


# EXHIBIT A

**OAK LAWN COMMUNITY HIGH SCHOOL DISTRICT 229**  
**BOARD OF EDUCATION OATH OF OFFICE**  
**ROBERT CRUZ**  
**APRIL 28, 2021**

I, Robert Cruz, do solemnly swear that I will faithfully discharge the duties of the office of member of the Board of Education of Oak Lawn Community High School District 229, in accordance with the Constitution of the United States, the Constitution of the State of Illinois, and the laws of the State of Illinois, to the best of my ability.

I further swear that:

- I shall respect taxpayer interests by serving as a faithful protector of the School District's assets;
- I shall encourage and respect the free expression of opinion by my fellow Board members and others who seek a hearing before the Board, while respecting the privacy of students and employees;
- I shall recognize that a Board member has no legal authority as an individual and that decisions can be made only by a majority vote at a public Board meeting;
- I shall abide by majority decisions of the Board, while retaining the right to seek changes in such decisions through ethical and constructive channels.
- As part of the Board of Education, I shall accept the responsibility for my role in the equitable and quality education of every student in the School District;
- I shall foster with the Board extensive participation of the community, formulate goals, define outcomes, and set the course for Oak Lawn Community High School District 229;
- I shall assist in establishing a structure and an environment designed to ensure all students have the opportunity to attain their maximum potential through a sound organizational framework;
- I shall strive to ensure a continuous assessment of student achievement and all conditions affecting the education of our children, in compliance with State law;
- I shall serve as education's key advocate on behalf of students and our community's school to advance the vision for Oak Lawn Community High School District 229; and
- I shall strive to work together with the District Superintendent to lead the School District toward fulfilling the vision the Board has created, fostering excellence for every student in the areas of academic skills, knowledge, citizenship, and personal development.

  
\_\_\_\_\_  
Robert Cruz

4 / 28 / 2021  
\_\_\_\_\_  
Date

# EXHIBIT B

IN THE CIRCUIT COURT  
COOK COUNTY, ILLINOIS

FILED  
8/19/2021 2:02 PM  
Iris Y. Martinez  
CIRCUIT CLERK  
COOK COUNTY, IL  
2021COMS000031  
Calendar, 7  
No hearing information was found

**ROBERT CRUZ**, individually, and in his official capacity as a Member of the Oak Lawn Community High School District 229 School Board,

*Plaintiff,*

v.

**JAY R. PRITZKER**, in his official capacity as Governor, and **DR. CARMEN I. AYALA**, in her official capacity as Director of the Illinois State Board of Education,

*Defendants.*

Case No.: 21-MR- \_\_\_\_\_

**VERIFIED COMPLAINT**

COMES NOW, Robert Cruz, by and through undersigned counsel, and files this Complaint seeking Declaratory and Injunctive Relief against Jay R. Pritzker, in his official capacity as Governor of the State of Illinois and Dr. Carmen I. Ayala, in her official capacity as Director of the Illinois State Board of Education, on the grounds set forth as follows:

**INTRODUCTION**

In further pursuit of quenching his insatiable appetite for power, Governor Pritzker issued Executive Order 2021-18 (“E.O. 85”) which *inter alia* mandates public and nonpublic K-12 schools “follow the joint guidance issued by ISBE and IDPH . . . [and] requir[e] the indoor use of face coverings” in abject disregard of the separation-of-powers doctrine of the Illinois Constitution and the Illinois General Assembly’s express intent to vest in local school boards the authority to “adopt and enforce all necessary means for the management and government of the public schools of the district.”<sup>1</sup> In doing so, Gov. Pritzker not only vitiates local school boards’ authority, but also, the authority of Illinois parents to make health-related decisions concerning their own children.

<sup>1</sup> See 105 ILCS 5/10-20.5 *et seq.*

### **PARTIES**

1. Plaintiff Robert Cruz ("Mr. Cruz") is a resident and taxpayer of the Oak Lawn Community High School District 229 ("District 229") in Cook County and serves as a duly elected member of the District 229 school board. Mr. Cruz is also a father of a minor child who attends school in Oak Lawn Hometown School District 123 in Cook County, Illinois.

2. Jay R. Pritzker ("Pritzker") is the duly elected Governor of the State of Illinois.

3. Dr. Carmen I. Ayala ("Dr. Ayala") is the director of the Illinois State Board of Education ("ISBE").

### **JURISDICTION & VENUE**

4. This Court has jurisdiction over this action because Mr. Cruz is a resident of Cook County and the father of a minor child who attends a public school located in Cook County, serves as a Member on the District 229 School Board, and is alleging the Governor of Illinois is violation the Illinois Constitution and the Illinois Emergency Management Agency Act.

5. Governor Pritzker's actions deny Mr. Cruz, individually, and as a Member of the District 229 School Board equal protection of the law under Article I, Section 2 of the Illinois Constitution.

6. Pursuant to 735 ILCS 5 §§ 2-701, 11-101, and 11-102, Plaintiff is entitled to a judgment; and temporary, preliminary, and permanent injunctions declaring that the school-related provisions included in E.O. 85 is unconstitutional or exceeds statutory authority, and therefore, is null and void and bears no legal effect.

7. A ripe controversy exists between the parties as to the constitutionality of the school-related provision contained in E.O. 85 on its face and as applied against Mr. Cruz as a

parent of a minor child enrolled in a public school located in Cook County and as a member of the District 229 school board.

8. Other than the claims asserted in this action, Mr. Cruz has no adequate state remedy to redress, or otherwise rectify, his constitutional rights that have been violated, or otherwise abridged, by Governor Pritzker as alleged herein.

9. Venue is proper in Cook County because a substantial portion of the events alleged herein occurred in Cook County and E.O. 85 is in full force in Cook County.

### **FACTUAL BACKGROUND**

#### **A. COVID-19 Statistics**

10. As of August 18, 2021, the Illinois Department of Public Health (“IDPH”) reports 1,474,285 total cases of COVID-19.<sup>2</sup>

11. As of August 18, 2021, IDPH reports persons under the age of 20 account for 246,227 cases of the total cases of COVID-19.<sup>3</sup>

12. Of those 246,227 reported cases, there have been 22 persons who had COVID-19 at the time of death.<sup>4</sup> It is unknown for how many of these 22 persons COVID-19 was the cause of death, if any.

13. The CDC estimates that only (1 of 4.2) 23.8% of all COVID infections are reported to the public health authorities.<sup>5</sup>

14. The CDC estimated that a much larger percentage, being (1 out of 1.3) 76.9% of COVID deaths are in fact reported to the public health authorities.<sup>6</sup>

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<sup>2</sup> See, Exhibit 1.

<sup>3</sup> See, Exhibit 2.

<sup>4</sup> See, Exhibit 3.

<sup>5</sup> See, Exhibit 4.

<sup>6</sup> *Id.*

15. As such, in the State of Illinois, according to IDPH statistics and the CDC analysis of unreported cases, the survival rate of children under 20 years of age in Illinois, should he or she even contract COVID-19, is 99.999973%.<sup>7</sup>

16. Based on these statistics, Gov. Pritzker has “declare[d] that a disaster exists” in the State of Illinois pursuant to the Illinois Emergency Management Agency Act<sup>8</sup> (“IMEAA”)—a statute upon which Gov. Pritzker has relied to maintain executive control over nearly all facets within the State of Illinois for the last eighteen (18) consecutive months.

## **B. The Illinois Emergency Management Agency Act & Executive Order 2021-18**

17. The IMEAA authorizes the governor of this state “to declare that a disaster exists.”<sup>9</sup>

18. The IMEAA defines a “disaster” as:

[A]n occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action, **public health emergencies**, or acts of domestic terrorism.<sup>10</sup>

19. The IMEAA defines a “public health emergency” as:

[A]n occurrence or imminent threat of an illness or health condition that . . . poses a high probability of . . . a large number of deaths in the affected population . . . .<sup>11</sup>

20. Once a “disaster” based upon a “public health emergency” is declared, the IMEAA “create[s] within the executive branch of the State Government an Illinois Emergency

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<sup>7</sup>  $(247,227 / 0.238) = 1,038,799$  total reported & unreported cases /  $(22 / 0.769) = 28$  total deaths, both reported and unreported /  $[1 - (28 / 1,038,799)] = 99.999973\%$  survival rate.

<sup>8</sup> See 20 ILCS 3305 *et seq.*

<sup>9</sup> See 20 ILCS 3305/7.

<sup>10</sup> See 20 ILCS 3305/4 (emphasis added).

<sup>11</sup> *Id.*

Management Agency (“IMEA”) and a Director of the [IMEA] . . . [who] shall be appointed by the Governor . . .”<sup>12</sup>

21. The IMEA shall “[p]repare, for issuance by the Governor, executive orders, proclamations, and regulations as **necessary or appropriate in coping with [the] disaster[ ]**.”<sup>13</sup>

22. On August 4, 2021, Gov. Pritzker issued E.O. 85 which states in pertinent part:

**All public and nonpublic schools** in Illinois serving pre-kindergarten through 12th grade students must follow the joint guidance issued by ISBE and IDPH and **take proactive measures to ensure the safety of students, staff, and visitors, including, but not limited to: (a) requiring the indoor use of face coverings by students,** staff, and visitors who are over age two and able to medically tolerate a face covering, **regardless of vaccination status,** consistent with CDC guidance . . .”<sup>14</sup>

### C. Erroneous Reliance Upon Constitutional and Statutory Authority

23. In issuing E.O. 85, Gov. Pritzker erroneously relies upon the Illinois Constitution and the IMEAA Sections 7(1), (2), (3), 7(12), and 7(19) to allege he is vested with lawful authority to issue the School Provision.

24. Section 7(1) of the IMEAA does not authorize Gov. Pritzker to take executive action pertaining to public and nonpublic schools. Specifically, IMEAA Section 7(1) authorizes Gov. Pritzker to:

[S]uspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules and regulations of any State agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder or delay necessary action, including emergency purchases, by the Illinois Emergency Management Agency, in coping with the disaster.

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<sup>12</sup> See 20 ILCS 3305/5.

<sup>13</sup> See 20 ILCS 3305/5(f)(3) (emphasis added).

<sup>14</sup> The portion of Executive Order 2021-18 cited in paragraph 22 shall be referred to hereinafter as the “School Provision”.



25. Section 7(2) of the IMEAA does not authorize Gov. Pritzker to take executive action pertaining to public and nonpublic schools. Specifically, IMEAA Section 7(2) authorizes Gov. Pritzker to:

[U]tilize all available resources of the State government as reasonably necessary to cope with the disaster and of each political subdivision of the State.

26. Section 7(3) of the IMEAA does not authorize Gov. Pritzker to take executive action pertaining to public and nonpublic schools. Specifically, IMEAA Section 7(3) authorizes Gov. Pritzker to:

To transfer the direction, personnel or functions of State departments and agencies or units thereof for the purpose of performing or facilitating disaster response and recovery programs.

27. Section 7(8) of the IMEAA does not authorize Gov. Pritzker to take executive action pertaining to public and nonpublic schools. Specifically, IMEAA Section 7(8) authorizes Gov. Pritzker to:

[C]ontrol ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein.

28. Section 7(12) of the IMEAA does not authorize Gov. Pritzker to take executive action pertaining to public and nonpublic schools. Specifically, IMEAA Section 7(12) authorizes Gov. Pritzker to:

Control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means, the use, sale or distribution of food, feed, fuel, clothing and other commodities, materials, goods, or services; and perform and exercise any other functions, powers, and duties as may be necessary to promote and secure the safety and protection of the civilian population.

