

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

Docket No. \_\_\_\_\_

LEIGH and JAMIE TUCCOLO,  
individually, and on behalf of  
A.T and N.T., their children

JAIME and ROSS CARTER,  
individually, and on behalf of  
C.C., their child

LAUREN ACEVEDO,  
individually, and on behalf of  
K.A. and I.A., her children

MELISSA and MATT RIVARD,  
individually, and on behalf of  
B.R., their child

DAN and MONICA PLOURDE,  
individually, and on behalf of  
A.P, and C.P., their children

AMY WHEELER,  
individually, and on behalf of  
K.W, E.W., and J.W., her children

BRITTANY CAVALLO and STEVE VARGUS,  
individually, and on behalf of  
I.C., and L.V., their children

KARA FOLSOM,  
individually, and on behalf of  
H.N., her child

MEGAN BORBA,  
individually, and on behalf of  
J.B., her child

CHRIS GROUT,  
individually, and on behalf of  
K.G., his child

STEPHEN TOOMEY,  
individually, and on behalf of  
P.T., his child

DAVID MICHEAL KILEY,  
individually, and on behalf of  
E.K., his child

JOSHUA and JILLIAN MANNING,  
individually, and on behalf of  
L.M. and N.M., their children

ROBERT HODGMAN,  
individually, and on behalf of  
Z.H., his child

MARIA BARUD,  
individually, and on behalf of  
V.B., L.B., and R.B., her children

PAUL LAMALFA,  
individually, and on behalf of  
L.L., his child

EMILY HANNAY,  
individually, and on behalf of  
M.M., her child

*Plaintiffs*

v.

LONDONDERRY SCHOOL DISTRICT,  
SCHOOL ADMINISTRATIVE UNIT #12

EPPING SCHOOL DISTRICT,  
SCHOOL ADMINISTRATIVE UNIT #16

TIMBERLANE REGIONAL SCHOOL DISTRICT,  
SCHOOL ADMINISTRATIVE UNIT #55

*Defendants*

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND  
INJUNCTIVE RELIEF<sup>1</sup>**

Plaintiffs bring this Verified Complaint for Declaratory Judgment and Injunctive Relief, against Defendants Londonderry School District, School Administrative Unit #12, Timberlane School District, School Administrative Unit #55, and Epping School District, School Administrative Unit #16, to challenge their policies requiring students to wear face masks or coverings while in school or partaking in school-related activities.

**PARTIES**

1. Plaintiff Leigh Tuccolo is an individual who resides at 19 Quentin Drive, Londonderry, New Hampshire 03053.
2. Plaintiff Jamie Tuccolo is an individual who resides at 19 Quentin Drive, Londonderry, New Hampshire 03053.
3. Plaintiff A.T. is an individual who resides at 19 Quentin Drive, Londonderry, New Hampshire 03053.
4. Plaintiff N.T. is an individual who resides at 19 Quentin Drive, Londonderry, New Hampshire 03053.
5. Plaintiff Jaime Carter is an individual who resides at 3 Angelo Lane, Londonderry, New Hampshire 03053.
6. Plaintiff Ross Carter is an individual who resides at 3 Angelo Lane, Londonderry, New Hampshire 03053.
7. Plaintiff C.C. is an individual who resides at 3 Angelo Lane, Londonderry, New Hampshire 03053.

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<sup>1</sup> Plaintiffs are filing contemporaneously with this Complaint a Motion for a Temporary Restraining Order and/or Preliminary Injunction.

8. Plaintiff Lauren Acevedo is an individual who resides at 3 Castle Court, Londonderry, New Hampshire 03053.

9. Plaintiff K.A. is an individual who resides at 3 Castle Court, Londonderry, New Hampshire 03053.

10. Plaintiff I.A. is an individual who resides at 3 Castle Court, Londonderry, New Hampshire 03053.

11. Plaintiff Melissa Rivard is an individual who resides at 11 Preserve Drive, Londonderry, New Hampshire 03053.

12. Plaintiff Matt Rivard is an individual who resides at 11 Preserve Drive, Londonderry, New Hampshire 03053.

13. Plaintiff B.R. is an individual who resides at 11 Preserve Drive, Londonderry, New Hampshire 03053.

14. Plaintiff Dan Plourde is an individual who resides at 31 Beacon Street, Londonderry, New Hampshire 03053.

15. Plaintiff Monica Plourde is an individual who resides at 31 Beacon Street, Londonderry, New Hampshire 03053.

16. Plaintiff A.P. is an individual who resides at 31 Beacon Street, Londonderry, New Hampshire 03053.

17. Plaintiff C.P. is an individual who resides at 31 Beacon Street, Londonderry, New Hampshire 03053.

18. Plaintiff B.P. is an individual who resides at 31 Beacon Street, Londonderry, New Hampshire 03053.

19. Plaintiff Amy Wheeler is an individual who resides at 11 Darrow Way, Londonderry, New Hampshire 03053.
20. Plaintiff K.W. is an individual who resides at 11 Darrow Way, Londonderry, New Hampshire 03053.
21. Plaintiff E.W. is an individual who resides at 11 Darrow Way, Londonderry, New Hampshire 03053.
22. Plaintiff J.W. is an individual who resides at 11 Darrow Way, Londonderry, New Hampshire 03053.
23. Plaintiff Brittany Cavallo is an individual who resides at 354 Mammoth Road, Londonderry, New Hampshire 03053.
24. Plaintiff Steve Vargus is an individual who resides at 354 Mammoth Road, Londonderry, New Hampshire 03053.
25. Plaintiff I.C. is an individual who resides at 354 Mammoth Road, Londonderry, New Hampshire 03053.
26. Plaintiff L.V. is an individual who resides at 354 Mammoth Road, Londonderry, New Hampshire 03053.
27. Plaintiff Kara Folsom is an individual who resides at 156 Winterwood Drive, Londonderry, New Hampshire 03053.
28. Plaintiff H.N. is an individual who resides at 156 Winterwood Drive, Londonderry, New Hampshire 03053.
29. Plaintiff Megan Borba is an individual who resides at 3 Sweetfern Road, Sandown, New Hampshire 03873.

