S. is a three-year-old who is on an IEP. Both children were supposed to attend public school in Salt Lake County. Both children live with S.S. in Salt Lake County.
 9. Plaintiff O.W. 's parent and general guardian, K.W., brings this action on behalf of O.W.O.W. is a seven-year-old child diagnosed with asthma. O.W. is enrolled in Canyons School District. O.W. lives in Salt Lake County with his parents.
 10. Plaintiff children M.P., L.P., and D.P's parents and general guardians bring this action on behalf of M.P., L.P., and D.P. M.P., L.P., and D.P are under the age of twelve years old and are not eligible to be vaccinated. Due to no mask mandate, C.P. does not feel like it is safe for their children to attend in-person school. All three children live in Salt Lake County with their parents.
 11. Defendant Spencer J. Cox, in his official capacity, as the duly elected and acting Governor for the State of Utah. Cox is charged with enforcing Utah law.

12. Defendant Deidre Henderson, in her official capacity, as the duly elected and acting Lieutenant Governor for the State of Utah. Henderson is charged with enforcing Utah Law.
13. Defendant Sean Reyes, in his official capacity, as the Attorney General for the State of Utah. Reyes is charged with enforcing Utah law.
14. Defendant Salt Lake County is a political entity.

VENUE AND JURISDICTION

15. The Third District Court in and for Salt Lake County, State of Utah is the proper venue for this action under Utah Code Ann. §78B-3-307.
16. The Third District Court in and for Salt Lake County, State of Utah has jurisdiction over the matter of this Complaint under Utah Code Ann. §78A-5-102(2), and Article VIII, Section 5 of the Utah Constitution.

FACTUAL ALLEGATIONS

17. Utah Code § 53G-9-210(5) prohibits a school district, charter school, and the Utah Schools for the Deaf and Blind from requiring students and staff from imposing mask mandates. In conjunction with Utah Code § 53G-9-210(5), the Utah State Legislature passed Utah Code §§ 26A-1-114(7)(d) and (9)(a)(iii), giving any county governing body the authority to terminate public health emergency orders issued by a local health department. By preventing local schools from adopting mask requirements during an ever-worsening and deadly pandemic, the State of Utah is preventing Plaintiffs and other children under the age of 12 with disabilities and underlying medical conditions from safely returning to school.

18. Exercising authority under Utah Code §§ 26A-1-114(7)(d) and (9)(a)(iii), the Salt Lake County Council, in Resolution No. 5888, terminated an emergency public health order issued by the Salt Lake County Health Department requiring masks in K -6 public schools. The Salt Lake County Health Department is preventing Plaintiffs and other children under the age of 12 with disabilities and underlying medical conditions from safely returning to school.

The Risks and Spread of COVID-19 in Children

19. While children have been less affected by COVID-19 compared to adults, children can still be infected with the virus that causes COVID-19 and some children develop severe illness."¹
20. Children with underlying medical conditions are at increased risk for severe illness compared to children without underlying medical conditions. *Id.*
21. "Even when illness isn't severe, children may suffer from long-term health effects and may spread the virus to other people."²
22. Since the beginning of the pandemic, 78,112 Utah children ages 5-18 have been diagnosed with COVID-19, with 632 needing to be hospitalized (36 needed ICU care). Of those requiring hospitalization in that age group, 55 developed multisystem inflammatory syndrome in children (MIS-C). *Id.*
23. MIS-C is a serious condition that can lead to death. Almost 92% of all pediatric cases of COVID-19 are among school-aged children in Utah." *Id.*

¹ [People with Certain Medical Conditions | CDC](#).

² [COVID in school-aged children.pdf \(utah.gov\)](#).

24. The Utah Health Department is seeing substantially higher cases counts among school-aged children than they saw at the start of school last year. *Id.*
25. Right now, the Delta variant is the dominant strain of the virus in most of the COVID-19 cases throughout Utah. *Id.*
26. The Utah Health Department anticipates there will be significantly more spreads of the virus this year compared to last year in schools because the Delta variant spreads more easily and universal making in schools is not required. *Id.*

If we make a projection taking today's rate, and applying the same % increase we saw in the first month of school last year:

Age in years	Number of cases for every 100,000 kids in age group Sept. 1, 2020	Number of cases for every 100,000 kids in age group Oct. 1, 2020	% Increase in COVID-19 in the first month of school last year	Number of cases for every 100,000 kids in age group Aug. 5, 2021	Projected number of cases for every 100,000 kids in age group in first month of school in 2021
5-10	22.5	65.7	192%	114.2	333.4
11-13	49.4	112.4	126%	104.3	235.7
14-17	82.1	255.7	211%	129.3	402.1
All other non-school ages combined (Utahns age 0-4 and 18+)	93.2	229.7	145%	175.9	431.0

Data notes: Incidence rates of COVID-19 are 7-day case rates per 100,000 population. These estimates could be higher or lower than what may actually happen due to a number of factors; including the availability of vaccines, variants which spread more easily, lack of universal masking in schools, and possible changes to in-person attendance levels this school year compared to last.