29. Section 7(19) of the IEMAA does not exist, thus mooted any reliance thereon.

30. Similarly, Gov. Pritzker’s reliance upon the Illinois Constitution is also misguided, in that the Illinois Constitution states:

A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities<sup>15</sup> . . . [and] [t]he **State shall provide for an efficient system of high quality public educational institutions and services.**<sup>16</sup>

31. In fulfilling its Art. X § 1 constitutional obligation, the Illinois General Assembly enacted the Illinois School Code<sup>17</sup> which *inter alia* creates local school boards and delegates to the local school boards the authority to “adopt and enforce all necessary means for the management and government of the public schools of the district.”<sup>18</sup>

32. Pursuant to the separation-of-powers doctrine<sup>19</sup> of the Illinois Constitution, “[t]he legislative, executive and judicial branches are separate. **No branch shall exercise powers properly belonging to another.**”<sup>20</sup>

33. In the State of Illinois, it is well-established that the legislature has vested in school directors and local school boards—**not the executive**—the authority, in cases of emergency, to institute temporary measures to prevent the spread of an infectious disease.<sup>21</sup>

34. Moreover, the Illinois General Assembly (the “legislature”) expressly articulated the scope within which the IMEA may take action as it pertains to public K-12 schools. Specifically, the IMEAA provides for two—**and only two**—perimeters under which the IMEA may exercise authority under the IMEAA. Specifically, the Illinois Emergency Management Agency:

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<sup>15</sup> See Il. Const. Art. X, § 1.

<sup>16</sup> *Id.*, (emphasis added).

<sup>17</sup> See 105 ILCS 5/10-20.5 *et seq.*

<sup>18</sup> *Id.*

<sup>19</sup> Il. Const. Art. II, § 1 is hereinafter referred to as the “separation-of-powers doctrine”.

<sup>20</sup> *Id.*, (emphasis added).

<sup>21</sup> *Hagler v. Larner*, 284 Ill. 547 (1918) (quoting *Potts v. Breen*, 167 Ill. 67, 47 N. E. 81, 39 L. RA. 152, 59 Am. St. Rep. 262; *Lawbaugh v. Board of Education*, 177 Ill. 572, 52 N. E. 850; *People v. Board of Education*, 234 Ill. 422, 84 N. E. 1046, 17 L. R. A. (N. S.) 709, 14 Ann. Cas. 943).

- (a) shall **expand the Earthquake Awareness Program** and its efforts to distribute earthquake preparedness materials to schools . . . [and] [m]aintain the list of all school districts . . . at the greatest risk of damage from earthquakes . . . ;<sup>22</sup> and
- (b) is **authorized to make grants** to various . . . public K-12 school districts and nonpublic K-12 schools **for safety and security improvements.**<sup>23</sup>

35. It is not subject to reasonable dispute that an executive order stating public and nonpublic K-12 schools must “follow the joint guidance issued by ISBE and IDPH . . . [and] requir[e] the indoor use of face coverings”<sup>24</sup> is overbroad and that such provisions fall well outside the scope of the Gov. Pritzker’s authority under the IMEAA. Boiled down to its essence, ISBE and IDPH guidance and facial coverings do not even remotely pertain to the Illinois Earthquake Awareness Program or grant funding under any conceivable circumstance.

#### **D. H.B. 2789 – In-Person Instruction at Schools**

36. On February 19, 2021, Rep. Michelle Mussman introduced H.B. 2789 – In-Person Instruction at Schools.<sup>25</sup> The sole purpose of H.B. 2789 is to usurp the authority the ISC<sup>26</sup> vests in local school boards to establish metrics to use during a public health emergency in determining if the district or institution may safely conduct in-person instruction and reassign such authority to the Illinois Department of Public Health (“IDPH”) while designating the ISBE as the enforcement agency for such would-be proposed metrics.

37. H.B. 2789 is *per se* evidence that the Illinois General Assembly is not only aware that the power to promulgate metrics to be used during a public health emergency is vested in local school boards, but that, at the time the Illinois General Assembly passed the IMEAA, the

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<sup>22</sup> See 20 ILCS 3305/5(f)(9) (emphasis added).

<sup>23</sup> *Id.* at 3305/5(g) (emphasis added).

<sup>24</sup> Executive Order 2021-18.

<sup>25</sup> See Exhibit 5.

<sup>26</sup> See 105 ILCS 5/10-20.5 *et seq.*

legislature **expressly declined** to vest in the executive the authority to establish metrics for schools to use during a public health emergency.

38. As of August 18, 2021, H.B. 2789 is pending in the Illinois Senate Committee on Assignments (“SCOA”).

39. Aware that the School Provision set forth in E.O. 85 falls outside the scope of matters the IMEAA authorizes Gov. Pritzker to exercise executive power, ISBE Director Dr. Carmen I. Ayala, sent a threatening letter<sup>27</sup> to all Illinois superintendents stating “noncompliance [with the unconstitutional School Provision of E.O. 85] is not an option.”<sup>28</sup>

40. Specifically, Director Ayala threatened to “use the ISBE’s regulatory authority, pursuant to 23 Ill. Admin. Code 1.20 . . .”<sup>29</sup> to revoke State recognition of any school district that refuses to violate the Illinois Constitution and the ISC.

41. Working in tandem, Gov. Pritzker and Director Ayala are aware the School Provision contained in E.O. 85 is unconstitutional as it exceeds the scope of executive authority vested in the governor of the state under the IMEAA. Nevertheless, Director Ayala is steadfast in dutifully fulfilling her role as Gov. Pritzker’s skivvy, even going so far as to threaten the academic futures of thousands of Illinois students as collateral by threatening to revoke State recognition for any school district that refuses violate the law in satisfaction of Gov. Pritzker’s insatiable appetite for power.

## **COUNT I** **DECLARATORY RELIEF**

42. Plaintiff incorporates all preceding paragraphs by reference as if fully set forth herein.

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<sup>27</sup> See, Exhibit 6.

<sup>28</sup> *Id.* at 1.

<sup>29</sup> *Id.* at 2.

43. Seemingly preferential to the title Comrade of Illinois, Gov. Pritzker continues to weaponize the IMEAA in his latest attempt to expand the scope of unilateral control he has exercised over the State of Illinois for an unprecedented (18) consecutive months—although this time, his authoritarian expansion is halted by well-established law and the separation-of-powers doctrine.

44. While Courts in this State have grappled with the constitutionality of Gov. Pritzker’s repeated extensions of an alleged “disaster” under the IMEAA, the question as to whether public and nonpublic schools fall within the scope of what Gov. Prizker can regulate by executive fiat has yet to be addressed.

45. Under the IMEAA, the governor of the state may declare a “disaster” which *inter alia* is defined as a “public health emergency.”

46. Upon the governor of the state’s disaster proclamation, the IMEAA is triggered and an IMEA is created.

47. The IMEAA vests in the governor a great number of powers; however, unless expressly stated, IMEAA does not preempt state statutes, including the Illinois School Code.

48. Under Art. II § 1 of Illinois Constitution, the executive branch is prohibited from exercising powers vested in the legislative branch.

49. The Illinois Constitution vests in the legislative branch the power to provide for an efficient system of high quality public educational institutions and services.

50. In exercising the aforesaid power, the Illinois General Assembly enacted the Illinois School Code as a means to develop a system of high quality educational institutions and services. In doing so, the Illinois School Code *inter alia* creates local school boards and vests in them the

authority to “adopt and enforce all necessary means for the management and government of the public schools of the district.”

51. At no time has the legislature enacted any statute vesting in the executive the power to “adopt and enforce all necessary means for the management and government of the public schools of the district.” This is evidenced by H.B. 2789, which is a bill *attempting* to usurp the power vested in the legislative branch and thereafter delegated to the local school boards created under the ISC.

52. While if passed, H.B. 2789 would constitutionally vest in the executive the authority to “adopt and enforce all necessary means for the management and government of the public schools of the district”, H.B. 2789 has not been enacted nor has any other law vested such powers within the executive as of the date this action is filed.

53. Despite not having any lawful authority vested in him as governor of the state, Gov. Pritzker nevertheless promulgated E.O. 85 which *inter alia* states that “[a]ll public and nonpublic schools in Illinois serving pre-kindergarten through 12th grade students **must follow the joint guidance issued by ISBE and IDPH** and take proactive measures . . . [such as] **requiring the indoor use of face coverings by students, staff, and visitors. . .**”.

54. Gov. Pritzker does not have the lawful authority to compel school districts to comply with the School Provision by executive fiat, even if a public health emergency is declared.

55. In issuing E.O. 85, Gov. Pritzker cites five (5) provisions of the IEMAA and the Illinois Constitution as the legal bases vesting in him the power to compel school districts to comply with the School Provision.

56. Even the most strained eyes cannot identify a viable nexus between the lawful authority to mandate the School Provision and any of the five (5) IMEAA provisions cited or the Illinois Constitution.

57. As to the five (5) IMEAA, provisions cited:

- (a) Section 7(1) pertains to suspending regulatory statutes setting forth procedures for conducting state business or rules and regulations of state agencies;
- (b) Section 7(2) authorizes use of “all available resources” as reasonably necessary to cope with a disaster;
- (c) Section 7(3) authorizes transferring the direction, personnel, or functions of State departments to facilitate or perform disaster response programs;
- (d) Section 7(8) pertains to ingress and egress from a disaster area and the movement of persons within the disaster area;
- (e) Section 7(12) authorizes the control, restriction, or regulation, allocation, or other means concerning quotas, shipment prohibitions, price fixing, or the use and sale of material commodities during a disaster; and
- (f) Section 7(19) does not authorize anything because it does not exist.

58. Accordingly, IMEAA does not vest in Gov. Pritzker any authority to mandate the School Provision.

59. In direct conflict with Gov. Pritzker’s assertion, the Illinois Constitution does not vest in the executive the authority to “**provide for an efficient system of high quality public educational institutions and services**” but rather, expressly vests this power in the legislative the branch.

60. The legislative branch exercised its power to “provide for an efficient system of high quality public educational institutions and services” by enacting the Illinois School Code.

61. The Illinois School Code creates local school boards.

62. The legislature vested in the local school boards created by the Illinois School Board the authority to “adopt and enforce **all necessary rules** for the management and government of the public schools of their district.”

63. Any exercise of executive authority over the necessary rules for the management and government of the public schools” in this state flies directly in the face to the separation-of-powers doctrine and is *per se* unconstitutional.

64. An actual controversy exists between the parties as to Gov. Pritzker’s attempt to vitiate the authority vested in local school districts by the Illinois General Assembly and compel public schools to comply with ISBE and IDPH guidance during a public health emergency.

65. An actual controversy exists between the parties as to Gov. Pritzker’s attempt to vitiate the authority vested in local school districts by the Illinois General Assembly and compel nonpublic schools to comply with ISBE and IDPH guidance during a public health emergency.

66. An immediate and definitive determination is necessary to clarify the rights and interests of the Parties.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Robert Cruz respectfully requests that this Court:

- A. Declare that Gov. Pritzker does not have the authority to compel local school boards to follow the joint guidance by the Illinois Department of Health or the Illinois State Board of Education under a disaster declaration;
- B. Declare that Gov. Pritzker does not have the authority to compel local school boards to follow the joint guidance by the Illinois Department of Health or the Illinois State Board of Education during times of a public health emergency;



- C. Declare that the ISBE does not have authority to revoke, suspend, or otherwise penalize school districts of this state for failure to comply with E.O. 85;
- D. Declare that the ISBE does not have the authority to revoke State recognition of the school districts of this state for failure to adhere to E.O. 85;
- E. Declare that the ISBE does not have the authority to revoke State recognition of the school districts of this state for failure to adhere to the recommended guidelines of ISBE and IDPH during times of a disaster;
- F. Declare that the ISBE does not have the authority to revoke State recognition of the school districts of this state for failure to adhere to the recommended guidelines of ISBE and IDPH under a declaration of a public health emergency;
- G. Enjoin Gov. Pritzker, Director Ayala, and the IMEA from infringing upon the authority lawfully delegated to the local school boards under the Illinois School Code;
- H. Enjoin Gov. Pritzker, Director Ayala, and the IMEA from infringing upon the lawful authority of parents to make medically-related decisions over their own children;
- I. Awarding Mr. Cruz reasonable attorney's fees and the costs incurred in this matter to the fullest extent permitted by law; and
- J. Grant such other and further relief as is just and proper.

Dated: August 19, 2021

Respectfully submitted,

/S/ RICARDO “RICK” MUÑOZ

Rick Muñoz [Cook County Bar No. 39053]

THE LAW FIRM OF RICK MUÑOZ

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Joliet, Illinois 60432

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/S/ MICHAEL A. YODER

Michael A. Yoder [VSB 93863]\*

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*\*Pro Hac Vice forthcoming*

**Attorneys for Plaintiff Robert Cruz**

## VERIFICATION

Under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct except as to matters therein stated to be on information and belief, if any, and as to such matters the undersigned certifies as aforesaid that the undersigned verily believes the same to be true.