30. Plaintiff J.B. is an individual who resides at 3 Sweetfern Road, Sandown, New Hampshire 03873.

31. Plaintiff Chris Grout is an individual who resides at 10 Scenic Lane, Tilton, New Hampshire 03276.

32. Plaintiff K.G. is an individual who resides at 10 Scenic Lane, Tilton, New Hampshire 03276.

33. Plaintiff Stephen Toomey is an individual who resides at 233 Oakridge Road, Plaistow, New Hampshire 03873.

34. Plaintiff P.T. is an individual who resides at 233 Oakridge Road, Plaistow, New Hampshire 03873.

35. Plaintiff David Michael Kiley is an individual who resides at 17 Knightland Road, Atkinson, New Hampshire 03811.

36. Plaintiff P.T. is an individual who resides at 17 Knightland Road, Atkinson, New Hampshire 03811.

37. Plaintiff Joshua Manning is an individual who resides at 121 Caleb Drive, Danville, New Hampshire 03819.

38. Plaintiff Jillian Manning is an individual who resides at 121 Caleb Drive, Danville, New Hampshire 03819.

39. Plaintiff L.M. is an individual who resides at 121 Caleb Drive, Danville, New Hampshire 03819.

40. Plaintiff N.M. is an individual who resides at 121 Caleb Drive, Danville, New Hampshire 03819.

41. Plaintiff Robert Hodgman is an individual who resides at 50 Lamprey Village Drive, Epping, New Hampshire 03042.

42. Plaintiff Z.H. is an individual who resides at 50 Lamprey Village Drive, Epping, New Hampshire 03042.

43. Plaintiff Maria Barud is an individual who resides at 6 Bridle Path, Unit 306, Londonderry, New Hampshire 03053.

44. Plaintiff L.B. is an individual who resides at 6 Bridle Path, Unit 306, Londonderry, New Hampshire 03053.

45. Plaintiff V.B. is an individual who resides at 6 Bridle Path, Unit 306, Londonderry, New Hampshire 03053.

46. Plaintiff R.B. is an individual who resides at 6 Bridle Path, Unit 306, Londonderry, New Hampshire 03053.

47. Plaintiff Paul Lamalfa is an individual who resides at 86 Fieldstone Drive, Londonderry, New Hampshire 03053.

48. Plaintiff L.L. is an individual who resides at 86 Fieldstone Drive, Londonderry, New Hampshire 03053.

49. Plaintiff Emily Hannay is an individual who resides at 107 Main Street, Plaistow, New Hampshire 03865.

50. Plaintiff M.M. is an individual who resides at 107 Main Street, Plaistow, New Hampshire 03865.

51. Defendant Londonderry School District, School Administrative Unit #12, is a New Hampshire School District with a principal place of business located at 6A Kitty Hawk Landing, Londonderry, New Hampshire 03053.

52. Defendant Timberlane Regional School District, School Administrative Unit #55, is a New Hampshire School District with a principal place of business located at 30 Greenough Road, Plaistow, New Hampshire 03865. It oversees and administers schools in the towns of Atkinson, Danville, Plaistow, and Sandown, New Hampshire.

53. Defendant Epping School District, School Administrative Unit #16, is a New Hampshire School District with a principal place of business located at 213 Main Street, Epping, New Hampshire 03042.

### **JURISDICTION AND VENUE**

54. This Court has subject matter jurisdiction over this Complaint pursuant to RSA 491:7, RSA 491:22, and RSA 498:1.

55. This Court has personal jurisdiction over Defendants because Defendants are located in New Hampshire, and Defendants' conduct occurred in New Hampshire.

56. Venue is appropriate in Rockingham County pursuant to RSA 507:9 because the parties all reside or conduct business in this county, or their children attend school in this county.

### **FACTUAL ALLEGATIONS**

#### **A. The Plaintiffs**

57. Mr. and Mrs. Tuccolo reside with their family in Londonderry, New Hampshire. Their child, A.T., is currently a student at Londonderry High School, and N.T., is currently a student at Matthew Thornton School and will be attending Londonderry Middle School next year.

58. Mr. and Mrs. Carter reside with their family in Londonderry, New Hampshire. Their child, C.C., is currently a student at Moose Hill School and will be attending that school next year.

59. Mrs. Acevedo resides with her family in Londonderry, New Hampshire. Her child, K.A., is currently a student at Moose Hill School, and her other child, I.A., is currently a student at North School and will be attending that school next year.

60. Mr. and Mrs. Rivard reside with their family in Londonderry, New Hampshire. Their child, B.R., is currently a student at Londonderry Middle School and will be attending that school next year.

61. Mr. and Mrs. Plourde reside with their family in Londonderry, New Hampshire. Their children, A.P. and C.P., are currently students at Moose Hill School and will be attending that school next year.

62. Ms. Wheeler resides with her family in Londonderry, New Hampshire. Her children K.W. and J.W., will be attending Londonderry Middle School next year, and her child, E.W., will be attending Londonderry High School next year.

63. Mr. Vargus and Ms. Cavallo reside with their family in Londonderry, New Hampshire. Their child, I.C., is currently a student at Londonderry Middle School; and their child, L.V., is currently a student at Matthew Thornton School and will be attending that school next year.

64. Ms. Folsom resides with her family in Londonderry, New Hampshire. Her child, H.N., is currently a student at Londonderry High School and will be attending that school next year.

65. Ms. Borba resides with her family in Sandown, New Hampshire. Her child, J.B., was attending Sandown North Elementary School, and will be attending that school next year.

66. Mr. Grout resides with his family in Tilton, New Hampshire. His child, K.G., is currently a student at South Elementary School (in Londonderry, NH) and will be attending that school next year.

67. Mr. Toomey resides with his family, in Plaistow, New Hampshire. His child, P.T., is currently a student at Timberlane High School and will be attending that school next year.

68. Mr. Kiley resides with his family in Atkinson, New Hampshire. His child, E.K., is currently a student at Timberlane High School and will be attending that school next year.

69. Mr. and Mrs. Manning reside with their family in Danville, New Hampshire. Their children, L.M. and N.M., will be attending Danville Elementary School next year.