27. Similar to the CDC, the Utah Department of Health recommends a layered prevention approach.
28. H.B. 1007 was sponsored by Representative Val L. Peterson at the 2021 First Special Session.
29. Representative Val L. Peterson presented the bill at the House Floor on May 19, 2021.

30. H.B. 1007's general purpose was to prohibit face-covering requirements in the system of higher education and in the public education system.
31. On or about May 19, 2021, H.B. 1007 passed at the House of Representatives and passed in the Senate.
32. On or about May 28, 2021, Governor Spencer J. Cox signed H.B. 1007 which then became Utah Code Ann. 53G-9-210.
33. During Representative Val L. Peterson's presentation of H.B. 1007, he indicated that local control would be maintained. If there were an outbreak, there would be a way to implement a mask mandate again.
34. Representative Val L. Peterson specifically referenced that future mask mandates would be implemented through S.B. 195, Utah Code §§ 26A-1-114(7)(d) and (9)(a)(iii).
35. On August 11, 2021, the Salt Lake County Executive Director of the Salt Lake County Department of Health issued Public Health Order of Constraint No. 2021-2. The Executive Director found:
 - a. The Delta Variant of the COVID-19 virus is the dominant strain actively circulating in Salt Lake County and is more contagious than other variants.
 - b. In Salt Lake County, the current 7-day case rate is 64% higher than it was this time last year, and among 5-11 year-olds, the case rate has increased to 261 per 100,000 versus 66 per 100,000 at this last time of year.
 - c. Currently, Salt Lake County is in a High Level of Transmission under criteria separately established by the State of Utah and the Centers for Disease Control.

d. COVID-19 presents a continuing threat to the 235,064 children under the age of 12 years in Salt Lake County, who are not eligible for vaccinations.

e. MIS-C is a condition where different body parts can become inflamed, including the heart, lungs, kidneys, brain, skin, eyes, or gastrointestinal organs. While the causes of MIS-C are unknown, many children with MIS-C were diagnosed with COVID-19 or had been around someone with COVID-19. MIS-C can be serious, even deadly, and children diagnosed with it may suffer long-term effects. As of August 9, 2021, 27 children in Salt Lake County have been diagnosed with MIS-C.

f. Requiring students to wear masks in school will help mitigate further widespread transmission of COVID-19 and keep the youngest students and their families safe.

36. Based on these findings, Public Health Order 2021-2 imposed mandatory face coverings in K-6 public schools in Salt Lake County.

37. On August 12, 2021, exercising its authority under Utah Code §§ 26A-1-114(7)(d) and (9)(a)(iii), the Salt Lake County Council voted 6 to 3 to terminate Public Health Order 2021-2.

38. Upon information and belief, no current voting council member has any specialized public health or infectious disease-related knowledge or training.

39. The Council provided no rationale for its decision in Resolution No. 5888. However, some council members later made public statements defending their vote to terminate Public Health Order 2021-2.

40. Salt County Council Member Aimee Winder Newton posted on FaceBook, "[A]lthough we have smart, incredible health officials, there are so many unknowns. Even they

admit they don't know everything about the virus and masking effects." She further explained, "I cannot, in good conscience, tell a parent that government knows better than they do for their child."

41. Salt Lake County Council Member Dea Theodore stated in an email, "Government's role is not to mandate compliance for the littlest among us...that is the role of parents. Government can inform and assist, but ultimately, this decision should be left up to parents. We live in a free society, we must allow citizens to make their own decisions."

42. Under our system of government, there is no unfettered personal freedom to engage in self-endangerment or to endanger others. The constitutionally protected right of family autonomy is not without limitations. There are many circumstances related to child health and well-being in which state intervention is constitutional.

43. Council Member Theodore further explained, "For now the evidence does not warrant heavy handed government intervention...especially intervention that seems on its face to be politically motivated."