Dated: August 19, 2021

/S/ ROBERT CRUZ

Robert Cruz

# EXHIBIT C

**RESOLUTION NO. 2122-01**

**RESOLUTION OF THE BOARD OF EDUCATION OF OAK LAWN COMMUNITY  
HIGH SCHOOL, DISTRICT 229, COOK COUNTY, ILLINOIS**

**WHEREAS**, the COVID-19 Delta variant has increasingly spread throughout the United States, including Illinois; and

**WHEREAS**, Oak Lawn Community High School, District 229 (“OLCHS”), is a unit of government of the State of Illinois; and

**WHEREAS**, all units of government are under the jurisdiction of the laws of the State of Illinois; and

**WHEREAS**, the Governor is the executive head of the government; and

**WHEREAS**, the Illinois State Board of Education (“ISBE”) is the state authority governing school districts; and

**WHEREAS**, the Illinois Department of Public Health (IDPH) issues guidance and directives to all school districts in order to ensure a safe and full, in-person return to school; and

**WHEREAS**, the school board recognizes every citizens’ right to speak their own mind as an individual person; and

**WHEREAS**, a member of OLCHS’s Board of Education has filed a lawsuit against the Governor and the State Superintendent of Schools; and

**WHEREAS**, the Board of Education of OLCHS has not authorized or is a party to this litigation; and

**WHEREAS**, no funds have been expended by OLCHS to support, encourage, or condone this lawsuit; and

**WHEREAS**, OLCHS is fully committed to the safety and wellbeing of our students, staff, and visitors; and

**WHEREAS**, the Board of Education of OLCHS will follow the directives and suggestions from the professionals at the IDPH, as well as the ISBE, and the mandates and orders from the Governor of Illinois; and

**WHEREAS**, the Board of Education of OLCHS is resolved to open school safely and be in compliance with the suggestions and directives of all state agencies.

**NOW, THEREFORE,** Be It Resolved by the Board of Education of Oak Lawn Community High School, District 229, Cook County, Illinois as follows:

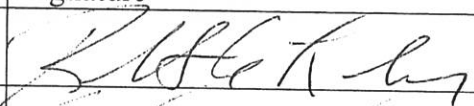

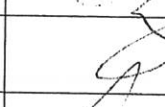
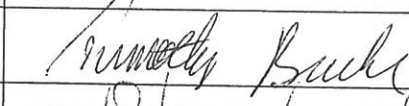
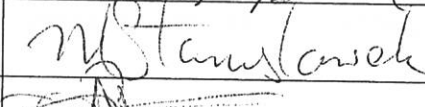

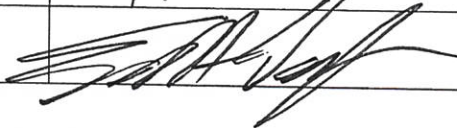
**Section 1.** The District 229 Board of Education has never discussed, contemplated, or supported the litigation against the Governor or the State Superintendent.

**Section 2.** All directives from the ISBE, IDPH, and the Governor will be followed by the District 229 Board, Superintendent, and staff.

**Section 3.** Attorneys for District 229 are directed to intervene into the pending litigation concerning the mask mandate for the purpose of removing the unauthorized misrepresentation that District 229 is involved as a party plaintiff.

**Section 4.** That all resolutions and parts thereof in conflict herewith be and the same are hereby repealed and that this resolution be in full force and effect forthwith upon its adoption.

**ADOPTED** this 23<sup>rd</sup> day of August, 2021.

Name	Signature	Aye	Nay	Abstain	Absent
Robert Loehr, President		X			
Matthew Egan, Vice President		X			
Judith Ott, Secretary					X
Timothy Burke, Member		X			
Mark Stanislawek, Member		X			
Robert Cruz, Member				X	
Edward Wolf, Member		X			

# EXHIBIT D

**MINUTES OF THE SPECIAL MEETING OF THE BOARD OF EDUCATION, OAK  
LAWN COMMUNITY HIGH SCHOOL, DISTRICT 229, COOK COUNTY, ILLINOIS,  
HELD ON WEDNESDAY AUGUST 23, 2021**

The Board of Education of Oak Lawn Community High School, District No. 229, Cook County, Illinois, met in special session at Oak Lawn Community High School, 9400 Southwest Highway, Oak Lawn, Illinois, on Wednesday August 23, 2021. The meeting began at 5:30 p.m.

PRESENT: Timothy Burke, Robert Cruz, Matthew Egan, Robert Loehr,  
Mark Stanislawek, Edward Wolf

ABSENT: Judy Ott

OTHERS PRESENT: Dr. Michael J. Riordan, Superintendent  
Mr. Joseph McCurdy, Assistant Superintendent  
Mr. Burt Odelson, Odelson, Sterk, Murphey, Frazier, McGrath

**Roll Call**

Timothy Burke, Robert Cruz, Matthew Egan, Robert Loehr, Mark Stanislawek,  
Edward Wolf

**Public Comment**

Mr. Brian McCarty; attached email

**Mr. Wolf**

Mr. Wolf arrived at 5:34 p.m.

**Resolution 2122-01**

Resolution directing legal counsel regarding recent litigation whereas OLCHS District 229 was named as a plaintiff, and expressing OLCHS commitment to safety and wellness of students and staff and compliance with guidance and directives from ISBE, IDPH, and the Governor

Mr. Odelson:

- Lawsuit has been filed by Mr. Cruz individually, and in official capacity as a Member of the OLCHS D229 School Board
- Individual board members cannot act by themselves
- Concern of liabilities if a student becomes severely ill with COVID-19
- OLCHS must comply with all health mandates issued by IDPH, CDC, and Governor
- All mention of OLCHS must be removed from lawsuit
- Affidavit will be filed August removing OLCHS from the lawsuit



Mr. Cruz:

- This is a standing position and not acting in Board capacity
- It is declared Robert Cruz is a member of the school board
- Accepts the fault of not informing the board members of intentions

A motion was made by Mr. Loehr and seconded by Mr. Egan to approve Resolution 2122-01 as presented. Upon roll call the vote was as follows:

2122-027

AYES: Burke, Egan, Loehr, Stanislawek, Wolf

ABSTAIN: Cruz

NAYS: None

President declared the motion carried.

**Adjournment**

There being no further business to come before the Board at this time, it was moved by Mr. Loehr and seconded by Mr. Burke to adjourn this meeting. Upon roll call the vote was as follows:

2122-028

AYES: Cruz, Egan, Loehr, Stanislawek, Wolf, Burke

NAYS: None. President declared the motion carried and the meeting adjourned at 6:02 p.m.

  
\_\_\_\_\_  
President, Board of Education  
\_\_\_\_\_  
Secretary, Board of Education

**Subject:** [External]OLCHS District 229 Board Member Robert Cruz Misconduct

**Date:** Monday, August 23, 2021 at 2:56:46 PM Central Daylight Time

**From:** Brian McCarty

**To:** Riordan, Michael

**CC:** Vanderwarren, Maria, info@cruz4district229.com

**CAUTION:** This e-mail originated outside of OLCHS. DO NOT click links or open attachments unless you confirm the incoming address of the sender.

Dr. Riordan:

Please forward the attached message to the Board of Education for the meeting tonight, August 23rd, 2021.

#### OLCHS DISTRICT 229 BOARD OF EDUCATION

I am writing to the Board with a high degree of anger at recently elected Board member Robert Cruz. My attention to this matter was due to Mr. Cruz and his associates "press release" on this issue last Thursday, August 19, 2021.

I have read the complaint filed by Mr. Cruz against our State of Illinois Governor, J.B. Pritzker and Dr. Carmen Ayala, Director of the Illinois State Board of Education. The complaint brings disrepute to the Oak Lawn Community High School Board and management of the school, who have in my view been thoughtful and highly responsible to the community, students, and employees of the school.

The filing of this complaint points out several issues of egregious conduct that the Board needs to address:

1. Mr. Cruz has been deliberately deceptive about his real views on the pandemic and political issues in our community. In his campaign materials, he has made statements contradictory now to the statements in his lawsuit. *"Getting parents, students and staff comfortable coming back to school for full-time, in-person learning safely"* is one of these statements. *"Because I will put the needs of the children FIRST!"* is one other such statement. The current requirements for full-time, in-person schooling, established by our Illinois State Government achieve both of these goals. Attacking our Governor and State Board of Education do NOT meet this goals. Judging from the language Mr. Cruz has used in his complaint, his personal beliefs are NOT anything close to these goals. He has in my view deliberately misled voters about his personal views in order to gain political advantage at the last election. He's a fraud.

<https://www.cruz4district229.com>

2. Mr. Cruz has deliberately used language in his filed complaint that suggests the District 229 Board of Education was a partner in this lawsuit/publicity stunt. NOTHING could be further from the truth. Mr. Cruz has deliberately and maliciously brought the District 229 Board of Education, Oak Lawn Community High School administrators, and indeed the entire community calling itself "Oak Lawn" into disrepute.

3. Further evidence of Mr. Cruz's malicious intent is obvious by his filing of this complaint on the morning of August 19, 2021 just hours after a scheduled meeting of the OLCHS District 229 School Board. Mr. Cruz could have easily sought a discussion of the Governor's order to Illinois school districts, issued on August 4, 2021. He did not. <https://www.illinois.gov/government/executive-orders/executive-order-executive-order-number-18.2021.html>

4. Mr. Cruz has engaged as local legal counsel Ricardo "Rick" Munoz, a known Republican operative in the region with a checkered history of failed lawsuits written to garner publicity, and not a serious legal effort. And also appended to the legal action by Mr. Cruz is Mike Yoder, a republican lawyer based in Washington with a checkered history of anti-vaccine and anti-freedom commentary. Twitter: @Yoder\_Esq

Mr. Cruz is in violation of several items in the OLCHS DISTRICT 229 POLICY MANUAL:

1. 2:80: Board member Oath and Conduct. He has breached several aspects of his oath taken when he was elected.
2. 2:80-E: Mr. Cruz has clearly *"surrendered his responsibilities to special interests and partisan groups"*. Mr. Cruz has failed to *"avoid a conflict of interest or appearance of impropriety"*. Mr. Cruz has clearly attempted to *"use (his) Board of Education membership for . . .publicity"*. Mr. Cruz, by naming the District 229 Board of Education in his complaint, has failed to recognize that *"a Board of Education member has no legal authority as an individual. . ."* Mr. Cruz has also shown himself to be unknowledgeable *"about . . . State and national issues"*.
3. 2:105: I have been advised that Mr. Cruz has accepted a "gift" of legal services from one or more lawyers in the filing of this lawsuit. This would seem to be a violation of the Ethics and Gift Ban.

Under the circumstances I've outlined, and additional information that I would be forthcoming as a result of an investigation by the Board of Education, Mr. Cruz should be considered for Removal from Office under 2:60, and State of Illinois Statute 105 ILCS 5/ School Code.

I expect this letter to be included in public comments in tonight's meeting of the Board of Education.

Brian L. McCarty  
OLCHS Graduate, 1972  
Distinguished Alumni Hall of Fame, 2015

# EXHIBIT E

IN THE CIRCUIT COURT  
SANGAMON COUNTY, ILLINOIS

**ROBERT CRUZ**, on behalf of his minor child  
L.C., and **SCOT JONES**, on behalf of his  
minor child D.J.,

*Plaintiffs,*

v.