70. Mr. Hodgman resides with his family in Epping, New Hampshire. His child, Z.H., is currently a student at Epping High School and will be attending that school next year.

71. Ms. Barud resides with her family in Londonderry, New Hampshire. Her child, L.B., is currently a student at Londonderry Middle School; her child, V.B., attends Matthew Thornton School; and her child, R.B., attends Moose Hill School.

72. Mr. Lamalfa resides with his family in Londonderry, New Hampshire. His child, L.L., is currently a student at Londonderry High School.

73. Emily Hannay resides with her family in Plaistow, New Hampshire. Her child, M.M., is currently a student at Pollard Elementary School.

#### **B. The Impact of the Coronavirus on New Hampshire Schools**

74. In response to the Coronavirus, Governor Christopher T. Sununu declared a “state of emergency” for the entire state of New Hampshire and extended that declaration an unprecedented 21 times. Under the emergency powers he had pursuant to that “state of

emergency” declaration, Governor Sununu issued a series of Emergency Orders to address the state’s response to the virus.

75. Beginning on March 15, 2020, Governor Sununu issued several Emergency Orders directing public school districts in New Hampshire to transition to remote instruction for the remainder of the 2019-2020 school year.

76. In May 2020, the New Hampshire Department of Education (“DOE) published a document titled “New Hampshire Grades K-12 Back-to-School Guidance.”<sup>2</sup> In that document, DOE provided local school districts with “guidance . . . for the planned physical reopening of New Hampshire’s K-12 schools.” Among its purported “guidance,” DOE stated “[s]tudents should wear cloth face coverings in circumstances when physical distancing cannot be maintained,” but the “[u]ltimate determination of their use will be a local decision.”

77. On August 13, 2020, Governor Sununu issued Emergency Order #64. N.H. Emer. Order No. 64 (Aug. 13, 2020). That Order directed New Hampshire schools to “retain the flexibility to provide traditional in-person instruction, distance learning, or hybrid instruction that encompasses aspects of both in-person and distance learning in order to respond to COVID-19 threats in their individual communities.” *Id.* ¶ 3.

78. Two days before, on August 11, 2020, Governor Sununu issued Emergency Order #63. N.H. Emer. Order No. 63 (Aug. 11, 2020). That Order required face coverings for anyone attending “[s]cheduled gatherings of 100 people or more for social, spiritual, and recreational activities, including, but not limited to, community, civic, public, private, leisure, faith based, political, or sporting events; parades, concerts; festivals, conventions; fundraisers; and similar activities, where individuals are gathered in the same place at the same time.” *Id.* ¶ 1. This

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<sup>2</sup> <https://www.covidguidance.nh.gov/sites/g/files/ehbemt381/files/inline-documents/sonh/k-12-back-to-school.pdf>

requirement did not apply, however, to “[s]cheduled gatherings where attendees are seated and separated by at least 6 feet,” state and local governments, and *schools*. *Id.* ¶ 2.

79. On November 19, 2020, Governor Sununu issued Emergency Order #74. N.H. Emer. Order No. 74 (Nov. 19, 2020). That Order (hereinafter, “State-wide Mask Mandate”) required “all persons over the age of 5” to “wear a mask or cloth face covering over their noses and mouths any time they are in public spaces, indoors or outdoors, where they are unable to or do not consistently maintain a physical distance of at least six feet from persons outside their own households.” *Id.* ¶ 1. The Order contained numerous exceptions, including that it did not apply to “[e]ducators, students, and staff within K-12 schools,” “[a]ny person with a medical condition or disability that prevents wearing a mask or other face covering,” or “[a]ny person . . . who has a disability, medical condition, or mental health condition that makes communication with that individual while wearing a mask or face covering difficult.” *Id.* ¶ 5.

80. Governor Sununu extended his State-wide Mask Mandate through April 16, 2021. N.H. Emer. Order No. 81 (Jan. 15, 2021); N.H. Emer. Order No. 87 (Mar. 26, 2021). He allowed the Mandate to expire on that date.

### **C. The Defendant School Districts Re-opened and Required Students to Wear Face Masks or Coverings**

81. The Londonderry, Epping, and Timberlane Regional School Districts re-opened at various points in September 2020, and provided families with the choice of either sending students to school for in-person instruction or enrolling students in remote instruction.

82. The Districts required students who returned to school for in-person instruction during the 2020-2021 school year to wear face masks or coverings approved by school administrators. This requirement included wearing face masks or coverings when riding the bus, entering/exiting buildings, arriving to/leaving a classroom, engaging in small group classroom

activities, walking in the hallways and other common areas, and whenever asked to do so by a District employee. It also included wearing face masks or coverings when engaged in any physical activity.

83. On February 19, 2021, Governor Sununu issued Emergency Order #85. N.H. Emer. Order No. 85 (Feb. 19, 2021). That Order directed New Hampshire schools to “provide in person instruction for at least two days per week for any student who wishes to elect such an option” by March 8, 2021. *Id.* ¶¶ 3, 7.

84. The Districts plan to maintain some form of their face mask requirements in place for the 2021-2022 school year.

85. For example, at its May 20, 2021, school board meeting, the Timberlane Regional School District, explained it “will continued using current mask protocols through the end of the 2021-2022 school year.”<sup>3</sup> Those protocols “require the use of masks in all buildings and grounds” and “for all students and staff.”<sup>4</sup>

86. At its June 3, 2021, school board meeting, the Timberlane Regional School District announced, for its summer programs, “[w]hile indoors, non-vaccinated individuals will be required to wear a mask” when social distancing cannot be achieved, but “fully vaccinated individuals will not need to wear a mask.”<sup>5</sup> “While outdoors, all individuals need only wear a mask if they are in a crowded setting, or during activities that involve sustained close contact

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<https://public.timberlane.net/sau/trsb/Shared%20Documents/SCHOOL%20BOARD%20MEETING%20AGENDA%20MATERIALS/2020-21/05%2020%202021%20Meeting/Agenda%20Packet%2005%2020%2021.pdf>

