COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss. SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO:

CHILDREN'S HEALTH RIGHTS OF MASSACHUSETTS, a Massachusetts Nonprofit Corporation,

Plaintiff,

vs.

DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION, CAMBRIDGE PUBLIC SCHOOL DISTRICT, CITY OF CAMBRIDGE, FRANKLIN PUBLIC SCHOOL DISTRICT, NORTHBOROUGH PUBLIC SCHOOL DISTRICT, SOUTHBOROUGH PUBLIC SCHOOL DISTRICT, NORTHBOROUGH-SOUTHBOROUGH REGIONAL PUBLIC SCHOOL DISTRICT, TYNGSBOROUGH PUBLIC SCHOOL DISTRICT,

Defendants.

VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF[1]

Plaintiff Children's Health Rights of Massachusetts, Inc. ("CHRM"), brings this Verified Complaint for Declaratory Judgment and Injunctive Relief against Defendant Department of Elementary and Secondary Education ("DESE") and Cambridge Public School District, City of Cambridge, Franklin Public School District, Northborough Public School District, Southborough Public School District, Northborough-Southborough Regional Public School District, and Tyngsborough Public School District to challenge DESE's and the Districts' adoption of policies

[1] CHRM is filing contemporaneously with this Complaint a Motion for a Temporary Restraining Order and/or Preliminary Injunction.

requiring students to wear face masks or coverings while in school, and the City of Cambridge's adoption of a city-wide mask mandate. CHRM contends (1) DESE and the Districts lacked the authority to pass these mandates; (2) even if DESE had the authority to pass the mandate, it exceeded its authority in doing so; (3) the City of Cambridge lacked the authority to issue a city-wide mask mandate; (4) the mandates are preempted by the Massachusetts Department of Health's comprehensive regulatory scheme concerning infectious diseases; and (5) the mandates violate parents' right to due process and their natural rights under the Massachusetts Constitution because they violate their rights to make healthcare decisions for their children and otherwise direct the care and upbringing of their children.

INTRODUCTION

1. Nearly four months ago, the Centers for Disease Control and Prevention ("CDC") published a large-scale study of COVID-19 transmission in U.S. schools that concluded that, while masking then-unvaccinated teachers and improving ventilation was associated with lower levels of virus transmission in schools, other measures like social distancing, classroom barriers, HEPA filters, and ***forcing students to wear masks did not result in a statistically significant benefit***.[2]

2. It should, therefore, not be surprising that the Massachusetts Department of Public Health's isolation and quarantine procedures ***do not require the use of masks for outbreaks of COVID-19***, but ***do*** require masks for six other types of infectious disease outbreaks. *See* 105 C.M.R. 300.200.

[2] Gettings J, Czarnik M, Morris E, et al. Mask Use and Ventilation Improvements to Reduce COVID-19 Incidence in Elementary Schools — Georgia, November 16–December 11, 2020. MMWR Morb Mortal Wkly Rep 2021;70:779–784. DOI: http://dx.doi.org/10.15585/mmwr.mm7021e1

3. These broad mask mandates have been consistently debunked: "Many of America's peer nations around the world — including the U.K., Ireland, all of Scandinavia**,** France, the Netherlands, Switzerland, and Italy — have exempted kids, with varying age cutoffs, from wearing masks in classrooms" and yet "there's no evidence of more outbreaks in schools in those countries relative to schools in the U.S., where the solid majority of kids wore masks for an entire academic year and will continue to do so for the foreseeable future." Zweig, David, "The Science of Masking Kids at School Remains Uncertain," New York Magazine (Aug. 20, 2021).[3] Mr. Zweig's article cites the opinion of another local expert, Elissa Schechter-Perkins, the director of Emergency Medicine Infectious Disease Management at Boston Medical Center, who states "I'm not aware of any studies that show conclusively that kids wearing masks in schools has any effect on their own morbidity or mortality or on the hospitalization or death rate in the community around them." *Id.*

4. Once the feigned urgency concerning face masks evaporates – and the need for masking children is exposed for what it is, a *mirage* – the question of whether children should be forced to wear face masks in school becomes much simpler. The answer – in any environment other than the "global pandemic" DESE and these school districts continue to insist exists – would unequivocally be "no." Indeed, no one in their right mind would force children to wear face masks in a situation where ***no other entity or institution is requiring them*** and ***where such a practice has no benefit and, instead, is harmful***.

5. Massachusetts no longer has an "emergency," or even a threat of one, that justifies any restrictions on its citizens, particularly its children. "Emergency" measures that appeared to be appropriate last year are less appropriate now, ***nearly 18 months later***, given the

[3] https://nymag.com/intelligencer/2021/08/the-science-of-masking-kids-at-school-remains-uncertain.html

wealth of information available that demonstrates Massachusetts's healthcare system never came close to reaching capacity, the Coronavirus has had no impact on children, and the use of face masks is not only ineffective to curb the spread of the virus but harmful for children.

6. Accordingly, *parents* – not government bureaucrats – should be making these healthcare decisions for their children.

PARTIES

7. Plaintiff Children's Health Rights of Massachusetts is a Massachusetts Nonprofit Corporation with a principal place of business at 704 Washington Street, Suite 108, South Easton, Massachusetts 02375. CHRM has members in its organizations who have children in the Andover, Attleboro, Easton, and Sandwich School Districts.

8. Defendant Massachusetts Department of Elementary and Secondary Education is a state agency with a principal place of business at 75 Pleasant Street, Malden, Massachusetts 02148.

9. Defendant Cambridge School District is a Massachusetts School District with a principal place of business located at 135 Berkshire Street, Cambridge, Massachusetts 02141.

10. Defendant City of Cambridge is a Massachusetts municipal corporation with a principal place of business located at 795 Massachusetts Avenue, Cambridge, Massachusetts 02139.

11. Defendant Franklin Public School District is a Massachusetts School District with a principal place of business located at 224 Oak Street, Franklin, Massachusetts 02038.

12. Defendant Northborough Public School District is a Massachusetts School District with a principal place of business located at 53 Parkerville Road, Southborough, Massachusetts 01772.

13. Defendant Southborough Public School District is a Massachusetts School District with a principal place of business located at 53 Parkerville Road, Southborough, Massachusetts 01772.

14. Defendant Northborough-Southborough Regional Public School District is a Massachusetts School District with a principal place of business located at 53 Parkerville Road, Southborough, Massachusetts 01772.

15. Defendant Tyngsborough Public School District is a Massachusetts School District with a principal place of business located at 50 Norris Road, Tyngsborough, Massachusetts 01879.

JURISDICTION AND VENUE

16. This Court has jurisdiction pursuant to M.G.L. c. 30A, § 7; c. 212, § 4, c. 223A, §§ 2 and 3, and c. 231A, § 1.

17. This Court has personal jurisdiction over the Defendants because Defendants are located in Massachusetts, and Defendants' conduct occurred in Massachusetts.

18. Venue is appropriate in Norfolk County pursuant to M.G.L. c. 223, § 1 because some of the parties reside or transact business in this county.

FACTUAL ALLEGATIONS

A. The Limited Authority of DESE

19. "[A]n agency's power to make regulations is delegated by the Legislature." *Borden, Inc. v. Comm'r of Pub. Health*, 388 Mass. 707, 721 (1983).

20. "[A]n administrative agency . . . has only those powers , duties, and obligations expressly conferred on it by statute or reasonably necessary to carry out the purposes for which it was established." *Doe v. Sex Offender Registry Bd.*, 82 Mass. App. Ct. 152, 155 (2012).

21. "[A]n administrative board or officer has no authority to promulgate rules and regulations which are in conflict with the statutes or exceed the authority conferred by the statutes by which such board or office was created." *Telles v. Comm'r of Ins.*, 410 Mass. 560, 564 (1991).

22. DESE's authority is limited. It has the authority to "establish policies relative to the education of students in public early childhood, elementary, secondary and vocational-technical schools" and "shall be the state agency responsible for the administration of vocational education and the supervision of the administration thereof by local educational agencies." M.G.L. c. 69, § 1B.

23. Its other powers include, for example:

- It may "establish standards for certifying all teachers, principals, and administrators in public early childhood, elementary, secondary and vocational-technical schools . . . ." *Id.*
- It may "establish the process and standards for school and district audits and reviews conducted by the office of school and district accountability . . . ." *Id.*
- It may "provide technical assistance, curriculum, materials, consultants, support services and other services to schools and school districts, to encourage programs for gifted and talented students." *Id.*
- It may "establish the standards for the recognition of high achievement by students and school districts." *Id.*
- It "shall establish minimum standards for all public early childhood, elementary, secondary and vocational-technical school buildings, subject to the provisions of the state building code. The board shall establish standards to ensure that every student shall attend classes in a safe environment." *Id.*
- It "shall establish the minimum length for a school day and the minimum number of days in the school year." M.G.L. c. 69, § 1G.