Case No.: 2021CH000087

**JAY R. PRITZKER**, in his official capacity  
as Governor, and **DR. CARMEN I. AYALA**,  
in her official capacity as Director of the  
Illinois State Board of Education, and **OAK  
LAWN COMMUNITY HIGH SCHOOL  
DISTRICT 229 SCHOOL BOARD**,

*Defendants.*

**COMPLAINT**

COMES NOW, Plaintiffs Robert Cruz and Scot Jones, by and through undersigned counsel, and hereby file this Complaint seeking Declaratory and Injunctive Relief against Defendants Jay R. Pritzker, in his official capacity as Governor of the State of Illinois (“Gov. Pritzker”), Dr. Carmen I. Ayala, in her official capacity as Director of the Illinois State Board of Education (“Dr. Ayala”), and Oak Lawn Community High School District 229 School Board<sup>1</sup> (“OLCHS”) (collectively, “Defendants”), on the grounds set forth as follows:

**INTRODUCTION**

1. In further pursuit of quenching his insatiable appetite for power, Gov. Pritzker issued Executive Order 2021-18<sup>2</sup> (“E.O. 85”) which *inter alia* mandates all public and nonpublic K-12 schools “follow the joint guidance issued by ISBE and IDPH . . . [and] requir[es] the indoor use of face coverings” in abject disregard of Plaintiffs’ fundamental right to make health-related decisions for their minor children.<sup>3</sup> This provision of E.O. 85 not only violates Plaintiffs’ aforesaid

<sup>1</sup> Both Plaintiffs lodge claims against Gov. Pritzker and Dr. Ayala. Only Plaintiff Jones lodges claims against OLCHS.

<sup>2</sup> See, Exhibit 1.

<sup>3</sup> *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

substantive due process right but also, directly violates this State’s separation-of-powers doctrine. It is not subject to reasonable dispute that the intent of the Illinois General Assembly is to vest in local school boards—**not the executive**—the authority to “adopt and enforce all necessary means for the management and government of the public schools of the district.”<sup>4</sup>

2. Aware E.O. 85 is unconstitutional, Dr. Ayala then sent a threatening letter<sup>5</sup> to all Illinois superintendents on August 11, 2021, stating “noncompliance [with the unconstitutional School Provision of E.O. 85] is not an option”<sup>6</sup> – otherwise, the ISBE may “use the ISBE’s regulatory authority, pursuant to 23 Ill. Admin. Code 1.20 . . .”<sup>7</sup> to revoke State recognition. Dr. Ayala’s scare tactic worked.

3. On or about July 21, 2021, OLCCHS voted to preserve parents’ fundamental rights to make medically-related decisions for their children; however, OLCCHS capitulated and reversed itself once the school’s financial status was placed jeopardy. On August 23, 2021, OLCCHS passed Resolution 2122-21<sup>8</sup> as a means to curry favor with the Governor and ISBE. Indeed, violate constitutional rights of all OLCCHS parents.

### **PARTIES**

4. Plaintiff Robert Cruz (“Mr. Cruz”) is an adult resident of Cook County, Illinois and the father of minor child L.C. who is enrolled in an Illinois public school.

5. Plaintiff Scot Jones (“Mr. Jones”) is an adult resident of Cook County, Illinois and the father of minor child D.J. who is enrolled at Oak Lawn Community High School District 229 in Cook County, Illinois.

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<sup>4</sup> See 105 ILCS 5/10-20.5 *et seq.*

<sup>5</sup> See, Exhibit 2.

<sup>6</sup> *Id.* at 1.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> See, Exhibit 3.

6. Defendant Jay R. Pritzker ("Gov. Pritzker") is the duly elected Governor of the State of Illinois.

7. Defendant Dr. Carmen I. Ayala is the Director of the Illinois State Board of Education ("ISBE").

8. Defendant Oak Law Community High School District 229 School Board ("OLCHS") operates in Cook County, Illinois.

### **JURISDICTION & VENUE**

9. This Court has jurisdiction over this action pursuant to 735 ILCS 5/2-209 and Ill. S. Ct. R. 187.<sup>9</sup>

10. Defendants' actions deny Plaintiffs, as parents of minor children, equal protection of the law under Art. I, Sec. 2 of the Illinois Constitution and substantive due process under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

11. Pursuant to 735 ILCS 5 §§ 2-701, 11-101, and 11-102, Plaintiffs are entitled to a judgment; and temporary, preliminary, and permanent injunctions declaring that the school-related provisions included in E.O. 85 is unconstitutional or exceeds statutory authority, and therefore, is null and void and bears no legal effect.

12. A ripe controversy exists between the parties as to the constitutionality of the school-related provision contained in E.O. 85 on its face and as applied against Plaintiffs as parents of minor children enrolled in Illinois public schools.

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<sup>9</sup> See Exhibit 4. Plaintiffs filed a notice of voluntary dismissal without prejudice with leave to re-file in Sangamon County in the Cook County action *Cruz v. Pritzker, et al.*, Case No. 21-COMMS-31 to preserve judicial economy and in response to two (2) transfer motions filed by the State Defendants.

13. Other than the claims asserted in this action, Plaintiffs have no adequate state remedy to redress, or otherwise rectify, their constitutional rights that have been violated, or otherwise abridged, by Defendants as alleged herein.

14. Venue is proper in the Circuit Court of Sangamon County, Illinois, pursuant to 735 ILCS 5/2-101 *et seq.*, because the acts giving rise to the Complaint occurred in Sangamon County and because E.O. 85 was filed with the Secretary of State in Sangamon County and has statewide effect.

### **FACTUAL BACKGROUND**

#### **A. COVID-19 Statistics**

15. As of August 18, 2021, the Illinois Department of Public Health (“IDPH”) reports 1,474,285 total cases of COVID-19.<sup>10</sup>

16. As of August 18, 2021, IDPH reports persons under the age of 20 account for 246,227 cases of the total cases of COVID-19.<sup>11</sup>

17. Of those 246,227 reported cases, there have been 22 persons who had COVID-19 at the time of death.<sup>12</sup> It is unknown for how many of these 22 persons COVID-19 was the cause of death, if any.

18. The CDC estimates that only (1 of 4.2) 23.8% of all COVID infections are reported to the public health authorities.<sup>13</sup>

19. The CDC estimated that a much larger percentage, being (1 out of 1.3) 76.9% of COVID deaths are in fact reported to the public health authorities.<sup>14</sup>

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<sup>10</sup> See, Exhibit 5.

<sup>11</sup> See, Exhibit 6.

<sup>12</sup> See, Exhibit 7.

<sup>13</sup> See, Exhibit 8.

<sup>14</sup> *Id.*



20. As such, in the State of Illinois, according to IDPH statistics and the CDC analysis of unreported cases, the survival rate of children under 20 years of age in Illinois, should he or she even contract COVID-19, is 99.999973%.<sup>15</sup>

21. Based on these statistics, Gov. Pritzker has “declare[d] that a disaster exists” in the State of Illinois pursuant to the Illinois Emergency Management Agency Act<sup>16</sup> (“IMEAA”)—a statute upon which Gov. Pritzker has relied to maintain executive control over nearly all facets within the State of Illinois for the last eighteen (18) consecutive months.

#### **B. The Illinois Emergency Management Agency Act & Executive Order 2021-18**

22. The IMEAA authorizes the governor of this state “to declare that a disaster exists.”<sup>17</sup>

23. The IMEAA defines a “disaster” as:

[A]n occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action, **public health emergencies**, or acts of domestic terrorism.<sup>18</sup>

24. The IMEAA defines a “public health emergency” as:

[A]n occurrence or imminent threat of an illness or health condition that . . . poses a high probability of . . . a large number of deaths in the affected population . . . .<sup>19</sup>

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<sup>15</sup>  $(247,227 / 0.238) = 1,038,799$  total reported & unreported cases /  $(22 / 0.769) = 28$  total deaths, both reported and unreported /  $[1 - (28 / 1,038,799)] = 99.999973\%$  survival rate.

<sup>16</sup> See 20 ILCS 3305 *et seq.*

<sup>17</sup> See 20 ILCS 3305/7.

<sup>18</sup> See 20 ILCS 3305/4 (emphasis added).

<sup>19</sup> *Id.*

25. Once a “disaster” based upon a “public health emergency” is declared, the IMEAA “create[s] within the executive branch of the State Government an Illinois Emergency Management Agency (“IMEA”) and a Director of the [IMEA] . . . [who] shall be appointed by the Governor . . .”<sup>20</sup>

26. The IMEA shall “[p]repare, for issuance by the Governor, executive orders, proclamations, and regulations as **necessary or appropriate in coping with [the] disaster[ ]**.”<sup>21</sup>

27. On August 4, 2021, Gov. Pritzker issued E.O. 85 which states in pertinent part:

**All public and nonpublic schools** in Illinois serving pre-kindergarten through 12th grade students must follow the joint guidance issued by ISBE and IDPH and **take proactive measures to ensure the safety of students, staff, and visitors, including, but not limited to: (a) requiring the indoor use of face coverings by students,** staff, and visitors who are over age two and able to medically tolerate a face covering, **regardless of vaccination status,** consistent with CDC guidance . . .”<sup>22</sup>

### C. Gov. Pritzker’s Erroneous Reliance Upon Constitutional and Statutory Authority

28. In issuing E.O. 85, Gov. Pritzker erroneously relies upon the Illinois Constitution and the IMEAA Sections 7(1), (2), (3), 7(12), and 7(19) to allege he is vested with lawful authority to issue the School Provision.

29. Section 7(1) of the IMEAA does not authorize Gov. Pritzker to take executive action pertaining to public and nonpublic schools. Specifically, IMEAA Section 7(1) authorizes Gov. Pritzker to:

[S]uspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules and regulations of any State agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder or delay necessary action, including emergency purchases, by the Illinois Emergency Management Agency, in coping with the disaster.

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<sup>20</sup> See 20 ILCS 3305/5.

<sup>21</sup> See 20 ILCS 3305/5(f)(3) (emphasis added).

<sup>22</sup> The portion of Executive Order 2021-18 cited in paragraph 22 shall be referred to hereinafter as the “School Provision”.

30. Section 7(2) of the IMEAA does not authorize Gov. Pritzker to take executive action pertaining to public and nonpublic schools. Specifically, IMEAA Section 7(2) authorizes Gov. Pritzker to:

[U]tilize all available resources of the State government as reasonably necessary to cope with the disaster and of each political subdivision of the State.

31. Section 7(3) of the IMEAA does not authorize Gov. Pritzker to take executive action pertaining to public and nonpublic schools. Specifically, IMEAA Section 7(3) authorizes Gov. Pritzker to:

To transfer the direction, personnel or functions of State departments and agencies or units thereof for the purpose of performing or facilitating disaster response and recovery programs.

32. Section 7(8) of the IMEAA does not authorize Gov. Pritzker to take executive action pertaining to public and nonpublic schools. Specifically, IMEAA Section 7(8) authorizes Gov. Pritzker to:

[C]ontrol ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein.

33. Section 7(12) of the IMEAA does not authorize Gov. Pritzker to take executive action pertaining to public and nonpublic schools. Specifically, IMEAA Section 7(12) authorizes Gov. Pritzker to:

Control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means, the use, sale or distribution of food, feed, fuel, clothing and other commodities, materials, goods, or services; and perform and exercise any other functions, powers, and duties as may be necessary to promote and secure the safety and protection of the civilian population.

34. Section 7(19) of the IEMAA does not exist, thus mooted any reliance thereon.

35. Similarly, Gov. Pritzker’s reliance upon the Illinois Constitution is also misguided, in that the Illinois Constitution states:

A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities<sup>23</sup> . . . [and] [t]he **State shall provide for an efficient system of high quality public educational institutions and services.**<sup>24</sup>

36. In fulfilling its Art. X § 1 constitutional obligation, the Illinois General Assembly enacted the Illinois School Code<sup>25</sup> which *inter alia* creates local school boards and delegates to the local school boards the authority to “adopt and enforce all necessary means for the management and government of the public schools of the district.”<sup>26</sup>

37. Pursuant to the separation-of-powers doctrine<sup>27</sup> of the Illinois Constitution, “[t]he legislative, executive and judicial branches are separate. **No branch shall exercise powers properly belonging to another.**”<sup>28</sup>

38. In the State of Illinois, it is well-established that the legislature has vested in school directors and local school boards—**not the executive**—the authority, in cases of emergency, to institute temporary measures to prevent the spread of an infectious disease.<sup>29</sup>

39. Moreover, the Illinois General Assembly (the “legislature”) expressly articulated the scope within which the IMEA may take action as it pertains to public K-12 schools. Specifically, the IMEAA provides for two—**and only two**—perimeters under which the IMEA may exercise authority under the IMEAA. Specifically, the Illinois Emergency Management Agency:

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<sup>23</sup> See Il. Const. Art. X, § 1.

