

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF LOUDOUN

KRISTEN BARNETT, HEATHER YESCAVAGE, and )  
COLIN DONIGER, )

*Plaintiffs,* )

THE COMMONWEALTH OF VIRGINIA, )  
by GLENN A. YOUNGKIN, Governor of Virginia, )  
JASON S. MIYARES, Attorney General of Virginia, and )  
JILLIAN BALOW, Superintendent of Public Instruction, )

Case No. 22-546

*Plaintiff-Intervenor,* )

v. )

LOUDOUN COUNTY SCHOOL BOARD, )

*Defendant.* )

**MOTION FOR LEAVE TO INTERVENE BY INTERVENOR-PLAINTIFF**  
**THE COMMONWEALTH OF VIRGINIA**

Pursuant to Virginia Supreme Court Rule 3:14, Plaintiff-Intervenor the Commonwealth of Virginia, by its Governor, Glenn A. Youngkin, by and with the advice of its Attorney General, Jason S. Miyares, and by its Superintendent of Public Instruction, Jillian Balow, respectfully moves for leave to intervene in this action as a plaintiff and to file the enclosed Complaint, Motion for Temporary Injunction, and Motion for Temporary Restraining Order. In support whereof, the Commonwealth states as follows:

**INTRODUCTION AND BACKGROUND**

1. In its complaint in intervention the Commonwealth of Virginia demands declaratory and injunctive relief against the Loudoun County School Board (the “School Board”) and seeks an order requiring the School Board to rescind its universal mask mandate and comply with Executive Order 2 (“EO 2”).

2. On May 14, 2021, then-Governor Ralph S. Northam and the State Health Commissioner issued Executive Order 79 (2021) and Order of Public Health Emergency Ten (“EO 79”). EO 79 provided, among other things, that “[a]ll students, teachers, staff, and visitors must wear a mask over their nose and mouth while on school property . . . .” EO 79, at 3. It became effective on May 28, 2021 and was to “remain in full force and effect until amended or rescinded by further executive order.” EO 79, at 4.

3. In compliance with the orders, the School Board required “students and staff to wear masks for indoor activities” during the 2021–22 school year. Loudoun County Public Schools, *2021–22 Return to School Planning* (Aug. 2, 2021), <https://tinyurl.com/2p8bk43c>.

4. Shortly after taking office on January 15, 2022, Governor Youngkin exercised his authority under Code § 44-146.17 to issue EO 2, directing the State Health Commissioner to “terminate . . . Public Health Emergency Order Ten,” and restoring to parents the authority to “elect for their children not to be subject to any mask mandate in effect at the child’s school or educational program.” EO 2, at 3. The Governor provided that, at the discretion of their parents, children “should not be required to wear a mask under any policy implemented by a teacher, school, school district, the Department of Education, or any other state authority.” *Id.* EO 2 is attached hereto as **Exhibit A**.

5. EO 2 became effective and Order of Public Health Emergency Ten was terminated at 12:00 a.m. on Monday, January 24, 2022. *See* EO 2, at 3.

6. After the Governor issued EO 2 but before it became effective on January 24, the School Board voted to “continue the current mitigation efforts, including the mask mandate within LCPS.” Loudoun County Public Schools, *Superintendent’s COVID-19 Mitigation Update 1.19.22* (Jan. 19, 2022), <https://tinyurl.com/2p8nmezj>. The School Board apparently felt it needed to

“comply with” state legislation which, according to the Board, “requires school boards to adhere to mitigation procedures, like mask[ ]wearing, to the extent practicable as recommended by the Centers for Disease Control (CDC).” *Id*; see Senate Bill 1303, 2021 Acts ch. 456 (Spec. Sess. I) (“S.B. 1303”) (directing school boards to “provide . . . in-person instruction in a manner in which it adheres, to the maximum extent practicable, to any currently applicable mitigation strategies for early childhood care and education programs and elementary and secondary schools to reduce the transmission of COVID-19 that have been provided by the federal Centers for Disease Control and Prevention.”).

7. On January 28, 2022, multiple of the School Board’s schools sent letters to parents advising them that “students who willfully continue to refuse to [wear a mask] as required by Loudoun County Public Schools will be suspended from school,” and that “[a] student who is suspended because of non-compliance with [the mask mandate] may return to school only when they agree to [wear a mask] throughout the entire school day and at all indoor school-related events.” *See, e.g.*, Parent Plaintiffs’ Complaint ¶ 54 (filed Feb. 1, 2022) (“Plaintiffs’ Compl.”) (second alteration in original).

8. Even before issuing that threat, the School Board permanently expelled a fifth-grade student for refusing to wear a mask. Luke Rosiak, *Standoff in Virginia As Schools Defy Governor’s Order Making Masks Optional*, Daily Wire (Jan. 24, 2022), <https://tinyurl.com/3r74v49c>.

9. On February 1, 2022, Plaintiffs Kristen Barnett, Heather Yescavage, and Colin Doniger (collectively, “Plaintiff Parents”) filed this action on behalf of themselves and their minor children, who are elementary students in Loudoun County Public Schools. Plaintiffs’ Compl. ¶¶ 1–3. The School Board has “directly interfered with the rights of each parent here . . . to make

educational decisions for their children,” who would “attend their respective Loudoun County Public Schools mask-free if it were not for the [School Board’s] Mandate.” Plaintiffs’ Compl. ¶ 56.

10. Each of the Plaintiff Parents’ children has been refused an in-person education after arriving at school without a mask, in accordance with their parents’ wishes and in reliance on EO 2. Plaintiffs’ Compl. ¶¶ 61, 71, 77. Each of the Plaintiff Parents has observed adverse physical and mental health effects stemming from long periods of forced mask wearing in school. *Id.* ¶¶ 58, 67, 75.

11. Plaintiff Parents allege that the School Board’s interference with their rights to direct their children’s care and education violates EO 2, S.B. 1303, and the Virginia Code, including Section 22.1-87, which prohibits the School Board from taking arbitrary and capricious action. Plaintiffs’ Compl. ¶ 83, 88, 94, 97–98.

12. Upon learning that the School Board refused to comply with EO 2, Governor Youngkin concluded that intervention in this matter is necessary to enforce EO 2 and to preserve the legal rights of the Plaintiff Parents and all Loudoun County parents to make decisions about their children’s education.

13. Counsel for the Commonwealth has conferred with Plaintiff Parents’ counsel, and Plaintiff Parents’ counsel have consented to this motion. Counsel for the Commonwealth has not conferred with defendant’s counsel on this motion because defendant’s counsel have not yet appeared in this suit. Consistent with Virginia Supreme Court Rule 4:15, counsel for the Commonwealth will take reasonable steps to confer with defendant’s counsel when they appear. If counsel are unable to resolve the subject of this motion after conferring, the Commonwealth requests a hearing on this motion to intervene at the earliest possible opportunity.

## ARGUMENT

14. Rule 3:14 provides that “[a] new party may by leave of court file a pleading to intervene as a plaintiff or defendant to assert any claim or defense germane to the subject matter of the proceeding.” Va. R. Sup. Ct. 3:14. The decision to grant leave to intervene is “within the discretion of the trial court.” *Hudson v. Jarrett*, 269 Va. 24, 33 (2005).

15. The Supreme Court has explained that Rule 3:14’s germaneness requirement means that a stranger to a suit “must ‘assert some right involved in the suit’” in order to become a party by intervention. *Layton v. Seawall Enters.*, 231 Va. 402, 406 (1986) (quoting William Minor Lile, *Lile’s Equity Pleading and Practice* 91 (3rd ed. 1952)); see *Hudson*, 269 Va. at 34 (“The Rule’s history includes a strong adherence to limiting intervention to those parties who are legitimately plaintiffs or defendants in litigation because the nature of their claim includes some right that is involved in the litigation.”).

16. In addition, a statute can authorize intervention in certain circumstances. See, e.g., *Commonwealth ex rel. Fair Hous. Bd. v. Windsor Plaza Condo. Ass’n*, 289 Va. 34, 63 (2014) (recognizing that Code § 36-96.16 permits intervention as a matter of right in certain housing discrimination cases). The Governor has a statutory right (indeed, a duty) to intervene to ensure the protection of the health and safety of Virginians and to preserve Virginia parents’ rights to direct the education of their children.

17. Section 2.2-111 of the Code of Virginia provides that “to protect or preserve the interests or legal rights of the Commonwealth and its citizens, the Governor may . . . institute any action . . . in the name of the Commonwealth” in an appropriate court. Code § 2.2-111(A). The statute further authorizes the Governor to institute an action “in the name of the Commonwealth acting in its capacity as *parens patriae* where he has determined that existing legal procedures fail

to adequately protect existing legal rights and interests of such citizens.” *Id.* § 2.2-111(B); *cf. Gilmore v. Finn*, 259 Va. 448, 467 (2000) (observing that Code § 2.2-111 “clearly acknowledges the Governor’s duty, rather than a mere right, to protect the general welfare of all citizens of the Commonwealth”). This statute authorizes the Commonwealth’s intervention to file a complaint in this matter.

18. The Governor has concluded that EO 2 is a necessary measure to protect public health, safety, and welfare during the COVID-19 emergency, in particular the health and safety of children, *see Knox v. Lynchburg Div. of Soc. Servs.*, 223 Va. 213, 223 (1982) (“[T]he protection of children from harm, whether moral, emotional, mental, or physical, is a valid and compelling state interest.”). He brings this suit to protect the health and safety of all Virginians. He also brings this suit to protect the fundamental right of every Virginia child to an education, *see Scott v. Commonwealth*, 247 Va. 379, 386 (1994), and the fundamental right “of parents and guardians to direct the upbringing and education of [their] children,” *Pierce v. Soc’y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534 (1925); *see also Prince v. Massachusetts*, 321 U.S. 158, 166 (“[T]he custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.”); Va. Code §1-240.1.

19. The Governor has a duty to protect the rights of parents to guide the care and education of their children, as recognized by the Virginia Supreme Court. *See Williams v. Williams*, 256 Va. 19, 21 (1998) (agreeing with the appellate court’s conclusion “that the right of parents in raising their child is a fundamental right protected by the Fourteenth Amendment”); *Hawkins v. Grese*, 68 Va. App. 462, 471 (2018) (“[T]his Court has held that ‘the parents’ right to autonomy in child rearing is a fundamental right protected by the Fourteenth Amendment of the United States

Constitution and that state interference with that right must be justified by a compelling state interest” (quoting *Williams v. Williams*, 24 Va. App. 778, 780 (1997)). The Governor has a duty to intervene in this action in order “to protect . . . the interests” of the Commonwealth’s parents in the education and healthcare of their children. *See* Code § 2.2-111.

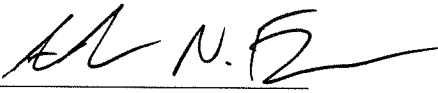
20. Further, the School Board willfully defied a lawful order from the Governor, opting instead to compromise the health and welfare of the Commonwealth’s children via adherence to a defunct order, and to interfere with both the Governor’s duty to manage an ongoing emergency and parents’ rights to have a say in how their children are cared for and educated.

21. Although Rule 3:14 does not explicitly address cases in which the Commonwealth seeks leave to intervene to defend a law, the Commonwealth’s interest in doing so in federal court is explicitly recognized. *See* 28 U.S.C. § 2403(b) (directing courts to permit a State to intervene to defend state laws when their constitutionality is questioned in cases to which the State is not a party). This same interest has been recognized in the Virginia courts. *See In re Multi-Cir. Episcopal Church Prop. Litig.*, 76 Va. Cir. 942, 943 (Fairfax 2008) (granting leave to the Attorney General to intervene to defend the constitutionality of a Virginia statute).

WHEREFORE, Plaintiff-Intervenor the Commonwealth of Virginia respectfully requests that this Court grant it leave to intervene as a plaintiff in this matter, to file the enclosed Complaint and Motion for Temporary Injunction, and to grant such other relief as the Court deems appropriate.

Respectfully submitted,

THE COMMONWEALTH OF VIRGINIA,  
by GLENN A. YOUNGKIN, Governor,  
JASON S. MIYARES, Attorney General and JILLIAN  
BALOW, Superintendent of Public Instruction,

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KRISTEN BARNETT, HEATHER YESCAVAGE, and	)	
COLIN DONIGER,	)	
	)	
<i>Plaintiffs,</i>	)	
	)	
THE COMMONWEALTH OF VIRGINIA,	)	Case No. 22-546
by GLENN A. YOUNGKIN, Governor of Virginia,	)	
JASON S. MIYARES, Attorney General of Virginia, and	)	
JILLIAN BALOW, Superintendent of Public Instruction,	)	
	)	
<i>Plaintiff-Intervenor,</i>	)	
	)	
v.	)	
	)	
LOUDOUN COUNTY SCHOOL BOARD,	)	
	)	
<i>Defendant.</i>	)	

**COMPLAINT IN INTERVENTION**  
**FOR DECLARATORY AND INJUNCTIVE RELIEF**

COMES NOW Plaintiff-Intervenor the Commonwealth of Virginia, by its Governor, Glenn A. Youngkin, by and with the advice of its Attorney General, Jason S. Miyares, and by its Superintendent of Public Instruction, Jillian Balow, with its Complaint in Intervention against Defendant the Loudoun County School Board and states as follows:

**INTRODUCTION**

1. The COVID-19 pandemic has posed a significant public health challenge in Virginia’s public schools. State and local officials have struggled to balance the critical importance of in-person education and the fundamental right of all parents to direct the upbringing, care, and education of their children, *see* Code § 1-240.1, against mitigating the transmission of the virus.

2. The General Assembly in the Virginia Emergency Services and Disaster Law of 2000 (“VESDL”) conferred on the Governor of the Commonwealth broad authority to issue

executive orders which “may, in his judgment, be necessary” to address emergencies like COVID-19. Code § 44-146.17(1).

3. The General Assembly has also conferred on the Board of Health the power to “make separate orders and regulations to meet any emergency, not provided for by general regulations, for the purpose of suppressing nuisances dangerous to the public health and communicable, contagious and infectious diseases and other dangers to the public life and health.” Code § 32.1-13.

4. Over the course of the pandemic, former Governor Ralph Northam invoked this authority to impose massive restrictions on commerce and education in an attempt to mitigate the transmission of COVID-19. These measures included:

- a. Terminating in-person education in every school district in the Commonwealth of Virginia, Executive Order 53 (as amended);
- b. Closing so-called “non-essential” businesses, *id.*;
- c. Ordering Virginians to remain in their homes except for a small number of approved reasons, Executive Order 55 (as amended);
- d. Ordering all Virginians ten and older to wear masks in nearly all public settings, Executive Order 63; and,
- e. Ordering all schools to impose mandatory mask mandates, Executive Order 79.

5. On January 15, 2022, Governor Youngkin similarly invoked the powers conferred on him by the VESDL to adjust mitigation measures in light of new data about COVID-19 and the effectiveness of previous mitigation measures, and to protect each parent’s “fundamental right to

make decisions concerning the upbringing, education, and care of the parent’s child.” Code § 1-240.1.

6. In Executive Order 2 (“EO 2”), Governor Youngkin rescinded the former Governor’s order imposing mandatory masking in public schools, and ordered that “[t]he parents of any child enrolled in a elementary or secondary school or a school based early childcare and educational program may elect for their children not to be subject to any mask mandate in effect at the child’s school or educational program.” EO 2 ¶ 2 (attached as **Exhibit A**).

7. The order did not terminate local school mask requirements. It provided only that parents have a right to decide whether their children will wear a mask, and that no school could deny an in-person education to a child on the basis of his or her parent’s decision regarding masking.

8. Loudoun County School Board has elected to defy EO 2 and has refused to permit children to obtain an in-person education if their parents have decided that they will not wear a mask.

9. Loudoun County School Board’s decisions are deeply unfair to children whose parents have made that election, and violate Senate Bill 1303 (2021 Acts of Assembly, Spec. Sess. I, Ch. 456) (“S.B. 1303”), which requires schools to provide “in-person instruction to each student enrolled in the local school division in a public elementary and secondary school . . . .”

10. Governor Youngkin, has the authority, by and with the advice of the Attorney General, to “institute any action, suit, motion or other proceeding, in the name of the Commonwealth” in order “to protect or preserve the interests or legal rights of the Commonwealth and its citizens,” Code § 2.2-111(A), and the authority to bring suit “in the name of the Commonwealth acting in its capacity as *parens patriae*,” *id.* § 2.2-111(B). The Commonwealth of Virginia therefore brings this

action for an injunction ordering Defendant to comply with EO 2 by admitting unmasked children to in-person schooling in the same manner as children who are masked, and for a declaration that EO 2 was lawful and that denying unmasked children an in-person education is unlawful.

## **PARTIES**

11. The Commonwealth brings this suit on its own behalf and acting as *parens patriae* pursuant to Code § 2.2-111. It does so because the Governor has determined that the suit is necessary to protect the interest of children in receiving an in-person education as required by law, S.B. 1303, and to protect each parent’s “fundamental right to make decisions concerning the upbringing, education, and care of the parent’s child.” Code § 1-240.1. He has concluded that existing legal procedures fail to protect these rights and interests.

12. Loudoun County School Board is a school board that has refused to comply with EO 2 and is denying in-person instruction to any student who does not wear a mask.

## **JURISDICTION AND VENUE**

13. This Court has jurisdiction to grant the requested relief. *See* Code § 8.01-184 (declaratory judgment); Code § 8.01-620 (injunction).

14. Venue is proper in this Court. Code § 8.01-261(1)(b)(2); *see also* Code § 8.01-185.

15. The Governor has standing to maintain this Complaint on behalf of the Commonwealth under Code § 2.2-111. *See Gilmore v. Finn*, 259 Va. 448, 464 (2000).

## **BACKGROUND**

### **A. Statutory Background**

16. The General Assembly enacted the VESDL “to confer upon the Governor ... emergency powers” to “protect the public peace, health, and safety, and to preserve the lives and

property and economic well-being of the people of the Commonwealth” during times of disaster or emergency. Code § 44-146.14(a), (a)(2).

17. The VESDL expressly authorizes the Governor “[t]o proclaim and publish such rules and regulations and to issue such orders as may, in his judgment, be necessary to accomplish the purposes of” the VESDL. *Id.* § 44-146.17(1).

18. It further provides that “Executive orders ... shall have the force and effect of law.” *Id.*

### **B. Use of VESDL Powers During the COVID-19 Pandemic**

19. In response to the arrival of COVID-19 from China, former Governor Northam issued Executive Order 51 on March 12, 2020. (Attached as **Exhibit B**.) That order announced that the “anticipated effects of COVID-19 constitute a disaster” and declared an emergency under the VESDL. EO 51.

20. Following that declaration of emergency, Governor Northam invoked his emergency authority under the VESDL to order sweeping measures which, in his judgment, were necessary to reduce transmission of COVID-19.

21. For instance, on March 23, 2020, Governor Northam issued Executive Order 53, which banned gatherings of 10 or more people; required food and beverage establishments to close their dine-in areas; and shuttered theaters, concert venues, museums, gyms, barbershops/salons, bowling alleys, indoor entertainment businesses, and social clubs. (Attached as **Exhibit C**.) Violators of Executive Order 53 could be charged with a Class 1 misdemeanor.

22. On March 30, 2020, Governor Northam issued Executive Order 55, which forbade Virginians from leaving their homes for any other than a small number of enumerated reasons, closed all public beaches except for fishing and exercising, and ordered campgrounds to stop

taking reservations for overnight stays less than 14 days. (Attached as **Exhibit D.**) Violators of Executive Order 55 could be charged with a Class 1 misdemeanor.

23. On May 26, 2020, Governor Northam issued Executive Order 63, which ordered all Virginians to wear masks in any indoor place shared by groups of people in close proximity to each other, apart from private residences. (Attached as **Exhibit E.**) Violators of Executive Order 63 could be charged with a Class 1 misdemeanor.

24. On June 30, 2020, Governor Northam issued Executive Order 67, which, *inter alia*, restricted religious services by requiring non-family members to sit six feet apart and mandated single-serving containers for food and drink. (Attached as **Exhibit F.**) Violators of Executive Order 67 could be charged with a Class 1 misdemeanor.