24. Nothing in any of the above provisions gives DESE the authority to enact health measures.

B. The Limited Authority of School Committees

25. Municipalities may "exercise any power or function conferrable on them by the Legislature, so long as exercise of that power is 'not inconsistent' with the Constitution or a general law enacted pursuant to the Legislature's retained powers." *Del Duca v. Town Administrator*, 368 Mass. 1, 10 (1975).

26. "In determining whether a local ordinance or by-law is 'not inconsistent' with any general law within the meaning of those words in § 6 of the Home Rule Amendment and in § 13 of the Home Rule Procedures Act, the same process of ascertaining legislative intent must be performed as has been performed in the Federal preemption cases and in our own cases involving 'inconsistent' or 'repugnant' local ordinances or by-laws." *Id.* at 10-11.

27. "The legislative intent to preclude local action must be clear. If the Legislature has made no explicit indication of its intention in this respect, a legislative intention to bar local ordinances and by-laws purporting to exercise a power or function on the same subject as State legislation may nevertheless be inferred in all the circumstances. Legislation which deals with a subject comprehensively, describing (perhaps among other things) what municipalities can and cannot do, may reasonably be inferred as intended to preclude the exercise of any local power or function on the same subject because otherwise the legislative purpose of that statute would be frustrated. . . . A conclusion that the Legislature intended to preempt a subject may also be inferred if the Legislature has explicitly limited the manner in which cities and towns may act on that subject. . . ." *Id.* at 11.

28. Various provisions in M.G.L. chapter 71 "vest in [a] school committee the general charge of all public schools, including high schools, continuation schools and vocational schools." *Hayes v. Brockton*, 313 Mass. 641, 644 (1943).

29. Like DESE, a school committee's powers are limited. Generally, "[t]he school committee in each city and town and each regional school district shall have the power to select and to terminate the superintendent, shall review and approve budgets for public education in the district, and shall establish educational goals and policies for the schools in the district consistent with the requirements of law and statewide goals and standards established by the board of education. The school committee in each city, town and regional school district may select a superintendent jointly with other school committees and the superintendent shall serve as the superintendent of all of the districts that selected him." M.G.L. c. 71, § 37.

30. Other provisions in Chapter 71 address specific powers of school committees necessarily contained in the above provision. For example, "[t]he school committee may establish and maintain schools to be kept open for the whole or any part of the summer vacation." M.G.L. c. 71, § 28. School committees may assist in deciding whether to admit a student who resides outside the Commonwealth. M.G.L. c. 71, § 6A. They may "supervise and control all athletic and other organizations composed of public school pupils and bearing the school name or organized in connection therewith." M.G.L. c. 71, § 47. They may discipline students. *Bd. of Educ. v. School Cmte. of Quincy*, 415 Mass. 240, 246 (1993) (citing M.G.L. c. 71, §§ 37, 37G, 37H).

31. Like DESE, nothing in Chapter 71 provides school committees with the authority to pass broad health measures. Rather, concerning matters of health, school committees only have the authority to develop "a plan to address the general mental health needs of its students." M.G.L. c. 71, § 37Q. Concerning safety in general, school committees only have the authority to regulate specific safety concerns of students, including establishing "school safety patrols,"

M.G.L. c. 71, § 48A; establishing "highway safety stations," M.G.L. c. 71, § 71A; and "internet safety measures." M.G.L. c. 71, § 93.

C. The Massachusetts Department of Public Health's Regulatory Scheme Concerning Infectious Diseases Preempts DESE's and School Districts' Mask Mandates

32. "A municipal regulation will be invalidated only (1) if there is an express legislative intent that there be no municipal regulation or (2) the local regulation would so frustrate the state statute as to warrant the conclusion that preemption was intended." *LeClair v. Town of Norwell*, 430 Mass. 328, 337 n.11 (1999).

33. "[T]he legislative intent to supersede local enactments need not be expressly stated for the State law to be given preemptive effect. Where legislation deals with a subject comprehensively, it 'may reasonably be inferred as intended to preclude the exercise of any local power or function on the same subject because otherwise the legislative purpose of that statute would be frustrated.'" *Boston Teachers Union, Local 66 v. Boston*, 382 Mass. 553, 564 (1981).

34. "Thus, a statute designed to deal uniformly with a Statewide problem 'displays on its face an intent to supersede local and special laws and to repeal inconsistent special statutes.'" *Boston Teachers Union, Local 66 v. Boston*, 382 Mass. 553, 564 (1981).

35. The Massachusetts Department of Public Health ("DPH") has a comprehensive statutory and regulatory scheme concerning infectious diseases, and that scheme charges both DPH and local boards of health with various powers to address outbreaks.

36. DPH "shall take cognizance of the interests of life, health, comfort and convenience among the citizens of the commonwealth; shall conduct sanitary investigations and investigations as to the causes of disease, and especially of epidemics, and the sale of food and drugs and adulterations thereof; and shall disseminate such information relating thereto as it considers proper. It shall advise the government concerning the location and other sanitary

condition of any public institution. It may produce and distribute immunological, diagnostic and therapeutic agents as it may deem advisable, and may sell such portions of such materials produced in its laboratories as constitute an excess over those required for its use within the commonwealth." M.G.L. c. 111, § 5.

37. "If smallpox or any other contagious or infectious disease declared by [DPH]t to be dangerous to the public health exists or is likely to exist in any place within the commonwealth, [DPH] shall make an investigation thereof and of the means of preventing the spread of the disease, and shall consult thereon with the local authorities." M.G.L. c. 111, § 7.

38. M.G.L. c. 111, section 95 states, "[i]f a disease dangerous to the public health breaks out in a town, or if a person is infected or lately has been infected therewith, the board of health [of a town or municipality] shall immediately provide such hospital or place of reception and such nurses and other assistance and necessaries as is judged best for his accommodation and for the safety of the inhabitants, and the same shall be subject to the regulations of the board."

39. DPH and local boards of health also have quarantine powers to address such outbreaks: "The board may cause any sick or infected person to be removed to such hospital or place, if it can be done without danger to his health; otherwise the house or place in which he remains shall be considered as a hospital, and all persons residing in or in any way connected therewith shall be subject to the regulations of the board, and, if necessary, persons in the neighborhood may be removed." *Id.* DPH and local boards may obtain warrants to empower a local sheriff, constable, or police department to effectuate this power. M.G.L. c. 111, § 96.

40. "If a disease dangerous to the public health exists in a town, the selectmen and board of health shall use all possible care to prevent the spread of the infection and may give

public notice of infected places by such means as in their judgment may be most effectual for the common safety." M.G.L. c. 111, § 104.

41. DPH's regulations[4] concerning infectious diseases specifically include the Novel Coronavirus. 105 C.M.R. 300.100, 300.200.

42. DPH may implement specific quarantine and isolation procedures for positive cases of COVID-19, including specific orders concerning the number of individuals allowed to be in the workplace or in public places. 105 C.M.R. 300.200, 300.210.

43. Nothing in Chapter 111 or in 105 C.M.R. 300.000 requires the use of masks to prevent the spread of COVID-19. Rather, DPH's regulations specific require "droplet precautions" to be used for certain types of outbreaks. 105 C.M.R. 300.200. "Droplet Precautions" are defined as "Measures designed to reduce the risk of transmission of infectious agents via large particle droplets that do not remain suspended in air, usually generated by coughing, sneezing or talking. ***Masks must be used, but gowns, gloves and special air handling are not generally needed***." 105 C.M.R. 300.020 (emphasis added). Such precautions are required for outbreaks of bacterial or community-acquired meningitis, an invasive infection of meningococcal disease, mumps, non-congenital rubella, viral hemorrhagic fevers, and other undefined "plagues," but not for COVID-19. *See* 105 C.M.R. 300.200.

44. Rather, the Commissioner of Public Health issued an Order on May 28, 2021, requiring face coverings to be worn in certain settings, including healthcare facilities, congregate care facilities, houses of correction, health care and day care service centers.[5] This Order did not require any school districts to implement mask mandates in their schools, nor did it require

[4] https://www.mass.gov/doc/105-cmr-300-reportable-diseases-surveillance-and-isolation-and-quarantine-requirements/download
[5] https://www.mass.gov/doc/dph-mask-order-may-28-2021/download

masks be worn in any other businesses or places open to the public. Section 3 of the Order states "[a]ll applicable statutes, regulations and guidance not inconsistent with this Order remain in effect. This Order does not alter the authority of any agency to make such rules or issue such guidance as it may be authorized to do, ***provided the terms are consistent with this Order and any guidance issued to implement it***." (Emphasis added.).