<sup>4</sup> *Id.*

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<https://public.timberlane.net/sau/trsb/Shared%20Documents/SCHOOL%20BOARD%20MEETING%20AGENDA%20MATERIALS/2020-21/06%2003%202021%20Meeting/Agenda%20Packet%2006%2003%2021.pdf>

with non-vaccinated individuals.”<sup>6</sup> For “outdoor events,” if social distancing cannot be achieved, “all non-fully vaccinated individuals” must wear masks.<sup>7</sup>

87. At its June 24, 2021, school board meeting, the Timberlane Regional School District appeared to modify its mask requirement for summer programs: it is now *recommending* mask-wearing in all of its buildings during summer programs based on the following chart:<sup>8</sup>

Color	Metric	Mitigation strategies
Green	0-50 Active cases in Rockingham county as reported by State of NH: <a href="https://www.covid19.nh.gov/dashboard/map">https://www.covid19.nh.gov/dashboard/map</a>	No mask, no social distancing
Yellow	51-100 Active cases in Rockingham county as reported by State of NH: <a href="https://www.covid19.nh.gov/dashboard/map">https://www.covid19.nh.gov/dashboard/map</a>	Masks <u>or</u> 3 ft. distancing
Red	Over 100 Active cases in Rockingham county as reported by State of NH: <a href="https://www.covid19.nh.gov/dashboard/map">https://www.covid19.nh.gov/dashboard/map</a>	Masks <u>or</u> 6 ft. distancing

According to the New Hampshire Department of Health & Human Services, Rockingham County currently has 39 active cases.<sup>9</sup>

88. The Timberlane Regional School District has not, however, modified its requirement concerning masks for the 2021-2022 school year.

89. At the Londonderry School District’s June 8, 2021, school board meeting, numerous parents (some of whom are Plaintiffs in this lawsuit) made lengthy passionate pleas to the board to end the District’s mask requirement. A school board member (Mr. Slater) made a motion to make mask-wearing optional.<sup>10</sup> No other board member mustered the courage to

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

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

<sup>8</sup>

<https://public.timberlane.net/sau/trsb/Shared%20Documents/SCHOOL%20BOARD%20MEETING%20AGENDA%20MATERIALS/2020-21/06%2024%202021%20Meeting/Agenda%20Packet%2006%2024%2021.pdf>

<sup>9</sup> <https://www.covid19.nh.gov/dashboard/map>

<sup>10</sup> <https://londonderry.org/common/pages/DisplayFile.aspx?itemId=25384625>

second the motion. It subsequently failed. The Londonderry School District continues to require its students to wear masks.

90. As noted above, the Epping School District required its students to wear masks through the end of the 2020-2021 school year. According to its June 25, 2021 “draft” re-opening plan, the District did not indicate whether it would require masks for the 2021-2022 school year; rather, it stated it will begin the school year in “Phase 4,” wherein it states “PPE to be determined by DPHS guidance.”<sup>11</sup> The New Hampshire Department of Health and Human Services continues, however, to recommend “[s]tudents should wear cloth face coverings in circumstances when physical distancing cannot be maintained,” and that, generally, “everybody wear face masks and physically distance in certain settings.”<sup>12</sup> Accordingly, the Epping School District will likely continue to require its students to wear masks during the 2021-2022 school year.

#### **D. The Coronavirus Has Had No Impact on Children in New Hampshire**

91. Despite the measures above, the Coronavirus has had virtually no impact on children in New Hampshire.

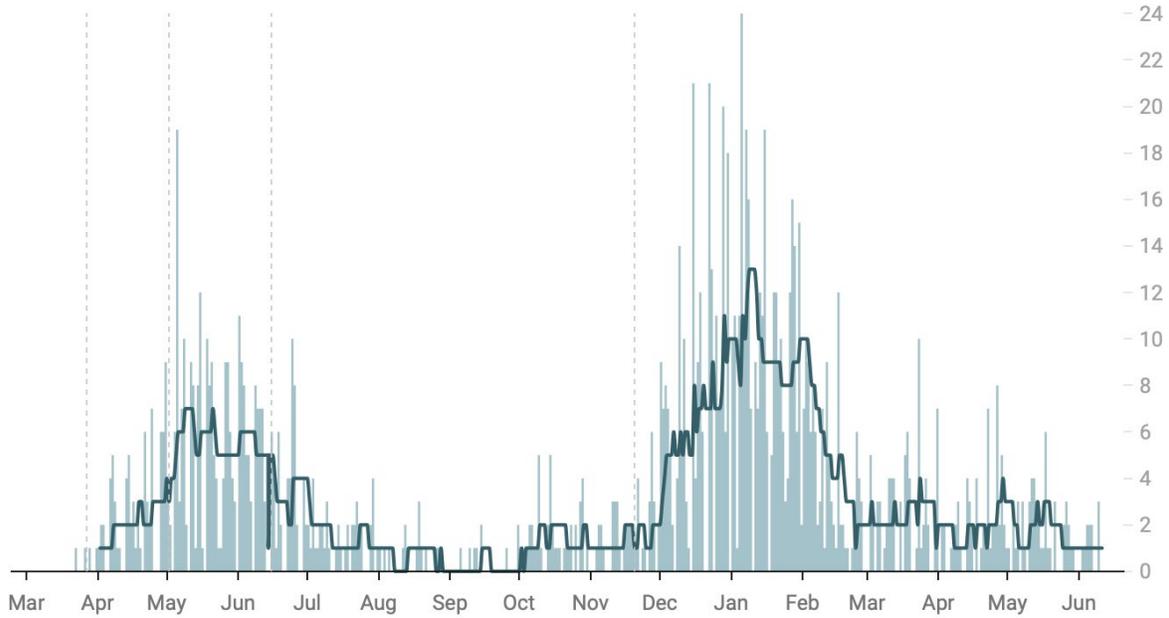
92. As of June 28, 2021, the number of current Coronavirus-related hospitalizations in New Hampshire was just 17 against 160 current or active cases, producing a current hospitalization rate of just 10.6%. Also as of June 29, 2021, there were no new deaths reported.