25. On December 10, 2020, Governor Northam issued Executive Order 72, which, *inter alia*, imposed a curfew on Virginians between the hours of 12:00 a.m. and 5:00 a.m. during the holiday season (Attached as **Exhibit G.**)

### **C. COVID-19 and Schools**

26. Governor Northam also invoked his emergency authority under the VESDL to regulate education during the pandemic.

27. Former Governor Northam announced on March 23, 2020 that schools in the Commonwealth would remain closed for the rest of that academic year.

28. The former Governor then announced on June 9, 2020 that schools in Virginia would open for students the next academic year.

29. Even so, by September of 2020 only 10 of the 132 school divisions in Virginia returned to “In Person” instructional schedules for the 2020–2021 academic year, while a large majority of divisions returned to some sort of hybrid or remote schooling. Virginia Dep’t of Educ.,

2020–2021 Operating Status: Virginia’s Return to School Instructional Schedules School Year 2020–2021, <https://tinyurl.com/mpd69n3b> (September 8 data).

30. The remainder adopted a “Partial in Person” model where some students, “usually the younger grades,” attended school at least four days in person while “all other students” attended hybrid or remote school. *Id.*

31. Fairfax County Public Schools, for example, as of November 2020, “ha[d] been mostly online since March.” Hannah Natanson, *Failing grades spike in Virginia’s largest school system as online learning gap emerges nationwide*, Washington Post (Nov. 24, 2020), <https://tinyurl.com/mrxem3fc> (explaining that in November 2020, Fairfax County Superintendent of Schools Scott Brabrand “announced that nearly 3,000 more students—elementary-schoolers and high school students taking career and technical classes—would return to online-only instruction”).

32. Loudoun County School Board also voted in July 2020 to begin the school year with “all-virtual” learning “with no in-person instruction” with the intention to “proceed with implementing the [previously endorsed] hybrid model in stages.” Mark Hand, *Loudoun School Board Votes To Implement All-Virtual Start In Fall*, Patch (Jul. 21, 2020), <https://tinyurl.com/ms994vja>.

33. Multiple school systems in Virginia, including in Loudoun County, refused to re-open or remain open during that academic year. *E.g.*, Will Vitka, *Shortages prompt Loudoun Co. schools remote learning days*, wtop news (Oct. 13, 2021), <https://tinyurl.com/3trspnat> (explaining that an “ongoing shortage of classroom and transportation substitutes ha[d] prompted the system to shift two school days to virtual learning” (quotation marks omitted)); Hannah Natanson, *Fairfax*

*delays in-person instruction as Virginia teachers' groups ask Northam to return state to all-virtual school*, Washington Post (Nov. 16, 2020), <https://tinyurl.com/yh5smvmj>.

34. Loudoun County Public Schools announced in December 2020, for example, that it “w[ould] return all students to online learning, a reversal that affect[ed] roughly 18,000 children who had gone back to school buildings over the past few months” even though “it d[id] not appear that Loudoun’s reopened school buildings functioned as superspreader sites” and the Virginia Department of Health had recently reported “that Loudoun County was witnessing no coronavirus outbreaks inside schools.” Hannah Natanson, *In sudden switch, Loudoun County is returning all students to online learning*, Washington Post (Dec. 10, 2020), <https://tinyurl.com/4a8rmpju> (explaining that some of those students had “benefited from almost a full semester of face-to-face instruction” before that decision but others “ha[d] been back in classrooms for only about a week”); *id.* (explaining that despite the reported positive COVID-19 cases among staff and children since September 8 of that year, “it is thought to be unlikely that th[o]se cases developed or spread inside school buildings”).

35. Since the beginning of the pandemic, experts had warned that “remote schooling would take a serious academic toll on children.” Hannah Natanson, *Failing grades spike in Virginia’s largest school system as online learning gap emerges nationwide*, Washington Post (Nov. 24, 2020), <https://tinyurl.com/mrxem3fc>.

36. The reliance on online schooling during this time unsurprisingly “forc[ed] a striking drop in students’ academic performance” in one major Virginia school district; internal analysis, for example, revealed that middle school and high school students in that public school system “earning F’s in at least two classes jumped by 83 percent” between the 2019–2020 school year and the 2020–2021 school year. *Id.* (emphasis added) (explaining that “[h]istorically low-performing



students are seeing an explosion of C's, D's and F's this semester, far more than would have been expected based on their pattern of achievement in past years”).

37. That trend occurred nationally in school districts outside of Virginia including in Texas and Minnesota, *id.*; “vulnerable students” and younger students “especially . . . have paid a heavy price in lost learning,” L. Chen, et al., *Teacher survey: Learning loss is global—and significant*, McKinsey & Company (Mar. 1, 2021), <https://tinyurl.com/ytsuknt3>. See also Verlenden, et al., *Association of Children’s Mode of School Instruction with Child and Parent Experiences and Well-Being During the COVID-19 Pandemic — COVID Experiences Survey, United States, October 8–November 13, 2020*, Centers for Disease Control and Prevention (Mar. 19, 2021), <https://tinyurl.com/2p8f6csp>; Hannah Natanson, *Failing grades spike in Virginia’s largest school system as online learning gap emerges nationwide*, Washington Post (Nov. 24, 2020), <https://tinyurl.com/mrxem3fc> (explaining, for example, that the percentage of middle-schoolers receiving at least two F’s quadrupled, the percentage of those with disabilities earning at least two F’s more than doubled, and that “Hispanic students were most affected”).

38. “[F]or Loudoun County students,” test scores similarly “indicate[d] substantial learning loss” with the county’s economically disadvantaged and Hispanic students suffering the greatest losses. Hayley Milon Bour, *SOL Results Show Learning Loss During COVID-19*, LoudounNow (Aug. 26, 2021), <https://tinyurl.com/2p8njhe3> (explaining that compared to 2019, the pass rate for reading scores dropped 5% to 79% while the pass rate for math scores dropped 23% to 64%); *id.* (noting that economically disadvantaged and Hispanic students in Loudoun County “saw the largest increase in failure rates [for] math scores”).

39. Even with adjustments in grading, additional flexibility on timelines, accommodations to student absences without penalty, “a very generous late policy,” and “ample opportunities

for test retakes,” at least “one Fairfax high school teacher” still saw “50 to 70 percent of his 150 students achieving D’s and F’s, whereas before they had earned B’s and C’s.” Hannah Natanson, *Failing grades spike in Virginia’s largest school system as online learning gap emerges nationwide*, Washington Post (Nov. 24, 2020), <https://tinyurl.com/mrxem3fc>.

40. The observed effects “confirm[ed] fears about how the pandemic is driving an equity gap in American education that may prove impossible to close” and at least one expert in education believes that “[t]he damage done to schoolchildren with scarce resources is *likely to be irreparable*.” *Id.* (emphasis added).

41. Furthermore, the Surgeon General found that depression and anxiety symptoms for youth around the world had doubled during the pandemic and that clinical data also revealed that “suspected suicide attempts were 51% higher for adolescent girls and 4% higher for adolescent boys compared to the same time period in early 2019.” Vivek H. Murthy, *Protecting Youth Mental Health*, The U.S. Surgeon General’s Advisory (2021), <https://tinyurl.com/2zwhdfmk>.

42. He further noted that “pandemic-related measures . . . made it harder to recognize signs of child abuse, mental health concerns, and other challenges” children were facing given the “reduced in-person interactions among children, friends, social supports, and professionals such as teachers [and] school counselors.” *Id.*

43. In response to the recalcitrance of school boards like Loudoun County, in March 2021 the General Assembly passed—and Governor Northam signed—S.B. 1303, which requires each school board to “offer in-person instruction to each student enrolled in the local school division in a public elementary and secondary school for at least the minimum number of required instructional hours . . . .” S.B. 1303 § 2. Such in-person instruction should be provided in a manner

which adheres to Centers for Disease Control and Prevention (“CDC”) guidance “to the maximum extent practicable.” *Id.*

#### **D. Masks in Schools**

44. Following the passage of S.B. 1303, in May 2021, former Governor Northam issued an executive order imposing mask mandates for children in K–12 schools. EO 79 (2021) (attached as **Exhibit H**).

45. This mitigation measure has proven to be ineffective and impractical.

46. During the recent Omicron variant outbreak, locations with restrictive masking policies have had similar or greater rates of transmission as those with less restrictive mask policies. *See* Spencer Kimball, *Omicron is spreading faster than any other Covid variant, WHO warns*, CNBC (Dec. 14, 2021), <https://tinyurl.com/2p8ppwdn> (providing a statement from the executive director of the World Health Organization health emergencies program that “mitigation measures like masking and social distancing . . . ‘won’t stop transmission of omicron or delta’”); Order Re-scinding Order of Public Health Emergency Ten (2021) Imposing Statewide Requirement to Wear Masks in K–12 Schools (2022) (“2022 PH Order”).

47. Studies have also shown that the risk of COVID-19 infection and spread in schools is low. *E.g.*, K. Zimmerman, et al., *Incidence and Secondary Transmission of SARS-CoV-2 Infections in Schools*, American Academy of Pediatrics (April 4, 2021), <https://tinyurl.com/2p94xaaf> (finding “extremely limited within-school secondary transmission of SARS-CoV-2” after conducting a nine-week study of in-person instruction in North Carolina schools); Dyani Lewis, *Why schools probably aren’t COVID hotspots*, Nature (Oct. 29, 2020), <https://tinyurl.com/2p96kj82> (“[E]ven in places where community infections were on the rise, outbreaks in schools were uncommon.”); Lauren Camera, *New Study Cautiously Suggests Schools Don’t Increase Spread of*

*Coronavirus*, U.S. News & World Report (Dec. 23, 2020), <https://tinyurl.com/4ktwmjsr> (“[E]vidence is mounting . . . that while children can and do contract the virus in schools, schools are not the superspreader sites they were initially thought to be.”). Cf. Holly Ellyatt, *Schools have low coronavirus infection rate, German study finds*, CNBC (Jul. 15, 2020), <https://tinyurl.com/2a4vvucy> (concluding from a study of 2,000 children and teachers after Germany reopened schools after lockdown that data “suggest[s] that schools and young people do not play as big a role in transmission as previously feared”).

48. The rate of hospitalization among school-age children is similarly low. E.g., *Children and COVID-19: State-Level Data Report*, American Academy of Pediatrics (Jan. 20, 2022) <https://tinyurl.com/3p3wsxc9> (describing that “[a]mong states reporting, children ranged from 1.7%–4.4% of their total cumulated hospitalizations, and 0.1%–1.5% of all their child COVID-19 cases resulted in hospitalization”).

49. And children are at a very low risk of severe illness due to COVID-19. Centers for Disease Control and Prevention, *Science Brief: Transmission of SARS-CoV-2 in K–12 Schools and Early Care and Education Programs – Updated*, <https://tinyurl.com/4s6vyesv>. See also 2022 PH Order.

50. The transmission-mitigation benefits of compelling children to wear masks in school remain unclear. See Affidavit of Colin M. Greene, MD, MPH, Acting State Health Commissioner for the Commonwealth of Virginia (attached as **Exhibit I**); see also Jenna Gettings, et al., *Mask Use and Ventilation Improvements to Reduce COVID-19 Incidence in Elementary Schools — Georgia, November 16–December 11, 2020*, Centers for Disease Control and Prevention (May 28, 2021), <https://tinyurl.com/nhbb8cud> (concluding that compulsory mask mandates for students had no statistically significant effect on the transmission of the virus).

51. Indeed, infectious disease experts from Harvard Medical School, Tufts University School of Medicine, and Boston University School of Medicine very recently opined that new CDC guidelines recommending respirators, such as N95s, would allow “schools [to] finally safely make masks optional for students and staff.” Shira Doran, Westyn Branch-Elliman, and Elissa Perkins, *Opinion: Schools can safely make masks optional with the CDC’s new guidelines*, Washington Post (Jan. 25, 2022), <https://tinyurl.com/3txetSBk> (“Our children have sacrificed a lot to protect us. Now it’s time for us to give them their childhood back.”).

52. Multiple experts have also expressed serious doubt on the scientific soundness of one of the “most important” studies on which the CDC has based its mask guidelines for schools, with one expert from Yale University describing the study’s findings as “ridiculous.” See David Zweig, *The CDC’s Flawed Case for Wearing Masks in School*, The Atlantic (Dec. 16, 2021), <https://tinyurl.com/5n73wd8e>.

53. Even when required, universal masking among children may still be ineffective because many children wear cloth masks which provide little-to-no protection and have in fact been shown to pose serious health risks. See ScienceDaily, *Cloth Masks: Dangerous to Your Health?* (Apr. 22, 2015), <https://tinyurl.com/mr3m7tuc>; Marty Makary & H. Cody Meissner, *The Case Against Masks for Children*, WSJ (Aug. 8, 2021), <https://tinyurl.com/2p9ah2c2> (quoting an epidemiologist who served on the Covid task force for President Biden’s transition team as explaining “[m]any of the face cloth coverings . . . are not very effective in reducing any of the virus movement in or out”); Vinay Prasad, *Are We Wearing the Wrong Masks?*, MedPage Today (Sept. 8, 2021), <https://tinyurl.com/2p89aezt>. See also 2022 PH Order.

54. Requiring masks in schools may also be an ineffective mitigation strategy given children often wear masks improperly or incorrectly. E.g., Jill Palermo, *UPDATED: Prince*

*William superintendent reiterates that schools' mask policy won't change*, Prince William Times (Jan. 19, 2022), <https://tinyurl.com/fnc2vh79> (“call[ing] improper mask-wearing the school’s ‘biggest battle,’” that at least one teacher must “frequently remind[] students to pull up their masks,” and that “little is said to students who don’t wear their masks correctly—over both their noses and mouths”). *See also* 2022 PH Order.

55. Furthermore, there is a growing consensus that mask mandates in schools may harm early childhood development, especially kids whose lingual or social development is atypical. Sean CL Deoni, et al., *Impact of the COVID-19 Pandemic on Early Child Cognitive Development: Initial Findings in a Longitudinal Observational Study of Child Health* (Aug. 11, 2021), <https://tinyurl.com/2zbz5rpb>; E. Lipps, et al., *Impact of Face Masks on Audiovisual Word Recognition in Young Children with Hearing Loss During the COVID-19 Pandemic*, *Journal of Early Hearing Detection and Intervention* (2021), <https://tinyurl.com/2p8488yx>; *see also* 2022 PH Order (finding that “masking of school-aged children can interfere with” development of various significant life skills and “increase feelings of isolation and lead to anxiety and exacerbation of mental health issues . . . [as well as] difficulty breathing and discomfort due to mask wearing”); David J. Lewkowicz, *Masks Can Be Detrimental to Babies’ Speech and Language Development*, *Scientific American* (Feb. 11, 2021), <https://tinyurl.com/3baebf8v> (explaining that masks can be detrimental to speech and language development of babies and young children and may lead to a “perceptual deprivation”).

56. Studies have additionally shown that masks may harm children’s ability to form solid social and emotional ties with friends, teachers, and other members of their community—particularly for children whose development is atypical. *See* F. Grundmann, et al., *Face masks reduce emotion-recognition accuracy and perceived closeness*, *PLOS ONE* (Apr. 23, 2021),

<https://tinyurl.com/y4dtsspn> (noting mask’s “effects on social functioning” such as “undermin[ing] the success of . . . social interactions” and “reduc[ing] perceived closeness”); Farid Pazhoohi, *Facial masks affect emotion recognition in the general population and individuals with autistic traits*, PLOS ONE (Sept. 30, 2021), <https://tinyurl.com/2awszaz4> (finding that, “across three experiments in which [the authors] tested individuals from different populations and with different levels of autistic traits, . . . facial masks have a negative effect on facial expression recognition [and] . . . reduce[] the intensity of the emotion that is being perceived and observers’ confidence in their ability to correctly identify the emotion, particularly so for those with autistic traits”).

57. Masks in school can also interfere with learning and receiving the proper instruction from teachers. M. Nobrega, et al., *How face masks can affect school performance*, Int’l J. of Pediatric Otorhinolaryngology (Nov. 2020), <https://tinyurl.com/2p8tcmxt> (explaining that face masks can reduce students’ abilities to hear teachers clearly); M. Gori, et al., *Masking Emotions: Face Masks Impair How We Read Emotions*, Frontiers in Psychology (May 25, 2021), <https://tinyurl.com/mrc9wtuv>.

58. Additionally, at least some children have “reported discomfort and side-effects” due to wearing masks. P. Ammann, et al., *Perceptions towards mask use in school children during the SARS-CoV-2 pandemic: the Ciao Corona Study*, <https://tinyurl.com/bdammc28> (“[P]rolonged wearing of masks . . . can be associated with potential side effects, such as headaches or skin irritation.”).

59. The international community has recognized these harms and generally does not provide for such extreme masking requirements for children as do schools in the United States. E.g., David Zweig, *The CDC’s Flawed Case for Wearing Masks in Schools*, The Atlantic (Dec. 16, 2021), <https://tinyurl.com/5n73wd8e> (noting that the World Health Organization does not

recommend masks for children under age 6 and that the European Centre for Disease Prevention and Control recommends against the use of masks for *any* children in primary school).

#### **E. Other COVID-19 Mitigation Strategies in Schools**

60. There are multiple strategies other than requiring masks that reduce or prevent transmission of COVID-19 in schools on which the Virginia Department of Health has provided comprehensive recommendations, including vaccinations, encouraging those sick to stay home and get tested, social distancing, screening testing based on groups' level of community transmission, ventilation, and more. Va. Dep't of Health, *Interim Guidance for COVID-19 Prevention in Virginia PreK–12 Schools* (2022), <https://tinyurl.com/yckpyzex>.

61. The CDC has also issued guidance on numerous COVID-19 mitigation strategies, including screening testing, ventilation, handwashing and respiratory etiquette, staying home when sick and getting tested, contact tracing in combination with quarantine and isolation, and cleaning and disinfection.

62. Schools across the Commonwealth have implemented some of the recommended mitigation strategies by the CDC and the Virginia Department of Health, but not all.

#### **F. EO 2**

63. COVID-19 still poses a very real threat to public safety and continues to constitute an emergency under the VESDL.

64. Fortunately, however, vaccines, natural immunity, and therapeutics have significantly reduced the danger of COVID-19, and have permitted the significant reduction in the onerous mitigation measures deployed in 2020 and 2021.

65. In light of this fact, Governor Youngkin issued EO 2 on January 15, 2022.

66. In EO 2, he found:



a. “Recent government orders requiring virtually every child in Virginia wear masks virtually every moment they are in school have proven ineffective and impractical.”

b. “[M]any children wear masks incorrectly, providing little or no health benefit. The masks worn by children are often ineffective because they are made from cloth material, and they are often not clean, resulting in the collection of impurities, including bacteria and parasites.”

c. “[T]he universal requirement has also inflicted notable harm and proven to be impracticable. Masks inhibit the ability of children to communicate, delay language development, and impede the growth of emotional and social skills. Some children report difficulty breathing and discomfort as a result of masks.”

d. “Masks have also increased feelings of isolation, exacerbating mental health issues, which in many cases pose a greater health risk to children than COVID-19. Two years into the COVID-19 pandemic, mask mandates in schools have proved demoralizing to children facing these and other difficulties.”

e. CDC “research has found no statistically significant link between mandatory masking for students and reduced transmission of COVID-19. And the CDC has acknowledged that certain masks may be ineffective due to the material from which they are made or how they are worn.”

f. “Permitting parents to make decisions on where and when to wear masks permits the Commonwealth’s parents to make the best decision for the circumstances confronting each child. Parents can assess the risks and benefits facing their child, consult their medical providers, and make the best decision for their children based on the most up to date health information available.”

g. “Masks are not the only method to reduce transmission of COVID-19. Local schools must ensure they are improving inspection, testing, maintenance, repair, replacement and upgrades of equipment to improve the indoor air quality in school facilities, including mechanical and nonmechanical heating, ventilation, and air conditioning systems, filtering, purification, fans, control systems and window and door repair.”

67. In light of these substantial findings, and the fact that “[u]nder Virginia law, parents, not the government, have the fundamental right to make decisions concerning the care of their children,” EO 2, Governor Youngkin invoked his VESDL power to rescind the previous executive order requiring all students to wear masks.