45. This comprehensive regulatory framework concerning infectious diseases, including existing orders such as the Order above, preempts any local measure that requires masks in schools because any such measures conflict with DPH's scheme that does not require masks in schools to prevent the transmission of COVID-19.

46. Thus, nether DESE nor a school committee has the authority to mandate face masks for students because the state pre-empted the regulatory field regarding its response to infectious diseases.

D. The City of Cambridge Health Department's Authority is Limited

47. Although DPH's regulatory scheme is broad and comprehensive, it is important to clarify that the City of Cambridge Health's Department is *limited*.

48. A local health department may exercise the duties and powers of a board of health, *see* M.G.L. c. 111, § 26A, as a *municipality*, the City of Cambridge (like school committees) may "exercise any power or function conferrable on them by the Legislature, so long as exercise of that power is 'not inconsistent' with the Constitution or a general law enacted pursuant to the Legislature's retained powers." *Del Duca*, 368 Mass. at 10.

49. Here, DPH has made it expressly clear when face masks should be worn: its regulations generally do not require masks be worn to prevent the transmission of COVID-19, and its Commissioner issued an Order on May 28 specifying masks should be worn only in

limited instances. Nothing in those authorities required masks be work in all businesses or places open to the public.

E. DESE's Statewide Mask Mandate

50. Despite DESE's lack of authority to issue health measures, it promulgated the Student Learning Time ("SLT") Regulations, 603 CMR 27.00, and then amended them earlier this year.

51. One of the authorities under which DESE promulgated the SLT Regulations is M.G.L. c. 69, section 1B, which it alleges "requires [it] to ***establish standards to ensure that every student shall attend classes in a safe environment***." 603 CMR 27.01(1) (emphasis added). Under 603 CMR 27.01(2), however, DESE *expanded* its powers under M.G.L. c. 69, section 1B, stating "[t]he purposes of 603 CMR 27.00 are . . . to establish ***health*** and ***safety standards for schools during a declared state of emergency or other exigent circumstances that adversely affect the safe environment of schools as determined by the Board***." (Emphases added.)

52. 603 CMR 27.08(1) states further that DESE, "upon a determination . . . that exigent circumstances exist . . . , the Commissioner . . . shall issue health and safety requirements and related guidance for districts."

53. As demonstrated above, nothing in M.G.L. c. 69, section 1B provides DESE with the authority to establish "health" standards, let alone any "standards" "during a declared state of emergency or other exigent circumstances that adversely affect the safe environment of schools." *See* 603 CMR 27.01(2), 603 CMR 27.08(1).

54. Further, there were and are no "exigent circumstances" concerning COVID-19 in Massachusetts, let alone among children, that necessitate invoking that provision.

55. DESE ignored these limitations and, nevertheless, issued a "Mask Requirement" on August 25, 2021. Under that Requirement, it "voted to declare 'exigent circumstances' pursuant to the Student Learning Time (SLT) regulations, 603 CMR 27.08(1)." Further, "[c]onsistent with the authority provided by [DESE], and after consulting with medical experts and state health officials, the Commissioner . . . implement[ed]" numerous "requirements" directing school districts across the state to have children in all public schools wear masks.

F. School District Mask Mandates

56. Apart from DESE, each District named as a Defendant – through its school committee – issued a mask mandate either before DESE passed its state-wide mask mandate, or after DESE's mandate.

57. The Cambridge Public School District, on August 3, 2021, approved an update to its CPS COVID-19 Safety and Facilities Manual that masks are required indoors for all staff and students for the first semester.

58. Those Districts that did not have a mandate before DESE announced its mandate revised their COVID-19 protocols to comply with DESE's requirements and approved these revisions at a school committee meeting.

59. Accordingly, all the named Districts currently have mask mandates for their schools.

G. The City of Cambridge Public Health Department's Mask Mandate

60. On August 27, 2021, the City of Cambridge – through its Public Health Department – issued an emergency order requiring the use of face masks in indoor public places.[6] That order was amended on September 15, 2021.

61. The order states "all persons" over the age of 2 must wear a "mask or face covering . . . whenever they are indoors on the premises of a business, club, place of assembly or other place that is open to members of the public, including but not limited to retail establishments, restaurants, bars, performance venues, social clubs, houses of worship, personal care and fitness establishments, event spaces, and municipal buildings."[7]

62. The order does not exempt schools and is effective "until further notice."

63. Anyone violating the order may be fined $300.

H. The Coronavirus Has Had No Impact on Children in Massachusetts or in the Defendant School Districts[8]

64. Despite the measures above, the Coronavirus has had virtually no impact on children in Massachusetts or in the Defendant School Districts.

65. As of September 20, 2021, the number of current Coronavirus-related hospitalizations in Massachusetts was just 641 (which has drastically fallen from earlier this year), and the 7-day average of confirmed cases was 1,377.4:

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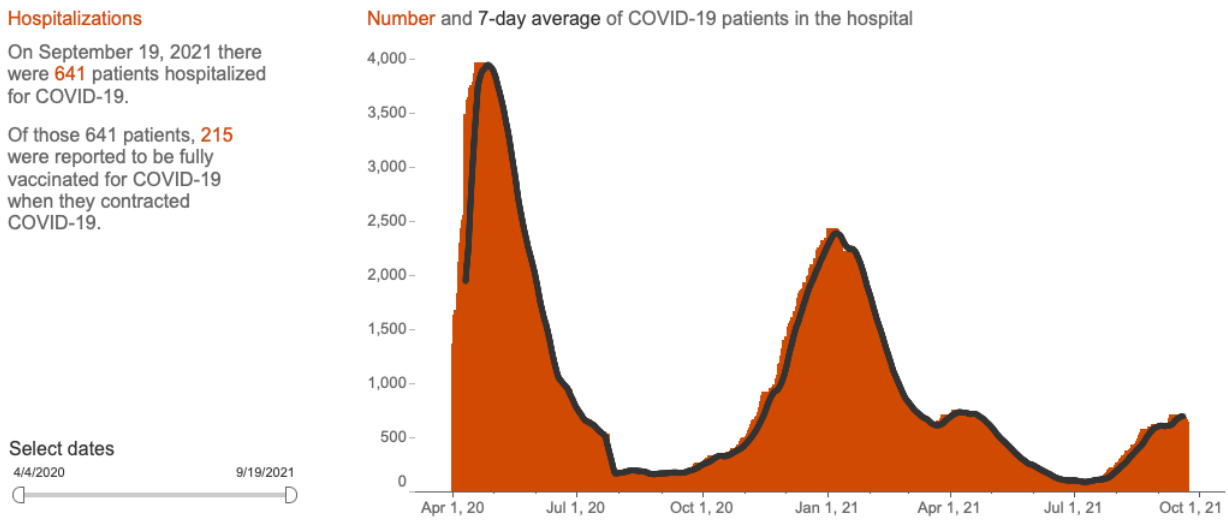
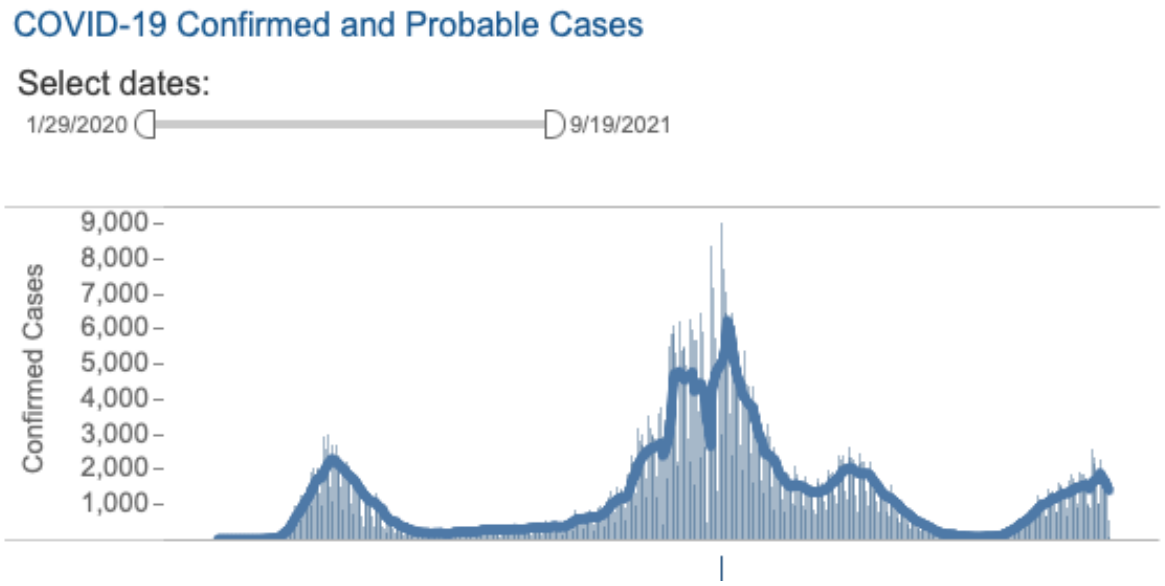
[6] https://www.cambridgema.gov/covid19/News/2021/08/emergencyorderrequiringuseoffacemasksinindoorpublicplaceseffectiveseptember3