<sup>24</sup> *Id.*, (emphasis added).

<sup>25</sup> See 105 ILCS 5/10-20.5 *et seq.*

<sup>26</sup> *Id.*

<sup>27</sup> Il. Const. Art. II, § 1 is hereinafter referred to as the “separation-of-powers doctrine”.

<sup>28</sup> *Id.*, (emphasis added).

<sup>29</sup> *Hagler v. Larner*, 284 Ill. 547 (1918) (quoting *Potts v. Breen*, 167 Ill. 67, 47 N. E. 81, 39 L. RA. 152, 59 Am. St. Rep. 262; *Lawbaugh v. Board of Education*, 177 Ill. 572, 52 N. E. 850; *People v. Board of Education*, 234 Ill. 422, 84 N. E. 1046, 17 L. R. A. (N. S.) 709, 14 Ann. Cas. 943).

(a) shall **expand the Earthquake Awareness Program** and its efforts to distribute earthquake preparedness materials to schools . . . [and] [m]aintain the list of all school districts . . . at the greatest risk of damage from earthquakes . . .;<sup>30</sup> and

(b) is **authorized to make grants** to various . . . public K-12 school districts and nonpublic K-12 schools **for safety and security improvements**.<sup>31</sup>

40. It is not subject to reasonable dispute that an executive order stating public and nonpublic K-12 schools must “follow the joint guidance issued by ISBE and IDPH . . . [and] requir[e] the indoor use of face coverings”<sup>32</sup> is overbroad and that such provisions fall well outside the scope of the Gov. Pritzker’s authority under the IMEAA. Boiled down to its essence, ISBE and IDPH guidance and facial coverings do not even remotely pertain to the Illinois Earthquake Awareness Program or grant funding under any conceivable circumstance.

#### **D. OLCBS School Board Violation of Parental Rights<sup>33</sup>**

41. On or about July 21, 2021, OLCBS fulfilled its duty under 105 ILCS 5-5/10-20.5 *et seq.* without violating the fundamental right of OLCBS parents to make health-related decisions for their children and in accord with the Illinois Constitution’s separation-of-powers doctrine.

42. However, on August 23, 2021 and after receiving Dr. Ayala’s threatening letter, OLCBS reneged on its July 21 decision and passed Resolution 2122-01, in violation of the both, the separation-of-powers doctrine and the fundamental rights of OLCBS parents, such as Mr. Jones.

43. OLCBS implemented Resolution 2122-01 despite never implementing any such policy related to the common influenza—a virus responsible for more deaths in school-aged

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<sup>30</sup> See 20 ILCS 3305/5(f)(9) (emphasis added).

<sup>31</sup> *Id.* at 3305/5(g) (emphasis added).

<sup>32</sup> Executive Order 2021-18.

<sup>33</sup> All claims against OLCBS are brought exclusively by Plaintiff Scot Jones, while claims against Gov. Pritzker and Director Ayala are brought by both Plaintiffs Robert Cruz and Scot Jones.

children than COVID-19.<sup>34</sup> OLCHS passed Resolution 2122-01 without any consideration for the known negative effects posed by children wearing masks for eight hours a day.

44. While no legal basis permits OLCHS' to usurp Mr. Jones' fundamental right to make health-related decisions for his minor child, undoubtedly OLCHS' own financial interests certainly do not take priority to the rights vested in Mr. Jones under the United States Constitution.

**E: No Evidence that the Delta Variant poses an Increased Health Risk to Children Beyond the “Original” COVID-19 Strain.**

45. It is undisputed that most effective mitigation technique to reduce the spread of COVID-19 is physically distancing from one another; in the school setting, the CDC recommends three feet between students.

46. Spacing children three feet apart while seated in a classroom under a teacher's supervision is easily accomplished and, according to the CDC, prevents transmission of airborne virus particles.

47. Moreover, three (3) feet of separation between students does not pose of the negative effects associated with wearing a mask for eight hours a day.

48. Likewise, frequent hand washing, proper ventilation and voluntary vaccination all indisputably mitigate the spread of COVID-19 and, unlike masking, do not negatively impact the physical or mental wellbeing of children during school.

49. In contrast, the first randomized controlled trial evaluating the effectiveness of face masks against SARS-CoV-2 was published in November of 2020. In that study, Danish scientists and physicians evaluated 6000 individuals at the University of Copenhagen and concluded that wearing a high-quality surgical masks “did not reduce, at conventional levels of statistical significance, incident SARS-CoV-2 infection.”

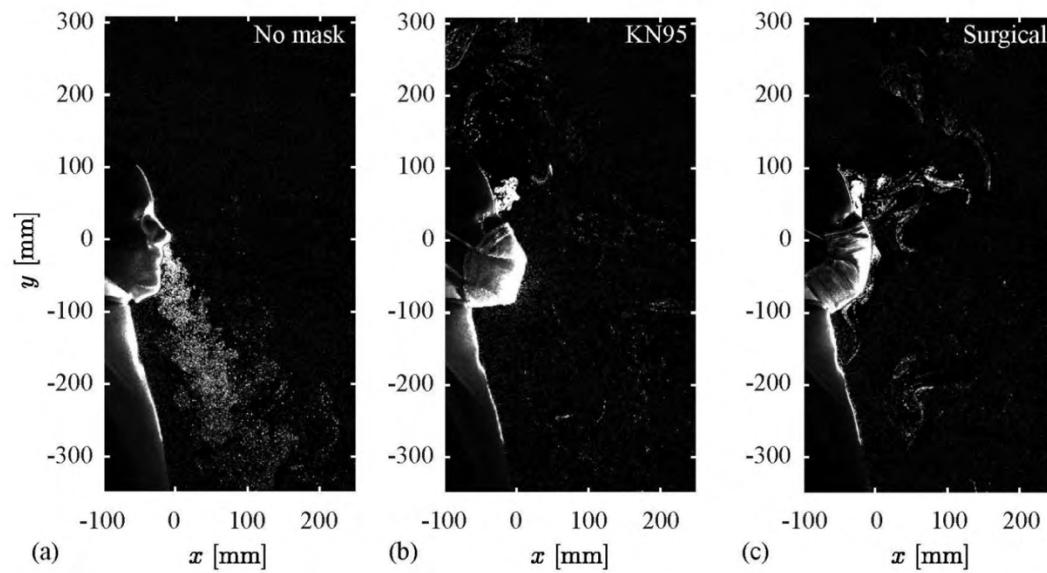
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<sup>34</sup> See, Exhibit 9.

50. A May 21, 2020 New England Journal of Medicine article noted:

We know that wearing a mask outside health care facilities offers little, if any protection from infection. Public health authorities define a significant exposure to COVID-19 as face-to-face contact within 6 feet with a patient with symptomatic COVID-19 that is sustained for at least a few minutes. . .The chance of catching COVID- 19 from a passing interaction in a public space is therefore minimal. **In many cases, the desire for widespread masking is a reflexive reaction to anxiety over the pandemic.**<sup>35</sup> (emphasis added).

51. More than a year after the New England Journal of Medicine was published, the University of Waterloo published a study<sup>36</sup> corroborating that facial coverings are effectively useless:



52. SARS-CoV-2 particles are 0.06 to 0.125 microns in size, and masks and respirators filter particles 0.3 to .8 microns in size, therefore, masks cannot serve to effectively filter and protect from COVID-19.

53. Moreover, the imposition of facemasks on children inhibits the child's ability to learn, as well as imposes serious physical and psychological harm on the child. For instance,

<sup>35</sup> Klompas, M.D. *et al.*, Universal Masking in Hospitals in the Covid-19 Era, N.E.J.M. May 21, 2020.

<sup>36</sup> See Exhibit 10.

prolonged mask wearing has been shown to reduce oxygen intake and increase carbon dioxide intake.

54. In terms of the child's education, over 60% of interpersonal communication is conveyed by non-verbal behaviors, and the forced mask mandate removes the ability of a child to learn from non-verbal behaviors and instructions from their teacher and their peers.

55. In addition, vaccines have made the COVID-19 virus less lethal, but the risk of catching and dying from COVID-19 for someone under thirty years of age, even without the vaccine, is less than .0001%.

56. A recent study funded by the National Institutes of Health and conducted by researchers from Rhode Island Hospital and Brown University found that "masks worn in public settings and in school or daycare settings may impact a range of early developing skills, such as attachment, facial processing, and socioemotional processing."<sup>37</sup>

57. A mask is akin to a medical device, such that mandating a mask on a child is akin to mandating a child wear a medical device.

58. For any medical procedure, parental consent for a minor is obtained, however, and in the context of the School Committee's mask mandate, no such consent was allowed by having the parents choose whether to require their child to wear a mask.

## **E. The Illinois General Assembly's Actions Demonstrate E.O. 85 is Unconstitutional**

### **a. H.B. 2789 – In-Person Instruction at Schools**

59. On February 19, 2021, Rep. Michelle Mussman introduced H.B. 2789 – In-Person Instruction at Schools.<sup>38</sup> The sole purpose of H.B. 2789 is to usurp the authority the ISC<sup>39</sup> vests in

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<sup>37</sup> Sean Deoni *et al.*, Impact of the COVID-19 Pandemic on Early Child Cognitive Development: Initial Findings in a Longitudinal Observational Study of Child Health, August 10, 2021.

<sup>38</sup> See Exhibit 11.

<sup>39</sup> See 105 ILCS 5/10-20.5 *et seq.*



local school boards to establish metrics to use during a public health emergency in determining if the district or institution may safely conduct in-person instruction and reassign such authority to the Illinois Department of Public Health (“IDPH”) while designating the ISBE as the enforcement agency for such would-be proposed metrics.

60. H.B. 2789 is *per se* evidence that the Illinois General Assembly is not only aware that the power to promulgate metrics to be used during a public health emergency is vested in local school boards, but that, at the time the Illinois General Assembly passed the IMEAA, the legislature **expressly declined** to vest in the executive the authority to establish metrics for schools to use during a public health emergency.

61. As of August 31, 2021, H.B. 2789 is pending in the Illinois Senate Committee on Assignments (“SCOA”).

**b. H.B. 4135 – Emergency Rulemaking**

62. On August 27, 2021, Rep. Edgar Gonzalez, Jr. introduced H.B. 4135 – Emergency Rulemaking<sup>40</sup> as an additional means to rectify Gov. Pritzker’s unlawful regulation of schools via E.O. 85 and manufacture authority and make lawful, Dr. Ayala’s *unlawful* threat to revoke school funding and state recognition.

63. To cure this unlawful threat, if passed, H.B. 4135 authorize the “State Board of Education [to] issue, refuse to issue, or revoke recognition for schools”, and *inter alia*, further:

- (1) Allows the State Board to revoke recognition for schools that fail to comply with the public health requirements;
- (2) [R]equires a nonpublic school to comply with public health requirements in provisions concerning the registration and recognition of nonpublic schools;
- (3) Prohibits a school board from passing any resolution that contravenes any of the public health requirements.

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<sup>40</sup> See Exhibit 12.

64. Working in tandem, Gov. Pritzker and Director Ayala are aware the School Provision contained in E.O. 85 is unconstitutional as it exceeds the scope of executive authority vested in the governor of the state under the IMEAA. Nevertheless, Director Ayala is steadfast in dutifully fulfilling her role as Gov. Pritzker's skivvy, even going so far as to threaten the academic futures of thousands of Illinois students as collateral by threatening to revoke State recognition for any school district that refuses violate the law in satisfaction of Gov. Pritzker's insatiable appetite for power.

65. As a result, OLCHS capitulated to the State's unlawful directives and followed en suite, passing Resolution 2122-01 in violation of OLCHS' parents' fundamental right to make medically-related decisions for their minor children.

**COUNT I**  
**VIOLATION OF SUBSTANTIVE DUE PROCESS UNDER 42 U.S.C. § 1983**  
***All Plaintiffs v. Defendants Pritzker & Ayala***  
***Plaintiff Jones v. OLCHS***

66. Plaintiffs incorporate by reference paragraphs all preceding paragraphs as if fully set forth herein.

67. The Due Process Clause of the Fourteenth Amendment guarantees Plaintiffs the fundamental liberty interest in the care, upbringing and education of their children. By extension, Plaintiffs enjoy the fundamental right to make decisions concerning the medical care of their children.