68. He further ordered that “[t]he parents of any child enrolled in a elementary or secondary school or a school based early childcare and educational program may elect for their children not to be subject to any mask mandate in effect at the child’s school or educational program.”

69. Accordingly, “[a] child whose parent has elected that he or she is not subject to a mask mandate should not be required to wear a mask under any policy implemented by a teacher, school, school district, the Department of Education, or any other state authority.”

### **G. Loudoun County School Board refuses to comply with EO 2**

70. Loudoun County School Board has, through a vote taken since the issuance of EO 2, defied EO 2 and maintained their universal masking requirements. Parent Plaintiffs’ Complaint ¶ 52 (filed Feb. 1, 2022) (“Plaintiffs’ Compl.”).

71. The night before EO 2 went into effect, Superintendent Scott Ziegler emailed families letting them know that “that maskless students would be considered close contacts of individuals who test positive for COVID-19 [and] would [thus] be required to quarantine for 10 days.” Hayley Milon Bour, *Maskless Monday Hits Loudoun Schools, Further Divides Families and*

*District*, LoudounNow (Jan. 24, 2022), <https://tinyurl.com/ay4825tz>; *see also* Loudoun County Public Schools, *Mask Statement For Monday January 24, 2022*, (Jan. 24, 2022), <https://tinyurl.com/4dsx4pe9>.

72. Two days later, the Superintendent again emphasized that masks are not optional for students attending any Loudoun County Public School. (Plaintiffs' Compl. ¶ 53.)

73. Multiple Virginia school districts have segregated students whose parents declined to send their children to school with a mask. *E.g.*, Luke Rosiak, *EXCLUSIVE: Standoff In Virginia As Schools Defy Governor's Order Making Masks Optional*, Daily Wire (Jan. 24, 2022), <https://tinyurl.com/3r74v49c> (recounting, for example, that the principal of Chris Young Elementary in Prince William County told a parent that her children "would not be permitted to join their classes" after the children walked into school without masks); Brittany Bernstein, *Fairfax County Tells Principals to Suspend Maskless Students in Defiance of State Order*, National Review (Jan. 21, 2022), <https://tinyurl.com/2dejxf4e>.

74. Schools in Loudoun County were no different. (*E.g.*, Plaintiffs' Compl. ¶¶ 61, 70, 77.) On the day EO 2 went into effect, those schools created classes of students by "collect[ing]" at least "25 kids" whose parents declined to send their children to school with a mask into the auditorium to do work on the computer despite the fact that they "could not do so because the online platform, Schoology, was not set up." Luke Rosiak, *Standoff in Virginia As Schools Defy Governor's Order Making Masks Optional*, Daily Wire (Jan. 24, 2022), <https://tinyurl.com/3r74v49c>; *see also id.* (recounting that a thirteen-year old who did not wear a mask at Eagle Ridge Middle School of Loudoun County "was sent to the auditorium and told to do school-work online"); Hayley Milon Bour, *Maskless Monday Hits Loudoun Schools, Further Divides Families and District*, LoudounNow (Jan. 24, 2022), <https://tinyurl.com/ay4825tz> (explaining that

administrators at another Loudoun County school “divid[ed] unmasked students from the student body” and “during recess, the student body played outside without masks, but [a student who came to school without a mask] was still not permitted to join”); James Gordon, *Loudoun County School District ‘punishing’ students who won’t wear masks – despite new Republican Virginia governor overturning the state’s mandates in an executive order*, Daily Mail (Jan. 24, 2022), <https://tinyurl.com/2p95hyjs> (noting that Loudoun County school district spokesperson Wayde Byard confirmed the segregation of students who refused to wear masks at school into “school auditoriums where they could do virtual work through the school’s online platform”).

75. Those students who chose not to wear masks, in at least one Loudoun County school, were barred from leaving the auditorium and going into the rest of the school building. James Gordon, *Loudoun County School District ‘punishing’ students who won’t wear masks – despite new Republican Virginia governor overturning the state’s mandates in an executive order*, Daily Mail (Jan. 24, 2022), <https://tinyurl.com/2p95hyjs>.

76. This segregation of students based on mask status continued throughout the week. See Nick Minock, *Masking in Loudoun County Schools: Where both sides stand*, WJLA (Jan. 25, 2022), <https://tinyurl.com/2p97wmfp> (explaining that “maskless students spent their school day at [various Loudoun County schools] . . . in a gymnasium away from their masked classmates, . . . in the auditorium, . . . [or] in the library” despite “want[ing] to be in the classroom with their friends”); *id.* (explaining that at one school, “a high school student . . . spent *the entire school day* in an auditorium *alone* because he didn’t want to wear a mask” and accordingly “didn’t learn a thing” those days (emphasis added)).

77. Other schools in Virginia have also threatened adverse action and discipline, including out-of-school suspension, for students who choose not to wear a mask as contemplated by

EO 2. Brittany Bernstein, *Fairfax County Tells Principals to Suspend Maskless Students in Defiance of State Order*, National Review (Jan. 21, 2022), <https://tinyurl.com/2dejxf4e>; Hannah Natanson, *Youngkin's mask-optional order divides Virginia schools and parents, threatening chaos*, Washington Post (Jan. 23, 2022), <https://tinyurl.com/3zs89a8p>.

78. At least one parent in Loudoun County views the Superintendent's 10-day quarantine rule for the children who arrive at school without a mask as "really a threat of suspension" given "[t]he quarantine period for close contacts or people who test positive for the virus is now five days." Hayley Milon Bour, *Maskless Monday Hits Loudoun Schools, Further Divides Families and District*, LoudounNow (Jan. 24, 2022), <https://tinyurl.com/ay4825tz>.

79. Indeed, Defendant's subsequent behavior confirms this parent's views. Schools within Loudoun have sent letters to parents advising them that "students who willfully continue to refuse to [wear a mask] as required by Loudoun County Public Schools will be suspended from school." The letters further provided that "[a] student who is suspended because of non-compliance with [the mask mandate] may return to school only when they agree to [wear a mask] the entire day and at all indoor school-related events." (*See, e.g.*, Plaintiffs' Compl. ¶ 54.)

80. Administrators at other Loudoun County public schools also required parents remove their children who refused to wear masks from school premises. (*E.g.*, Plaintiffs' Compl. ¶ 60.)

81. One Loudoun County school even permanently kicked a fifth-grader out of his elementary school for refusing to wear a mask. Luke Rosiak, *EXCLUSIVE: Standoff In Virginia As Schools Defy Governor's Order Making Masks Optional*, Daily Wire (Jan. 24, 2022), <https://tinyurl.com/3r74v49c> (explaining that a fifth-grader in Banneker Elementary in Loudoun County

“was being permanently kicked out of his elementary school for refusing to wear a mask Monday”).

82. Even teachers in Loudoun County were punished for refusing to wear a mask the Monday EO 2 went into effect. Luke Rosiak, *Standoff in Virginia As Schools Defy Governor’s Order Making Masks Optional*, Daily Wire (Jan. 24, 2022), <https://tinyurl.com/3r74v49c> (noting that “a[n] LCPS teacher . . . was sent home and put on leave without pay for refusing to wear a mask” that day).

**COUNT ONE  
VIOLATION OF EXECUTIVE ORDER TWO (2022)**

83. Plaintiff-intervenor incorporates by reference all previous allegations set forth in this Complaint as if fully set forth herein.

84. EO 2 was a lawful exercise of the Governor’s emergency authority under the VESDL, and it permits parents to decide whether their child should wear a mask at school.

85. Loudoun County School Board has disobeyed EO 2 by imposing universal mask mandates and not allowing parents to opt their children out of such mandates.

86. Loudoun County School Board has violated EO 2.

**COUNT TWO  
VIOLATION OF SENATE BILL 1303**

87. Plaintiff-intervenor incorporates by reference all previous allegations set forth in this Complaint as if fully set forth herein.

88. S.B. 1303 requires Loudoun County School Board to offer in-person educational instruction, and it does not impose a universal mask mandate.

89. Loudoun County School Board has refused to offer such in-person instruction to children whose parents have elected not to have them wear masks.

90. Loudoun County School Board has violated S.B. 1303.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff-intervenor the Commonwealth of Virginia respectfully requests that the Court issue injunctive and declaratory relief:

a. declaring that the Governor lawfully issued EO 2 and that its provisions are valid and enforceable with regard to Virginia local school boards, including Loudoun County School Board;

b. declaring that Loudoun County School Board has violated EO 2 or S.B. 1303 or both by refusing to admit certain students to school for in-person instruction because the students' parents have elected that their children should not wear a mask in school;


c. ordering Loudoun County School Board to admit all students for in-person instruction even if the parents of said students elect that their children should not wear a mask in school;

d. enjoining Loudoun County School Board from hereafter barring any child from admission to any school within their jurisdiction on the ground that the parent or parents of said child have elected that said child should not wear a mask; and

e. any and all other relief that the Court deems proper and just.

Respectfully submitted,

THE COMMONWEALTH OF VIRGINIA,  
by GLENN A. YOUNGKIN, Governor,  
JASON S. MIYARES, Attorney General and JILLIAN  
BALOW, Superintendent of Public Instruction,

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February 2, 2022

*Counsel for Plaintiff-Intervenor  
The Commonwealth of Virginia*



**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE COUNTY OF LOUDOUN**

**INDEX OF EXHIBITS**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>
<b>A.</b>	<b>Executive Order 2 (2022)</b>
<b>B.</b>	<b>Executive Order 51 (2020)</b>
<b>C.</b>	<b>Executive Order 53 (2020)</b>
<b>D.</b>	<b>Executive Order 55 (2020)</b>
<b>E.</b>	<b>Executive Order 63 (2020)</b>
<b>F.</b>	<b>Executive Order 67 (2020)</b>
<b>G.</b>	<b>Executive Order 72 (2020)</b>
<b>H.</b>	<b>Executive Order 79 (2021)</b>
<b>I.</b>	<b>Affidavit of Colin M. Greene, MD, MPH</b>

# **EXHIBIT A**



*Commonwealth of Virginia*  
*Office of the Governor*

## *Executive Order*

**NUMBER TWO (2022)**

**AND**

**ORDER OF PUBLIC HEALTH EMERGENCY ONE**

### **REAFFIRMING THE RIGHTS OF PARENTS IN THE UPBRINGING, EDUCATION, AND CARE OF THEIR CHILDREN**

By virtue of the authority vested in me as Governor, I hereby issue this Executive Order reaffirming the rights of parents in the upbringing, education, and care of their children.

#### **Importance of the Issue**

There is no greater priority than the health and welfare of Virginia's children. Under Virginia law, parents, not the government, have the fundamental right to make decisions concerning the care of their children.

Recent government orders requiring virtually every child in Virginia wear masks virtually every moment they are in school have proven ineffective and impractical. They have also failed to keep up with rapidly changing scientific information. For example, the August 12, 2021 Order of the State Health Commissioner explicitly relates to the Delta variant and not the Omicron variant, which results in less severe illness. The order states children under the age of 12 cannot obtain vaccines. Now children five and older are eligible. The order also states vaccination rates for children that are now out of date. The order notes that "universal and correct mask use" helps reduce transmission. As parents and educators have observed, many children wear masks incorrectly, providing little or no health benefit. The masks worn by children are often ineffective because they are made from cloth material, and they are often not clean, resulting in the collection of impurities, including bacteria and parasites. Additionally, wearing masks for prolonged periods of time, such as for an entire school day, decreases their effectiveness. Masking may be more or less effective dependent on the age of the child.

At the same time that a universal masking requirement in schools has provided inconsistent health benefits, the universal requirement has also inflicted notable harm and proven to be impracticable. Masks inhibit the ability of children to communicate, delay language development, and impede the growth of emotional and social skills. Some children report difficulty breathing and discomfort as a result of masks. Masks have also increased feelings of isolation, exacerbating mental health issues, which in many cases pose a greater health risk to children than COVID-19. Two years into the COVID-19 pandemic, mask mandates in schools have proved demoralizing to children facing these and other difficulties.

While the Center for Disease Control (CDC) recommends masks, its research has found no statistically significant link between mandatory masking for students and reduced transmission of COVID-19. And the CDC has acknowledged that certain masks may be ineffective due to the material from which they are made or how they are worn. A review of CDC, WHO, and other local and international health authorities' recommendations reveals a lack of consensus on the costs and benefits of mask-wearing for children in school for many of the reasons noted above.

In light of the variety of circumstances confronted by students in the Commonwealth, parents should have the ability to decide whether their child should wear masks for the duration of the school day. This approach is consistent with the broad rights of parents. The Commonwealth recognizes in § 1-240.1 of the *Code of Virginia*, that “a parent has a fundamental right to make decisions concerning the upbringing, education, and care of the parent’s child.” Permitting parents to make decisions on where and when to wear masks permits the Commonwealth’s parents to make the best decision for the circumstances confronting each child. Parents can assess the risks and benefits facing their child, consult their medical providers, and make the best decision for their children based on the most up to date health information available.

While parents of some students with conditions that increase the risks of COVID-19 infection might require their children to remain masked during the duration of the school day, other parents may require masks for a more limited duration, if at all.

Masks are not the only method to reduce transmission of COVID-19. Local schools must ensure they are improving inspection, testing, maintenance, repair, replacement and upgrades of equipment to improve the indoor air quality in school facilities, including mechanical and non-mechanical heating, ventilation, and air conditioning systems, filtering, purification, fans, control systems and window and door repair. Other mitigation efforts can be made in consultation with health authorities. The benefit of mitigation efforts must always be weighed against the cost to children’s overall wellbeing.

### **Directive**

Therefore, by virtue of the authority vested in me as Governor by Article V of the Constitution of Virginia, by § 44-146.17 of the *Code of Virginia*, by any other applicable law, and by virtue of the authority vested in the State Health Commissioner pursuant to §§ 32.1-13, 32.1-20, and 35.1-10 of the *Code of Virginia*, Executive Order Number Seventy-Nine (2021) is rescinded and the following is ordered:

1. The State Health Commissioner shall terminate Order of Public Health Emergency Order Ten (2021).
2. The parents of any child enrolled in a elementary or secondary school or a school based early childcare and educational program may elect for their children not to be subject to any mask mandate in effect at the child's school or educational program.
3. No parent electing that a mask mandate should not apply to his or her child shall be required to provide a reason or make any certification concerning their child's health or education.
4. A child whose parent has elected that he or she is not subject to a mask mandate should not be required to wear a mask under any policy implemented by a teacher, school, school district, the Department of Education, or any other state authority.
5. The Superintendent of Public Instruction shall rescind the Interim Guidance for COVID-19 Prevention in Virginia PreK-12 Schools, issued January 14, 2021, and updated October 14, 2021, and issue new guidance for COVID-19 Prevention consistent with this Order.
6. School districts should marshal any resources available to improve inspection, testing, maintenance, repair, replacement and upgrades of equipment to improve the indoor air quality in school facilities, including mechanical and non-mechanical heating, ventilation, and air conditioning systems, filtering, purification, fans, control systems and window and door repair.

**Effective Date of this Executive Order**

This Executive Order shall be effective 12:00 a.m., Monday, January 24, 2022, and shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 15<sup>th</sup> day of January, 2022.



A handwritten signature in black ink, appearing to read "Glenn Youngkin".

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Glenn Youngkin, Governor

Attest:

A handwritten signature in black ink that reads "Kelly Thomasson" followed by a horizontal flourish.

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Kelly Thomasson, Secretary of the Commonwealth

# **EXHIBIT B**

## 36 Va. Regs. Reg. 2114

Volume 36, Issue 17, April 13, 2020

### EXECUTIVE ORDER

#### Reporter

36 Va. Regs. Reg. 2114

*VA - Virginia Register of Regulations > 2020 > April > April 13, 2020 > EXECUTIVE ORDER > GOVERNOR*

#### Agency

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GOVERNOR

#### Text

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GOVERNOR EXECUTIVE ORDER NUMBER FIFTY-ONE (2020)

Declaration of a State of Emergency Due to Novel Coronavirus (COVID-19)

Importance of the Issue

The Commonwealth of Virginia is monitoring an outbreak of a respiratory illness referred to as the coronavirus (COVID-19), which has spread from Wuhan, Hubei Province, China to more than 80 other locations internationally, including the Commonwealth. The Virginia Department of Health (VDH) has been working with local, state, and federal officials, healthcare and emergency management experts, and various state agencies to form a COVID-19 Taskforce to prepare for and respond to this threat. Given recent confirmed occurrences of COVID-19 within the Commonwealth and in neighboring states, as well as information from the Centers for Disease Control and Prevention, it is anticipated that the disease will spread.

Therefore, on this date, March 12, 2020, I declare that a state of emergency exists in the Commonwealth of Virginia to continue to prepare and coordinate our response to the potential spread of COVID-19, a communicable disease of public health threat. The anticipated effects of COVID-19 constitute a disaster as described in § 44-146.16 of the Code of Virginia (Code). By virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by §§ 44-146.17 and 44-75.1 of the Code of Virginia, as Governor and Director of Emergency Management and Commander-in-Chief of the Commonwealth's armed forces, I proclaim a state of emergency. Accordingly, I direct state and local governments to render appropriate assistance to prepare for this event, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return



## 36 Va. Regs. Reg. 2114

impacted areas to prevent conditions as much as possible. Emergency services shall be conducted in accordance with § 44-146.13 et seq. of the Code.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures, I order the following actions:

A. Implementation by state agencies of the Commonwealth of Virginia Emergency Operations Plan, as amended, along with other appropriate state plans.

B. Activation of the Virginia Emergency Operations Center and the Virginia Emergency Support Team, as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to state, local, and tribal governments and to facilitate emergency services assignments to other agencies.

C. Authorization for the heads of executive branch agencies, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any state requirement or regulation, and enter into contracts without regard to normal procedures or formalities, and without regard to application or permit fees or royalties. All waivers issued by agencies shall be posted on their websites.

D. Activation of § 59.1-525 et seq. of the Code related to price gouging.

E. Activation of the Virginia National Guard to State Active Duty.

F. Authorization of a maximum of \$ 10,000,000 in state sum sufficient funds for state and local government mission assignments and state response and recovery operations authorized and coordinated through the Virginia Department of Emergency Management allowable by The Stafford Act, 42 USC § 5121 et seq. Included in this authorization is \$ 1,000,000 for the Department of Military Affairs, if it is called to State Active Duty.

Effective Date of this Executive Order

This Executive Order shall be effective March 12, 2020, and shall remain in full force and in effect until June 10, 2020, unless sooner amended or rescinded by further executive order.

Termination of this Executive Order is not intended to terminate any federal type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 12th day of March, 2020.

/s/ Ralph S. Northam

Governor

VIRGINIA REGISTER OF REGULATIONS

# EXHIBIT C

## 36 Va. Regs. Reg. 2115

Volume 36, Issue 17, April 13, 2020

### EXECUTIVE ORDER

#### Reporter

36 Va. Regs. Reg. 2115 \*

*VA - Virginia Register of Regulations > 2020 > April > April 13, 2020 > EXECUTIVE ORDER > GOVERNOR*

#### Agency

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GOVERNOR

#### Text

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EXECUTIVE ORDER NUMBER FIFTY-THREE (2020)

Temporary Restrictions on Restaurants, Recreational, Entertainment, Gatherings, Non-Essential Retail Businesses, and Closure of K-12 Schools due to Novel Coronavirus (COVID-19)

#### Importance of the Issue

The Commonwealth of Virginia continues to respond to the novel coronavirus (COVID-19) pandemic. On March 13, 2020, I ordered all K-12 schools in the Commonwealth closed for two weeks. On March 17, 2020, I, along with the Virginia State Health Commissioner, issued an Order of the Governor and State Health Commissioner Declaration of Public Health Emergency (later amended) limiting the number of patrons in restaurants, fitness centers, and theaters to no more than 10 per establishment. Despite these measures, COVID-19 presents an ongoing threat to our communities. Information from the Virginia Department of Health reveals occurrences of the virus in every region of the Commonwealth. Indeed, the data suggests that in several regions there may be community spread of the virus.