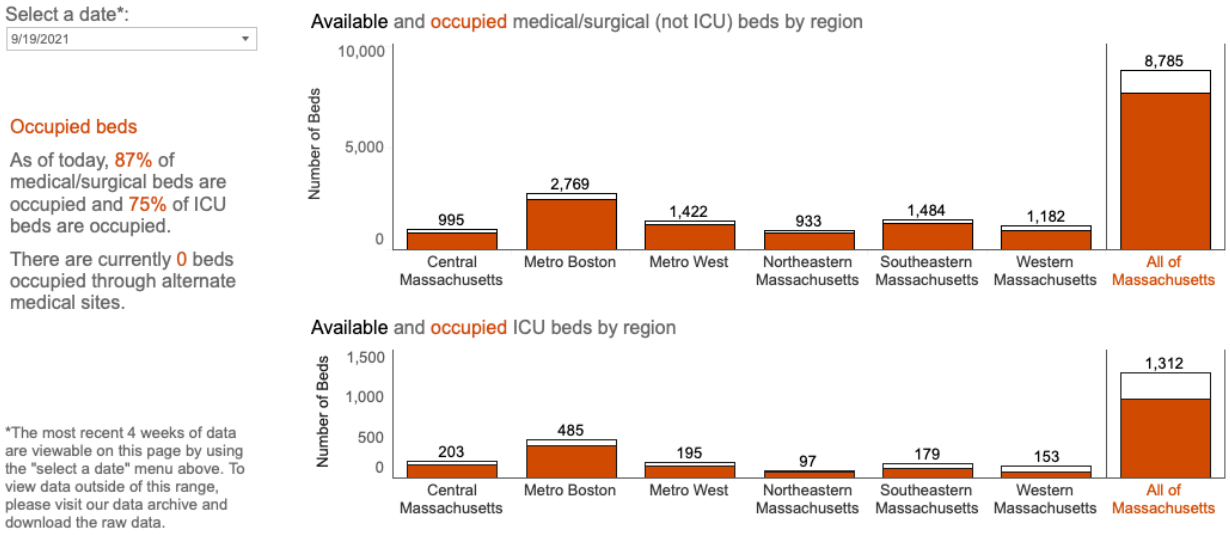
[7] https://www.cambridgema.gov/-/media/Files/citymanagersoffice/COVID19/coccovid19maskord082721_signed.pdf

[8] Plaintiff plans to have an expert testify concerning the lack of impact COVID-19 has had on children in Massachusetts.

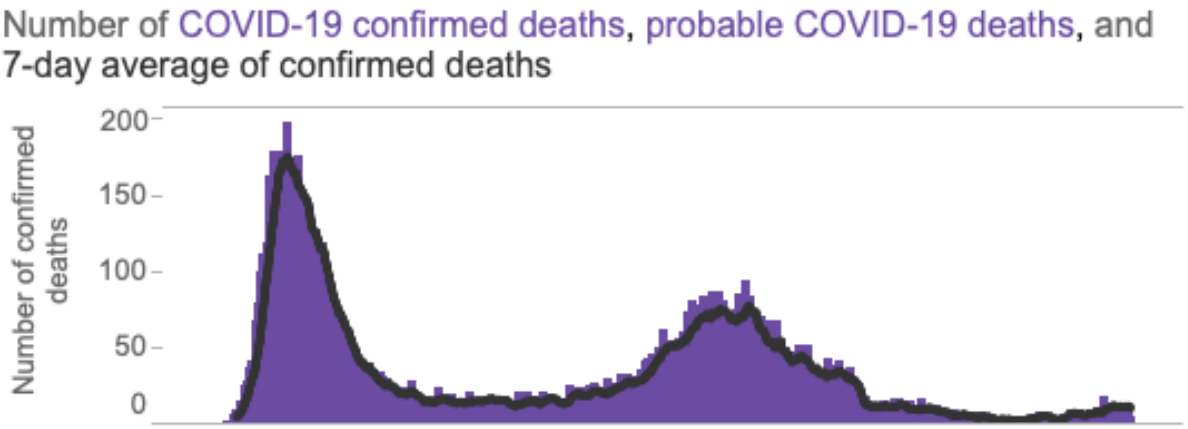




66. The 641 hospitalizations for COVID in Massachusetts represent just 7.29% of all hospitalizations (8,785) in the state:

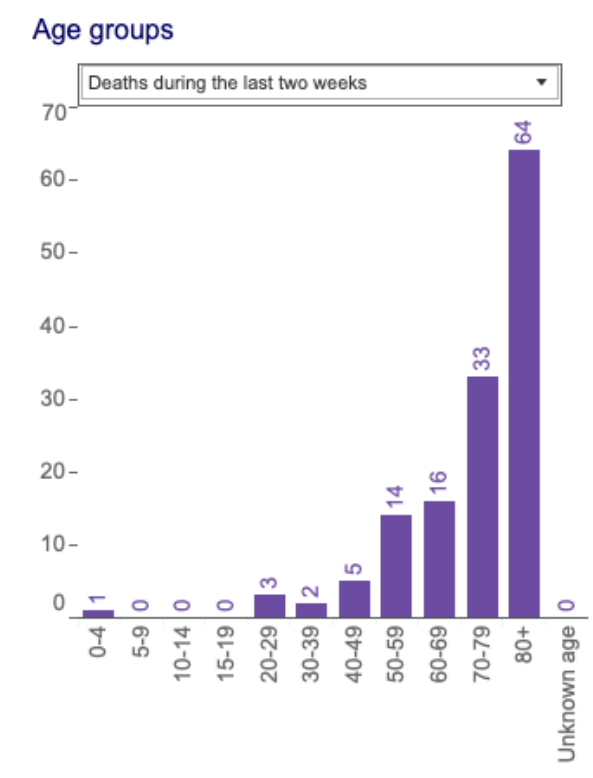


67. Also as of September 16, 2021, the seven-day average for new deaths per day was approximately 9.6:

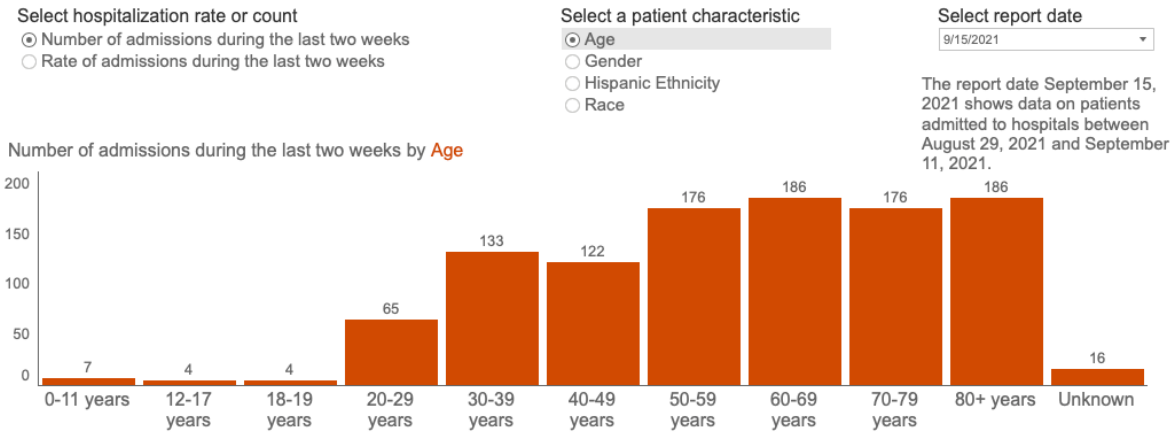


68. Most important: COVID-19 has been highly selective in those among the population to whom it poses the most risk: The average age of patients who died from COVID-19 is 75 years old.