68. By enacting a blanket policy requiring mandatory masking of all children without substantive or temporal limitation, Gov. Pritzker and Dr. Ayala have infringed upon Plaintiffs' fundamental rights.

69. By enacting a blanket policy requiring mandatory masking of all children without substantive or temporal limitation, OLCCHS has infringed upon Plaintiff Jones' fundamental rights.

70. Defendant Pritzker acted under color of state law in issuing E.O. 85. *United States v. Classic*, 313 U.S. 299, 326, (1941) ("Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law"); *Screws v. United States*, 325 U.S. 91, 111, (1945) (holding that to act under "color" of law means under "pretense" of law).

71. In issuing E.O. 85, Defendant Pritzker violated Plaintiffs' fundamental right to make medically-related decisions for their own children in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

72. Defendant Ayala acted under color of state law in threatening all Illinois school superintendents to revoke funding and/or state recognition for failure to comply with E.O. 85 in her official capacity as the ISBE Director. *Classic*, 313 U.S. at 326; *Screws v. United States*, 325 U.S. at 111.

73. In threatening all Illinois school superintendents to revoke funding and/or state recognition for failure to comply with E.O. 85 in her official capacity as the ISBE Director, violated Plaintiffs' fundamental right to make medically-related decisions for their own children in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

74. Defendant OLCCHS acted under color of state law in passing Resolution 2122-01. *Classic*, 313 U.S. at 326; *Screws v. United States*, 325 U.S. at 111.

75. In passing Resolution 2122-01, OLCBS violated Plaintiff Jones' fundamental right to make medically-related decisions for his own child, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

76. Based on the scientific studies provided, voluminous alternatives to blanket mask mandates, the inefficacy of the masks themselves, and the virtually zero percent (0%) chance of COVID-19 being the cause of death for school-aged children, neither E.O. 85 nor Resolution 2122-01 are narrowly tailored. Neither policy has an end date, no exceptions exist, and the goal of stopping the spread of COVID-19 is medically impossible. To the extent that the goal of E.O. 85 and Resolution 2122-01 is to mitigate transmission of COVID-19, facial coverings are perhaps the least effective means to accomplish such an objective. Rather, mitigation of spreading COVID-19 may be accomplished by other means, such as social distancing and frequently washing their hands.

77. E.O. 85 infringes Plaintiffs' fundamental rights and Resolution 2122-01 infringes on Plaintiff Jones' fundamental rights and as a result, both E.O. 85 and Resolution 2122-01 must be subject to strict scrutiny. *Guerrero v. Ryan*, 272 Ill. App. 945, 951 (1995); *see also Troxel v. Granville*, 530 U.S. 57, 65 (2000) (Thomas, J. concurring) (agreeing with the Court's holding that strict scrutiny is the appropriate standard of review to apply as to claims alleging an infringement on "a fundamental right of parents to direct their children's upbringing."); *see, e.g., Branch v. Newsom*, No. 20-56291, 2021 WL 3124310, at \* 17 (9th Cir. July 23, 2021) ("governmental actions that infringe upon a fundamental right receive strict scrutiny.").

78. Facing public pressure, Defendants have reflexively acted to take what action ***Defendants'*** deem necessary, in ***Defendants' opinion*** as to the provision of medical care for its students. In doing so, Defendants abjectly disregard Plaintiffs' fundamental right in the care,

upbringing and education of their children, including the right to make medical care decisions for their children.

79. Defendant Prizker has infringed and deprived Plaintiffs of their fundamental rights under the United States Constitution and acted in violation of the Illinois Constitution separation-of-powers doctrine.

80. Defendant Ayala has infringed and deprived Plaintiffs of their fundamental rights under the United States Constitution and acted in violation of the Illinois Constitution separation-of-powers doctrine.

81. Defendant OLCHS has infringed and deprived Plaintiff Jones of his fundamental right under the United States Constitution.

**COUNT II**  
**PERMANENT INJUNCTION**  
***All Plaintiffs v. Defendants Pritzker & Ayala***  
***Plaintiff Jones v. All Defendants***

82. Plaintiff incorporates all preceding paragraphs by reference as if fully set forth herein.

83. Gov. Pritzker continues to weaponize the IMEAA in his latest attempt to expand the scope of unilateral control he has exercised over the State of Illinois for an unprecedented (18) consecutive months—although this time, his authoritarian expansion is halted by well-established law and the separation-of-powers doctrine.

84. While Courts in this State have grappled with the constitutionality of Gov. Pritzker’s repeated extensions of an alleged “disaster” under the IMEAA, the question as to whether public and nonpublic schools fall within the scope of what Gov. Prizker can regulate by executive fiat has yet to be addressed.

85. Under the IMEAA, the governor of the state may declare a “disaster” which *inter alia* is defined as a “public health emergency.”

86. Upon the governor of the state’s disaster proclamation, the IMEAA is triggered and IMEA is created.

87. The IMEAA vests in the governor a great number of powers; however, unless expressly stated, IMEAA does not preempt state statutes, including the Illinois School Code.

88. Under Art. II § 1 of Illinois Constitution, the executive branch is prohibited from exercising powers vested in the legislative branch.

89. The Illinois Constitution vests in the legislative branch the power to provide for an efficient system of high quality public educational institutions and services.

90. In exercising the aforesaid power, the Illinois General Assembly enacted the Illinois School Code as a means to develop a system of high-quality educational institutions and services. In doing so, the Illinois School Code *inter alia* creates local school boards and vests in them the authority to “adopt and enforce all necessary means for the management and government of the public schools of the district.”

91. At no time has the legislature enacted any statute vesting in the executive the power to “adopt and enforce all necessary means for the management and government of the public schools of the district.” This is evidenced by H.B. 2789, which is a bill *attempting* to usurp the power vested in the legislative branch and thereafter delegated to the local school boards created under the ISC.

92. While if passed, H.B. 2789 would constitutionally vest in the executive the authority to “adopt and enforce all necessary means for the management and government of the

public schools of the district”, H.B. 2789 has not been enacted nor has any other law vested such powers within the executive as of the date this action is filed.

93. Moreover, H.B. 4135 further evidences that Director Ayala does not have the authority to revoke funding or state recognition for failure to comply with provisions contained in an executive order outside the scope of the authority the Illinois General Assembly vested in Gov. Pritzker **at the time the executive order was issued.**

94. Despite not having any lawful authority vested in him as governor of the state, Gov. Pritzker nevertheless promulgated E.O. 85 which *inter alia* states that “[a]ll public and nonpublic schools in Illinois serving pre-kindergarten through 12th grade students must follow the joint guidance issued by ISBE and IDPH and take proactive measures . . . [such as] requiring the indoor use of face coverings by students, staff, and visitors. . .”.

95. Gov. Pritzker does not have the lawful authority to compel school districts to comply with the School Provision by executive fiat, even if a public health emergency is declared.

96. In issuing E.O. 85, Gov. Pritzker cites five (5) provisions of the IEMAA and the Illinois Constitution as the legal bases vesting in him the power to compel school districts to comply with the School Provision.

97. Even the most strained eyes cannot identify a viable nexus between the lawful authority to mandate the School Provision and any of the five (5) IEMAA provisions cited or the Illinois Constitution.

98. As to the five (5) IEMAA, provisions cited:

- (a) Section 7(1) pertains to suspending regulatory statutes setting forth procedures for conducting state business or rules and regulations of state agencies;
- (b) Section 7(2) authorizes use of “all available resources” as reasonably necessary to cope with a disaster;

- (c) Section 7(3) authorizes transferring the direction, personnel, or functions of State departments to facilitate or perform disaster response programs;
- (d) Section 7(8) pertains to ingress and egress from a disaster area and the movement of persons within the disaster area;
- (e) Section 7(12) authorizes the control, restriction, or regulation, allocation, or other means concerning quotas, shipment prohibitions, price fixing, or the use and sale of material commodities during a disaster; and
- (f) Section 7(19) does not authorize anything because it does not exist.

99. Accordingly, IMEAA does not vest in Gov. Pritzker any authority to mandate the School Provision.

100. In direct conflict with Gov. Pritzker's assertion, the Illinois Constitution does not vest in the executive the authority to “**provide for an efficient system of high quality public educational institutions and services**” but rather, expressly vests this power in the legislative the branch.

101. The legislative branch exercised its power to “provide for an efficient system of high quality public educational institutions and services” by enacting the Illinois School Code.

102. The Illinois School Code creates local school boards.

103. The legislature vested in the local school boards created by the Illinois School Board the authority to “adopt and enforce all necessary rules for the management and government of the public schools of their district.”

104. Any exercise of executive authority over the necessary rules for the management and government of the public schools” in this state flies directly in the face to the separation-of-powers doctrine and is *per se* unconstitutional.



105. An actual controversy exists between the parties as to Gov. Pritzker's attempt to vitiate the authority vested in local school districts by the Illinois General Assembly and compel public schools to comply with ISBE and IDPH guidance during a public health emergency.

106. An actual controversy exists between the parties as to Gov. Pritzker's attempt to vitiate the authority vested in local school districts by the Illinois General Assembly and compel nonpublic schools to comply with ISBE and IDPH guidance during a public health emergency.

107. An immediate and definitive determination is necessary to clarify the rights and interests of the Parties.

108. The mask mandate imposed by the Winslow School Board will cause Plaintiff irreparable injury.

109. Remedies, such as monetary damages are inadequate to compensate for that injury.

110. Considering the balance of the infringement of the Plaintiff's fundamental constitutional rights, a remedy in equity is warranted.

111. The public interest would not be disserved by a permanent injunction, rather the public would benefit by this Court upholding the Plaintiff's fundamental right to parent his child.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request this Honorable Court:

- A. Enter a declaratory judgment that Governor Pritzker and Dr. Ayala's acts complained of herein have violated, and continue to violate, Plaintiffs' fundamental right;
- B. Enter a declaratory judgment that OLCHS's acts complained of herein have violated, and continue to violate, Plaintiff Jones' fundamental right;
- C. Permanently enjoin Gov. Pritzker and Director Ayala from continued enforcement of the School Provision contained in E.O. 85;
- D. Permanently enjoin OLCHS from continued enforcement of Resolution 2122-01;

- E. Award reasonable costs and attorneys' fees; and
- D. Grant any other relief this Court deems just and proper.

**JURY DEMAND**

Pursuant to 735 ILCS 5/2-1105, Plaintiffs demand trial by jury on all issues so triable.

Dated: September 1, 2021

Respectfully submitted,

/S/ RICARDO "RICK" MUÑOZ

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*\*Pro Hac Vice forthcoming*

**Attorneys for Plaintiffs Robert Cruz  
and Scot Jones**

## **VERIFICATION**

Under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct except as to matters therein stated to be on information and belief, if any, and as to such matters the undersigned certifies as aforesaid that the undersigned verily believes the same to be true.

Dated: August 31, 2021

/S/ ROBERT CRUZ  
Robert Cruz

/S/ SCOT JONES  
Scot Jones

# EXHIBIT F

**Lyons Township High School Meeting: November 15, 2021**

**Minutes: 1:37 to 1:39 of Video Clip**

**Link: <https://www.youtube.com/watch?v=ibN-wEckbAA>**

Hello, my name is Rob Cruz. I was asked here by some students and some parents that are locals and go to school here. For one, I know how hard this job is cause I do it myself. I'm a school Board member down south in District 229, so I know what you're going through. I know exactly how you feel. It's a thankless job, but nonetheless, some concerns that were brought to my attention, that I have myself. One is performing or allowing certain advocacy groups on your campus and denying others. I think education is built so that two opposing sides can debate healthy in society. Right now our society is broken and we need to teach our kids how to mend it. Allowing advocacy groups and not others, I believe is a disservice to our children, especially educational ones. We are here to learn not coerce. Number two, my biggest proponent of my school board including my own, which we have opted out of sex education standard out of Washington D.C. and opted into health class, where we get rid of the books that this woman, right here, was reading that almost made me throw up in my mask. But lastly, I'm not a scientist, I don't know anything about that kind of stuff, I'm not here to pretend like I am. But I do know one thing, I do know what government overreach looks like. Which is why I sued the Governor, over his governmental reach because this Board should be able to decide what happens in school, not a guy sitting in Springfield. When it comes to whatever health decisions that you guys want to make those should be your choices, not the Governor's, this should be allowed for the people in this room to discuss it with you and reverse those. So, I actually am in federal court and I'm going to find out pretty soon, so I'll come back when we find out the answer and we can figure out where we're gonna go from there. And lastly, I offer this, I may even see some of you on Friday if you're going to this convention downtown, if we give up our freedoms for safety, we will get neither. Thank you very much.