Now, we must take additional long term action to mitigate the impacts of this virus on our Commonwealth. Guidance on School Closures from the Centers for Disease Control and Prevention indicates that medium term closures (8-20 weeks) have greater impact on minimizing the spread of COVID-19 than shorter term closures (2-8 weeks). This guidance is consistent with the expertise of public health officials and their models of continuing spread of COVID-19 throughout the Commonwealth and the nation. Unnecessary person-to-person contact increases the risk of

transmission and community spread. Consequently, we must limit such interactions to those necessary to access food and essential materials. Protecting the health and ensuring the safety of every Virginian is my highest priority.

#### Directive

Therefore, by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by § 44-146.17 of the Code of Virginia and in furtherance of Executive Order 51, I order the following:

1. Effective 11:59 p.m., Tuesday, March 24, 2020 until 11:59 p.m., Thursday, April 23, 2020, all public and private in person gatherings of 10 or more individuals are prohibited.
2. Cessation of all in-person instruction at K-12 schools, public and private, for the remainder of the 2019-2020 school year. Facilities providing child care services may remain open. On March 18, 2020, the Commissioner of the Virginia Department of Social Services, Duke Storen, issued a letter with guidance for daycare providers operating in the Commonwealth, including group size limits of 10 and stringent public health guidelines to prevent the spread of COVID-19. That guidance remains effective and I urge all Virginians with school-age children to review it. In addition, I urge child care providers to prioritize services for children of essential personnel, while asking all families with the ability to keep their children home, to do so. To that end, the Virginia Department of Social Services and the Virginia Department of Education will issue guidance to communities about operationalizing emergency child care services for essential personnel.
3. Closure of all dining and congregation areas in restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, tasting rooms, and farmers markets effective 11:59 p.m., Tuesday, March 24, 2020 until 11:59 p.m., Thursday, April 23, 2020. Restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, tasting rooms, and [\*2116] farmers markets may continue to offer delivery and take-out services.
4. Closure of all public access to recreational and entertainment businesses, effective 11:59 p.m., Tuesday, March 24, 2020 until 11:59 p.m., Thursday, April 23, 2020 as set forth below:
  - Theaters, performing arts centers, concert venues, museums, and other indoor entertainment centers;
  - Fitness centers, gymnasiums, recreation centers, indoor sports facilities, and indoor exercise facilities;
  - Beauty salons, barbershops, spas, massage parlors, tanning salons, tattoo shops, and any other location where personal care or personal grooming services are performed that would not allow compliance with social distancing guidelines to remain six feet apart;
  - Racetracks and historic horse racing facilities; and
  - Bowling alleys, skating rinks, arcades, amusement parks, trampoline parks, fairs, arts and craft facilities, aquariums, zoos, escape rooms, indoor shooting ranges, public and private social clubs, and all other places of indoor public amusement.
5. Essential retail businesses may remain open during their normal business hours. Such businesses are:

- Grocery stores, pharmacies, and other retailers that sell food and beverage products or pharmacy products, including dollar stores, and department stores with grocery or pharmacy operations;
- Medical, laboratory, and vision supply retailers;
- Electronic retailers that sell or service cell phones, computers, tablets, and other communications technology;
- Automotive parts, accessories, and tire retailers as well as automotive repair facilities;
- Home improvement, hardware, building material, and building supply retailers;
- Lawn and garden equipment retailers;
- Beer, wine, and liquor stores;
- Retail functions of gas stations and convenience stores;
- Retail located within healthcare facilities;
- Banks and other financial institutions with retail functions;
- Pet and feed stores;
- Printing and office supply stores; and
- Laundromats and dry cleaners.

6. Effective 11:59 p.m., Tuesday, March 24, 2020 until 11:59 p.m., Thursday, April 23, 2020, any brick and mortar retail business not listed in paragraph 5 may continue to operate but must limit all in-person shopping to no more than 10 patrons per establishment. If any such business cannot adhere to the 10 patron limit with proper social distancing requirements, it must close.

7. All businesses shall, to the extent possible, adhere to social distancing recommendations, enhanced sanitizing practices on common surfaces, and other appropriate workplace guidance from state and federal authorities while in operation.

8. Although business operations offering professional rather than retail services may remain open, they should utilize teleworking as much as possible. Where telework is not feasible, such business must adhere to social distancing recommendations, enhanced sanitizing practices on common surfaces, and apply the relevant workplace guidance from state and federal authorities.

9. Nothing in the Order shall limit: (a) the provision of health care or medical services; (b) access to essential services for low-income residents, such as food banks; (c) the operations of the media; (d) law enforcement agencies; or (e) the operation of government.

Violation of paragraphs 1, 3, 4, and 6 of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the Code of Virginia.

Effective Date of this Executive Order

This Executive Order shall be effective March 23, 2020, amends Amended Order of the Governor and State Health Commissioner Declaration of Public Health Emergency, Order of Public Health Emergency One, and shall remain in full force and in effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 23rd day of March, 2020.

/s/ Ralph S. Northam

Governor

VIRGINIA REGISTER OF REGULATIONS

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End of Document

# **EXHIBIT D**

## 36 Va. Regs. Reg. 2117

Volume 36, Issue 17, April 13, 2020

### EXECUTIVE ORDER

#### Reporter

36 Va. Regs. Reg. 2117 \*

***VA - Virginia Register of Regulations > 2020 > April > April 13, 2020 > EXECUTIVE ORDER > GOVERNOR***

#### Agency

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GOVERNOR

#### Text

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EXECUTIVE ORDER NUMBER FIFTY-FIVE (2020)

Temporary Stay at Home Order due to Novel Coronavirus (COVID-19)

To reinforce the Commonwealth's response to COVID-19 and in furtherance of Executive Orders 51 (March 12, 2020) and 53 (March 23, 2020) and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by § 44-146.17 of the Code of Virginia, I order the following:

1. All individuals in Virginia shall remain at their place of residence, except as provided below by this Order and Executive Order 53. To the extent individuals use shared or outdoor spaces, whether on land or on water, they must at all times maintain social distancing of at least six feet from any other person, with the exception of family or household members or caretakers. Individuals may leave their residences for the purpose of:
  - a. Obtaining food, beverages, goods, or services as permitted in Executive Order 53;
  - b. Seeking medical attention, essential social services, governmental services, assistance from law enforcement, or emergency services;
  - c. Taking care of other individuals, animals, or visiting the home of a family member;
  - d. Traveling required by court order or to facilitate child custody, visitation, or child care;
  - e. Engaging in outdoor activity, including exercise, provided individuals comply with social distancing requirements;
  - f. Traveling to and from one's residence, place of worship, or work;
  - g. Traveling to and from an educational institution;



- h. Volunteering with organizations that provide charitable or social services; and
  - i. Leaving one's residence due to a reasonable fear for health or safety, at the direction of law enforcement, or at the direction of another government agency.
2. All public and private in-person gatherings of more than ten individuals are prohibited. This includes parties, celebrations, religious, or other social events, whether they occur indoor or outdoor. This restriction does not apply:
- a. To the operation of businesses not required to close to the public under Executive Order 53; or
  - b. To the gathering of family members living in the same residence.
3. Institutions of higher education shall cease all in-person classes and instruction, and cancel all gatherings of more than ten individuals. For purposes of facilitating remote learning, performing critical research, or performing essential functions, institutions of higher education may continue to operate, provided that social distancing requirements are maintained.
4. Effective April 1, 2020, at 11:59 p.m., cessation of all reservations for overnight stays of less than 14 nights at all privately-owned campgrounds, as defined in § 35.1-1 of the Code of Virginia.
5. Closure of all public beaches as defined in § 10.1-705 of the Code of Virginia for all activity, except exercising and fishing. Social distancing requirements must be followed.
6. All relevant state agencies shall continue to work with all housing partners to execute strategies to protect the health, safety, and well-being of Virginians experiencing homelessness during this pandemic and to assist Virginians in avoiding evictions or foreclosures.
7. As provided in Executive Order 53, nothing in this Order shall limit: (a) the provision of health care or medical services; (b) access to essential services for low-income [\*2118] residents, such as food banks; (c) the operations of the media; (d) law enforcement agencies; or (e) the operation of government.

Violation of paragraphs 2, 3, 4, and 5 of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the Code of Virginia.

Effective Date of this Executive Order

This Executive Order shall be effective March 30, 2020, amends Amended Order of the Governor and State Health Commissioner Declaration of Public Health Emergency, Order of Public Health Emergency One and Executive Order 53, and shall remain in full force and in effect until June 10, 2020, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 30th day of March, 2020.

/s/ Ralph S. Northam

Governor

Amended Order of the Governor and State Health Commissioner Declaration of Public Health Emergency

Order of Public Health Emergency One

WHEREAS, the State Health Commissioner declared COVID-19 a disease of public health threat on February 7, 2020; and

WHEREAS, Virginia Governor Ralph S. Northam declared a state of emergency due to COVID-19 on March 12, 2020 in Executive Order No. 51 by virtue of the authority vested in the Governor by Article V, Section 7 of the Constitution of Virginia and by §§ 44-146.17 and 44-75.1 of the Code of Virginia; and

WHEREAS, COVID-19 spreads from person-to-person, transmitted via respiratory droplets, and can be spread from an infected person who does not have symptoms to another person; and

WHEREAS, no current vaccine or known treatment options exist at this time; and

WHEREAS, the Commonwealth of Virginia, seeks to contain, control, and prevent additional COVID-19 infections and unnecessary risk to citizens; and

WHEREAS, on March 17, 2020, Virginia Governor Ralph S. Northam announced new measures to combat COVID-19 and support impacted Virginians; and

WHEREAS, in an effort to increase social distancing to inhibit spread of the virus, Virginia Governor Ralph S. Northam included in that announcement that all restaurants, fitness centers, and theaters are mandated to significantly reduce capacity to 10 patrons, or close; while encouraged to continue carry-out and takeaway options; and

WHEREAS, the State Health Commissioner desires to protect the public health of all Virginians by increasing social distancing in restaurants, fitness centers, and theaters; and

WHEREAS, pursuant to § 32.1-13 of the Code of Virginia, the State Health Commissioner, acting for the State Board of Health (Board) when it is not in session pursuant to § 32.1-20 of the Code of Virginia, is vested with authority to make separate orders to meet any emergency not provided for by general regulations, for the purpose of suppressing conditions dangerous to the public health and communicable, contagious, and infectious diseases; and

WHEREAS, pursuant to § 35.1-10 of the Code of Virginia, the State Health Commissioner may take whatever action he deems necessary, to include ordering immediate closure of a restaurant, to control the spread of a preventable disease.

NOW THEREFORE, the Governor and State Health Commissioner hereby issue this Order declaring a public health emergency resulting from the spread of COVID-19 virus affecting the health and safety of Virginians, and restrict the number of patrons allowed in restaurants, as defined in § 35.1-1 of the Code of Virginia, fitness centers, and theaters, as defined in § 15.2-2820 of the Code of Virginia, to 10 patrons or less in any such establishment in order to inhibit spread of the virus. Any willful violation or refusal, failure, or neglect to comply with this Order, issued

pursuant to § 32.1-13 of the Code of Virginia, is punishable as a Class 1 misdemeanor pursuant to § 32.1-27 of the Code of Virginia.

In addition, the observation of 11 or more patrons in a restaurant may result in immediate operation permit suspension per the Food Regulations at 12VAC5-421-3770 (Summary Suspension of a Permit) by a district health director as authorized by the State Health Commissioner.

The State Health Commissioner may also seek injunctive relief in circuit court for violation of this Order pursuant to § 32.1-27 of the Code of Virginia.

WHEREAS, this Order hereby amends the Order dated March 17, 2020, shall be effective as of March 16, 2020, and shall remain in full force and effect until amended or rescinded. Citation of this Order shall be Commonwealth of Virginia Amended Order of Public Health Emergency One.

Given under my hand and under the Seal of the Office of the State Health Commissioner of the Commonwealth of Virginia this 20th Day of March 2020.

/s/ Ralph S. Northam

Governor

/s/ M. Norman Oliver, MD, MA

State Health Commissioner [**\*2119**]

Order of the Governor and State Health Commissioner

Order of Public Health Emergency Two

WHEREAS, the State Health Commissioner declared COVID-19 a disease of public health threat on February 7, 2020; and

WHEREAS, Virginia Governor Ralph S. Northam declared a state of emergency due to COVID-19 on March 12, 2020 in Executive Order No. 51 by virtue of the authority vested in the Governor by Article V, Section 7 of the Constitution of Virginia and by §§ 44-146.17 and 44-75.1 of the Code of Virginia; and

WHEREAS, the Governor and State Health Commissioner issued Order of Public Health Emergency One on March 17, 2020, as amended on March 20, 2020, declaring a public health emergency; and

WHEREAS, COVID-19 spreads from person-to-person, transmitted via respiratory droplets, and can be spread from an infected person who does not have symptoms to another person; and

WHEREAS, no current vaccine or known treatment options exist at this time; and

WHEREAS, the supply chain in the Commonwealth for health care personal protective equipment (PPE), to include gowns, masks, face shields and respirators, has been severely disrupted by the significant increased use of such

equipment worldwide in response to COVID-19, such that there are now critical shortages of this equipment for health care workers; and

WHEREAS, it is anticipated that due to the continuing spread of COVID-19, a critical shortage of needed hospital beds will result; and

WHEREAS, the Commonwealth of Virginia seeks to curtail the spread of the COVID-19 pandemic in the Commonwealth, protect our health care workers, and ensure sufficient hospital beds necessary to serve Virginians' medical needs; and

WHEREAS, pursuant to § 32.1-13 of the Code of Virginia, the State Health Commissioner, acting for the State Board of Health when it is not in session pursuant to § 32.1-20 of the Code of Virginia, is vested with authority to make separate orders to meet any emergency not provided for by general regulations, for the purpose of suppressing conditions dangerous to the public health and communicable, contagious, and infectious diseases.

NOW THEREFORE, the Governor and State Health Commissioner hereby issue this Order prohibiting all inpatient and outpatient surgical hospitals licensed under 12VAC5-410, free-standing endoscopy centers, physicians' offices, and dental, orthodontic, and endodontic offices in the Commonwealth from providing procedures and surgeries that require PPE, which if delayed, are not anticipated to cause harm to the patient by negatively affecting the patient's health outcomes, or leading to disability or death. This does not include outpatient visits delivered in hospital-based clinics.

This Order does not apply to the full suite of family planning services and procedures nor to treatment for patients with emergency or urgent needs. Inpatient and outpatient surgical hospitals licensed under 12VAC5-410, free-standing endoscopy centers, physicians' offices, and dental, orthodontic, and endodontic offices may perform any procedure or surgery that if delayed or canceled would result in the patient's condition worsening. Outpatient surgical hospitals are encouraged to work with their local inpatient hospitals to assist with surge capacity needs.

Any willful violation or refusal, failure, or neglect to comply with this Order, issued pursuant to § 32.1-13 of the Code of Virginia, is punishable as a Class 1 misdemeanor pursuant to § 32.1-27 of the Code of Virginia. The State Health Commissioner may also seek injunctive relief in circuit court for violation of this Order pursuant to § 32.1-27 of the Code of Virginia.

WHEREAS, this Order shall remain in full force and effect until April 24, 2020. Citation of this Order shall be Commonwealth of Virginia Order of Public Health Emergency Two.

Given under my hand and under the Seal of the Office of the State Health Commissioner of the Commonwealth of Virginia this 25th Day of March, 2020.

/s/ Ralph S. Northam

Governor

/s/ M. Norman Oliver, MD, MA

State Health Commissioner

VIRGINIA REGISTER OF REGULATIONS

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# **EXHIBIT E**

## 36 Va. Regs. Reg. 2320

Volume 36, Issue 21, June 8, 2020

### EXECUTIVE ORDER

#### Reporter

36 Va. Regs. Reg. 2320 \*

***VA - Virginia Register of Regulations > 2020 > June > June 8, 2020 > EXECUTIVE ORDER > GOVERNOR***

#### Agency

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GOVERNOR

#### Text

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EXECUTIVE ORDER NUMBER SIXTY-THREE (2020) AND ORDER OF PUBLIC HEALTH EMERGENCY FIVE

Requirement to Wear Face Covering While Inside Buildings

#### Importance of the Issue

The Commonwealth of Virginia continues to respond to the novel coronavirus (COVID-19) pandemic. Measures undertaken over the last ten weeks have slowed the spread of the virus; however, its transmission continues to threaten our communities. We must remain vigilant. In fact, as we reopen Virginia, it is critical that we become even more vigilant. Studies of the virus show that a substantial number of individuals with coronavirus are asymptomatic. In addition, individuals who contract the virus may still transmit the virus to others before ever showing symptoms. Therefore, a person with no symptoms of the virus could spread it by speaking, coughing, or sneezing. As more people venture back to businesses, employees are put in a vulnerable position when patrons come in without a face covering. We must make sure workers are safe as they interact with customers. Science shows us that face coverings can help stop the spread of the virus. That is why the Centers for Disease Control and Prevention (CDC) recommends wearing cloth face coverings, even those made from household items or common materials in public settings. I strongly urge all Virginians to wear face coverings when leaving their homes. But as to indoor settings to which the public has access, mere encouragement is not enough to protect the health and safety of Virginians.

#### Directive

Therefore, by virtue of the authority vested in me by Article V of the Constitution of Virginia, by § 44-146.17 of the Code of Virginia, by any other applicable law, and in furtherance of Amended Executive Order 51, and by virtue of

the authority vested in the State Health Commissioner pursuant to §§ 32.1-13, 32.1-20, and 35.1-10 of the Code of Virginia, the following is ordered:

#### A. Face Coverings Required-Patrons

All patrons in the Commonwealth aged ten and over shall when entering, exiting, traveling through, and spending time inside the settings listed below cover their mouth and nose with a face covering, as described and recommended by the CDC:

1. Personal care and personal grooming businesses, including but not limited to, beauty salons, barbershops, [\*2321] spas, massage centers, tanning salons, tattoo shops, and any other location where personal care or personal grooming services are provided.
2. All brick and mortar retail businesses, including both essential and non-essential brick and mortar retail businesses, as delineated in Amended Executive Order 61 and Amended Order of Public Health Emergency Three (2020).
3. Food and beverage establishments, including but not limited to, restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, tasting rooms, and farmers markets, when permitted to reopen for indoor dining.
4. Entertainment or recreation businesses, including but not limited to, racetracks, historic horse racing facilities, theaters, performing arts centers, concert venues, museums, and other indoor entertainment centers, bowling alleys, skating rinks, arcades, amusement parks, trampoline parks, fairs, arts and craft facilities, aquariums, zoos, escape rooms, public and private social clubs, and all other places of indoor public amusement, once permitted to reopen to the public. Face coverings shall also be required when patrons are outdoors at these businesses if a distance of six feet from every other person cannot be maintained.
5. Train stations, bus stations, and intrastate public transportation, including buses, rideshares, trains, taxis, and cars for hire, as well as any waiting or congregating areas associated with boarding public transportation. This requirement shall not apply in any area under federal jurisdiction or control.
6. Any other indoor place shared by groups of people who are in close proximity to each other. This restriction does not apply to persons while inside their residence or the personal residence of another. Face coverings may be removed to participate in a religious ritual.
7. State or local government buildings when accessed for the purpose of securing public services, with the exception of students in daycare centers or participating in-person classes in K-12 education or institutions of higher education.

#### B. Face Coverings Required-Employees of Essential Retail Businesses

All employees of essential retail businesses as listed in Amended Executive Order 61 and Amended Order of Public Health Emergency Three (2020), section C, paragraph 1 shall wear a face covering whenever working in customer



facing areas. Amended Executive Order 61 and Amended Order of Public Health Emergency Three (2020) is so further amended.

#### C. Enforcement

The Virginia Department of Health shall have authority to enforce this Order. Any willful violation or refusal, failure, or neglect to comply with this Order, issued pursuant to § 32.1-13 of the Code of Virginia, is punishable as a Class 1 misdemeanor pursuant to § 32.1-27 of the Code of Virginia. The State Health Commissioner may also seek injunctive relief in circuit court for violation of this Order, pursuant to § 32.1-27 of the Code of Virginia. No minor shall be subject to criminal penalty for failure to wear a face covering. Adults accompanying minors should use the adult's best judgment with respect to placing face coverings on a minor between the ages of two through nine while inside the public areas noted above. Adults accompanying minors age 10 through 18 shall use reasonable efforts to prompt the minor to wear face coverings while inside the public areas noted above.