Children with Disabilities and Pre-existing Conditions are at Extreme Risk of Serious Illness or Death from COVID-19

44. Children with disabilities are disproportionately affected by Utah Code § 53G-9-210(5). As a group, they suffer more serious and life-threatening effects from the virus than children without those underlying medical conditions.

45. According to the CDC, "children with medical complexity, with genetic, neurologic, metabolic conditions, or with congenital heart disease can be at increased risk for severe illness from COVID-19."³
46. Children with obesity, diabetes, asthma or chronic lung disease, sickle cell disease, or immunosuppression can also be at increased risk for severe illness from COVID-19.
47. People with developmental disabilities have "markedly increased risks of hospital admission and death from COVID-19, over and above the risks observed for non-covid causes of death."⁴

Mask Requirements in Schools Reduce the Risk of Transmission of COVID-19

48. It is undisputed that wearing masks prevents the spread of contagious diseases and saves children's lives.⁵
49. On August 20, 2021, BYU announced that it will be requiring all students to wear masks on campus this fall.⁶
50. Mask mandates and social distancing in 2020 not only slowed the spread of the disease, but saved children's lives. In the 2019-20 pre-COVID-19 flu season, the Centers for Disease Control and Prevention recorded the deaths of 199 American children aged 17 and under from the flu. In the 2020-21 flu season, the CDC recorded one child flu death in the same age group.⁷

³ Centers for Disease Control, COVID-19: People with Certain Medical Conditions, May 13, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

⁴ BMJ. 2021 Jul 14;374:n1592. doi: 10.1136/bmj.n1592. National Library of Medicine. <https://pubmed.ncbi.nlm.nih.gov/34261639/>

⁵ CDC, Guidance for COVID-19 Prevention in K-12 Schools, updated Aug. 5, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>.

⁶ <https://www.byu.edu/coronavirus/face-coverings>

⁷ [Pediatric Flu Deaths During 2019-2020 Reach New High | CDC; 2020-2021 Flu Season Summary | CDC](#)

**Plaintiffs are Minor Children Who Fall into a Category of Students
with Disabilities or Underlying Comorbidities.**

51. E.L. is a four-year-old diagnosed with a chronic auto inflammatory condition and an undiagnosed condition that causes weakness in the legs.
52. Due to E.L.'s condition, A.B. has had to take E.L. out of public school and enroll him in private school where masks are mandated.
53. E.L.'s father has multiple sclerosis and E.L.'s live-in grandmother has cancer.
54. A mask mandate is important for E.L. to continue receiving a public education and keeping himself and other family members safe from COVID-19.
55. E.W. is a seven-year-old who has asthma and is a special needs student. E.W. was in kindergarten when the pandemic reached the United States.
56. In January 2020, A.W. transferred E.W. from a local private school to a public school to access necessary special-education and disability protections not afforded or enforceable in private school.
57. By mid-February 2020, E.W. had a 504 plan and had begun the special education evaluation process, pursuant to the Individuals with Disabilities Education Act 20 USC §1400, in order to receive an Individualized Education Program (IEP).
58. E.W. was never able to complete the evaluation process due to the pandemic. The necessary testing to create an IEP cannot be done remotely.
59. Due to E.W.'s underlying condition putting E.W. at significant risk of severe COVID-19 complications, E.W. cannot complete testing and therefore will not be afforded the proper support normally available under an IEP.
60. E.W. is being deprived of the right to a free, appropriate public education.

61. L.N. is an eleven-year-old who has a history of strokes and seizures.
62. L.N. also suffers from cerebral palsy and selective mutism.
63. According to the CDC, strokes and seizures increase the likelihood of getting severe COVID-19.
64. L.N., due to her underlying conditions, is provided specific accommodations under a 504 Plan.
65. During the period that L.N. was engaged in remote learning early in the pandemic, her anxiety significantly increased, requiring her pediatrician to increase her psychotropic medication by 50%.
66. R.P. is a ten-year-old with Type 1 Diabetes.
67. According to the CDC and the American Diabetes Association, Type 1 Diabetes increases the likelihood of severe COVID-19 complications.
68. Due to the lack of a mask mandate, R.P. has been removed from a public-school setting and is enrolled in a home and hospital program.
69. R.P.'s three-year-old brother, S.P., has an expressive language delay.
70. S.P.'s speech therapist recently advised S.P. be enrolled in additional developmental and speech therapy programs through the Jordan School District.
71. Due to the risk of exposure to R.P., S.P. cannot attend additional developmental and speech therapy programs in a public-school setting, absent a mask mandate.
72. C.H. was born with SCID, so she does not have a functional immune system.
73. C.H. received a bone marrow transplant at three months of age and a thymus transplant when she was 3-years-old.