# EXHIBIT G



[robacruzforcongress.com](http://robacruzforcongress.com) @CruzforIL

For Immediate Release

**Contact:**

**D: Scott Winslow 312.972.3929**

### **PRESS STATEMENT**

#### **CRUZ TO CHALLENGE LOCAL SCHOOL BOARD; EXPLOSION OF YOUTH SUICIDE AND CRIME CALLS FOR URGENT ACTIONS**

Rob Cruz, Candidate for Congress (R-6th) and member of District 229 School Board, plans to address the board to face the rapid increase of youth suicide and violence in his district, as well as nationally. He received several urgent calls from parents in the past few weeks. "I will be addressing the District 229 Board and the topic is the following:

We are in an unprecedented time where student cases involving mental health are up significantly not just here but in districts all across the Chicagoland area. These cases have led to double digit suicides in the last 4-5 months and have devastated families and communities alike. Schools have seen a hike in bad behavior to the point where media outlets are covering it almost on a weekly basis," he stated.

"I am deeply saddened about the state of affairs in our school systems right now and vow to defend the children first. Right now, I see kids that are confused and are lashing out. We have asked a lot of our kids lately, but they are only children and we have failed them at the local levels in my opinion," he continued. "It is time we evaluate our Covid protocols, our disciplinary measures and look to further address the mental health crisis that we are enduring in our young people. We ask all concerned parents to attend and make their voices heard," Cruz declared.

"We are afraid to speak up in fear of being canceled, I say if standing up for kids gets you canceled so be it. It's time to look inward at the local level to address these items with:"

1. Mask optional approach;
2. Increased in mental health awareness practices;
3. Increase in student discipline when it comes to fights and students who spread hate on social media.

"I swore an oath to protect the kids at all costs and make sure school is a safe place. Can we honestly say it is right now?"

Cruz is a successful small businessman from Oak Lawn who is frustrated with the direction and overreach of current elected officials. Rob seeks office only to find better solutions for public safety, education, and support of small businesses.

# EXHIBIT H





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Schools

Meet OLCBS Dist. 229 School Board Candidate Robert 'Rob' Cruz

Robert Cruz, a business owner, is one of five candidates vying for the four seats on the Oak Lawn Community High School D 229 school board.

 **Lorraine Swanson**, Patch Staff 

Posted Thu, Mar 4, 2021 at 11:07 pm CTUpdated Fri, Mar 5, 2021 at 12:58 pm CT

 Reply (1)

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Dist. 229 school board candidate Robert Cruz with his wife, Sandra, and daughter, Lola. (Courtesy of Robert Cruz)

OAK LAWN, IL —Robert "Rob" Cruz is running for the [Oak Lawn Community High School Dist. 229](#) school board in the upcoming April 6 consolidated election. Cruz, 42, is a long-time Oak Lawn resident. He is a business owner and works in construction and development. Cruz is one of five candidates, including three incumbents and two newcomers, vying for four seats on Dist. 229 Board of Education. The top four vote getters will win the election. Early voting starts March 22.

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**Your name:** Robert "Rob" Cruz

**Campaign contact email:** [info@cruz4district229.com](mailto:info@cruz4district229.com)

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**Age (as of election day):** 42

**Town/city of residence:** Oak Lawn

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**School district:** 229

**Family:** Sandra Cruz (Guerrero) and daughter Lola Cruz

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**Does anyone in your family work in politics or government? This includes any relatives who work in the government you're running for:** No

**Education:** Studied Business Administration @ University of Dubuque IA

**Occupation (please include years of experience):** Small Business owner, 16 years (Construction and Development)

**Campaign website:** [cruz4district229.com](https://cruz4district229.com)

**Previous or current elected or appointed office:** No.

**The single most pressing issue facing Dist. 229 and this is what I intend to do about it.**

Getting parents, students and staff comfortable coming back to school for full-time, in-person learning safely. I plan to create more communication within the respective groups regarding how we will monitor the safety protocols.

Additionally, I will suggest a portion of the \$3,000,000 awarded to the district be used to ensure our school is sanitized and cleaned in a fashion that suits the students, staff and parents of OLCBS.

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**What are the critical differences between you and the other candidates seeking this post?**

I have always differentiated myself through my work ethic. I have worked

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championship team. I have worked tirelessly in my professional career as a small business owner. I choose to be the hardest worker in the room

**If you are a challenger, in what way has the current board or officeholder failed the community or district?**

Recently had a property tax hike in Oak Lawn and the communication could have been better.

**Describe the other issues that define your campaign platform.**

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1. Safety in our schools as we open up full-time in-person learning
2. Keeping the property taxes at an affordable rate as COVID-19 has disrupted our economy
3. Communication with taxpayers on how the funds collected are being used.

**What accomplishments in your past would you cite as evidence you can handle this job?**

As a small business owner for 16 years I have handled adversity as market conditions in real estate have been erratic. During this time, I was diagnosed with Leukemia and withstood chemo treatment while operating my business. I have faced adversity before and can handle the ups and downs that come with this job.

**Why should voters trust you?**

Because I will put the needs of the children FIRST!

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**If you win this position, what accomplishment would make your term in office**

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**Getting our students and staff back to school safely while keeping the property taxes at current or lower levels while we recover from COVID-19.**

**What are your views on fiscal policy, government spending and the handling of taxpayer dollars in the office you are seeking?**

Policy is to only take what we need to achieve our goals while putting savings in the hard working people of Oak Lawn's hands.

**Do you support Black Lives Matter and what are your thoughts on the demonstrations held since the death of George Floyd and the shooting of Jacob Blake?**

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Protests are protected under the first amendment and I support those efforts. Riots and destructive gatherings are not and should be condemned.

**Do you think the current board has done enough to support racial equality, and if not, what specifically should be done to do so?**

I think the board has positioned itself to serve ALL students. However, while the board has been gender diverse they have not been ethnically diverse. I'm hoping to change that this year.

**What are your thoughts on the district's handling of the coronavirus pandemic? Are you in favor of remote learning, in-person learning or a hybrid of the two? Do you support a mask mandate for students and school staff, or mandatory coronavirus testing for both students and staff?**

The district's handling of the virus was done well. In the beginning of the pandemic shutting down was warranted as we knew very little about COVID-19.

~~I agreed with the questionnaire that was sent out to parents giving them a~~

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option at the current moment with a goal of full-time in-person learning in the fall. I believe students and staff should be required to wear masks while on school property.

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**When the vaccine is available to them, do you support mandatory COVID-19 vaccinations for students and staff?**

I do not believe the COVID-19 vaccine should be mandatory. I believe this decision should be left in the hands of the people and not a government mandate.

**Is there any reason you would not serve your full term of office, other than those of health or family?**

No.

**The best advice ever shared with me was \_\_\_\_\_**

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A winner never quits and a quitter never wins.

***CLARIFICATION: Five candidates are running for four open seats on the D229 board; two are newcomers, three are incumbents. Also, Patch misstated that Mr. Cruz was a graduate of OLCBS. We apologize for the error.***

***Are you a candidate running for local office? Email [lorraine.swanson@patch.com](mailto:lorraine.swanson@patch.com), and we'll send you a questionnaire and feature you on Patch.***




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# EXHIBIT I



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Politics & Government

# Rob Cruz To Formally Announce Run In IL-06 Republican Primary

Embattled D229 school board member Robert Cruz plans to formally announce his candidacy in the IL-06 GOP primary Dec. 3 at Cork and Kerry.



Lorraine Swanson, Patch Staff 

Posted Thu, Dec 2, 2021 at 2:21 am CT

 Replies (42)

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Embattled D229 school board member Robert Cruz plans to formally announce his candidacy in the IL-06 GOP primary Dec. 3 at Cork and Kerry. (Courtesy of Rob Cruz Campaign)

**OAK LAWN, IL** — Oak Lawn resident Rob Cruz is expected to formally announce his candidacy for the 6th Illinois Congressional District [at a political fundraiser](#) set for Friday, Dec. 3, at Cork and Kerry, 10614 S. Western Ave., in Chicago's Beverly neighborhood. Cruz is running for the Republican nomination in the new IL-06 in the upcoming gubernatorial primary June 28, 2022.

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"Join us, on December 3, as we hold the line with Sheriff David Clarke and our men and women in blue," the invitation said. "Now, more than ever, we need to show our support for those who work tirelessly to keep us safe. It's time for us to show them how we can support them! And we can do this by pushing through the right candidates who will get the right policies passed."

Cruz was elected to the [Oak Lawn Community High School Dist. 229](#) school board this past April. He currently has a pending lawsuit against Gov. J.B. Pritzker and the Dist. 229 school board over claims of government overreach concerning the state's face mask mandate. Cruz has had a website for his congressional and/or senatorial campaign up for the past several months as a GOP candidate in what was then the 3rd Congressional District.

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His board colleagues in Oak Lawn denounced Cruz's "unauthorized lawsuit" that mentioned his position as an elected D229 school. He's also been accused of using the Dist. 229 school board as a stepping stone to further himself in politics. Cruz withdrew his original lawsuit, that named only Pritzker and ISBE director Carmen Ayala. He's since refiled the lawsuit, dropping mention of his elected position and adding the D229 board as a plaintiff for "capitulating" when the district's financial status was threatened and to "curry favor with the governor and [Illinois State Board of Education], violating the rights of all OLCHS students and parents."

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A Joliet native, Cruz owns his own development and construction company and claims to have completed more than 400 projects. He says his company has employed hundreds of union workers since 2008. Cruz is also a cancer survivor, diagnosed with leukemia in 2011 and after a grueling four-year battle, he achieved remission.

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In 2020, Cruz co-founded the [GOP Jamboree](#), an organization dedicated to attracting younger people to the Republican Party through song and culture. He was also recruited to work on the VOTE NO campaign, a grassroots initiative that would block Illinois politicians from burdening already-stressed residents with higher tax burdens.

Speaking school board member to school board member, Cruz addressed a Lyons Township High School Dist. 204 Board of Education meeting last month, acknowledging how hard the job a board member is, calling it a "thankless job." He chastised the board for the Dist. 204 policies of allowing some advocacy groups on campus and denying others, although he did not go into specifics.

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"I think education is built so that two opposing sides can debate healthy in society," Cruz said. "Right now, our society is broken, and we need to teach our kids how to mend it. Allowing advocacy groups and not others, I believe, is a disservice to our children ... We're here to learn, not to coerce."

Cruz also called for removal of two young adult novels, "All Boys Aren't Blue," a gay coming-of-age story, and "Monday's Not Coming" about a missing middle school student, that touches on themes of bullying, race, sexual abuse, disenfranchisement and teen sexuality. Cruz told Dist. 204 board members that both books ["almost made me throw up in my face mask."](#) He cautioned the LTHS board members against following sex education standards that come out of Washington, D.C.

Cruz took aim this week at the Cook County Medical Examiner's announcement that the [county has recorded 1,009 homicides](#), the highest recorded number since 1994. More than three out of four of the county's killings this year have taken place in Chicago.

"This is a 40% increase from the pre-Covid numbers, in 2019 and a direct consequence of our elected officials setting the wrong course for our communities," Cruz said in a written statement. "Voters in Cook County must now acknowledge, it is time to elect new representatives, at all levels, particularly our States Attorney, Board President and the Mayor of Chicago."

Orland Park Mayor Keith Pekau has also announced his candidacy for the 6th Congressional District in the upcoming GOP primary.