Medical-grade masks and personal protective equipment should be reserved for medical personnel. The use of cloth face coverings does not replace the need to maintain six feet of physical social distancing, clean and disinfect frequently touched surfaces routinely in all public settings, stay home when sick, and practice frequent handwashing.

#### D. Exceptions

The requirement to wear a face covering does not apply to following:

1. While eating or drinking;
2. Individuals exercising or using exercise equipment;
3. Any person who has trouble breathing, or is unconscious, incapacitated, or otherwise unable to remove the face covering without assistance;
4. Any person seeking to communicate with the hearing impaired and for which the mouth needs to be visible;
5. When temporary removal of the face covering is necessary to secure government or medical services;  
and
6. Persons with health conditions that prohibit wearing a face covering. Nothing in this Order shall require the use of a face covering by any person for whom doing so would be contrary to his or her health or safety because of a medical condition.

Any person who declines to wear a face covering because of a medical condition shall not be required to produce or carry medical documentation verifying the stated condition nor shall the person be required to identify the precise underlying medical condition.

#### E. Department of Labor and Industry

Except for paragraph B above, this Order does not apply to employees, employers, subcontractors, or other independent contractors in the workplace. The Commissioner of the Virginia Department of Labor and Industry shall promulgate [\*2322] emergency regulations and standards to control, prevent, and mitigate the spread of COVID-19 in the workplace. The regulations and standards adopted in accordance with §§ 40.1-22(6a) or 2.2-4011 of the Code of Virginia shall apply to every employer, employee, and place of employment within the jurisdiction of the Virginia Occupational Safety and Health program as described in 16 Va. Admin. Code § 25-60-20 and Va. Admin. Code § 25-60-30. These regulations and standards must address personal protective equipment, respiratory protective equipment, and sanitation, access to employee exposure and medical records and hazard communication. Further, these regulations and standards may not conflict with requirements and guidelines applicable to businesses set out and incorporated into Amended Executive Order 61 and Amended Order of Public Health Emergency Three.

#### Effective Date of this Executive Order

This Order is in furtherance of Amended Executive Order 51 (2020) and Amended Executive Order 61 and Amended Order of Public Health Emergency Three (2020). Further, this Order shall be effective 12:00 a.m., Friday, May 29, 2020, and shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia and the Seal of the Office of the State Health Commissioner of the Commonwealth of Virginia, this 26th day of May, 2020.

/s/ Ralph S. Northam

Governor

VIRGINIA REGISTER OF REGULATIONS

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# **EXHIBIT F**

## 36 Va. Regs. Reg. 2580

Volume 36, Issue 24, July 20, 2020

### EXECUTIVE ORDER

#### Reporter

36 Va. Regs. Reg. 2580 \*

***VA - Virginia Register of Regulations > 2020 > July > July 20, 2020 > EXECUTIVE ORDER > GOVERNOR***

#### Agency

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GOVERNOR

#### Text

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EXECUTIVE ORDER NUMBER SIXTY-SEVEN (2020) AND ORDER OF PUBLIC HEALTH EMERGENCY SEVEN

Phase Three Easing of Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19)

#### Importance of the Issue

On June 2, 2020, Executive Order 65 and Order of Public Health Emergency Six implemented Phase Two, continuing to ease business, gathering, and traveling restrictions originally imposed by Executive Order 53 and Executive Order 55 issued in March of 2020. During the weeks following, the public health metrics have continued to show positive trends. Our testing is increasing, our supply of personal protective equipment is steady, our hospital bed capacity remains steady, our hospitalizations statewide have a downward trend, and the percentage of positive tests continue to trend downward. Virginia continues to make significant progress.

As outlined below, we will move forward into Phase Three. In doing so, we must remember that the virus is still in our communities. We must remain cautious--continue teleworking whenever possible, wash our hands frequently, do not touch our faces, and wear face coverings. Through these efforts, we will continue to protect ourselves, our families, and our fellow Virginians as we respond to this emergency.

#### Directive

Therefore, by virtue of the authority vested in me by Article V of the Constitution of Virginia, by § 44-146.17 of the Code of Virginia, by any other applicable law, and in furtherance of Amended Executive Order 51 (2020), and by virtue of the authority vested in the State Health Commissioner pursuant to §§ 32.1-13, 32.1-20, and 35.1-10 of the Code of Virginia, the following is ordered:

## A. EASING OF BUSINESS RESTRICTIONS

### 1. All Businesses

Any businesses, not listed in this section, should adhere to the Guidelines for All Business Sectors expressly incorporated by reference herein as best practices. This guidance is located here.

### 2. Restaurants, Dining Establishments, Food Courts, Breweries, Microbreweries, Distilleries, Wineries, and Tasting Rooms

Restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, and tasting rooms may continue to operate delivery, take-out, and indoor and outdoor service, provided such businesses comply with the Guidelines for All Business Sectors, and sector-specific guidance for restaurant and beverage services incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. All parties must be separated by at least six feet, including in the bar area. Tables at which dining parties are seated must be positioned six feet apart from other tables. If tables are not movable, parties must be seated at least six feet apart, including in the bar area.
- b. Customers may be provided with self-service options. Facilities must provide hand sanitizer at food lines and require the use of barriers (e.g., gloves or deli paper) when employees or patrons touch common utensils. Food lines must be monitored by trained staff at all times of operation, and serving utensils must be changed hourly.
- c. Employees working in customer-facing areas must wear face coverings over their nose and mouth at all times.
- d. A thorough cleaning and disinfection of frequently-contacted surfaces must be conducted every 60 minutes during operation. Tabletops, chairs, and credit card/bill folders must be cleaned in between patrons.
- e. Bar seats and congregating areas of restaurants must be closed to patrons except for through-traffic. Non-bar seating in the bar area (i.e., tables or counter seats that do not line up to a bar or food service area) may be used for customer seating as long as a minimum of six feet is provided between parties at tables.
- f. If any such business cannot adhere to these requirements, it must close.

### 3. Farmers Markets

Farmers markets may continue to operate, provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines for farmers markets incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. Employees and patrons must maintain at least six feet of physical distancing between individuals who are not Family members, as defined below, at all times. Configure operations to avoid congestion or congregation points.
- b. Employees and vendors in customer-facing areas must wear face coverings over their nose and mouth at all times.

- c. Vendors must supply hand sanitizer stations or hand washing stations for patrons and employees.
- d. A thorough cleaning and disinfection of frequently-contacted surfaces must be conducted.
- e. If any such business cannot adhere to these requirements, it must close.

4. Brick and Mortar Retail Businesses Not Listed in Section C, Paragraph 1 (Non-Essential Retail) **[\*2581]** Any brick and mortar retail business not listed in section C, paragraph 1 below may continue to operate, provided such business complies with the Guidelines for All Business Sectors and the sector-specific guidance for brick and mortar retail expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. Employees and patrons must maintain at least six feet of physical distancing between individuals who are not Family members at all times.
- b. Employees working in customer-facing areas must wear face coverings over their nose and mouth at all times.
- c. If any such business cannot adhere to these requirements, it must close.

#### 5. Fitness and Exercise Facilities

Fitness centers, gymnasiums, recreation centers, sports facilities, and exercise facilities may continue to operate indoor and outdoor activities, provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines for fitness and exercise facilities expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. Patrons, members, and guests who are not Family members must remain at least ten feet apart during all activities except where necessary for the physical safety of an individual.
- b. Instructors and all participants of group exercise and fitness classes who are not Family members must maintain at least ten feet of physical distancing between each other at all times, with the exception of swimming lessons, where parents or guardians may support a participant during class, and instructors may have contact with swimmers when necessary.
- c. Occupancy must be limited to no more than 75% of the lowest occupancy load on the certificate of occupancy.
- d. Hot tubs, spas, splash pads, spray pools, and interactive play features must be closed.
- e. Outdoor and indoor swimming pools may be open, provided occupancy is limited to no more than 75% of the lowest occupancy load on the certificate of occupancy and all swimmers maintain at least ten feet of physical distance from others who are not Family members.
- f. Employees working in customer-facing areas must wear face coverings over their nose and mouth at all times. Lifeguards responding to distressed swimmers are exempt from this requirement.

- g. Employers must ensure cleaning and disinfection of shared equipment after each use.
- h. Facilities must prohibit the use of any equipment that cannot be thoroughly disinfected between uses (e.g., climbing rope, exercise bands, etc.).
- i. Businesses must supply hand sanitizer stations or hand washing stations for patrons, members, and guests.
- j. If any such business cannot adhere to these requirements, it must close.

6. Personal Care and Personal Grooming Services Beauty salons, barbershops, spas, massage centers, tanning salons, tattoo shops, and any other location where personal care or personal grooming services are performed may continue to operate, provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines for personal care and personal grooming services expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. Service providers must maintain at least six feet of physical distancing between work stations.
- b. Service providers and employees working in customer-facing areas must wear face coverings over their nose and mouth at all times.
- c. Provide face coverings for clients or ask that clients bring a face covering with them, which they must wear during the service. Limit services to only those that can be completed without clients removing their face covering.
- d. A thorough cleaning and disinfection of frequently-contacted surfaces must be conducted every 60 minutes of operation, while cleaning and disinfecting all personal care and personal grooming tools after each use. If that is not possible, such items must be discarded.
- e. If any such business cannot adhere to these requirements, it must close.

## 7. Campgrounds

Privately-owned campgrounds as defined in § 35.1-1 of the Code of Virginia may continue to operate, provided they comply with the Guidelines for All Business Sectors and the sector-specific guidelines for campgrounds, which are expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. Employees working in public-facing areas must wear face coverings over their nose and mouth at all times.
- b. Businesses must supply hand sanitizer stations or hand washing stations for patrons, members, and guests.
- c. If any such business cannot adhere to these requirements, it must close.

## 8. Indoor Shooting Ranges **[\*2582]**

Indoor shooting ranges may continue to operate, provided they comply with the following requirements:

- a. Employees and patrons must maintain at least six feet of physical distancing between individuals who are not Family members at all times.
- b. Employees working in customer-facing areas are required to wear face coverings over their nose and mouth at all times.
- c. Perform thorough cleaning and disinfection of frequently-contacted surfaces every 60 minutes of operation, while disinfecting all equipment between each customer use and prohibiting the use of equipment that cannot be thoroughly disinfected.
- d. Either thoroughly clean shared or borrowed equipment in between uses, or only allow the use of personal equipment at the range.
- e. If any such indoor shooting range cannot adhere to these requirements, it must close.

#### 9. Public Beaches

All public beaches as defined in § 10.1-705 of the Code of Virginia may remain open to individual and family recreational activity. All such public beaches, must comply with the requirements below.

- a. Require beachgoers to practice physical distancing of at least six feet between each person unless they are with Family members.
- b. Prohibit gatherings of more than 250 people.
- c. Implement and adhere to a cleaning schedule for all high-touch surfaces made of plastic or metal such as benches and railings that includes cleaning at least every two hours between the hours of 9 a.m. and 6 p.m.
- d. Establish, train, and deploy a team to educate and promote compliance with beach rules and refer cases of noncompliance to public safety personnel, if appropriate.
- e. Establish procedures for temporary beach closure or access limitations in the event of overcrowding.
- f. Ensure adequate personal protective equipment for all lifeguards.
- g. Perform a disinfectant-level cleaning of all public restrooms every two hours with an EPA-approved disinfectant by staff or volunteers trained to follow Centers for Disease Control and Prevention (CDC) guidance on cleaning and disinfecting.
- h. For chair and umbrella rental companies, require vendors to set up chairs and umbrellas for customers, maintaining at least six feet of distance between groups, and to clean equipment between rentals following Environmental Protection Agency and CDC guidelines on cleaning and disinfecting.



- i. Post signage at all public access points to the beaches and other "cluster prone" areas providing health reminders regarding physical distancing, gathering prohibitions, options for high risk individuals, and staying home if sick. Messaging must be specific to location.
- j. Locality shall provide daily metrics to its local health department to include beach closures, complaint incidents, police reports of violence related to enforcement, and number of reports of noncompliance to be submitted each Monday.
- k. All employees and contract workers must wear a cloth face covering when not able to practice physical distancing following CDC Use of Face Cloth Coverings guidance.
- l. Employees and contract workers must have access to soap and water or hand sanitizer containing at least 60% alcohol, and locality should provide best hygiene practices to employees on a regular basis, including washing hands often with soap and water for at least 20 seconds and practicing respiratory etiquette protocols.
- m. Locality shall require all employees and contract workers to take their temperature before reporting to work and direct such employees not to report to work if they have a fever of over 100.4 degrees, have experienced chills, or have been feverish in the last 72 hours.
- n. Follow enhanced workplace safety best practices outlined in the Guidelines for All Business Sectors.

#### 10. Racetracks and Speedways

Outdoor racetracks may remain open for racing events, provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines for racetracks expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. The event must be held at locations with the ability to restrict access (i.e. barriers and gating).
- b. All individuals must maintain at least six feet of physical distancing between themselves and other participants who are not Family members.
- c. Food services must adhere to the sector-specific guidance for restaurant and beverage services and camping areas must adhere to the sector-specific guidance for campgrounds.
- d. The total number of attendees (including both participants and spectators) cannot exceed the lesser of 50% of the lowest occupancy load on the certificate of occupancy, if applicable, or 1000 persons.

#### 11. Entertainment and Amusement Businesses **[\*2583]**

Performing arts venues, concert venues, sports venues, movie theaters, museums, aquariums, zoos, fairs, carnivals, amusement parks, public and private social clubs, botanical gardens, entertainment centers, historic horse racing facilities, bowling alleys, skating rinks, arcades, trampoline parks, arts and craft facilities, escape rooms, and other places of indoor public amusement may open provided such businesses comply with the

Guidelines for All Business Sectors and the sector-specific guidelines, which are expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. The total number of attendees (including both participants and spectators) cannot exceed the lesser of 50% of the lowest occupancy load on the certificate of occupancy, if applicable, or 1,000 persons.
- b. All private bookings must comply with section B, paragraph 1.
- c. Install visible markers for queue lines that separate people by six feet of physical distance.
- d. Create a guest flow plan of modified queue lines into and within the facility. Determine areas likely to become bottlenecks or pinch points and adjust guest flow accordingly.
- e. Ten feet of physical distancing is required between parties at all establishments with physical activity, singing, or cheering; six feet of physical distancing is required in other venues.
- f. Perform thorough cleaning and disinfection of frequently-contacted surfaces including digital ordering devices, check presenters, self-service areas, tabletops, bathroom surfaces, games, shared equipment, and other common touch areas every 60 minutes during operation.
- g. Where possible, install plexiglass barriers in front of commonly used point-of-sale or guest service stations.
- h. Employees working in customer-facing areas are required to wear face coverings over their nose and mouth at all times.
- i. Provide hand washing or sanitizing stations for attendees and employees.
- j. If any such business cannot adhere to these requirements, it must close.

## 12. Recreational Sports

Indoor and outdoor recreational sports activities are permitted, provided participants and organizers of recreational sports activities comply with the Guidelines for All Business Sectors and the sector-specific guidelines for recreational sports expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. Ten feet of physical distance should be maintained by all instructors, participants, and spectators, where practicable.
- b. The total number of attendees (including both participants and spectators) of recreational sports cannot exceed the lesser of 50% of the occupancy load of the certificate of occupancy for the venue, if applicable, or 250 persons. For sports played on a field, attendees are limited to 250 persons per field.

## 13. Enforcement

Guidelines for All Business Sectors and the sector-specific guidelines appear here. The Virginia Department of Health shall have authority to enforce section A of this Order. Any willful violation or refusal, failure, or neglect to comply with this Order, issued pursuant to § 32.1-13 of the Code of Virginia, is punishable as a Class 1 misdemeanor pursuant to § 32.1-27 of the Code of Virginia. The State Health Commissioner may also seek injunctive relief in circuit court for violation of this Order, pursuant to § 32.1-27 of the Code of Virginia. In addition, any agency with regulatory authority over a business listed in section A may enforce this Order as to that business to the extent permitted by law.

## B. CONTINUED RESTRICTIONS

### 1. All Public and Private In-Person Gatherings

All public and private in-person gatherings of more than 250 individuals are prohibited. The presence of more than 250 individuals performing functions of their employment is not a "gathering." A "gathering" includes, but is not limited to, parties, celebrations, or other social events, whether they occur indoors or outdoors.

Individuals may attend religious services subject to the following requirements:

- a. Individuals attending religious services must be at least six feet apart when seated and must practice proper physical distancing at all times. Family members, as defined below, may be seated together.
- b. Mark seating and common areas where attendees may congregate in six-foot increments to maintain physical distancing between persons who are not Family members.
- c. Any items used to distribute food or beverages must be disposable, used only once and discarded.
- d. A thorough cleaning and disinfection of frequently-contacted surfaces must be conducted prior to and following any religious service.
- e. Post signage at the entrance that states that no one with a fever or symptoms of COVID-19 is permitted to participate in the religious service. **[\*2584]**
- f. Post signage to provide public health reminders regarding physical distancing, gatherings, options for high risk individuals, and staying home if sick.
- g. If religious services cannot be conducted in compliance with the above requirements, they must not be held in-person.

Further, any social gathering held in connection with a religious service is subject to the public and private in-person gatherings restriction in section B, paragraph 1. Additional suggested guidance can be found here.

### 2. Institutions of Higher Education

Institutions of higher education shall comply with all applicable requirements under the Phased Guidance of Virginia Forward and the "Guidelines for All Business Sectors." Any postsecondary provider offering vocational training in a

profession regulated by a Virginia state agency/board must also comply with any sector-specific guidelines relevant to that profession to the extent possible under the regulatory training requirements. Such professions may include, but are not necessarily limited to: aesthetician, barber, cosmetologist, massage therapist, nail technician, and practical nurse.

### 3. Overnight Summer Camps

Overnight services of summer camps, as defined in § 35.1-1 of the Code of Virginia, must remain closed.

### 4. Enforcement

Violations of section B paragraphs 1, 2, and 3 of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the Code of Virginia.

## C. CONTINUED GUIDANCE AND DIRECTION

### 1. Essential Retail Businesses

Essential retail businesses as set out below may continue to remain open during their normal business hours. They should comply with the Guidelines for All Business Sectors expressly incorporated by reference and linked here, as best practices. Employers are required to provide face coverings to employees.

- a. Grocery stores, pharmacies, and other retailers that sell food and beverage products or pharmacy products, including dollar stores, and department stores with grocery or pharmacy operations;
- b. Medical, laboratory, and vision supply retailers;
- c. Electronic retailers that sell or service cell phones, computers, tablets, and other communications technology;
- d. Automotive parts, accessories, and tire retailers as well as automotive repair facilities;
- e. Home improvement, hardware, building material, and building supply retailers;
- f. Lawn and garden equipment retailers;
- g. Beer, wine, and liquor stores;
- h. Retail functions of gas stations and convenience stores;
- i. Retail located within healthcare facilities;
- j. Banks and other financial institutions with retail functions;
- k. Pet and feed stores;
- l. Printing and office supply stores; and

m. Laundromats and dry cleaners.

## 2. State Agencies

All relevant state agencies shall continue to work with all housing partners to execute strategies to protect the health, safety, and well-being of Virginians experiencing homelessness during this pandemic and to assist Virginians in avoiding evictions or foreclosures.

## 3. Face Coverings

The waiver of § 18.2-422 of the Code of Virginia is continued, so as to allow the wearing of a medical mask, respirator, or any other protective face covering for the purpose of facilitating the protection of one's personal health in response to the COVID-19 public health emergency declared by the State Health Commissioner on February 7, 2020, and reflected in Amended Executive Order 51 (2020) declaring a state of emergency in the Commonwealth. Amended Executive Order 51 (2020) remains so amended. This waiver is effective as of March 12, 2020 and will remain in effect until 11:59 p.m. on September 8, 2020 unless amended or rescinded by further executive order.