69. There has been just ***one*** death among the 0-19 demographic in Massachusetts in the last two weeks:



70. Only 15 cases among that demographic have been hospitalized during the same period of time:



71. An astounding 91% of deaths (16,956 out of 18,445 deaths) attributed to COVID-19 in Massachusetts were in nursing homes or long-term care facilities.

72. The risk of serious COVID-19 illness in children is no different than their risk from the flu.[9] A study last fall showed no statistically significant difference in the rates of hospitalization, admission to the intensive care unit, and medical ventilator use between children with COVID-19 and children with the seasonal flu.[10]

73. As of September 16, 2021, the Town of Cambridge has an average of 20.6 cases per 100,000 residents over the last 14 days, the Town of Franklin has an average of 13.3 cases per 100,000 residents, the Town of Northborough has an average of 15.3 cases per 100,000 residents, the Town of Southborough has an average of 17 cases per 100,000 residents, and the Town of Tyngsborough has an average of 24.4 cases per 100,000 residents.[11] In addition, the Cambridge Public School District has just 8 confirmed cases among in-person staff and students (representing just 0.12% of its total 6,538 student population),[12] and the Tyngsborough Public School District has just 12 active cases, representing just 0.7% of its school population.[13]

74. Children and healthy adults under 60 have not been at risk with this virus. COVID-19 presents a statistically insignificant threat to the health of children, young adults, and healthy adults of middle and even slightly advanced age.

75. Indeed, COVID-19 spread is so exceedingly rare in asymptomatic persons as to have virtually no impact in the grand scheme of available data on the virus.[14]

76. There is no "state of emergency" in Massachusetts concerning COVID-19, nor is there any threat to children or healthy adults from the virus. Governor Baker allowed his "state

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[9] https://www.npr.org/2021/05/21/999241558/in-kids-the-risk-of-covid-19-and-the-flu-are-similar-but-the-risk-perception-isn

[10] https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2770250?utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_term=090820

[11] https://www.mass.gov/info-details/covid-19-response-reporting

[12] https://www.cpsd.us/cms/One.aspx?portalId=3042869&pageId=69798726

[13] https://www.tyngsboroughps.org/en-US/covid-19-dashboard-ae8de604

[14] https://www.aier.org/article/asymptomatic-spread-revisited/

of emergency" declaration to expire over three months ago, June 15, 2021, along with *every* emergency order he issued pursuant to that declaration.

I. Face Masks Do Not Prevent the Spread of COVID-19[15]

77. As noted above, the CDC recently concluded face masks have had no statistically significant impact on the spread of COVID-19 in schools. *See supra* p. 1. The CDC's conclusion is buttressed by similar conclusions in numerous other studies conducted recently and over the last few years.

78. A Danish study[16] released in November 2020 suggested face masks did not significantly protect mask wearers from contracting COVID-19 compared to those without masks.[17]

79. Another study concluded "[v]entilation, ***cardiopulmonary exercise capacity and comfort are reduced by surgical masks*** and highly impaired by FFP2/N95 face masks in healthy individuals." *Effects of surgical and FFP2/N05 face masks on cardiopulmonary exercise capacity*, Fikenzer, Sven, et al., July 6, 2020.[18]

80. Another recent study concluded mask mandates were not associated with the spread of COVID-19 among U.S. States. *Mask mandate and use efficacy in state-level COVID-19 containment*, Guerra, Damian D., Guerra, Daniel J., May 25, 2021.[19] That study noted "80% of US states mandated masks during the COVID-19 pandemic," and while "mandates induced

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[15] Plaintiff plans to have an expert testify concerning the lack of efficacy of masks in curbing the spread of COVID-19.
[16] https://www.acpjournals.org/doi/10.7326/M20-6817
[17] https://www.msn.com/en-us/health/medical/first-randomized-control-trial-shows-face-masks-did-not-reduce-coronavirus-infections-with-statistical-significance/ar-BB1b8zo2
[18] https://link.springer.com/epdf/10.1007/s00392-020-01704-y?sharing_token=4AfWegbHOxk00hiHYtrplPe4RwlQNchNByi7wbcMAY4ZfoGR_ibmFHApWSw2JRb7yoFxeXbxgdwNA2TYmPtz8OVhsr-eLNmHTAFlu6bFbQl5DaVnEieqTZNVL58LC3cW5QirGJONSGqeFdIMNEhxS2AmFJPw2wAfRsgDXHh9EII%3D
[19] https://www.medrxiv.org/content/10.1101/2021.05.18.21257385v1

greater mask compliance, [they] did not predict lower growth rates when community spread was low (minima) or high (maxima)." In addition, the study stated "mask mandates are not associated with lower SARS-CoV-2 spread among US states."

81. Numerous other studies have concluded face masks provide minimal to no protection. *See*, *e.g.*, "Are Face Masks Effective? The Evidence," (Aug. 2021) ("[M]ost studies found little to no evidence for the effectiveness of face masks in the general population, neither as personal protective equipment nor as a source control," and "[i]n many states, coronavirus infections strongly increased after mask mandates had been introduced.");[20] Chughtai AA, Stelzer-Braid S, Rawlinson W, Pontivivo G, Wang Q, Pan Y, Zhang D, Zhang Y, Li L, MacIntyre CR, "Contamination by respiratory viruses on outer surface of medical masks used by hospital healthcare workers," BMC Infect Dis. 2019 Jun 3;19(1):491. doi: 10.1186/s12879-019-4109-x. PMID: 31159777; PMCID: PMC6547584 (respiratory pathogens on the outer surface of used medical masks may result in self-contamination, and the risk is higher with longer duration of mask use);[21] MacIntyre, C Raina et al. "A cluster randomised trial of cloth masks compared with medical masks in healthcare workers." *BMJ open* vol. 5,4 e006577. 22 Apr. 2015, doi:10.1136/bmjopen-2014-006577 (cloth face masks should not be used because moisture retention, their re-use, and poor filtration may result in increased risk of infection);[22] Brainard, J., Jones, N., Lake, I., Hooper, L, Hunter, P. R., Facemasks and similar barriers to prevent respiratory illness such as COVID-19: A rapid systematic review, medRxiv 2020.04.01.20049528; doi:https://doi.org/10.1101/2020.04.01.20049528 ("The evidence is not sufficiently strong to support widespread use of facemasks as a protective

[20] https://swprs.org/face-masks-evidence/
[21] https://pubmed.ncbi.nlm.nih.gov/31159777/
[22] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4420971/

measure against COVID-19.");[23] Person E, Lemercier C, Royer A, Reychler G., "Effect of a surgical mask on six minute walking distance," Rev Mal Respir. 2018 Mar; 35(3):264-268 doi: 10.1016/j.rmr.2017.01.010. Epub 2018 Feb 1. PMID: 29395560 (wearing a face mask while walking significantly increases dyspnea);[24] Jefferson, T., Jones, MA, Al-Ansary, L., at al, Physical interventions to interrupt or reduce the spread of respiratory viruses. Part 1 - Face masks, eye protection and person distancing: systematic review and meta-analysis, medRxiv 2020.03.30.20047217; doi:https://doi.org/10.1101/2020.03.30.20047217 ("There was insufficient evidence to provide a recommendation on the use of facial barriers without other measures.");[25] Klompas, M., Morris, C. A., Sinclair, J., et al., Universal Masking in Hospitals in the Covid-19 Era, N Engl J Med 2020; 382:e63, DOI: 10.1056/NEJMp2006372 ("We know that wearing a mask outside health care facilities offers little, if any, protection from infection. . . . In many cases, the desire for widespread masking is a reflexive reaction to anxiety over the pandemic.");[26] Radonovich LJ, Simberkoff MS, Bessesen MT, et al. N95 Respirators vs Medical Masks for Preventing Influenza Among Health Care Personnel: A Randomized Clinical Trial. *JAMA.* 2019;322(9):824–833. doi:10.1001/jama.2019.11645 (concluding, among outpatient health care personnel, N95 respirators vs. medical masks resulted in no significant difference in the incidence of laboratory-confirmed influenza);[27] Bin-Reza, Faisal et al. "The use of masks and respirators to prevent transmission of influenza: a systematic review of the scientific evidence." *Influenza and other respiratory viruses* vol. 6,4 (2012): 257-67. doi:10.1111/j.1750-2659.2011.00307.x ("[T]here is a limited evidence base to support the use of

