

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT  
CIVIL ACTION NO:

**RECEIVED**

9/21/2021 JP

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PETER CARLINO, individually and on behalf )  
of J.C., his child, ROBERT HANLEY, )  
individually and on behalf of L.H., his child, )  
PETER FOSTER, individually and on behalf )  
of K.F., his child, ERIN HUDD, individually )  
and on behalf of J.H., her child, DANIELLE )  
NEWELL, individually and on behalf of L.N. )  
and E.N., her children, CHRISTOPHER )  
ROSSETTI, individually and on behalf of A.R. )  
and J.R., his children, SHAUN CARR, )  
individually and on behalf of S.C. and L.C., his )  
children, and ANGELA DELUCA JOYCE, )  
individually and on behalf of T.J. and T.J., her )  
children, LISA McMAHAN WILSON, )  
individually and on behalf of I.W. and A.W., )  
her children, CHRIS and AMY LUTKEVICH, )  
individually and on behalf of E.L. and D.L., )  
their children, )

Plaintiffs, )

vs. )

DEPARTMENT OF ELEMENTARY AND )  
SECONDARY EDUCATION and )  
TEWKSBURY PUBLIC SCHOOL )  
DISTRICT, )

Defendants. )

**PLAINTIFFS' EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER  
AND/OR PRELIMINARY INJUNCTION**

Plaintiffs, pursuant to Massachusetts Rules of Civil Procedure 65(a) and (b), move, on an *ex parte* basis, for a temporary restraining order or, in the alternative, move for a preliminary injunction enjoining Defendants from enforcing their policies or mandates requiring children to wear face masks or coverings while in school.

As set forth more fully in its Memorandum of Law filed contemporaneously with this Motion, Plaintiffs request that the Court issue an emergency temporary restraining order without notice or, in the alternative, a preliminary injunction because (1) DESE and the Districts lacked the authority to pass these mandates; (2) even if DESE had the authority to pass the mandate, it exceeded its authority in doing so; (3) the mandates are preempted by the Massachusetts Department of Health's comprehensive regulatory scheme concerning infectious diseases; and (4) the mandates violate parents' right to due process and their natural rights under the Massachusetts Constitution because they violate their rights to make healthcare decisions for their children and otherwise direct the care and upbringing of their children.

#### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Schedule a hearing as soon as practicable;
- B. Enjoin the enforcement of the Defendants' face mask mandates;
- C. Enjoin the Defendants from extending these mandates for any portion of the 2021-2022 school year and beyond; and
- D. Award such other relief as is just and equitable.

Respectfully submitted,

PLAINTIFFS,

By Its Attorneys,

FOJO LAW, P.L.L.C.

Dated: September 21, 2021

*/s/Robert M. Fojo*

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