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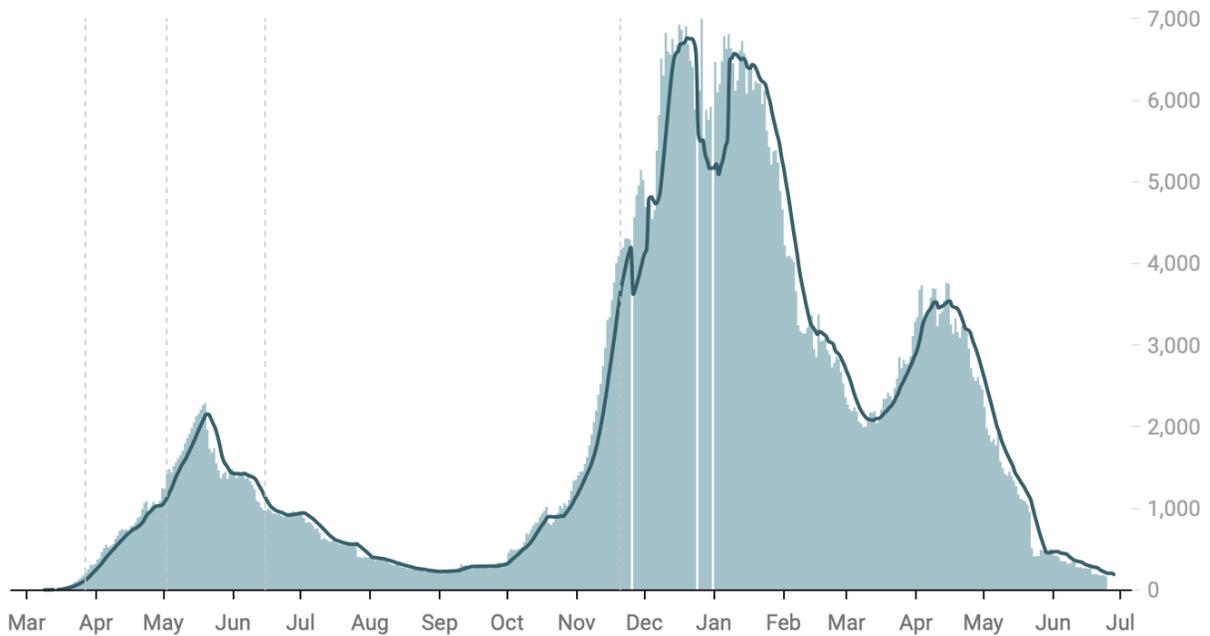
<sup>11</sup> <https://campussuite-storage.s3.amazonaws.com/prod/1558548/98912c94-4d3d-11e8-9597-0a13d6b59dd2/2284473/792e177e-d5c8-11eb-acf7-027cd404a8f9/file/Epping%20School%20District%20COVID%20Plan%202021-2022.pdf>

<sup>12</sup> <https://www.covidguidance.nh.gov/sites/g/files/ehbemt381/files/inline-documents/sonh/k-12-back-to-school.pdf>

93. The seven-day average for new deaths per day was approximately 0.5:

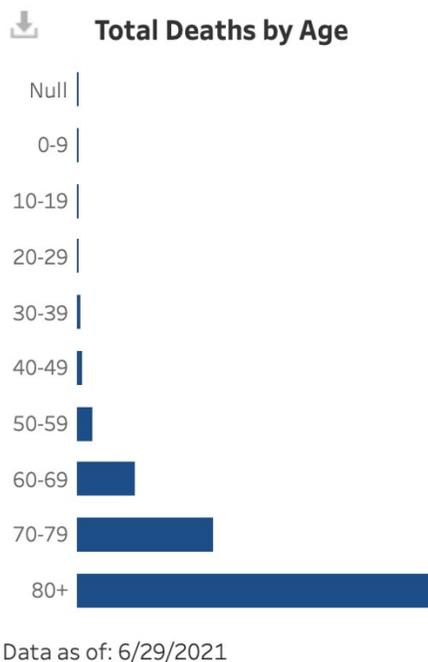


94. The seven-day average for new cases per day was 190:



95. COVID-19 has been highly selective in those among the population to whom it poses the most risk: Over 95% of Coronavirus-related deaths have occurred in individuals

above the age of 60, and approximately 62% of those deaths occurred in individuals above the age of 80:



96. Approximately 80% of deaths attributed to COVID-19 in New Hampshire were in nursing homes or long-term care facilities.

97. Regardless, a presentation at Johns Hopkins University in December 2020 stated COVID-19 “had no effect on the percentage of deaths of older people,” and that the virus “has also not increased the total number of deaths” in comparison to historical data.<sup>13</sup>

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

99. Indeed, COVID-19 spread is so exceedingly rare in asymptomatic persons as to have virtually no impact in the grand scheme of available data on the virus.<sup>14</sup>

<sup>13</sup> <https://campusreform.org/?id=16463>

<sup>14</sup> <https://www.aier.org/article/asymptomatic-spread-revisited/>

100. There is no “state of emergency” in New Hampshire concerning COVID-19, nor is there any threat to children or healthy adults from the virus.

101. Indeed, Governor Sununu allowed his “state of emergency” declaration to expire on June 11, 2021, along with *every* emergency order he issued pursuant to that declaration.

#### **E. Face Masks Do Not Prevent the Spread of COVID-19**

102. In a “60 Minutes” interview on March 8, 2020,<sup>15</sup> Dr. Anthony Fauci, an American physician-scientist and immunologist who serves as the Director of the United States National Institute of Allergy and Infectious Diseases and the chief medical advisor to the President of the United States, stated Americans should not wear masks: “There’s no reason to be walking around with a mask.”

103. In that same interview, Fauci said: “While masks may block some droplets, they do not provide the level of protection people think they do. Wearing a mask may also have unintended consequences: People who wear masks tend to touch their face more often to adjust them, which can spread germs from their hands.”