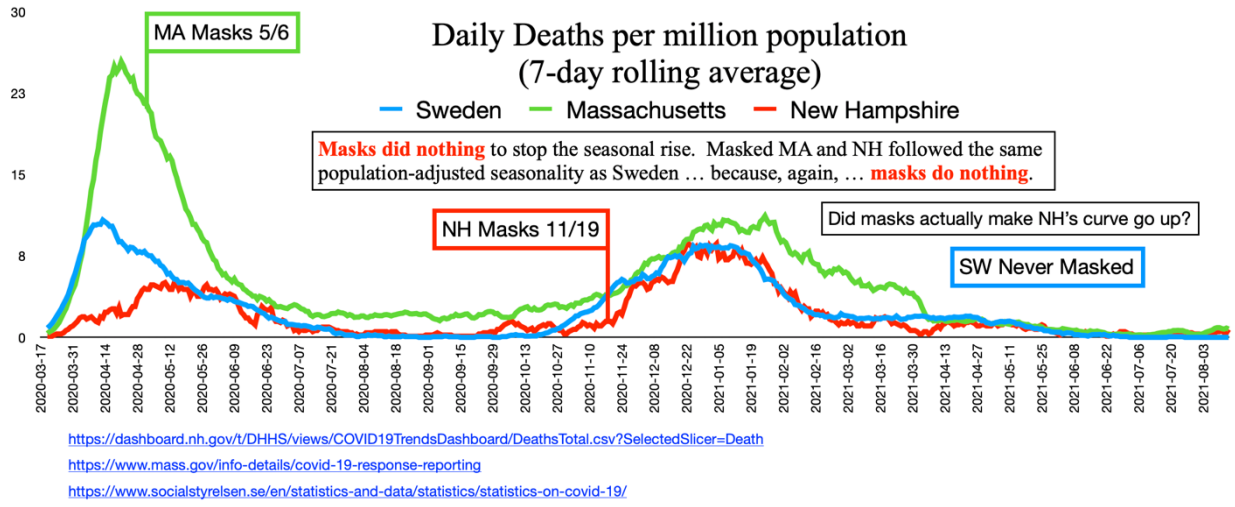
[23] https://www.medrxiv.org/content/10.1101/2020.04.01.20049528v1
[24] https://pubmed.ncbi.nlm.nih.gov/29395560/
[25] https://www.medrxiv.org/content/10.1101/2020.03.30.20047217v2
[26] https://www.nejm.org/doi/full/10.1056/NEJMp2006372
[27] https://jamanetwork.com/journals/jama/fullarticle/2749214

masks and/or respirators in healthcare or community settings.");[28] Jacobs JL, Ohde S, Takahashi O, Tokuda Y, Omata F, Fukui T. Use of surgical face masks to reduce the incidence of the common cold among health care workers in Japan: a randomized controlled trial. Am J Infect Control. 2009 Jun;37(5):417-419. doi: 10.1016/j.ajic.2008.11.002. Epub 2009 Feb 12. PMID: 19216002 (face mask use in health care workers has not been demonstrated to provide benefit in terms of cold symptoms or getting colds);[29] Vittoria Offeddu, Chee Fu Yung, Mabel Sheau Fong Low, Clarence C Tam, Effectiveness of Masks and Respirators Against Respiratory Infections in Healthcare Workers: A Systematic Review and Meta-Analysis, Clinical Infectious Diseases, Volume 65, Issue 11, 1 December 2017, Pages 1934–1942, https://doi.org/10.1093/cid/cix681 ("Our analysis confirms the effectiveness of medical masks and respirators against SARS. Disposable, cotton, or paper masks are not recommended. . . . [S]ingle-use medical masks are preferable to cloth masks, for which there is no evidence of protection and which might facilitate transmission of pathogens when used repeatedly without adequate sterilization.");[30] Xiao J, Shiu E, Gao H, Wong JY, Fong MW, Ryu S, et al. Nonpharmaceutical Measures for Pandemic Influenza in Nonhealthcare Settings—Personal Protective and Environmental Measures. Emerg Infect Dis. 2020;26(5):967-975. https://doi.org/10.3201/eid2605.190994 (concerning disposable medical masks or surgical masks, "[t]here is limited evidence for their effectiveness in preventing influenza virus transmission either when worn by the infected person for source control or when worn by uninfected persons to reduce exposure. Our systematic review found no significant effect of face masks on transmission of laboratory-confirmed influenza").[31]

[28] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5779801/
[29] https://pubmed.ncbi.nlm.nih.gov/19216002/
[30] https://academic.oup.com/cid/article/65/11/1934/4068747
[31] https://wwwnc.cdc.gov/eid/article/26/5/19-0994_article

82. Face masks do not prevent the spread of COVID-19, and wearing one does more harm than good.

83. Indeed, Massachusetts' state-wide mask mandate did *nothing* to curb the spread of COVID-19 cases in the state, as the number of daily deaths per million was already sharply declining *before* Governor Baker implemented the mandate and then spiked again while the mandate had been in place for months:



Instead, the trend of daily deaths per million in Massachusetts tracked the same trend in Sweden, where there was no mask mandate.

84. Further, of the U.S. states with the most deaths per million, the top four states on that list (including Massachusetts, which ranks fifth), and nine of the top 10, either enacted a state-wide mask mandate or had large portions of their jurisdictions under municipal or local mask mandates:[32]

[32] https://www.worldometers.info/coronavirus/country/us/

#	USA State	Total Cases	New Cases	Total Deaths	New Deaths	Total Recovered	Active Cases	Tot Cases/ 1M pop	Deaths/ 1M pop	Total Tests	Tests/ 1M pop	Population
1	Mississippi	473,413		9,214		420,745	43,454	159,069	3,096	3,615,402	1,214,792	2,976,149
2	New Jersey	1,128,696		27,165		1,006,361	95,170	127,074	3,058	15,229,840	1,714,649	8,882,190
3	Louisiana	725,637		13,418		N/A	N/A	156,091	2,886	9,865,420	2,122,146	4,648,794
4	New York	2,437,752		55,399		2,117,593	264,760	125,311	2,848	67,933,450	3,492,083	19,453,561
5	Massachusetts	790,953		18,445		N/A	N/A	114,756	2,676	27,559,376	3,998,457	6,892,503
6	Arizona	1,061,604		19,379		960,220	82,005	145,850	2,662	5,866,601	805,994	7,278,717
7	Alabama	764,839		13,048		N/A	N/A	155,988	2,661	5,595,142	1,141,124	4,903,185
8	Rhode Island	168,449		2,812		N/A	N/A	159,010	2,654	5,099,691	4,813,931	1,059,361
9	Arkansas	482,743		7,412		459,023	16,308	159,965	2,456	4,808,199	1,593,277	3,017,804
10	South Dakota	139,956		2,100		130,062	7,794	158,203	2,374	1,446,754	1,635,380	884,659

States that have lifted mask mandates (like New Hampshire) or that never enacted mask mandates have not seen an increase in COVID-19 cases or deaths: For example, Texas, which never enacted a state-wide mask mandate, ranks 21st, on the same list above:

20	Illinois	1,590,342		27,175		1,435,282	127,885	125,502	2,145	30,395,751	2,398,688	12,671,821
21	Texas	3,925,385		62,046		3,513,015	350,324	135,377	2,140	40,361,948	1,391,989	28,995,881
22	Oklahoma	592,074		8,440		566,135	17,499	149,628	2,133	4,470,262	1,129,718	3,956,971
23	Tennessee	1,178,168		14,341		1,092,496	71,331	172,520	2,100	9,628,785	1,409,949	6,829,174
	USA Total	42,800,494	+587	690,715	+1	32,434,166	9,675,613	129,306	2,087	617,825,327	1,866,527	
24	North Dakota	125,110		1,585		120,039	3,486	164,173	2,080	489,625	642,500	762,062
25	Iowa	463,376		6,401		386,816	70,159	146,867	2,029	5,959,175	1,888,762	3,155,070
26	Kansas	396,907		5,865		342,199	48,843	136,239	2,013	1,701,842	584,160	2,913,314
27	Delaware	127,222		1,913		114,160	11,149	130,650	1,965	808,053	829,824	973,764

85. A report updated and released weekly by the American Pediatric Academy and the Children's Hospital Association that tracks COVID-19 statistics in children demonstrates state-wide mask mandates had no effect on the number of cases in those states.[33] It shows cumulative cases per 100,000 children state by state (over the last 18 months). The distribution of higher and lower rates of cases does not correlate with the mask mandates in those states.