Further, where a mandatory business sector requirement in this Order conflicts with a requirement to wear a face covering in Executive Order 63 and Order of Public Health Emergency Five (2020), the business sector-specific requirement governs.

## 4. Family Members

"Family members" means blood relations, adopted, step, and foster relations, as well as all individuals residing in the same household. Family members are not required to maintain physical distancing while in their homes.

## 5. Exceptions

Nothing in the Order shall limit: (a) the provision of health care or medical services; (b) access to essential services for low-income residents, such as food banks; (c) the operations of the media; (d) law enforcement agencies; or (e) the operation of government. **[\*2585]**

## 6. Expiration of Order

Amended Executive Order 65 and Amended Order of Public Health Emergency Six shall expire on Tuesday, June 30, 2020, at 11:59 p.m..

### Effective Date of the Executive Order

This Order shall be effective 12:00 a.m., Wednesday, July 1, 2020. This Executive Order shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia and the Seal of the Office of the State Health Commissioner of the Commonwealth of Virginia, this 30th day of June, 2020.

/s/ Ralph S. Northam

Governor

VIRGINIA REGISTER OF REGULATIONS

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End of Document

# **EXHIBIT G**

## 37 Va. Regs. Reg. 1045

Volume 37, Issue 10, January 4, 2021

### EXECUTIVE ORDER

#### Reporter

37 Va. Regs. Reg. 1045 \*

*VA - Virginia Register of Regulations > 2021 > January > January 4, 2021 > EXECUTIVE ORDER  
> GOVERNOR*

#### Agency

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GOVERNOR

#### Text

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EXECUTIVE ORDER NUMBER SEVENTY-TWO (2020)

and Order of Public Health Emergency Nine Commonsense Surge Restrictions

Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19)

#### Importance of the Issue

In November, as case counts and positivity rates began to rise, we took additional measures to stem the spread of the virus throughout the Commonwealth. In general, Virginians cooperated with those measures. Unfortunately, the surge that began many weeks ago is continuing across the Commonwealth. All five health regions are experiencing increases in new COVID-19 cases, positive tests, and hospitalizations. Virginia is averaging more than 4,000 new COVID-19 cases per day, up from a statewide peak of approximately 1,200 in May. Virginia's PCR percent test positivity rate is at 11.1 percent, an increase from 6.5 percent approximately one month ago. As of December 10, 2020, all but one health region reported a PCR test positivity rate at or above ten percent. Hospitalizations have increased by approximately 83 percent in the last four weeks. COVID-19 ICU hospitalizations have been increasing for 33 days and the statewide rate (4.4 per 100,000 persons) has exceeded the threshold of concern (3.5 per 100,000 persons) for the rate of confirmed COVID-19 hospitalizations. Since this pandemic began in March, we have learned that socialization with persons outside of your household and sustained activities in indoor settings contribute significantly to the transmission of the virus. Virginians must continue to practice the measures that we know work to stem the spread of the virus: wash your hands, avoid touching your face, avoid gatherings, and wear face coverings both indoors and outdoors. Therefore, additional measures are necessary to protect public health and stem the spread of COVID-19.



## Directive

Therefore, by virtue of the authority vested in me by Article V of the Constitution of Virginia, by § 44-146.17 of the Code of Virginia, by any other applicable law, and in furtherance of Amended **Executive Order 51** (2020), and by virtue of the authority vested in the State Health Commissioner pursuant to §§ 32.1-13, 32.1-20, and 35.1-10 of the Code of Virginia, the following is ordered:

### I. MODIFIED STAY AT HOME ORDER

All individuals in Virginia should remain at their place of residence between the hours of 12:00 a.m. and 5:00 a.m. Individuals may leave their residences for the purposes of:

- a. Obtaining food, beverages, goods, or services as permitted in this Order;
- b. Seeking medical attention, essential social services, governmental services, assistance from law enforcement, or emergency services;
- c. Taking care of other individuals or animals;
- d. Traveling required by court order or to facilitate child custody, visitation, or child care;
- e. Engaging in exercise, provided individuals comply with social distancing requirements;
- f. Traveling to and from one's residence, place of worship, or work;
- g. Traveling to and from an educational institution;
- h. Volunteering with organizations that provide charitable or social services; or
- i. Leaving one's residence due to a reasonable fear for health or safety, at the direction of law enforcement, or at the direction of another government agency.

### II. RESTRICTIONS

#### A. BUSINESS RESTRICTIONS

##### 1. All Businesses

Any business not listed in Section II, subsections A or C below must adhere to the Guidelines for All Business Sectors expressly incorporated by reference herein as best practices. This guidance is located here.

##### 2. Restaurants, Dining Establishments, Food Courts, Breweries, Microbreweries, Distilleries, Wineries, and Tasting Rooms

Restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, and tasting rooms may continue to operate delivery, take-out, and indoor and outdoor service, provided such businesses comply with the Guidelines for All Business Sectors, and sector-specific guidance for restaurant and beverage services incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. No alcoholic beverage shall be sold, consumed, or possessed on premises after 10:00 p.m. in any restaurant, dining establishment, food court, brewery, microbrewery, distillery, winery, or tasting room. Alcoholic beverages may continue to be sold via delivery or take-out after 10:00 p.m., as permitted by existing regulations promulgated by the Virginia Alcoholic Beverage Control Authority.
- b. Closure of all dining and congregation areas in restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, and tasting rooms between the hours of 12:00 a.m. and 5:00 a.m. Restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, and tasting rooms may continue to offer delivery and take-out services between the hours of 12:00 a.m. and 5:00 a.m. **[\*1046]**
- c. All parties must be separated by at least six feet, including in the bar area. Tables at which dining parties are seated must be positioned six feet apart from other tables. If tables are not movable, parties must be seated at least six feet apart, including in the bar area.
- d. Customers may be provided with self-service options. Facilities must provide hand sanitizer at food lines and require the use of barriers (e.g., gloves or deli paper) when employees or patrons touch common utensils. Food lines must be monitored by trained staff at all times of operation, and serving utensils must be changed hourly.
- e. Employees must wear face coverings over their nose and mouth while working at their place of employment.
- f. Patrons must wear face coverings, except while eating or drinking.
- g. Routine cleaning and disinfection of frequently-contacted surfaces must be conducted every 60 minutes during operation. Tabletops must be cleaned in between patrons.
- h. Bar seats and congregating areas of restaurants must be closed to patrons except for through-traffic. Non-bar seating in the bar area (i.e., tables or counter seats that do not line up to a bar or food service area) may be used for customer seating as long as a minimum of six feet is provided between parties at tables.
- i. If any such business cannot adhere to these requirements, it must close.

### 3. Farmers' Markets

Farmers' markets may continue to operate, provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines for farmers' markets incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. Employees and patrons must maintain at least six feet of physical distancing between individuals who are not Family members, as defined below in section II, subsection D, paragraph 2, at all times. Employees and vendors must, where possible, configure operations to avoid congestion or congregation points.
- b. Employees and vendors must wear face coverings over their nose and mouth while working at their place of employment.

- c. Employees and vendors must routinely clean and disinfect frequently-contacted surfaces during operation.
- d. Patrons must wear face coverings over their nose and mouth according to Section III.
- e. Farmers' markets must promote frequent and thorough hand washing, including by providing employees, customers, visitors, the general public, and other persons entering into the place of employment with a place to wash their hands. If soap and running water are not immediately available, provide hand sanitizers.
- f. If any such business cannot adhere to these requirements, it must close.

#### 4. Brick and Mortar Retail Businesses Not Listed in Section II, Subsection C, Paragraph 1 (Non-Essential Retail)

Any brick and mortar retail business not listed in section II, subsection C, paragraph 1 below may continue to operate, provided such business complies with the Guidelines for All Business Sectors and the sector-specific guidance for brick and mortar retail expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. Employees and patrons must maintain at least six feet of physical distancing between individuals who are not Family members, as defined below in section II, subsection D, paragraph 2, at all times.
- b. Employees must wear face coverings over their nose and mouth while working at their place of employment.
- c. Patrons must wear face coverings over their nose and mouth according to Section III.
- d. If any such business cannot adhere to these requirements, it must close.

#### 5. Fitness and Exercise Facilities

Fitness centers, gymnasiums, recreation centers, sports facilities, and exercise facilities may continue to operate indoor and outdoor activities, provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines for fitness and exercise facilities expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. Patrons, members, and guests who are not Family members as defined below must remain at least ten feet apart during all activities except where necessary for the physical safety of an individual.
- b. Instructors and all participants of group exercise and fitness classes who are not Family members as defined below must maintain at least ten feet of physical distancing between each other at all times, with the exception of swimming lessons, where parents or guardians may support a participant during class, and instructors may have contact with swimmers when necessary.
- c. Occupancy must be limited to 75 percent of the lowest occupancy load on the certificate of occupancy.

d. The total number of attendees (including both participants and instructors) in all group exercise and fitness classes cannot exceed the lesser of 75 percent of the minimum occupancy load on the certificate of occupancy or 10 persons.

e. Hot tubs, spas, splash pads, spray pools, and interactive play features, except water slides, must be closed.

**[\*1047]**

f. Outdoor and indoor swimming pools may be open, provided occupancy is limited to no more than 75 percent of the lowest occupancy load on the certificate of occupancy and all swimmers maintain at least ten feet of physical distance from others who are not Family members as defined below in section II, subsection D, paragraph 2.

g. Employees working must wear face coverings over their nose and mouth while working at their place of employment. Lifeguards responding to distressed swimmers are exempt from this requirement.

h. Patrons must wear face coverings over their nose and mouth according to Section III.

i. Employers must ensure cleaning and disinfection of shared exercise equipment after each use.

j. Businesses must promote frequent and thorough hand washing, including by providing employees, customers, visitors, the general public, and other persons entering into the place of employment with a place to wash their hands. If soap and running water are not immediately available, provide hand sanitizers.

k. If any such business cannot adhere to these requirements, it must close.

6. Personal Care and Personal Grooming Services Beauty salons, barbershops, spas, massage centers, tanning salons, tattoo shops, and any other location where personal care or personal grooming services are performed may continue to operate, provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines for personal care and personal grooming services expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

a. Service providers must maintain at least six feet of physical distancing between work stations.

b. Service providers and employees must wear face coverings over their nose and mouth while working at their place of employment.

c. Provide face coverings for clients or ask that clients bring a face covering with them, which they must wear during the service, except when treating the areas of the nose and mouth.

d. Routine cleaning and disinfection of frequently contacted surfaces must be conducted every 60 minutes of operation. All personal care and personal grooming tools should be cleaned and disinfected after each use. If that is not possible, such items must be discarded.

e. If any such business cannot adhere to these requirements, it must close.

7. Campgrounds

Privately-owned campgrounds as defined in § 35.1-1 of the Code of Virginia may continue to operate provided they comply with the Guidelines for All Business Sectors and the sector-specific guidelines for campgrounds, which are expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. Employees must wear face coverings over their nose and mouth while working at their place of employment.
- b. Patrons must wear face coverings over their nose and mouth in accordance with Section III.
- c. Businesses must promote frequent and thorough hand washing, including by providing employees, customers, visitors, the general public, and other persons entering into the place of employment with a place to wash their hands. If soap and running water are not immediately available, provide hand sanitizers.
- d. If any such business cannot adhere to these requirements, it must close.

#### 8. Indoor Shooting Ranges

Indoor shooting ranges may continue to operate, provided they comply with the following requirements:

- a. Employees and patrons must maintain at least six feet of physical distancing between individuals who are not Family members as defined below in section II, subsection D, paragraph 2 at all times.
- b. Employees must wear face coverings over their nose and mouth while working in their place of employment.
- c. Perform thorough cleaning and disinfection of frequently-contacted surfaces every 60 minutes of operation, while disinfecting all equipment between each customer use and prohibiting the use of equipment that cannot be thoroughly disinfected.
- d. Patrons must wear face coverings over their nose and mouth according to Section III.
- e. If any such indoor shooting range cannot adhere to these requirements, it must close.

#### 9. Public Beaches

All public beaches as defined in § 10.1-705 of the Code of Virginia may remain open to individual and family recreational activity. All such public beaches, must comply with the requirements below.

- a. Require beachgoers to practice physical distancing of at least six feet between each person unless they are with Family members as defined in section II, subsection D, paragraph 2.
- b. Prohibit gatherings of more than 10 people in accordance with section II, subsection B.
- c. Implement and adhere to a cleaning schedule for all high-touch surfaces made of plastic or metal such as benches and railings that includes cleaning at least every two hours between the hours of 9 a.m. and 6 p.m.

**[\*1048]**

- d. Establish, train, and deploy a team to educate and promote compliance with beach rules and refer cases of noncompliance to public safety personnel, if appropriate.
- e. Establish procedures for temporary beach closure or access limitations in the event of overcrowding.
- f. Ensure adequate personal protective equipment for all lifeguards.
- g. Perform a disinfectant-level cleaning of all public restrooms every two hours with an EPA-approved disinfectant by staff or volunteers trained to follow Centers for Disease Control and Prevention (CDC) guidance on cleaning and disinfecting.
- h. For chair and umbrella rental companies, require vendors to set up chairs and umbrellas for customers, maintain at least six feet of distance between groups, and clean equipment between rentals following Environmental Protection Agency and CDC guidelines on cleaning and disinfecting.
- i. Post signage at all public access points to the beaches and other "cluster prone" areas providing health reminders regarding physical distancing, gathering prohibitions, options for high risk individuals, and staying home if sick. Messaging must be specific to location.
- j. Each locality shall provide daily metrics to its local health department to include beach closures, complaint incidents, police reports of violence related to enforcement, and number of reports of noncompliance to be submitted each Monday.
- k. All employees and contract workers must wear a cloth face covering when not able to practice physical distancing following CDC Use of Face Cloth Coverings guidance.
- l. All employees and contract workers must have access to soap and water or hand sanitizer containing at least 60 percent alcohol, and locality should provide best hygiene practices to employees on a regular basis, including washing hands often with soap and water for at least 20 seconds and practicing respiratory etiquette protocols.
- m. Each locality shall require all employees and contract workers to take their temperature before reporting to work and direct such employees not to report to work if they have a fever of over 100.4 degrees, have experienced chills, or have been feverish in the last 72 hours.
- n. Individuals must wear face coverings over their nose and mouth in accordance with Section III.
- o. Follow enhanced workplace safety best practices outlined in the Guidelines for All Business Sectors.

#### 10. Racetracks and Speedways

Outdoor racetracks may remain open for racing events, provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines for racetracks expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. The event must be held at locations with the ability to restrict access (i.e., barriers and gating).

- b. All individuals must maintain at least six feet of physical distancing between themselves and other participants who are not Family members as defined below.
- c. Food services must adhere to the sector-specific guidance for restaurant and beverage services and camping areas must adhere to the sector-specific guidance for campgrounds.
- d. The total number of patrons cannot exceed the lesser of 30 percent of the lowest occupancy load on the certificate of occupancy, if applicable, or 250 persons.
- e. Employees must wear face coverings while working in their place of employment.
- f. Patrons must wear face coverings over their nose and mouth in accordance with Section III.
- g. Prohibit gatherings of more than 10 people in accordance with section II, subsection B.

#### 11. Large Outdoor Amusement Parks and Zoos

Large Outdoor Amusement Parks and Zoos are outdoor amusement parks and zoos comprised of at least 25 acres of land that contain one or more permanent amusement exhibits or rides and that host at least 500,000 visitors annually.

- a. Total occupancy for the venue must not exceed 50 percent the combined occupancy load on the certificates of occupancy for all areas of the venue.
- b. Install visible markers for queue lines that separate people by six feet of physical distance.
- c. Create a guest flow plan of modified queue lines into and within the facility. Determine areas likely to become bottlenecks or pinch points and adjust guest flow accordingly.
- d. Patrons must wear face coverings over their nose and mouth in accordance with Section III.
- e. Employees must wear face coverings over their nose and mouth while working at their place of employment.
- f. Venues must promote frequent and thorough hand washing, including by providing employees, customers, visitors, the general public, and other persons with a place to wash their hands. If soap and running water are not immediately available, provide hand sanitizers.
- g. Venues should screen patrons for COVID-19 symptoms prior to admission to the venue. Patrons should be asked if they are currently experiencing fever (100.4 degrees Fahrenheit or higher) or a sense of having a fever, a new cough that cannot be attributed to another health condition, new shortness of breath that cannot be [\*1049] attributed to another health condition, new chills that cannot be attributed to another health condition, a new sore throat that cannot be attributed to another health condition, or new muscle aches that cannot be attributed to another health condition or specific activity (such as physical exercise). Anyone experiencing symptoms should not be permitted in the facility. Screenings should be conducted in accordance with applicable privacy and confidentiality laws and regulations.

h. Any ride, attraction, or theatre at an amusement park that is located indoors, or has queue lines indoors, must remain closed. The amusement park may open indoor restaurants, concessions, gifts shops or retail spaces, and restrooms. On site retail, recreation and fitness, cabins, and food establishments must follow the requirements and guidelines specific to those establishments.

i. All private bookings are limited to 10 people and must comply with Section II, subsection B, paragraph 1.

j. If any such venue cannot adhere to these requirements, it must close.

## 12. Entertainment and Amusement Businesses

Performing arts venues, concert venues, sports venues, convention centers, expos, movie theaters, museums, aquariums, fairs, carnivals, public and private social clubs, botanical gardens, entertainment centers, historic horse racing facilities, bowling alleys, skating rinks, arcades, trampoline parks, arts and craft facilities, escape rooms, amusement parks and zoos not covered in paragraph 11, and other places of indoor public amusement may open provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines, which are expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

a. The total number of spectators cannot exceed the lesser of 30 percent of the lowest occupancy load on the certificate of occupancy, if applicable, or 250 persons.

b. All private bookings are limited to 10 people and must comply with Section II, subsection B, paragraph 1.

c. No alcoholic beverage shall be sold, consumed, or possessed on premises after 10:00 p.m. Alcoholic beverages may continue to be sold via delivery or take-out after 10:00 p.m., as permitted by existing regulations promulgated by the Virginia Alcoholic Beverage Control Authority.

d. Install visible markers for queue lines that separate people by six feet of physical distance.

e. Create a guest flow plan of modified queue lines into and within the facility. Determine areas likely to become bottlenecks or pinch points and adjust guest flow accordingly.

f. Require ten feet of physical distancing between parties at all establishments with physical activity, singing, or cheering; six feet of physical distancing is required in other venues.

g. If interactive exhibits are in service, post signage to discourage congregating and encourage the use of hand sanitizer. Provide hand sanitizer stations around any interactive exhibits. Discontinue any interactive exhibits that pose a risk for children to place items in their mouths.

h. Practice routine cleaning and disinfection of high contact areas and hard surfaces, including check out stations and payment pads, store entrance push/pull pads, door knobs/handles, dining tables/chairs, light switches, handrails, restrooms, guest lockers, floors, and equipment.



- i. Where possible, install plexiglass barriers in front of commonly used point-of-sale or guest service stations.
- j. Employees are required to wear face coverings over their nose and mouth while working at their place of employment.
- k. Patrons must wear face coverings over their nose and mouth in accordance with Section III.
- l. Businesses must promote frequent and thorough hand washing, including by providing employees, customers, visitors, the general public, and other persons to the entering into place of employment with a place to wash their hands. If soap and running water are not immediately available, provide hand sanitizers.
- m. If any such business cannot adhere to these requirements, it must close.

### 13. Recreational Sports

Indoor and outdoor recreational sports activities are permitted, provided participants and organizers of recreational sports activities comply with the following requirements:

- a. For sports played indoors, spectators must be limited to 25 persons per field. For sports played outdoors, spectators are limited to two guests per player. The total number of spectators cannot exceed 30 percent of the occupancy load of the certificate of occupancy for the venue.
- b. Races or marathons may have up to 250 participants, provided staggered starts separate runners into groups of 25 or less.
- c. Conduct screening of coaches, officials, staff, and players for COVID-19 symptoms prior to admission to the venue/facility.
- d. Employees must wear face coverings while working in their place of employment.
- e. Spectators must wear face coverings over their nose and mouth at all times.