104. Fauci was not the only government official downplaying masks. On February 27, 2020, during a congressional hearing,<sup>16</sup> Dr. Robert Redfield, then-director of the Centers for Disease Control and Prevention (“CDC”), responded, “No,” when asked if Americans should wear face masks to prevent the spread of COVID-19. Two days later, on February 29, 2020, then-U.S. Surgeon General Dr. Jerome Adams tweeted, “They [face masks] are NOT effective in preventing [the] general public from catching coronavirus.”<sup>17</sup>

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<sup>15</sup> <https://www.cbsnews.com/news/preventing-coronavirus-facemask-60-minutes-2020-03-08/>

<sup>16</sup> <https://www.c-span.org/video/?469566-1/house-hearing-coronavirus-response>

<sup>17</sup> <https://www.kcrg.com/content/news/US-Surgeon-General-face-masks-are-not-effective-in-preventing-spread-of-COVID-19-568391361.html>

105. Since then, for some unknown reason, many infectious disease experts adopted the opposite position and recommended citizens should wear face masks to prevent the spread of COVID-19.

106. Those experts were wrong: there is compelling evidence now that face masks not only have not prevented the spread of COVID-19, but they are *harmful* to children.

107. A Danish study released in November 2020 suggested face masks did not significantly protect mask wearers from contracting COVID-19 compared to those without masks.<sup>18</sup>

108. According to a study published on June 30, 2021 in a monthly peer-reviewed medical journal titled *JAMA Pediatrics* by the American Medical Association, a group of physicians evaluated the carbon dioxide content in inhaled air among children who wear face masks and concluded there was “elevated carbon dioxide content of inhaled air” underneath the masks worn by those children.<sup>19</sup> See Harald Walach, PhD, Ronald Weigl, M.D., Juliane Prentice, BA, et al., “Experimental Assessment of Carbon Dioxide Content in Inhaled Air With or Without Face Masks in Healthy Children,” *JAMA Pediatrics*. The study continued: “**This leads in turn to impairments attributable to hypercapnia. A recent review concluded that there was ample evidence for adverse effects of wearing such masks.** We suggest that decision-makers weigh the hard evidence produced by these experimental measurements accordingly, which suggest that **children should not be forced to wear face masks.**”<sup>20</sup>

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<sup>18</sup> <https://www.msn.com/en-us/health/medical/first-randomized-control-trial-shows-face-masks-did-not-reduce-coronavirus-infections-with-statistical-significance/ar-BB1b8zo2>

<sup>19</sup> <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2781743>

<sup>20</sup> *Id.*

109. According to another recent study by Stanford University, “Facemasks in the COVID-19 era: A health hypothesis,”<sup>21</sup> face masks (other than N95 masks) do not prevent the spread of COVID-19: “The physical properties of medical and non-medical facemasks suggest that facemasks are ineffective to block viral particles due to their difference in scales. According to the current knowledge, the virus SARS-CoV-2 has a diameter of 60 nm to 140 nm [nanometers (billionth of a meter)], while medical and non-medical facemasks’ thread diameter ranges from 55  $\mu\text{m}$  to 440  $\mu\text{m}$  [micrometers (one millionth of a meter), which is more than 1000 times larger. Due to the difference in sizes between SARS-CoV-2 diameter and facemasks thread diameter (the virus is 1000 times smaller), SARS-CoV-2 can easily pass through any facemask.”<sup>22</sup>

110. The study continues: “Clinical scientific evidence challenges further the efficacy of facemasks to block human-to-human transmission or infectivity. A randomized controlled trial (RCT) of 246 participants [123 (50%) symptomatic] who were allocated to either wearing or not wearing surgical facemask, assessing viruses transmission including coronavirus. The results of this study showed that among symptomatic individuals (those with fever, cough, sore throat, runny nose ect...) there was no difference between wearing and not wearing facemask for coronavirus droplets transmission of particles of  $>5 \mu\text{m}$ . Among asymptomatic individuals, there was no droplets or aerosols coronavirus detected from any participant with or without the mask, suggesting that asymptomatic individuals do not transmit or infect other people.”

111. The study cites several other randomized control trials that concur with the fact that face masks do not prevent transmission of COVID-19.

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<sup>21</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7680614/>

<sup>22</sup> After drawing enormous attention, this study was retracted on May 12, 2021, and labeled “disruptive.” See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8114149/>

112. The study also concludes face masks cause adverse health effects: “Wearing facemask **mechanically restricts breathing by increasing the resistance of air movement during both inhalation and exhalation process.** Although, intermittent (several times a week) and repetitive (10–15 breaths for 2–4 sets) increase in respiration resistance may be adaptive for strengthening respiratory muscles, prolonged and continues effect of wearing facemask is maladaptive and could be detrimental for health. In normal conditions at the sea level, air contains 20.93% O<sub>2</sub> and 0.03% CO<sub>2</sub>, providing partial pressures of 100 mmHg and 40 mmHg for these gases in the arterial blood, respectively. These gas concentrations significantly altered when breathing occurs through facemask. A trapped air remaining between the mouth, nose and the facemask is rebreathed repeatedly in and out of the body, containing low O<sub>2</sub> and high CO<sub>2</sub> concentrations, causing hypoxemia and hypercapnia. Severe hypoxemia may also provoke cardiopulmonary and neurological complications and is considered an important clinical sign in cardiopulmonary medicine. Low oxygen content in the arterial blood can cause myocardial ischemia, serious arrhythmias, right or left ventricular dysfunction, dizziness, hypotension, syncope and pulmonary hypertension. Chronic low-grade hypoxemia and hypercapnia as result of using facemask can cause exacerbation of existing cardiopulmonary, metabolic, vascular and neurological conditions.

113. Another study concluded “[v]entilation, **cardiopulmonary exercise capacity and comfort are reduced by surgical masks** and highly impaired by FFP2/N95 face masks in healthy individuals.” *Effects of surgical and FFP2/N05 face masks on cardiopulmonary exercise capacity*, Fikenzer, Sven, et al., July 6, 2020.<sup>23</sup>

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<sup>23</sup> [https://link.springer.com/epdf/10.1007/s00392-020-01704-y?sharing\\_token=4AfWegbHOxk00hiHYtrplPe4RwlQNchNByi7wbcMAY4ZfoGR\\_ibmFHApWSw2JRb7yoFxeXbxgdwNA2TYmPtz8OVhsr-](https://link.springer.com/epdf/10.1007/s00392-020-01704-y?sharing_token=4AfWegbHOxk00hiHYtrplPe4RwlQNchNByi7wbcMAY4ZfoGR_ibmFHApWSw2JRb7yoFxeXbxgdwNA2TYmPtz8OVhsr-)

114. The science is, thus, clear: Face masks do not prevent the spread of COVID-19, and wearing one does more harm than good.