[33] https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/children-and-covid-19-state-level-data-report/

States that held school mostly online last year, states that had in person school with mask mandates, and states that had school without mandates are scattered fairly evenly across the list.

86. DESE's recent state-wide mask mandate and the Districts' mask mandates also have had no effect on preventing transmission of the virus. As of September 16, 2021, 1,230 students in Massachusetts have reported positive cases of COVID-19 since September 13, 2021, and 190 teachers have reported positive cases of COVID-19 between September 13 and September 15.[34] In addition, last week, a class of fourth-grade students in Bridgewater were sent home to quarantine after a cluster of positive COVID-19 cases was confirmed.[35]

87. Masks are worthless, aside from their performative relief it provides certain people. They are no more than a "psychological crutch."[36]

J. The Impact of the These Face Mask Mandates on CHRM's Members' Children[37]

88. As noted above, CHRM has members who have children who attend school in Massachusetts public schools and in the Districts named as Defendants in this lawsuit and, thus, are required to wear masks while attending school or participating in any extra-curricular activities.

89. The United States Food and Drug Administration, in its Emergency Use Authorization for surgical masks, defined a "surgical mask" as "a mask that covers the user's nose and mouth and provides a physical barrier to fluids and particulate materials," noting it is "regulated by [the] FDA as [a] Class II device[] under 21 CFR 878.4040 – Surgical apparel." The latter statute identifies "surgical apparel" as "devices that are intended to be worn by

[34] https://www.boston25news.com/news/covid-19-updates-dese-says-1230-students-190-teachers-ma-reported-positive-cases-since-monday/XFR4PB2WWBAQDNBP2OUG4ZDQEI/
[35] https://whdh.com/news/class-of-bridgewater-fourth-graders-sent-home-to-quarantine-after-13-kids-test-positive-for-covid-19/
[36] https://www.nejm.org/doi/full/10.1056/NEJMp2006372?query=TOC
[37] Plaintiff intends to have an expert testify concerning the impact of masks on children.

operating room personnel during surgical procedures to protect both the surgical patient and the operating room personnel from transfer of microorganisms, body fluids, and particulate material. Examples include surgical caps, hoods, masks, gowns, operating room shoes and shoe covers, and isolation masks and gowns." 21 CFR 878.4040(a).

90. DESE's and the school districts' mask mandates prevent the parents in this lawsuit from directing the care and upbringing of their children. It prevents them from making healthcare decisions concerning them. Requiring a child to wear a mask – particularly as a tool to capture respiratory droplets in order to curb the spread of a virus – is a form of medical intervention and treatment that should be decided by the child's parents, not a school or school official with absolutely no training or expertise in the medical field.

91. Wearing a mask restricts these children's breathing: wearing masks makes it difficult for them to breathe because it restricts their oxygen levels and increases their carbon dioxide levels.

92. Face masks were designed to be work in hospitals to prevent saliva droplets from landing on patients and fellow staff. The human body is designed to expel wastes through exhaling. Holding these wastes against the face can detrimentally impact a child: children inhale bacteria and viruses their bodies are attempted to get rid of, and those wastes sit in a moist environment on the skin.

93. For some of these children, masks also irritate their skin, cause acne, and lead to other skin problems.

94. These problems have caused these children to be afraid, suffer anxiety and stress, and experience light-headedness, trouble concentrating, and headaches. At times, they have caused a level of anxiety that has led some of these children to withdraw from social interaction.

95. Children rely on facial expressions to interpret what they hear. They respond to facial cues to interact and respond appropriately to teachers and peers. Wearing a mask forcefully eliminates this key part of human interaction.

96. Masks are also a distraction: they prevent children from listening to teachers' instructions and directions, inhibit social interaction, and they are not heard clearly when they speak. These children feel disconnected from their friends, teachers, and other staff members. The grades of many of these children have also been negatively impacted.

97. In many instances, schools in the Defendant Districts have reprimanded these children if they do not wear masks.

98. Masks for children do more harm to their development than provide effective safeguards against spreading COVID-19. In the absence of evidence demonstrating masks provide a measurable protection against a respiratory illness such as COVID-19 among school-age children, requiring children to wear masks risks teaching them to be afraid of their bodies and afraid of their peers.

99. CHRM – through its members – has repeatedly communicated its concerns and these issues to the Districts at school committee meetings and in separate telephone calls and emails, but the Districts have refused to end their face mask mandates.

K. The Plaintiff Parents' Fundamental Right to Direct the Care and Upbringing of their Children

100. Parents have a fundamental right to direct the care and upbringing of their children, and that right includes the right to make healthcare and medical decisions for their children.

101. The Massachusetts Constitution states "no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the

law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land." Part 1, Art. 12, Mass. Const. "The phrase 'law of the land' does not refer to the statutory law of the Commonwealth . . . . Rather, it refers, in language found in Magna Charta, to the concept of due process of law." *Commonwealth v. Lyons*, 397 Mass. 644, 646 (1986). This clause protects citizens from the arbitrary and unreasonable exercise of governmental power.

102. The Supreme Judicial Court of Massachusetts has held "parents possess a fundamental liberty interest, protected by the Fourteenth Amendment, to be free from unnecessary governmental intrusion in the rearing of their children." *Curtis v. School Cmte. of Falmouth*, 420 Mass. 749, 755 (1995); *see also In the Matter of McCauley*, 409 Mass. 134, 136 (1991) ("Courts have recognized that the relationship between parents and their children is constitutionally protected, and, therefore, that the private realm of family life must be protected from unwarranted State interference.").

103. The Court has "sought to treat the exercise of parental prerogative with great deference. For example, in the area of medical treatment for minors, courts have shown great reluctance to overturn parental objections to medical treatment where the child's condition is not life-threatening, and where the proposed treatment would expose the child to great risk." *Custody of a Minor*, 375 Mass. 733, 748 (1978).

104. Courts elsewhere have agreed with this principle: "Parents and children have a well-elaborated constitutional right to live together without governmental interference." *Wallis v. Spencer*, 202 F.3d 1126, 1136 (9th Cir. 1999). "That right is an essential liberty interest protected by the Fourteenth Amendment." *Id.*; *see also id.* at 1138 n.8 ("The claims of the

parents in this regard should properly be assessed under the Fourteenth Amendment standard for interference with the right to family association.").

105. "The right to family association includes the right of parents to make important medical decisions for their children, and of children to have those decisions made by their parents rather than the state." *Wallis*, 202 F.3d at 1141; *Thomas v. Kaven*, 765 F.3d 1183, 1194-95 (10th Cir. 2014) ("The Fourteenth Amendment protects the right of parents to make decisions 'concerning the care, custody, and control of their children.'" (quoting *Troxel v. Granville*, 530 U.S. 57, 66 (2000)); *PJ v. Wagner*, 603 F.3d 1182, 1197 (10th Cir. 2010) ("[T]he Due Process Clause provides some level of protection for parents' decisions regarding their children's medical care."); *Kanuszewski v. Shah*, 18-cv-10472, at *1 (E.D. Mich. July 29, 2021) ("The Sixth Circuit held that parents have a fundamental right to direct their children's medical decisions."); *Panzardi v. Jensen*, 13-CV-4441 (MKB), at *4 (E.D.N.Y. Feb. 18, 2015) ("Parents have a 'constitutionally protected liberty interest in the care, custody and management of their children.' This liberty interest includes the right to direct medical care for their child.") (quoting *Southerland v. City of New York*, 680 F.3d 127, 142 (2d Cir. 2011)); *see also Emrikv. Chemung Cray. Dep't of Social Servs*., 911 F.2d 863, 867 (2d Cir. 1990) ("[T]he constitutional liberty interest of parents . . . though not beyond limitation ... includes a significant decision - making role concerning medical procedures sought to be undertaken by state authority upon their children."); *Fla. Dep't of Children and Families v. F.L.*, 880 So.2d 602 (Fla. 2004) (recognizing that "[p]arents have a fundamental liberty interest, protected by both the Florida and federal constitutions, in determining the care and upbringing of their children").

106. Likewise, the Massachusetts Constitution states, "All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the

right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness." Part 1, Art. 1, Mass. Const.

CLAIMS

COUNT I
(Declaratory Judgment)
(DESE Lacks the Authority to Issue a Face Mask Mandate)
(Plaintiff vs. DESE)

107. Plaintiff repeats and incorporates by reference the allegations of the paragraphs above as if fully stated herein.

108. There is a genuine and bona fide dispute and an actual controversy and disagreement between CHRM and DESE regarding whether DESE has the authority to issue face mask mandates.

109. DESE lacked the authority to issue the mandate because the state legislature did not expressly grant it any authority to enact a mandate requiring students to wear face masks or coverings.