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The newly remapped IL-06 includes all or parts of Alsip, Burr Ridge, Chicago Ridge, Clarendon Hills, Crestwood, Darien, Elmhurst, Evergreen Park, Hickory Hills, Indian Head Park, Justice, LaGrange Highlands, Oakbrook Terrace, Oak Forest, Oak Lawn, Orland Hills, Palos Heights, Palos Hills, Tinley Park, Western Springs, Willowbrook, Worth and extends north to Villa Park and west to Downers Grove. Areas near Midway Airport and a portion of Chicago's Beverly community are also part of the new district.

*~ Patch Editor David Giuliani contributed to this report*

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# EXHIBIT J



**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

ROBERT CRUZ, on behalf of his minor  
child, L.C. and SCOT JONES, on behalf  
of his minor child, D.J.,

Plaintiffs,

v.

JAY PRITZKER, in his official capacity  
as Governor, DR. CARMEN I. AYALA, in  
her official capacity as Director of the  
Illinois State Board of Education, and OAK  
LAWN COMMUNITY HIGH SCHOOL,  
DISTRICT 229 SCHOOL BOARD,

Defendants.

Case No. 21-cv-5311

Judge Sharon Johnson Coleman

**MEMORANDUM OPINION AND ORDER**

Plaintiffs Robert Cruz and Scot Jones, on behalf of their minor children, challenge Governor Jay Pritzker’s Executive Order 2021-18 (“EO21-18”), which states that all public and nonpublic K-12 schools must require “the indoor use of face coverings by students, staff, and visitors who are over age two.” Before the Court are defendants’ motions to dismiss brought pursuant to Federal Rules of Procedure 12(b)(1) and 12(b)(6). For the following reasons, the Court grants defendants’ motions.

**Background**

On July 23, 2021, pursuant to his authority under the Illinois Constitution and Section 7 of the Illinois Emergency Management Agency Act (“IEMAA”), 20 ILCS 3305/1, *et seq.*, Governor Pritzker issued a disaster proclamation for the State of Illinois. In that proclamation, the Governor noted that “despite efforts to contain COVID-19, the virus has continued to spread rapidly.” From this proclamation, Governor Pritzker issued EO21-18 on August 4, 2021, which states in relevant part:

All public and nonpublic schools in Illinois serving pre-kindergarten through 12th grade students must follow the joint guidance issued by ISBE [Illinois State Board of Education] and IDPH [Illinois Department of Health] and take proactive measures to ensure the safety of students, staff, and visitors, including, but not limited to:

- a. Requiring the indoor use of face coverings by students, staff, and visitors who are over age two and able to medically tolerate a face covering, regardless of vaccination status, consistent with CDC guidance; and
- b. Implementing other layered prevention strategies (such as physical distancing, screening testing, ventilation, handwashing and respiratory etiquette, advising individuals to stay home when sick and get tested, contact tracing in combination with appropriate quarantine and isolation, and cleaning and disinfection) to the greatest extent possible and taking into consideration factors such as community transmission, vaccination coverage, screening testing, and occurrence of outbreaks, consistent with CDC guidance.

After Governor Pritzker issued EO21-18, defendant Oak Law Community High School (“OLCHS”) District 229 School Board passed resolution 2122-01, which states in relevant part:

“WHEREAS, the Board of Education of OLCHS will follow the directives and suggestions from the professionals at the IDPH, as well as the ISBE, and the mandates and orders from the Governor of Illinois; and

WHEREAS, the Board of Education of OLCHS is resolved to open school safely and be in compliance with the suggestions and directives of all state agencies.

...

Section 2. All directives from the ISBE, IDPH, and the Governor will be followed by the District 229 Board, Superintendent, and staff.

In short, the District 229 School Board complied with the directives of the IDPH and ISBE, and Governor Pritzker’s executive order when enacting resolution 2122-01.

Cruz is the father of a minor child, who is enrolled in an Illinois public school, and Jones is a father of a minor child, who is enrolled at OLCHS. Plaintiffs argue that EO21-18 violates the substantive due process clause of the Fourteenth Amendment. More specifically, plaintiffs contend that by issuing EO21-18 and resolution 2122-01, defendants Governor Pritzker, ISBE Director Carmen Ayala, and the District 229 School Board violated their fundamental liberty interest in the

care, custody, education, and control of their children. Plaintiffs also contend that Governor Pritzker exceed his authority under the Illinois Constitution and IEMAA, 20 ILCS 3305, *et seq.*, by issuing EO21-18.

### **Legal Standards**

A motion to dismiss pursuant to Rule 12(b)(6) for failure to state a claim tests the sufficiency of the complaint, not its merits. *Skinner v. Switzer*, 562 U.S. 521, 529, 131 S.Ct. 1289, 179 L.Ed.2d 233 (2011). When considering dismissal of a complaint, the Court accepts all well-pleaded factual allegations as true and draws all reasonable inferences in favor of the plaintiff. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007) (per curiam). To survive a motion to dismiss, the plaintiff must “state a claim for relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). A complaint is facially plausible when the plaintiff alleges enough “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009).

A Rule 12(b)(1) motion challenges federal jurisdiction, and the party invoking jurisdiction bears the burden of establishing the elements necessary for subject matter jurisdiction, including standing. *Thornley v. Clearview AI, Inc.*, 984 F.3d 1241, 1244 (7th Cir. 2021); *International Union of Operating Eng’rs v. Daley*, 983 F.3d 287, 294 (7th Cir. 2020). Under Rule 12(b)(1), the Court accepts all well-pleaded factual allegations as true and construes all reasonable inferences in the plaintiffs’ favor when a defendant has facially attacked standing. *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 2 F.4th 1002, 1007 (7th Cir. 2021).

### **Discussion**

#### *Substantive Due Process*

The Court first turns to plaintiffs’ substantive due process claim as alleged in Count I of

their complaint. As stated, plaintiffs allege that EO21-18 and District 299's adoption of this executive order contravenes the substantive due process clause by violating their fundamental liberty interest in the "care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000); *see also Washington v. Glucksberg*, 521 U.S. 702, 720, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997) (a fundamental right exists "to direct the education and upbringing of one's children"). In essence, plaintiffs argue that their liberty interest in raising their children and making medically-related decisions for them extends to the context of mask mandates during the COVID-19 global pandemic. "To allege a viable substantive due process claim, [plaintiffs] would need to allege conduct under color of state law that 'violated a fundamental right or liberty' and was so 'arbitrary and irrational' as to 'shock the conscience.'" *Nelson v. City of Chicago*, 992 F.3d 599, 604 (7th Cir. 2021); *see also Campos v. Cook County*, 932 F.3d 972, 975 (7th Cir. 2019) ("Substantive due process protects against only the most egregious and outrageous government action.").

Here, plaintiffs have failed to plausibly allege that the mask mandate in schools, which was enacted to prevent the spread of the deadly coronavirus among students, teachers, faculty, and visitors, is so egregious and outrageous as to shock the conscience. Indeed, the Court would be hard-pressed to conclude that the Governor's executive order, which is intended to save lives during an ongoing public health crisis that has taken at least 800,000 American lives, amounts to egregious or outrageous conduct. The Court is not alone in this conclusion. *See Lipman v. Cortes-Vazquez*, No. 21-CV-4631, 2021 WL 5827129, at \*2 (S.D.N.Y. Dec. 7, 2021) (collecting cases); *Lloyd v. School Bd. of Palm Beach County*, No. 21-cv-81715, 2021 WL 5353879, at 8-9 (S.D. Fla. Oct. 29, 2021) (collecting cases); *Case v. Ivey*, No. 20-cv-0777, 2021 WL 2210589, at \*22 (M.D. Ala. June 1, 2021); *see also Parker v. Wolf*, 506 F.Supp.3d 271, 291 n.20 (M.D. Pa. 2020) (mask mandate and tracing program, "at worst, [are] minor and fleeting inconveniences, especially when compared to the widespread infectiousness and death that Defendants credibly seek to avoid through these two orders.").

In response, plaintiffs do not address defendants' arguments based on controlling case law that substantive due process requires government action that is so arbitrary and egregious that it "shocks the conscience." *See Geinosky v. City of Chicago*, 675 F.3d 743, 750 (7th Cir. 2012) (substantive due process "claims must meet a high standard, even when the alleged conduct was abhorrent, to avoid constitutionalizing every tort committed by a public employee."). Rather, plaintiffs reiterate certain allegations from their complaint. In the end, plaintiffs have failed to adequately allege that the mask mandate for Illinois' K-12 schools "shocks the conscience." The Court therefore grants defendants' motions to dismiss this claim.

### *Article III Standing*

In addition, defendants argue that plaintiffs do not have Article III standing to challenge EO21-18 and District 299's adoption of that executive order. "Article III of the Constitution limits the federal judicial power to deciding 'Cases' and 'Controversies'" and "as an essential part of a federal court's authority under Article III, [the] standing doctrine ensures respect for these jurisdictional bounds." *Prairie Rivers Network*, 2 F.4th at 1007. To establish standing under Article III, plaintiffs must show: (1) they suffered an injury-in-fact; (2) that is fairly traceable to the defendants' conduct; and (3) that is likely to be redressed by a favorable judicial decision. *Protect Our Parks, Inc. v. Chicago Park Dist.*, 971 F.3d 722, 729 (7th Cir. 2020) (Barrett, J.).

Defendants maintain that plaintiffs have not fulfilled the injury-in-fact component of Article III standing, which requires that the harm be "concrete and particularized" and "actual or imminent." *Prosser v. Becerra*, 2 F.4th 708, 713 (7th Cir. 2021). In response, plaintiffs assert that they have stated an injury-in-fact because "there is perhaps no greater of a personal and individualized impact on a person than having an intermeddler affect a parents' relationship with his or her child." Put differently, plaintiffs assert that the loss of their constitutionally protected liberty interest fulfills the injury-in-fact requirement of Article III standing. As explained above, however, plaintiffs have

failed to plausibly allege their substantive due process claim. Indeed, the Governor’s executive order, and District 299’s adoption of it, are not arbitrary and egregious under the circumstances of the worldwide Covid-19 pandemic, including last month’s discovery of the Omicron variant.<sup>1</sup> Last, plaintiffs’ injury-in-fact allegations fail to assert a particularized injury that affects them “in a personal and individual way,” but instead they allege a “generalized grievance” shared by all parents of K-12 school children in Illinois. *See Fox v. Dakota Integrated Sys., LLC*, 980 F.3d 1146, 1152 (7th Cir. 2020). Accordingly, plaintiffs do not have standing to bring their claims against defendants.

#### *Governor Pritzker’s Emergency Powers*

Although plaintiffs do not have Article III standing to bring their claims in federal court, the Court addresses plaintiffs’ request for injunctive relief as alleged in Count II for the sake of completeness. In Count II, plaintiffs seek injunctive relief arguing that Governor Pritzker exceeded the emergency powers granted to him under the Illinois Constitution and IEMAA when he enacted EO21-18. Because the “Eleventh Amendment immunizes state officers from federal injunctions based on state law,” plaintiffs cannot seek to enjoin Governor Pritzker for allegedly misusing his emergency powers. *Cassell v. Snyders*, 990 F.3d 539, 551 (7th Cir. 2021); *see also Troogstad v. City of Chicago*, No. 21 C 5600, 2021 WL 5505542, at \*9 (N.D. Ill. Nov. 24, 2021) (Lee, J.). The Court thus dismisses Count II.

#### **Conclusion**

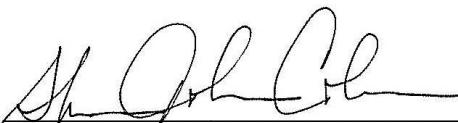
For these reasons, the Court grants defendants’ motions to dismiss brought pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) [11, 14]. Plaintiff’s motion for a preliminary injunction [8] and defendants’ motion to exclude the testimony of Dr. Thomas Tarter [20] are stricken as moot. Civil case terminated.

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<sup>1</sup> The first case of the Omicron variant was discovered in Chicago, Illinois on December 7, 2021. *See* <https://news.wttw.com/2021/12/07/omicron-variant-detected-chicago-officials-announce>

IT IS SO ORDERED.

Date: 12/14/2021

Entered:   
SHARON JOHNSON COLEMAN  
United States District Judge