For more information on how to reduce the risk of COVID-19 exposure and spread associated with indoor and outdoor recreational sports activities, consult the Virginia Department of Health's "Considerations for Recreational Sports" webpage, which can be found here. **[\*1050]**

### 14. Enforcement - Business Restrictions

- a. Guidelines for All Business Sectors and the sector-specific guidelines appear here.
- b. The Virginia Department of Health and the Virginia Alcoholic Beverage Control Authority shall have authority to enforce section II, subsection A of this Order. Any willful violation or refusal, failure, or neglect to comply with this Order, issued pursuant to § 32.1-13 of the Code of Virginia, is punishable as a Class 1 misdemeanor pursuant to § 32.1-27 of the Code of Virginia. The State Health Commissioner may also seek injunctive relief in circuit court for violation of this Order, pursuant to § 32.1-27 of the Code of Virginia.

c. In addition, any agency with regulatory authority over a business listed in section II, subsection A, including but not limited to the Virginia Department of Labor and Industry, pursuant to § 40.1-51.1 of the Code of Virginia, the Department of Professional and Occupational Regulation, pursuant to 18 Va. Admin Code § 41-20-280, and the Virginia Department of Agriculture and Consumer Services, pursuant to § 3.2-5106 of the Code of Virginia, or any other law applicable to these agencies, may enforce this Order as to that business.

## B. OTHER RESTRICTIONS

### 1. All Public and Private In-Person Gatherings

All public and private in-person gatherings of more than 10 individuals who do not live in the same residence are prohibited. A "gathering" includes, but is not limited to, parties, celebrations, or other social events, whether they occur indoors or outdoors. The presence of more than 10 individuals performing functions of their employment or assembled in an educational instructional setting is not a "gathering." The presence of more than 10 individuals in a particular location, such as a park, or retail business is not a "gathering" as long as individuals do not congregate. This restriction does not apply to the gathering of Family members, as defined in section II, subsection D, paragraph 2 living in the same residence.

Subject to the following requirements, this restriction shall not bar individuals from attending religious services or assembling for educational instruction with more than 10 people provided:

- a. Individuals assembled for educational instruction adhere to the applicable physical distancing and sanitization plan and guidelines of the relevant governing body or educational institution;
- b. Individuals attending religious services:
  - i. Practice proper physical distancing at all times.
  - ii. Mark seating and common areas where attendees may congregate in six-foot increments to maintain physical distancing.
  - iii. Ensure that any items used to distribute food or beverages either should be disposable or washed or cleaned between uses between individuals who are not Family members.
  - iv. Conduct routine cleaning and disinfection of frequently-contacted surfaces prior to and following any religious service.
  - v. Post signage at the entrance that states that no one with a fever or symptoms of COVID-19 is permitted to participate in the religious service.
  - vi. Post signage to provide public health reminders regarding physical distancing, gatherings, options for high risk individuals, and staying home if sick.
  - vii. Individuals attending religious services must wear face coverings in accordance with Section III below.

viii. If religious services cannot be conducted in compliance with the above requirements, they must not be held in-person.

Further, any social gathering held in connection with a religious service is subject to the public and private in-person gatherings restriction in Section II, subsection B, paragraph 1. Additional suggested guidance can be found here.

## 2. Institutions of Higher Education

Institutions of higher education shall comply with all applicable requirements under the Phased Guidance of Virginia Forward and the "Guidelines for All Business Sectors." Any postsecondary provider offering vocational training in a profession regulated by a Virginia state agency/board must also comply with any sector-specific guidelines relevant to that profession to the extent possible under the regulatory training requirements. Such professions may include, but are not necessarily limited to: aesthetician, barber, cosmetologist, massage therapist, nail technician, and practical nurse.

## 3. Overnight Summer Camps

Overnight services of summer camps, as defined in § 35.1-1 of the Code of Virginia, must remain closed.

## 4. Enforcement - Other Restrictions

Violations of section II, subsection B, paragraphs 1 and 3 of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the Code of Virginia. Any law enforcement officer as defined in § 9.1-101 of the Code of Virginia including the Virginia Department of State Police may enforce these restrictions.

## C. REQUIREMENTS FOR ESSENTIAL RETAIL BUSINESSES

### 1. Essential Retail Businesses

Essential retail businesses as set out below may continue to remain open during their normal business hours.

#### **[\*1051]**

- a. Grocery stores, pharmacies, and other retailers that sell food and beverage products or pharmacy products, including dollar stores, and department stores with grocery or pharmacy operations;
- b. Medical, laboratory, and vision supply retailers;
- c. Electronic retailers that sell or service cell phones, computers, tablets, and other communications technology;
- d. Automotive parts, accessories, and tire retailers as well as automotive repair facilities;
- e. Home improvement, hardware, building material, and building supply retailers;
- f. Lawn and garden equipment retailers;
- g. Beer, wine, and liquor stores;

- h. Retail functions of gas stations and convenience stores;
- i. Retail located within healthcare facilities;
- j. Banks and other financial institutions with retail functions;
- k. Pet and feed stores;
- l. Printing and office supply stores; and
- m. Laundromats and dry cleaners. Essential Retail Businesses must comply with the Guidelines for All Business Sectors expressly incorporated by reference and linked here. Employers are required to provide face coverings to employees. If any such business cannot adhere to these requirements, it must close.

## 2. Enforcement -- Essential Retail

- a. Guidelines for All Business Sectors and the sector-specific guidelines appear here.
- b. The Virginia Department of Health and the Virginia Alcoholic Beverage Control Authority shall have authority to enforce section II, subsection C of this Order. Any willful violation or refusal, failure, or neglect to comply with this Order, issued pursuant to § 32.1-13 of the Code of Virginia, is punishable as a Class 1 misdemeanor pursuant to § 32.1-27 of the Code of Virginia. The State Health Commissioner may also seek injunctive relief in circuit court for violation of this Order, pursuant to § 32.1-27 of the Code of Virginia.
  - c. In addition, any agency with regulatory authority over a business listed in section II, subsection C, including but not limited to the Virginia Department of Labor and Industry, pursuant to § 40.1-51.1 of the Code of Virginia, the Department of Professional and Occupational Regulation, pursuant to 18 Va. Admin Code § 41-20-280, and the Virginia Department of Agriculture and Consumer Services, pursuant to § 3.2-5106 of the Code of Virginia or any other law applicable to these agencies, shall have authority to enforce section II, subsection C of this Order as to that business.

## D. CONTINUED GUIDANCE AND DIRECTION

### 1. State Agencies

All relevant state agencies shall continue to work with all housing partners to execute strategies to protect the health, safety, and well-being of Virginians experiencing homelessness during this pandemic and to assist Virginians in avoiding evictions or foreclosures.

### 2. Family Members

"Family members" include blood relations, adopted, step, and foster relations, as well as all individuals residing in the same household or visiting such household pursuant to a child custody arrangement or order. Family members are not required to maintain physical distancing while in their homes.

### 3. Exceptions

With the exception of Section III below, nothing in the Order shall limit:

- a. The provision of health care or medical services;
- b. Access to essential services for low-income residents, such as food banks;
- c. The operations of the media;
- d. Law enforcement agencies; or
- e. The operation of government.

### III. REQUIREMENT TO WEAR FACE COVERING

#### A. Face Coverings Required - Indoors

1. All individuals in the Commonwealth aged five and older must cover their mouth and nose with a face covering, as described and recommended by the CDC, if they are in an indoor setting shared by others. This requirement applies to state and local government settings, train stations, bus stations, and intrastate public transportation, including buses, rideshares, trains, taxis, and cars for hire, as well as any waiting or congregating areas associated with boarding public transportation. This requirement shall not apply in any area under federal jurisdiction or control.
2. This restriction does not apply to persons inside their personal residence.
3. Individuals may remove face coverings to participate in a religious ritual.

#### B. Face Coverings Required - Outdoors

All individuals in the Commonwealth aged five and older must cover their mouth and nose with a face covering, as described and recommended by the CDC, when outdoors and unable to maintain at least six feet of physical distance from other individuals who are not Family members.

**[\*1052]**

#### C. Face Coverings Required - Employees

All employees of all businesses listed in section II, subsections A and C shall wear a face covering while working at their place of employment.

#### D. Face Coverings - Enforcement

1. The Virginia Department of Health shall have authority to enforce section III of this Order. The State Health Commissioner may also seek injunctive relief in circuit court for violation of this Order, pursuant to § 32.1-27 of the Code of Virginia. Any willful violation or refusal, failure, or neglect to comply with this Order, issued pursuant to §

32.1-13 of the Code of Virginia, is punishable as a Class 1 misdemeanor pursuant to § 32.1-27 of the Code of Virginia.

2. In addition, any agency with regulatory authority over a business listed in section III, including but not limited to the Virginia Department of Labor and Industry, pursuant to § 40.1-51.1 of the Code of Virginia, the Department of Professional and Occupational Regulation, pursuant to 18 Va. Admin Code § 41-20-280, the Virginia Department of Agriculture and Consumer Services, pursuant to § 3.2-5106 of the Code of Virginia or any other law applicable to these agencies, shall have authority to enforce section III of this Order as to that business.

3. Violations of section III, subsection A of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the Code of Virginia and enforceable by the Virginia Alcoholic Beverage Control Authority.

4. No minor shall be subject to criminal penalty for failure to wear a face covering. Adults accompanying minors should use the adult's best judgment with respect to placing face coverings on a minor between the ages of two through four while inside the public areas noted above. Adults accompanying minors age five through 18 shall use reasonable efforts to prompt the minor to wear face coverings while inside the public areas noted above.

5. Medical-grade masks and personal protective equipment should be reserved for medical personnel. The use of cloth face coverings does not replace the need to maintain six feet of physical social distancing, clean and disinfect frequently touched surfaces routinely in all public settings, stay home when sick, and practice frequent handwashing.

#### E. Face Covering - Exceptions

The requirement to wear a face covering does not apply to the following:

1. While eating or drinking;
2. Individuals exercising or using exercise equipment;
3. Any person who is playing a musical instrument when wearing a mask or face covering would inhibit the playing of the instrument (e.g. wind instrument) so long as at least 10 feet of physical distancing can be maintained from other persons, whether the rehearsal or performance is indoors or outdoors;
4. Any person who has trouble breathing, or is unconscious, incapacitated, or otherwise unable to remove the face covering without assistance;
5. Any person seeking to communicate with the hearing impaired and for which the mouth needs to be visible;
6. When temporary removal of the face covering is necessary to secure government or medical services;
7. Persons with health conditions or disabilities that prohibit wearing a face covering. Nothing in this Order shall require the use of a face covering by any person for whom doing so would be contrary to his or her health or safety because of a medical condition. Adaptations and alternatives for individuals with health conditions or disabilities should be considered whenever possible to increase the feasibility of wearing a mask or to reduce the risk of COVID-19 spreading if it is not possible to wear one.

Any person who declines to wear a face covering because of a medical condition shall not be required to produce or carry medical documentation verifying the stated condition nor shall the person be required to identify the precise underlying medical condition.

#### F. Face Coverings - Waiver

The waiver of § 18.2-422 of the Code of Virginia is continued, so as to allow the wearing of a medical mask, respirator, or any other protective face covering for the purpose of facilitating the protection of one's personal health in response to the COVID-19 public health emergency declared by the State Health Commissioner on February 7, 2020, and reflected in Amended Executive Order 51 (2020) declaring a state of emergency in the Commonwealth. Amended Executive Order 51 (2020) remains so amended. This waiver is effective as of March 12, 2020 and will remain in effect until 11:59 p.m. on March 12, 2021, unless amended or rescinded by further executive order.

#### IV. ADDITIONAL PROVISIONS

##### A. Construction with the Emergency Temporary Standard "Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19"

Where the Emergency Temporary Standard "Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19" adopted by the Safety and Health Codes Board of the Virginia Department of Labor and Industry pursuant to 16 Va. Admin. Code §§ 25-60-20 and 25-60-30 conflicts with requirements and guidelines applicable to businesses in this Order, this Order shall govern.

##### B. Expiration of Executive Orders

First Amended Executive Order 63, Order of Public Health Emergency Five (2020) and Sixth Amended Executive Order **[\*1053]** 67, Order of Public Health Emergency Seven (2020) will expire at 11:59 p.m., Sunday, December 13, 2020.

##### Effective Date of this Executive Order

This Order is in furtherance of Amended Executive Order 51 (2020). Further, this Order shall be effective 12:01 a.m., Monday, December 14, 2020, and shall remain in full force and effect until 11:59 p.m., January 31, 2021.

Given under my hand and under the Seal of the Commonwealth of Virginia and the Seal of the Office of the State Health Commissioner of the Commonwealth of Virginia, this 10th day of December, 2020.

/s/ Ralph S. Northam

Governor

VIRGINIA REGISTER OF REGULATIONS

# EXHIBIT H





Commonwealth of Virginia  
Office of the Governor

## *Executive Order*

**NUMBER SEVENTY-NINE (2021)**

**AND**

**ORDER OF PUBLIC HEALTH EMERGENCY TEN**

**ENDING OF COMMONSENSE PUBLIC HEALTH RESTRICTIONS  
DUE TO NOVEL CORONAVIRUS (COVID-19)**

### **Importance of the Issue**

Since March 2020, Virginians have fought against the spread of COVID-19. We have witnessed service and sacrifice across the Commonwealth from our frontline workers, our students and teachers, our business owners, essential employees, and our families and neighbors. We have lost an astounding number of Virginians to this pandemic, and everyone has lost something. Commonsense public health restrictions have kept many Virginians safe during the last year, and with vaccines now widely available – over three million Virginians are fully vaccinated and safe from serious illness or death caused by COVID-19 – it is time to begin our new normal. COVID-19 remains a serious risk to unvaccinated people, and I encourage all Virginians to get their shot as soon as possible. Masks are a critical tool in protecting yourself and others until you are fully vaccinated.

### **Directive**

Therefore, by virtue of the authority vested in me by Article V of the Constitution of Virginia, by § 44-146.17 of the *Code of Virginia*, by any other applicable law, and in furtherance of Amended Executive Order 51 (2020), and by virtue of the authority vested in the State Health Commissioner pursuant to §§ 32.1-13, 32.1-20, and 35.1-10 of the *Code of Virginia*, the following is ordered:

## CONTINUED GUIDANCE ON MASK WEARING

### A. Masks – Indoors and Outdoors

All individuals in the Commonwealth aged five and older should cover their mouth and nose with a mask in accordance with the Centers for Disease Control and Prevention guidance linked [here](#).

### B. Masks – Enforcement

1. The Virginia Department of Health shall have authority to enforce this Order.  
The State Health Commissioner may also seek injunctive relief in circuit court for violation of this Order, pursuant to § 32.1-27 of the *Code of Virginia*.
2. Medical-grade masks and personal protective equipment should be reserved for medical personnel. The use of cloth masks does not replace the need to maintain the appropriate physical distancing, clean and disinfect frequently touched surfaces routinely in all public settings, stay home when sick, and practice frequent handwashing.

### C. Masks – Exceptions

1. Where required to wear a mask, the requirement does not apply to the following:
  - a. While eating or drinking;
  - b. Individuals exercising or using exercise equipment;
  - c. Any person who is playing a musical instrument when wearing a mask would inhibit the playing of the instrument (*e.g.*, wind or brass instrument) so long as at least ten feet of physical distance can be maintained from other persons, whether the rehearsal or performance is indoors or outdoors;
  - d. Any person who has trouble breathing, or is unconscious, incapacitated, or otherwise unable to remove the mask without assistance;
  - e. Any person seeking to communicate with people who are deaf or hard of hearing and for which the mouth needs to be visible;
  - f. When temporary removal of the mask is necessary to secure government or medical services;
  - g. When necessary to participate in a religious ritual; and

h. Persons with health conditions or disabilities that prohibit wearing a mask. Nothing in this Order shall require the use of a mask by any person for whom doing so would be contrary to his or her health or safety because of a medical condition. Adaptations and alternatives for individuals with health conditions or disabilities should be considered whenever possible to increase the feasibility of wearing a mask to reduce the risk of COVID-19 spreading if it is not possible to wear one.

2. Any person who declines to wear a mask because of a medical condition shall not be required to produce or carry medical documentation verifying the stated condition, nor shall the person be required to identify the precise underlying medical condition.

#### **D. Masks – Public and Private K-12 Schools**

All students, teachers, staff, and visitors must wear a mask over their nose and mouth while on school property subject to **section C**.

#### **E. Masks – Waiver**


The waiver of § 18.2-422 of the *Code of Virginia* is continued, so as to allow the wearing of a medical mask, respirator, or any other protective face covering for the purpose of facilitating the protection of one's personal health in response to the COVID-19 public health emergency declared by the State Health Commissioner on February 7, 2020, and reflected in Amended Executive Order 51 (2020) declaring a state of emergency in the Commonwealth. Amended Executive Order 51 (2020) remains so amended. This waiver is effective as of March 12, 2020, and will remain in effect until 11:59 p.m. on June 30, 2021, unless amended or rescinded by further executive order.


**Effective Date of this Executive Order**

This Order is in furtherance of Amended Executive Order 51 (2020). Further, this Order terminates Seventh Amended Number Seventy-Two (2021) and Order of Public Health Emergency Nine, shall be effective **midnight on May 28, 2021**, and shall remain in full force and effect until amended or rescinded by further executive order.

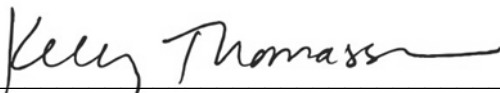
Given under my hand and under the Seal of the Commonwealth of Virginia and the Seal of the Office of the State Health Commissioner of the Commonwealth of Virginia, **this 14th day of May, 2021.**



  
\_\_\_\_\_  
Ralph S. Northam, Governor

  
\_\_\_\_\_  
M. Norman Oliver, MD, MA  
State Health Commissioner

Attest:

  
\_\_\_\_\_  
Kelly Thomasson, Secretary of the Commonwealth

# EXHIBIT I

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF LOUDOUN

KRISTEN BARNETT, HEALTHER YESCAVAGE, and )  
COLIN DONIGER, )

*Plaintiffs,* )

THE COMMONWEALTH OF VIRGINIA, )  
by GLENN A. YOUNGKIN, Governor of Virginia, )  
JASON S. MIYARES, Attorney General of Virginia, and )  
JILLIAN BALOW, Superintendent of Public Instruction, )

Case No. 22-546

*Plaintiff-Intervenor,* )

v. )

LOUDOUN COUNTY SCHOOL BOARD, )

*Defendant.* )

**AFFIDAVIT OF COLIN M. GREENE, MD, MPH  
ACTING STATE HEALTH COMMISSIONER  
FOR THE COMMONWEALTH OF VIRGINIA**

I, Dr. Colin M. Greene, declare under penalty of perjury that the following is true and correct, to the best of my knowledge and belief.

1. I currently serve as Acting State Health Commissioner for the Commonwealth of Virginia. I have been in that role since January 15, 2022. Before my appointment as Acting State Health Commissioner, I served as Health Director of the Loudoun Health District. Prior to 2017, I served 30 years on active duty in the US Army, with assignments including Interim Commander of the Walter Reed Army Institute of Research in Silver Spring, Maryland, and numerous clinical, administrative, academic, and public health-related assignments, including deputy commander of the 28<sup>th</sup> Combat Support Hospital in Iraq. I am a board-certified family physician with 35 years' experience and hold a Master of Public Health from the University of Washington.

2. In my capacity as Acting State Health Commissioner, I advise the Governor, the Virginia Department of Health, and the Virginia Department of Education on the Commonwealth's effort to combat the novel coronavirus known as COVID-19.

3. On January 30, 2020, the World Health Organization declared the outbreak a “public health emergency of international concern.” On January 31, United States Health and Human Services Secretary declared a public health emergency. On February 7, the prior State Health Commissioner declared COVID-19 a Communicable Disease of Public Health Threat for Virginia. On March 12, Governor Northam declared a State of Emergency in the Commonwealth in response to the spread of COVID-19.