74. C.H.'s immune system is now functional but weak. Additionally, the bone marrow transplant chemotherapy left her with stage-2 chronic kidney disease.
75. According to the CDC, solid organ and bone marrow transplant recipients are at increased risk of severe COVID-19 complications; the risk to such individuals is so high that age-eligible transplant recipients have been advised to obtain a third "booster" vaccine dose.
76. During this time, T.H. cannot attend school because any illnesses he brings home would almost certainly spread to C.H.
77. C.J. is diagnosed with asthma, and A.J. has a genetic connective tissue disorder called Vascular Ehlers-Danlos Syndrome ("VEDS").
78. VEDS sufferers are prone to spontaneous arterial aneurysms, dissection, or ruptures, as well as bowel perforations and pneumothorax. A.J. is also on an IEP for speech.
79. Due to his underlying conditions, contracting COVID-19 would significantly increase A.J.'s chances of life-threatening events.
80. D.S. is a ten-year-old with significant health issues, including Compliment 2 Immune Deficiency.
81. D.S. is on an IEP for hearing and speech.
82. T.S. is a three-year-old and on an IEP for speech, language, fine motor, and gross motor delays.
83. Due to no mask mandate in their public-school settings, both children will be enrolled in expensive private programs where masks are mandated.
84. The children of C.P and C.P. do not have any underlying conditions that they are aware of.

85. Due to no safety precautions in school, the children of C.P. and C.P. will not attend in-person school. The children of C.P. and C.P. will not get the benefits of attending school in person.
86. O.W. is a seven-year-old child diagnosed with asthma. Two younger siblings of O.W. that do not attend school also have asthma.
87. Due to no mask mandate in O.W.'s public school setting, all children within the home are at significant risk of contracting COVID-19.

Remote Learning is Detrimental to the Educational Attainment of all Students and in Particular, Students with Disabilities

88. Return to in-person education is a priority this Fall, and it is undisputed that students benefit from in-person instruction.
89. Dr. Glenn S. Lipson's attached affidavit explains the impact of social isolation on children stemming from online learning as a result of COVID-19.
90. Plaintiffs are the parents of minor children set to return to in-person classroom learning in Salt Lake County.
91. Plaintiffs are forced to opt for online learning because of an unnecessary risk created by Utah Code § 53G-9-210(5) and the Salt Lake County Council's unconstitutional resolution terminating Salt Lake County Health's emergency public health order requiring masks in schools.
92. Plaintiffs' attached affidavits explain that remote learning does not offer an adequate education for their special needs children.

93. According to the American Academy of Pediatrics, "remote learning highlighted inequities in education, was detrimental to students' educational attainment of all ages and exacerbated the mental health crisis among children and adolescents."⁸
94. COVID-19 disproportionately disrupted the education of students with disabilities. Virtual learning because of COVID-19 disrupted special needs students' access to services necessary to support their academic progress and prevent regression, such as speech and occupational therapy, behavioral support, and counseling.⁹
95. Conversely, no studies have indicated that masking requirements in a congregate school setting have negative mental health impacts for children.¹⁰
96. Furthermore, no studies have shown that mask-wearing causes increased resistance to inhalation or exhalation.¹¹
97. The Open Education Clause of the Utah Constitution, Art X, Sec. 1, requires that the public education system be open to all children of Utah.
98. The requirement that the schools must be open to all children of Utah is a prohibition against any law or rule which would separate or divide the children of Utah into classes or groups and grant, allow, or provide one group or class educational privileges or advantages denied another.

⁸ AAP, COVID-19 Guidance for Safe Schools, <https://services.aap.org/en/pages/2019-novel-coronavirus-COVID19-infections/clinical-guidance/COVID-19-planning-considerations-return-to-in-person-education-in-schools/>

⁹ "How America failed students with disabilities during the pandemic," The Washington Post, May 20, 2021, <https://www.washingtonpost.com/education/2021/05/20/students-disabilities-virtual-learning-failure/> ("[O]fficials in school districts across the country concede they failed during the crisis to deliver the quality of education that students with disabilities are legally entitled to receive.")

¹⁰ Dr. Jeremy Kendrick, Assistant Professor of Psychiatry at Huntsman Mental Health Institute. Aug 20, 2021.