115. Indeed, of the U.S. states with the most deaths per million, the top four states on that list (New Jersey, New York, Massachusetts, and Rhode Island), and nine of the top 10, either enacted a state-wide mask mandate or had large portions of their jurisdictions under municipal or local mask mandates:<sup>24</sup>

#	USA State	Total Cases	New Cases	Total Deaths	New Deaths	Total Recovered	Active Cases	Tot Cases/ 1M pop	Deaths/ 1M pop	Total Tests	Tests/ 1M pop	Population
1	<a href="#">New Jersey</a>	1,012,196		26,030		847,175	138,991	113,958	2,931	14,034,868	1,580,113	8,882,190
2	<a href="#">New York</a>	2,139,723		53,332		1,631,407	454,984	109,991	2,742	54,303,681	2,791,452	19,453,561
3	<a href="#">Massachusetts</a>	702,776		17,779		671,170	13,827	101,962	2,579	22,422,268	3,253,139	6,892,503
4	<a href="#">Rhode Island</a>	150,737		2,703		9,167	138,867	142,290	2,552	4,208,523	3,972,700	1,059,361
5	<a href="#">Mississippi</a>	315,891		7,269		305,388	3,234	106,141	2,442	2,762,752	928,298	2,976,149
6	<a href="#">Arizona</a>	874,605		17,497		838,324	18,784	120,159	2,404	4,853,983	666,873	7,278,717
7	<a href="#">Connecticut</a>	345,948		8,204		319,827	17,917	97,032	2,301	9,068,140	2,543,453	3,565,287
8	<a href="#">Louisiana</a>	467,055		10,509		N/A	N/A	100,468	2,261	7,283,174	1,566,680	4,648,794
9	<a href="#">South Dakota</a>	123,822		1,994		121,154	674	139,966	2,254	475,670	537,687	884,659
10	<a href="#">Alabama</a>	540,891		11,045		509,800	20,046	110,314	2,253	2,719,677	554,676	4,903,185

States that have lifted mask mandates (like New Hampshire) or that never enacted mask mandates have not seen an increase in COVID-19 cases or deaths: For example, states such as Texas and Florida, which never enacted state-wide mask mandates, ranked 23rd and 27th, respectively, on the same list above:

<sup>24</sup> <https://www.worldometers.info/coronavirus/country/us/>

21	<a href="#">Tennessee</a>	859,281		12,353		839,941	6,987	125,825	1,809	7,861,704	1,151,194	6,829,174
22	<a href="#">Nevada</a>	321,716		5,545		298,141	18,030	104,448	1,800	3,325,006	1,079,493	3,080,156
23	<a href="#">Texas</a>	2,938,100		51,301		2,810,561	76,238	101,328	1,769	29,626,357	1,021,744	28,995,881
24	<a href="#">Oklahoma</a>	451,473		6,918		443,397	1,158	114,096	1,748	4,040,035	1,020,992	3,956,971
25	<a href="#">Kansas</a>	312,591		5,053		301,057	6,481	107,297	1,734	1,402,459	481,396	2,913,314
26	<a href="#">Delaware</a>	107,928		1,652		100,342	5,934	110,836	1,697	715,008	734,272	973,764
27	<a href="#">Florida</a>	2,299,596		36,287		1,903,074	360,235	107,069	1,690	28,722,772	1,337,328	21,477,737
28	<a href="#">Ohio</a>	1,093,534		19,628		1,050,024	23,882	93,552	1,679	12,918,124	1,105,143	11,689,100
29	<a href="#">District Of Columbia</a>	48,634		1,124		34,441	13,069	68,911	1,593	1,591,051	2,254,415	705,749

Remarkably, Florida (no mask mandate) has just over half the total deaths (36,287) that New York (mask mandate) has suffered (53,332), despite having similar populations.

116. The effectiveness of cloth masks is even lower than that of medical masks and respirators.<sup>25</sup>

117. People who are fully vaccinated have even less of a reason to wear a mask: 0.04% of all vaccinated people contracted COVID-19 during a Pfizer trial.<sup>26</sup>

118. Masks are worthless, aside from their performative relief it provides certain people. They are no more than a “psychological crutch.”<sup>27</sup>

## F. New Hampshire Law Prohibits Schools From Requiring Restraints on Children that Restrict Their Breathing

119. RSA 126-U:4 states:

No school or facility shall **use or threaten to use any of the following restraint and behavior control techniques:**

I. Any **physical restraint or containment technique** that:

(a) **Obstructs a child’s respiratory airway or impairs the child’s breathing or respiratory capacity or restricts the movement required for normal breathing;**

(b) Places pressure or weight on, or causes the compression of, the chest, lungs, sternum, diaphragm, back, or abdomen of a child;

<sup>25</sup> [https://wwwnc.cdc.gov/eid/article/26/10/20-0948\\_article](https://wwwnc.cdc.gov/eid/article/26/10/20-0948_article)

<sup>26</sup> <https://www.livescience.com/covid-19-vaccine-efficacy-explained.html>

<sup>27</sup> <https://www.nejm.org/doi/full/10.1056/NEJMp2006372?query=TOC>

(c) Obstructs the circulation of blood;

(d) Involves pushing on or into the child's mouth, nose, eyes, or any part of the face or *involves covering the face or body with anything*, including soft objects such as pillows, blankets, or washcloths; or

(e) Endangers a child's life or significantly exacerbates a child's medical condition.

(Emphasis added.)

120. "Restraint" is defined as "bodily physical restriction, mechanical devices, or any device that immobilizes a person or restricts the freedom of movement of the torso, head, arms, or legs. It includes mechanical restraint, physical restraint, and medication restraint used to control behavior in an emergency or any involuntary medication. RSA 126-U:1, IV.