110. Pursuant to the M.G.L. chapters 30A and 231A, CHRM requests, in good faith, that this Court declare that DESE lacked the authority to issue face mask mandates, and, therefore, the mandate, including any extension or implementation of its requirements beyond October 1, 2021, and for the remainder of this school year and future school years, is void.

COUNT II
(Declaratory Judgment)
(DESE Exceeded its Authority to Issue a Face Mask Mandate)
(Plaintiff vs. DESE)

111. Plaintiff repeats and incorporates by reference the allegations of the paragraphs above as if fully stated herein.

112. There is a genuine and bona fide dispute and an actual controversy and disagreement between CHRM and DESE regarding whether DESE exceeded its authority to issue face mask mandates.

113. 603 CMR 27.08(1) states that DESE, "upon a determination . . . that ***exigent circumstances*** exist . . . , the Commissioner . . . shall issue health and safety requirements and related guidance for districts." (Emphasis added.)

114. There are no "exigent circumstances" in Massachusetts concerning COVID-19, let along among children. The virus has had no impact on children or on healthy adults.

115. Accordingly, even if DESE has the authority to issue broad health measures, it exceeded that authority in issuing a state-wide mask mandate because there were and are no "exigent circumstances" requiring a state-wide mask mandate in schools.

116. Pursuant to the M.G.L. chapters 30A and 231A, CHRM requests, in good faith, that this Court declare that DESE exceeded its authority to issue a face mask mandate, and, therefore, the mandate, including any extension or implementation of its requirements beyond October 1, 2021, and for the remainder of this school year and future school years, is void.

COUNT III
(Declaratory Judgment)
(The School Districts Lack the Authority to Issue Face Mask Mandates)
(Plaintiff vs. School Districts)

117. Plaintiff repeats and incorporates by reference the allegations of the paragraphs above as if fully stated herein.

118. There is a genuine and bona fide dispute and an actual controversy and disagreement between CHRM and the School Districts regarding whether the Districts have the authority to issue face mask mandates.

119. The School Districts lack the authority to issue mask mandates because the state legislature did not expressly grant them any authority to enact mandates requiring students to wear face masks or coverings.

120. Pursuant to the M.G.L. chapter 231A, CHRM requests, in good faith, that this Court declare that the School Districts lacked the authority to issue face mask mandates, and, therefore, the mandates, including any extension or implementation of their requirements for the remainder of this school year and future school years, are void.

COUNT IV
(Declaratory Judgment)
(The City of Cambridge Lacks the Authority to Issue a Face Mask Mandate)
(Plaintiff vs. City of Cambridge)

121. Plaintiff repeats and incorporates by reference the allegations of the paragraphs above as if fully stated herein.

122. There is a genuine and bona fide dispute and an actual controversy and disagreement between CHRM and the City regarding whether the City has the authority to issue a face mask mandate.

123. The City lacks the authority to issue mask mandates because the state legislature did not expressly grant it any authority to enact mandates requiring anyone to wear face masks or coverings.

124. Pursuant to the M.G.L. chapter 231A, CHRM requests, in good faith, that this Court declare that the City lacked the authority to issue a face mask mandate, and, therefore, the mandate, including any extension of its requirements, is void.

COUNT V
(Declaratory Judgment)
(Defendants' Face Mask Mandates are Preempted)
(Plaintiffs vs. All Defendants)

125. Plaintiff repeats and incorporates by reference the allegations of the paragraphs above as if fully stated herein.

126. There is a genuine and bona fide dispute and an actual controversy and disagreement between CHRM and all the Defendants regarding whether Defendants' face mask mandates are preempted.

127. As explained above, a city or school district cannot regulate a field that has been preempted by the state.

128. The mandates at issue conflict with DPH's comprehensive statutory and regulatory scheme concerning infectious diseases in several respects, including the fact that they require face masks to prevent the transmission of COVID-19, whereas DPH's scheme does not; and they exceed the Commissioner of Public Health's May 28, 2021 Order.

129. Pursuant to the M.G.L. chapter 231A, CHRM requests, in good faith, that this Court declare that mandates are null and void because DPH's regulatory scheme concerning infectious diseases preempts them.

COUNT VI
(Violation of Due Process – Parents' Fundamental Right to Make Medical and Healthcare Decisions for their Children, Part 1, Art. 12, Mass. Const.)
(Plaintiff vs. All Defendants)

130. Plaintiff repeats and incorporates by reference the allegations of the paragraphs above as if fully stated herein.

131. CHRM's members have a fundamental right to make medical and healthcare decisions for their children. Part 1, Art. 12, Mass. Const.

132. The mask mandates infringe on this fundamental right.

133. The mandate does not serve a compelling government interest because there is no state of emergency; COVID-19 does not pose any threat to the health of children; there is no evidence face masks have done anything to curb the spread of COVID-19; and face masks are harmful for children. *See Commonwealth v. Weston W., a Juvenile*, 455 Mass. 24, 30 (2009) ("[W]here a statute implicates a fundamental right or uses a suspect classification, we employ 'strict judicial scrutiny.'").

134. Even if there was a compelling interest, the mask mandates here are not narrowly tailored to achieve that end because they apply to all students and contain no exceptions or exemptions, and any compelling interest can be accomplished by other means.

135. The mask mandates are also not rationally related to a legitimate government purpose because, as demonstrated above, there is no evidence masks have curbed the spread of COVID-19.

136. Defendants acted without regard for – and completely ignored – parents' fundamental right in the care, upbringing, and education of their children, including the right to make healthcare and medical decisions for their children.

137. Accordingly, the mandates violate CHRM's members' rights under the Massachusetts Constitution.

COUNT VII
(Violation of Natural Rights, Part 1, Art. 1, Mass. Const.)
(Plaintiff vs. All Defendants)

138. Plaintiff repeats and incorporates by reference the allegations of the paragraphs above as if fully stated herein.

139. Plaintiffs have a fundamental right to raise and care for their children. Part 1, Art. 1, Mass. Const.

140. As demonstrated above, the mask mandates infringe on this fundamental right; they do not serve a compelling government interest; and – even if they did – they are not narrowly tailored to that interest.

141. Accordingly, the mandates violate CHRM's members' rights under the Massachusetts Constitution.

COUNT VIII
(Injunctive Relief)

142. Plaintiff repeats and incorporates by reference the allegations of the paragraphs above as if fully stated herein.

143. Plaintiffs will likely succeed on the merits because the Defendants' mask mandates violate their Constitutional rights; the Defendants lacked the authority to issue them; and DPH's regulatory scheme preempts them.

144. As a result of these requirements, CHRM's parents and their children will continue to suffer irreparable harm.

145. CHRM has no adequate remedy at law to redress the harm threatened by the continuation of these requirements.

146. The public interest favors the protection of children.

147. CHRM is, therefore, entitled to an injunction prohibiting Defendants from enforcing and continuing their mask mandates.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Declare Defendants' mask mandates are null and void because Defendants lacked the authority to issue them;

B. Declare Defendants' mask mandates are null and void because DPH's regulatory scheme preempts them;

C. Declare Defendants' mask mandates are null and void because they violate parents' right to due process because they violate their right to make healthcare and medical decisions for their children;

D. Declare the Defendants' mask mandates are null and void because they violate parents' natural rights because they violate their right to raise and care for their children;

E. Enjoin the enforcement of Defendants' mask mandates;

F. Enter judgment in favor of Plaintiff on all counts;

G. Award Plaintiff its attorney's fees and costs; and

H. Award such other relief as is just and equitable.

Respectfully submitted,

CHILDREN'S HEALTH RIGHTS OF MASSACHUSETTS, INC.,

By Its Attorneys,

FOJO LAW, P.L.L.C.

Dated: September 20, 2021

/s/Robert M. Fojo

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VERIFICATION

I, Andrea Polcaro, Vice President and Secretary of Children's Health Rights of Massachusetts, Inc., certify that the foregoing facts are true and correct to the best of my knowledge and belief.

Andrea Polcaro

STATE OF ~~MASSACHUSETTS~~ Texas JEF

COUNTY OF Harris

The foregoing instrument was acknowledged before me this 20th day of September, 2021 by Andrea Polcaro.

(Seal)

Jose Escobar Ferix
ID NUMBER
131140914
COMMISSION EXPIRES
May 23, 2025

Signature of Notary Public
Print, Type/Stamp Name of Notary
Notarized online using audio-video communication

Personally known: _____
OR Produced Identification: ✓
Type of Identification Produced: ~~DRIVER LICENSE~~