4. In 2020, there was no proven treatment or cure for COVID-19 and no vaccine to address COVID-19. As a result, the Governor and the prior Commissioner of Health issued several orders to mitigate the spread of COVID-19 in the Commonwealth.

- On March 13, 2020, the Governor temporarily closed K-12 schools and limited the number of patrons in restaurants, fitness centers, and theaters to no more than 10 per establishment.
- On March 20, the Governor issued Order of Public Health Emergency 1, which amended the Declaration of Public Health Emergency previously issued and made clear that willful violation of the 10-patron limit on restaurants, fitness centers, and gymnasiums was punishable as a class-1 misdemeanor and/or license suspension, and was enforceable by the Health Commissioner in a civil action.
- On March 24, 2020, the Governor issued Executive Order 53, which extended school closures for the remainder of the school year, temporarily prohibited private and public gatherings of 10 or more individuals, and directed certain businesses (such as entertainment venues) to close their doors to the public. Other businesses (for example, restaurants) were required to close all dining and congregation areas but were permitted to engage in takeout and delivery services. Most retail businesses

were also required to adhere to the 10-person limit. Certain essential businesses (such as grocery stores) were permitted to exceed the 10-person limit, but were required to adhere to social distancing recommendations, enhanced sanitizing practices on common surfaces, and other appropriate workplace guidance from state and federal authorities while in operation.

- On March 31, 2020, the Governor issued Executive Order 55, which imposed additional restrictions and extended the duration of the temporary gatherings restriction announced in Executive Order 53. Executive Order 55 directed all Virginians to stay at home except as needed to perform essential tasks.

5. Much has changed since 2020, but many health authorities have not updated their guidance accordingly. For example, effective vaccines are widely available for COVID-19, even for children as young as five years old. Medical providers have identified numerous effective treatments for COVID-19. How COVID-19 spreads and therefore effective mitigation efforts are better understood.

6. A number of variants of the COVID-19 virus have emerged, each with varying levels of contagion and virulence. The most recent variant, Omicron, has in many ways behaved quite differently from previous variants. First, it appeared to spread extremely rapidly in numerous diverse foreign countries and states, showing a relatively consistent pattern of a rapid rise, peak, and fall of cases.<sup>1</sup> Second, in Virginia, Omicron's impact coincided with an up to 20-fold increase in average daily case counts between November 1, 2021 and January 11, 2022, with the highest rates of increase, and highest case rates per capita, in the urban and suburban regions,

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<sup>1</sup> <https://www.worldometers.info/coronavirus/>, last accessed January 25, 2022.



with somewhat lower rates of rise in rural areas.<sup>2</sup> This pattern was striking insofar as the urban and suburban regions in Virginia typically have relatively higher vaccination rates than rural areas<sup>3</sup> as well as greater adherence to mitigation techniques, including masking. Finally, despite the rapid and typically all-time record case rates occurring during the Omicron phase, death rate rises have been proportionately much lower when compared with previous variants.<sup>5,6</sup> These outcomes are consistent with literature describing Omicron as a highly contagious variant that tends to cause less severe disease.<sup>4</sup> These findings together may be taken to suggest that (1) previously applicable mitigation strategies, including universal masking, may be less effective against Omicron than previous variants, and (2) that the risk of severe disease from Omicron is significantly less than with Delta and its predecessors. It is apparent that the Omicron variant behaves differently from previous variants of COVID-19, and that assumptions tied to those prior variants, including the benefits of universal masking, may need to be re-examined.

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16. Notwithstanding the above, there are certain circumstances where VDH recommends masking. First, when a child is at increased risk of severe illness from COVID-19 or lives with individuals at higher risk for severe illness, parents should discuss with their medical providers whether to mask. Second, when a child is returning from isolation due to COVID or was subject to a close contact exposure, VDH guidelines permit return to school but recommend that such children wear a mask on days 6-10. This is approach uses masking on a more targeted basis, rather than requiring all students to mask all the time regardless of the circumstances.

17. It should be noted that even under strict masking requirements, children typically do not wear masks in school while eating meals, playing sports, and engaging in other activities where masking is not feasible. They do not wear goggles or face shields to protect their eyes from virus particles. And, of course, children are not required to wear masks outside of school or at home. Additionally, their parents and most other adults are not required to mask while engaging in their daily activities and are thus not masking consistently. For these reasons too, strict masking in school imposes hardship while providing only questionable benefit toward reducing the transmission of COVID-19.


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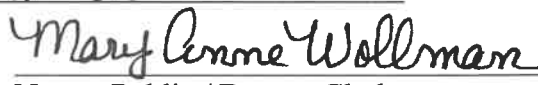
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I, Dr. Colin Greene, hereby certify that the foregoing information is true and accurate to the best of my knowledge and belief.

  
\_\_\_\_\_  
Colin M. Greene, MD, MPH.  
Acting State Health Commissioner

COMMONWEALTH OF VIRGINIA  
COUNTY/CITY OF Richmond, to-wit:

Subscribed and sworn to before me this 2<sup>nd</sup> day of February, 2022.  
My commission expires: 2-28-22

  
\_\_\_\_\_  
Notary Public / Deputy Clerk  
Notary Registration Number: 7372482



**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE COUNTY OF LOUDOUN**

KRISTEN BARNETT, HEATHER YESCAVAGE, and )  
COLIN DONIGER, )  
 )  
 *Plaintiffs,* )  
 )  
 THE COMMONWEALTH OF VIRGINIA, ) Case No. 22-546  
 by GLENN A. YOUNGKIN, Governor of Virginia, )  
 JASON S. MIYARES, Attorney General of Virginia, and )  
 JILLIAN BALOW, Superintendent of Public Instruction, )  
 )  
 *Plaintiff-Intervenor,* )  
 )  
 v. )  
 )  
 LOUDOUN COUNTY SCHOOL BOARD, )  
 )  
 *Defendant.* )

**MOTION FOR TEMPORARY INJUNCTION**

NOW COMES Plaintiff-Intervenor, the Commonwealth of Virginia, by its Governor, Glenn A. Youngkin, by and with the advice of its Attorney General, Jason S. Miyares, and by its Superintendent of Public Instruction, Jillian Balow, and in support of this motion for a temporary injunction pending adjudication of its claims against Loudoun County School Board in this matter, states as follows:

1. Under Va. Code § 2.2-111, the Governor has authority to “institute any action, suit, motion or other proceeding, in the name of the Commonwealth” to “protect or preserve the interests or legal rights of the Commonwealth and its citizens,” including the power to sue “in the name of the Commonwealth acting in its capacity as *parens patriae*, where he has determined that existing legal procedures fail to adequately protect existing legal rights and interests of such citizens.” *Id.* § 2.2-111(A), (B).

2. The Commonwealth of Virginia has therefore filed a complaint seeking to compel the compliance of Loudoun County School Board with Executive Order 2, issued on January 15, 2022 (“EO 2”) and Senate Bill 1303, 2021 Acts ch. 456 (Spec. Sess. I) (“S.B. 1303”).

3. EO 2 rescinded Governor Northam’s mask mandate and ordered that “[t]he parents of any child enrolled in an elementary or secondary school or a school based early childcare and educational program may elect for their children not to be subject to any mask mandate in effect at the child’s school or educational program.” EO 2, at 3.

4. In support of the foregoing affirmation of parents’ fundamental right to make decisions regarding the upbringing and education of their children, EO 2 contained the following findings:

- a. “Recent government orders requiring virtually every child in Virginia wear masks virtually every moment they are in school have proven ineffective and impractical.” *Id.* at 1.
- b. “[M]any children wear masks incorrectly, providing little or no health benefit. The masks worn by children are often ineffective because they are made from cloth material, and they are often not clean, resulting in the collection of impurities, including bacteria and parasites.” *Id.*
- c. “[T]he universal requirement has also inflicted notable harm and proven to be impracticable. Masks inhibit the ability of children to communicate, delay language development, and impede the growth of emotional and social skills. Some children report difficulty breathing and discomfort as a result of masks.” *Id.* at 2.
- d. “Masks have also increased feelings of isolation, exacerbating mental health issues, which in many cases pose a greater health risk to children than COVID-19. Two years into the COVID-19 pandemic, mask mandates in schools have proved demoralizing to children facing these and other difficulties.” *Id.*
- e. CDC “research has found no statistically significant link between mandatory masking for students and reduced transmission of COVID-19. And the CDC has acknowledged that certain masks may be ineffective due to the material from which they are made or how they are worn.” *Id.*

- f. “Permitting parents to make decisions on where and when to wear masks permits the Commonwealth’s parents to make the best decision for the circumstances confronting each child. Parents can assess the risks and benefits facing their child, consult their medical providers, and make the best decision for their children based on the most up to date health information available.” *Id.*
- g. “Masks are not the only method to reduce transmission of COVID-19. Local schools must ensure they are improving inspection, testing, maintenance, repair, replacement and upgrades of equipment to improve the indoor air quality in school facilities, including mechanical and nonmechanical heating, ventilation, and air conditioning systems, filtering, purification, fans, control systems and window and door repair.” *Id.*

5. EO 2 took effect on January 24, 2022. On the morning of January 24, Loudoun County School Board refused to comply with EO 2. They proceeded to seriously mistreat their own students. According to press reports, schools segregated students whose parents exercised their right under EO 2 to send their children to school without a mask. *E.g.*, Parent Plaintiffs’ Complaint ¶¶ 61, 70, 77 (filed Feb. 1, 2022) (“Plaintiffs’ Compl.”).

6. The decision to grant a temporary injunction “rests on sound judicial discretion to be exercised upon consideration of the nature and circumstances of a particular case.” *Levisa Coal Co. v. Consol. Coal Co.*, 276 Va. 44, 60 (2008). Virginia courts generally rely on the federal standard for a preliminary injunction described in *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20 (2008), to guide the exercise of their discretion. *See, e.g., Wings, LLC v. Capitol Leather, LLC*, 88 Va. Cir. 83, 89 (Fairfax Cnty. 2014); *SEG Props., LLC v. Northam*, 105 Va. Cir. 216, 219 (Loudoun Cnty. 2020); *Dillon v. Northam*, 105 Va. Cir. 402, 408–09 (Va. Beach 2020).

6. To obtain a temporary injunction under *Winter*, the applicant must show “that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter*, 555 U.S. at 20.

7. The Commonwealth is likely to succeed on the merits of its claims because, by barring children whose parents opted out of defendant’s school mask mandates, defendant has violated both EO 2 and Senate S.B. 1303—duly issued promulgations carrying the force of law under the Virginia Constitution.

8. *First*, Loudoun County School Board is violating EO 2, which is a proper exercise of the Governor’s emergency authority under the Virginia Emergency and Disaster Law of 2000 (“VESDL”). The VESDL delegated to the Governor power to issue such “orders” as “in his judgment” are necessary to protect public health and welfare during an emergency. Va. Code § 44-146.17(1).

9. The Governor explained in issuing EO 2 why the order was necessary to protect public health and welfare during the COVID-19 emergency. Compulsory, unexcepted mask mandates in schools have done little to halt the transmission of COVID-19. But those mandates have had serious, deleterious side-effects on the education and development of Virginia schoolchildren. A plethora of data supports both of the Commonwealth’s conclusions.

10. *Second*, S.B. 1303 does not bar the enforcement of EO 2. On the contrary, Loudoun County School Board is violating S.B. 1303, which requires schools to provide “in-person instruction to each student enrolled in the local school division in a public elementary and secondary school.”

11. S.B. 1303 does not require the Loudoun County School Board to maintain a policy of universal masking notwithstanding parents’ decisions as to their own children. What it does require, however, is that Loudoun County School Board must provide in-person education for all students, masked and unmasked. Instead, defendant is segregating the children of parents who



have opted out of the School Board's mask mandates, as EO 2 permits, and denying those children the in-person education to which they are entitled under the law.

12. The Commonwealth and its citizens will suffer irreparable harm in the absence of the temporary injunction. Absent temporary injunctive relief, Loudoun County School Board will continue to violate the rights of Virginia schoolchildren in their divisions, in contravention of the fundamental right to an education and irreparably harming their educational progress and the Commonwealth's duty to protect their rights and interests.

13. The balance of the equities favors a temporary injunction, and such an injunction would be in the public interest. Children have suffered, and will continue to suffer, a deprivation of their right to an in-person public education. Parents have suffered, and will continue to suffer, a deprivation of their fundamental right to make decisions concerning their children's education. Both deprivations are compounded each day that Loudoun County School Board continues to flout EO 2. The noneconomic harm these children and parents have suffered cannot be remedied by damages and, without injunctive relief, will continue until a trial on the merits.

14. Any harm a temporary injunction may work upon Loudoun County School Board is minimal in comparison. Research has demonstrated that masking has a statistically negligible effect on COVID-19 transmission in schools and any potential benefits of masking are frequently negated through wearing masks improperly or wearing masks of an ineffective material. *See* Affidavit of Colin M. Greene, MD, MPH, Acting State Health Commissioner for the Commonwealth of Virginia (attached as **Exhibit A**); *see also* EO 2. Indeed, infectious disease experts from Harvard Medical School, Tufts University School of Medicine, and Boston University School of Medicine have very recently opined that other COVID-19 mitigation measures should allow "schools [to] finally safely make masks optional for students and staff."

Shira Doran *et al.*, *Opinion: Schools can safely make masks optional with the CDC's new guidelines*, Washington Post (Jan. 25, 2022), <https://tinyurl.com/3txetsbk>.

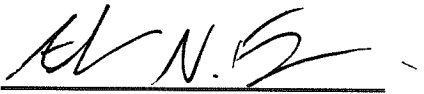
15. In summary, because the Commonwealth of Virginia is likely to succeed on the merits and can show irreparable harm in the absence of immediate injunctive relief, the Court should immediately issue a temporary injunction.

WHEREFORE, for the reasons stated herein, and as more fully described in a brief to be filed in support of this motion for temporary injunction, the Plaintiff-Intervenor, the Commonwealth of Virginia, respectfully requests that this Court:

- a. declare that the Governor lawfully issued EO 2 and that its provisions are valid and enforceable with regard to Virginia local school boards, including Loudoun County School Board;
- b. enter a temporary injunction enjoining Loudoun County School Board from enforcing any mask mandate insofar that it conflicts with the provisions of EO 2 or with parents' fundamental rights;
- c. schedule this motion for a hearing during the week of February 7, or at the earliest possible date thereafter; and
- d. grant the Commonwealth of Virginia any and all such other and further relief as the Court deems necessary and appropriate.

Respectfully submitted,

THE COMMONWEALTH OF VIRGINIA,  
by GLENN A. YOUNGKIN, Governor,  
JASON S. MIYARES, Attorney General and JILLIAN  
BALOW, Superintendent of Public Instruction,

By:   
ANDREW N. FERGUSON (#86583)  
*Solicitor General*

JASON S. MIYARES  
*Attorney General*

KEVIN M. GALLAGHER (#87548)  
*Deputy Solicitor General*

CHARLES H. SLEMP III (#79742)  
*Chief Deputy Attorney General*

GRAHAM K. BRYANT (#90592)  
ANNIE CHIANG (#94703)  
M. JORDAN MINOT (#95321)  
*Assistant Solicitors General*

STEVEN G. POPPS (#80817)  
COKE MORGAN STEWART (#41933)  
*Deputy Attorneys General*

Office of the Attorney General  
202 North Ninth Street  
Richmond, Virginia 23219  
(804) 786-5315—Telephone  
(804) 371-0200—Facsimile

February 2, 2022

*Counsel for Plaintiff-Intervenor  
The Commonwealth of Virginia*

# EXHIBIT A

V I R G I N I A:

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COLIN DONIGER, )

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Case No. 22-546

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v. )

LOUDOUN COUNTY SCHOOL BOARD, )

*Defendant.* )

**AFFIDAVIT OF COLIN M. GREENE, MD, MPH  
ACTING STATE HEALTH COMMISSIONER  
FOR THE COMMONWEALTH OF VIRGINIA**

I, Dr. Colin M. Greene, declare under penalty of perjury that the following is true and correct, to the best of my knowledge and belief.

1. I currently serve as Acting State Health Commissioner for the Commonwealth of Virginia. I have been in that role since January 15, 2022. Before my appointment as Acting State Health Commissioner, I served as Health Director of the Loudoun Health District. Prior to 2017, I served 30 years on active duty in the US Army, with assignments including Interim Commander of the Walter Reed Army Institute of Research in Silver Spring, Maryland, and numerous clinical, administrative, academic, and public health-related assignments, including deputy commander of the 28<sup>th</sup> Combat Support Hospital in Iraq. I am a board-certified family physician with 35 years' experience and hold a Master of Public Health from the University of Washington.

2. In my capacity as Acting State Health Commissioner, I advise the Governor, the Virginia Department of Health, and the Virginia Department of Education on the Commonwealth's effort to combat the novel coronavirus known as COVID-19.

3. On January 30, 2020, the World Health Organization declared the outbreak a “public health emergency of international concern.” On January 31, United States Health and Human Services Secretary declared a public health emergency. On February 7, the prior State Health Commissioner declared COVID-19 a Communicable Disease of Public Health Threat for Virginia. On March 12, Governor Northam declared a State of Emergency in the Commonwealth in response to the spread of COVID-19.

4. In 2020, there was no proven treatment or cure for COVID-19 and no vaccine to address COVID-19. As a result, the Governor and the prior Commissioner of Health issued several orders to mitigate the spread of COVID-19 in the Commonwealth.

- On March 13, 2020, the Governor temporarily closed K-12 schools and limited the number of patrons in restaurants, fitness centers, and theaters to no more than 10 per establishment.
- On March 20, the Governor issued Order of Public Health Emergency 1, which amended the Declaration of Public Health Emergency previously issued and made clear that willful violation of the 10-patron limit on restaurants, fitness centers, and gymnasiums was punishable as a class-1 misdemeanor and/or license suspension, and was enforceable by the Health Commissioner in a civil action.
- On March 24, 2020, the Governor issued Executive Order 53, which extended school closures for the remainder of the school year, temporarily prohibited private and public gatherings of 10 or more individuals, and directed certain businesses (such as entertainment venues) to close their doors to the public. Other businesses (for example, restaurants) were required to close all dining and congregation areas but were permitted to engage in takeout and delivery services. Most retail businesses

were also required to adhere to the 10-person limit. Certain essential businesses (such as grocery stores) were permitted to exceed the 10-person limit, but were required to adhere to social distancing recommendations, enhanced sanitizing practices on common surfaces, and other appropriate workplace guidance from state and federal authorities while in operation.

- On March 31, 2020, the Governor issued Executive Order 55, which imposed additional restrictions and extended the duration of the temporary gatherings restriction announced in Executive Order 53. Executive Order 55 directed all Virginians to stay at home except as needed to perform essential tasks.

5. Much has changed since 2020, but many health authorities have not updated their guidance accordingly. For example, effective vaccines are widely available for COVID-19, even for children as young as five years old. Medical providers have identified numerous effective treatments for COVID-19. How COVID-19 spreads and therefore effective mitigation efforts are better understood.

6. A number of variants of the COVID-19 virus have emerged, each with varying levels of contagion and virulence. The most recent variant, Omicron, has in many ways behaved quite differently from previous variants. First, it appeared to spread extremely rapidly in numerous diverse foreign countries and states, showing a relatively consistent pattern of a rapid rise, peak, and fall of cases.<sup>1</sup> Second, in Virginia, Omicron's impact coincided with an up to 20-fold increase in average daily case counts between November 1, 2021 and January 11, 2022, with the highest rates of increase, and highest case rates per capita, in the urban and suburban regions,

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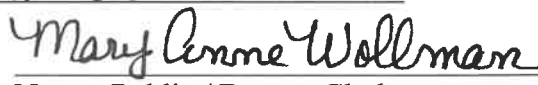
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I, Dr. Colin Greene, hereby certify that the foregoing information is true and accurate to the best of my knowledge and belief.

  
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Colin M. Greene, MD, MPH.  
Acting State Health Commissioner

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COUNTY/CITY OF Richmond, to-wit:

Subscribed and sworn to before me this 2<sup>nd</sup> day of February, 2022.  
My commission expires: 2-28-22

  
\_\_\_\_\_  
Notary Public / Deputy Clerk  
Notary Registration Number: 7372482