121. "Mechanical restraint" is defined as "when a physical device or devices are used to restrict the movement of a child or the movement or normal function of a portion of his or her body." RSA 126-U:1, IV(b).

122. "Physical restraint" is defined as "when a manual method is used to restrict a child's freedom of movement or normal access to his or her body." RSA 126-U:1, IV(c).

123. There is no question requiring children to wear face masks or covering contradicts one or more of the prohibitions contained in RSA 126-U:4.

124. The word "restraint" includes the use of face masks. "Restraint" means . . . [a]ny device that . . . restricts the freedom of movement of the torso, head, arms, or legs" and includes "[m]echanical restraint," which "occurs when a physical device or devices are used to restrict the movement of a child or the movement or normal function of a portion of his or her body." RSA 126-U:1, IV(b). The Plaintiffs allege below that face masks obstruct their children's

breathing and respiratory airways, which constitutes the normal functioning of a portion of their bodies. *See id.* The statute then prohibits these “restraints” in several ways.

125. First, the statute prohibits “[a]ny physical restraint or containment technique that . . . involves covering the face or body with anything.” RSA 126-U:4, I(d). Even if the word “restraint” does not apply to the use of face masks (it applies), the phrase “containment technique” applies: while not defined in the statute, a face mask is certainly a “containment technique” because it allegedly helps contain a person’s respiratory droplets and/or prevent a person from spreading those droplets – by covering one’s face.

126. Second, the statute prohibits “[a]ny physical restraint or containment technique that . . . obstructs a child’s respiratory airway or impairs the child’s breathing or respiratory capacity or restricts the movement required for normal breathing.” RSA 126-U:4, I(a). The Plaintiffs allege below that face masks obstruct their children’s breathing and respiratory airways.

127. Third, the statute restricts “[a]ny physical restraint or containment technique that . . . endangers a child’s life or significantly exacerbates a child’s medical condition.” RSA 126-U:4, I(e). The Plaintiffs allege below that some of their children have asthma or asthma-related problems, and speech-related developmental disorders, and wearing a mask exacerbates their conditions.

128. The use of face masks on children can cause numerous physiological and psychological effects, as well as long-term health consequences.

**G. The Impact of the School Districts' Face Mask Requirement on the Plaintiffs' Children**

129. Plaintiffs' children attended school in one of the Defendant School Districts and will continue to attend school there. Thus, they will be required to wear masks while riding the bus, attending school, or participating in any extra-curricular activities.

130. Wearing a mask restricts the breathing of all the Plaintiffs' children: as described above, wearing masks makes it difficult for them to breathe because it restricts their oxygen levels and increases their carbon dioxide levels. Wearing a mask has also caused them, at times, to develop acne and rashes on their faces in the area where the masks are worn. These problems have caused them to be afraid, suffer anxiety, and experience headaches. In addition, the Districts, at times, have failed to make reasonable accommodations to make "mask breaks" accessible to disabled students.

131. Some of the Plaintiffs' children have learning- and focus-related issues, experience anxiety on a normal basis, and have difficulty breathing *without* a face mask. Being forced to wear a face mask while in school further complicates these issues: it distracts them because they must constantly fix or adjust their masks while in class, and it poses additional challenges for their breathing.

132. Some of the Plaintiffs' children also experience asthma and have speech-related developmental disorders. Thus, wearing a mask makes it even more difficult for them to breathe, particularly now that the weather has become warmer (including when the children return to school in the fall), and speak.

133. As noted above, Plaintiffs have repeatedly communicated their concerns and these issues to the Districts at school board meetings and in separate telephone calls and emails, but the Districts have refused to end their face mask requirements.

**CLAIMS**

**COUNT I**

***(Declaratory Judgment)***

***(Plaintiffs v. Defendants)***

***(Face Mask Requirement Violates RSA 126-U:4)***

134. Plaintiffs repeat and incorporate by reference the allegations of the paragraphs above as if fully stated herein.

135. There is a genuine and bona fide dispute and an actual controversy and disagreement between Plaintiffs and the Districts regarding whether the Districts' face mask requirements violate RSA 126-U:4.

136. As described above, these face mask requirements require a child to cover his or her face with certain material (whether a surgical mask or a cloth mask); restrict a child's breathing; and restrict the normal function of their bodies (breathing).

137. Pursuant to the RSA 491:22, Plaintiffs request, in good faith, that this Court declare that the Districts' face mask requirements, including any extension or implementation of those requirements for future school years, violate RSA 126-U:4, and are, therefore, void.

**COUNT II**

***(Injunctive Relief)***

***(Plaintiffs v. Defendants)***

138. Plaintiffs repeat and incorporate by reference the allegations of the paragraphs above as if fully stated herein.

139. Plaintiffs will likely succeed on the merits because the Districts' face mask requirements violate RSA 126-U:4.

140. As a result of these requirements, Plaintiffs will continue to suffer irreparable harm.

141. Plaintiffs have no adequate remedy at law to redress the harm threatened by the continuation of these requirements.

142. The public interest favors the protection of children.

143. Plaintiffs are, therefore, entitled to an injunction prohibiting the Districts from continuing their face mask requirements.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Declare the Districts' face mask requirements violate RSA 126-U:4;
- B. Enjoin the enforcement of the Districts' face mask requirements;
- C. Enter judgment in favor of Plaintiffs on all counts;
- D. Award Plaintiffs their attorney's fees and costs; and
- E. Award such other relief as is just and equitable.

Respectfully submitted,

PLAINTIFFS,

By Their Attorneys,

FOJO LAW, P.L.L.C.

Dated: June 30, 2021

/s/Robert M. Fojo  
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VERIFICATION

I, Jamie Tuccolo, certify that the foregoing facts are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Jamie Tuccolo

STATE OF NEW HAMPSHIRE

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of June 30, 2021

by Jamie Tuccolo

(Seal)



  
\_\_\_\_\_  
Signature of Notary Public  
Print, Type Stamp Name of Notary

Personally known \_\_\_\_\_  
OR Produced Identification: \_\_\_\_\_  
Type of Identification Produced: \_\_\_\_\_