¹¹ "Pediatric Pulmonologists Say 'Kids Should Mask Up.'" Wall Street Journal, Aug 20, 2021. <https://www.wsj.com/articles/masks-children-kids-covid-virus-transmission-11629439686>

99. It is also a prohibition against the Utah Legislature, or any other body, making any law or rule which would deny admission to, or exclude from, the public schools any child resident of Utah, for any cause except the child's conduct, behavior, or health.
100. No child of school age, residing in Utah, can be lawfully denied admission to the schools of Utah because of race, color, location, religion, politics, or any other bar or barrier which may be set up which would deny to such child equality of educational opportunities or facilities with all other children of Utah.
101. Plaintiffs are school-aged children enrolled in a public school in Salt Lake County for the Fall 2021 school year.
102. By virtue of their underlying conditions, Plaintiffs would be provided specific accommodations so they could attend public schools safely.
103. By virtue of their underlying conditions, Plaintiffs are particularly susceptible to serious illness and death, should they contract COVID-19.
104. Utah Code § 53G-9-210(5) puts Plaintiffs, by virtue of their underlying conditions, in grave danger of contracting COVID-19 if they attend in-person classes this Fall by prohibiting the implementation of a simple, non-invasive, protective measure.
105. Utah Code §§ 26A-1-114(7)(d) and (9)(a)(iii) , as applied by Salt Lake County, puts Plaintiffs, by virtue of their underlying conditions, in grave danger of contracting COVID-19 if they attend in-person classes this Fall by prohibiting the implementation of a simple, non-invasive, protective measure.
106. Plaintiffs, by virtue of their underlying conditions, must choose between their safety and their education.

107. Plaintiffs, by virtue of their underlying conditions, will have diminished educational prospects and opportunities as remote learning is neither comparable to nor sufficiently replaces in-person learning.

108. As a direct and proximate result of defendants' actions, Plaintiffs will suffer irreparable harm.

109. A student's right to free, public education is a property interest protected under the Due Process Clause of the United States and Utah Constitution.

110. As students in Salt Lake County, Plaintiffs have a property interest in their continued access to public education.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF (Declaratory Judgment and Injunctive Relief – Free and Equal Public Education Violation)

111. Plaintiffs incorporate by reference in this Claim for Relief the previous paragraphs of this Complaint.

112. Plaintiffs respectfully request the court enter a Judgment declaring that Utah Code §§ 26A-1-114(7)(d) and (9)(a)(iii) as applied violates the Free and Equal Public Education Clause of the Utah Constitution (Art. X, § 1) and order Salt Lake County to rescind Resolution No. 5888 terminating Public Health Order 2021-2.

SECOND CLAIM FOR RELIEF (Declaratory Judgment and Injunctive Relief – Due Process Violation)

113. Plaintiffs incorporate by reference in this Claim for Relief the previous paragraphs of this Complaint.

114. Plaintiffs respectfully request the court enter a Judgment declaring that Utah Code §§ 26A-1-114(7)(d) and (9)(a)(iii) as applied violates the Due Process Clause of the Utah Constitution (Art. I, § 7) and order Salt Lake County to rescind Resolution No. 5888 terminating Public Health Order 2021-2.

THIRD CLAIM FOR RELIEF

(Declaratory Judgment and Injunctive Relief –
Free and Equal Public Education Violation)

115. Plaintiffs incorporate by reference in this Claim for Relief the previous paragraphs of this Complaint.

116. Plaintiffs respectfully request the court enter a Judgment declaring that Utah Code § 53G-9-210(5) on its face and as applied violates the Free and Equal Public Education Clause of the Utah Constitution (Art. X, § 1) and an Order permanently enjoining the enforcement of § 53G-9-210(5).

FOURTH CLAIM FOR RELIEF

(Declaratory Judgment and Injunctive Relief –
Due Process Violation)

117. Plaintiffs incorporate by reference in this Claim for Relief the previous paragraphs of this Complaint.

118. Plaintiffs respectfully request the court enter a Judgment declaring that Utah Code § 53G-9-210(5) violates the Due Process Clause of the Utah Constitution (Art. I, § 7) and an Order permanently enjoining the enforcement of § 53G-9-210(5).

NOTICE TO DEFENDANTS

To satisfy the notice requirement of Utah R. Civ. P. 65(a), Plaintiffs will seek a Temporary Restraining Order. Once filed, a copy of this Complaint, Motion for a TRO, and supporting brief will promptly be delivered to Utah Attorney General Sean Reyes and to the Salt Lake County Clerk.

SKORDAS & CASTON, LLC

/s/ Gregory G. Skordas

Gregory G. Skordas

Attorney at Law

/s/ Gabriela Mena

Gabriela Mena

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