

DOCKET NO. _____
DIVISION _____
SECTION _____

CHYNA ANDREWS, ET AL

CIVIL DISTRICT COURT

VERSUS

PARISH OF ORLEANS

LaTOYA CANTRELL, in her official capacity as Mayor of the City of New Orleans; NEW ORLEANS HEALTH DEPARTMENT; and JENNIFER AVEGNO, M.D., in her official capacity as Director of Health for the New Orleans Health Department.

STATE OF LOUISIANA

.....
PETITION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTION, AND DECLARATORY JUDGMENT

COME NOW, Plaintiffs, who, in support of their petition for injunctive and declaratory relief, respectfully state as follows:

PARTIES

1.

Plaintiffs are individuals who live and operate in or adjacent to the City of New Orleans, Louisiana, or who are citizens of Louisiana who visit or work in New Orleans and who have endured nearly two years of unprecedented executive control during the COVID-19 pandemic. What started as a temporary means to protect the community from unknown risks has turned into perpetual, unlawful overreach.

Fortunately, the virus has evolved into a milder variant, effective treatments have been developed, and most people now have immunity and have learned to protect themselves. Yet, paradoxically, Mayor Latoya Cantrell and city officials under her direction have *increased* restrictions on individuals and businesses. In response to the original virus, Mayor Cantrell issued orders mandating wearing masks, closing businesses, and limiting gatherings. Now, for Omicron, the mildest variant yet, Mayor Cantrell is lowering the vaccine mandate to *age five* and expanding the mask mandate to everyone *over the age of two*. See www.ready.nola.gov (beginning Tuesday, Feb. 1, the city is expanding the Covid-19 vaccine/testing mandate that went into effect Jan. 3, 2022). **Enough.**

Plaintiffs (Exhibit A) stand on behalf of all persons who demand respect for the rule of law, individual autonomy, parental authority, and those who cherish the City of New Orleans and

are saddened by the social, economic and cultural harm caused by the Defendants' authoritarian actions under the pretext of an emergency without end.

2.

Made Defendants herein are:

LaTOYA CANTRELL, Mayor of the City of New Orleans, Louisiana, who is being sued in her official capacity.

NEW ORLEANS HEALTH DEPARTMENT, a department of the City of New Orleans organized under the Home Rule Charter of the City of New Orleans.

JENNIFER AVENGNO, M.D., the Director of Health for the New Orleans Health Department, who is being sued in her official capacity.

SUMMARY OF THE ACTION

3.

This is an action for declaratory and injunctive relief challenging Defendants' issuance and enforcement of mandates for vaccination and mask usage in the City of New Orleans in violation of individual constitutional liberties and the separation of powers. First, the vaccinate-or-test mandate violates La. Const. art, I, § 5 by infringing on the fundamental right to privacy with overly broad restricts lacking no accommodation for religious objections, personal or philosophical choice, natural immunity, medical contraindications, or the wide range of factors influencing the severity of the disease process. Second, the vaccinate-or-test mandate denies equal protection under La. Const. art. 1, § 3 by classifying persons based on vaccination status and threatening to punish the exercise of a fundamental right in order to coerce compliance. Third, the mask mandate is unconstitutionally vague and overly broad, and thus fails due process under La. Const. art. 1, § 2. Fourth the third-party enforcement provisions offend due process under La. Const. art. 1, § 2 by unlawfully conscripting private persons into the role of public enforcement officers under the threat of criminal and regulatory sanctions and the denial of municipal services. Finally, the Mayor's emergency orders violate the separation of powers under the State constitution and the City Charter by purporting to enact law without legislative authorization.

FACTS

The COVID-19 Pandemic

4.

On March 11, 2020, the World Health Organization ("WHO") declared a global pandemic in response to the spread of COVID-19, an infectious disease originating in Wuhan, China in 2019 and present in the United States by early 2020.

5.

A disease is considered pandemic when its spread is vast and unpredictable. It is considered endemic when it becomes “continuously present in a given population at a lower and more stable level, even if cases spike under certain conditions.” James Paton, *Is Covid Becoming Endemic? What Would That Mean?* https://www.washingtonpost.com/business/is-covid-becoming-endemic-what-would-that-mean/2022/01/19/9dd7066a-791c-11ec-9dce-7313579de434_story.html. See also W. Ian Lipkin, *Epidemic, Endemic, Pandemic: What are the Differences?* <https://www.publichealth.columbia.edu/public-health-now/news/epidemic-endemic-pandemic-what-are-differences> (“It has nothing to do with virology, population immunity, or disease severity.”).

6.

By all accounts, COVID-19 is very near endemic.

The COVID-19 Variants

7.

“It is normal for viruses to change and evolve as they spread between people over time. When these changes become significantly different from the original virus, they are known as ‘variants.’ To identify variants, scientists map the genetic material of viruses (known as sequencing) and then look for differences between them to see if they have changed.” World Health Organization (WHO), *Coronavirus disease (COVID-19): Variants of SARS-CoV-2*, [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/qa-detail/coronavirus-disease-\(covid-19\)-variants-of-sars-cov-2](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/qa-detail/coronavirus-disease-(covid-19)-variants-of-sars-cov-2).

8.

Variants are labeled “of interest,” “of concern,” and “of high consequence,” as explained by experts at John Hopkins:

A variant of interest is a coronavirus variant that, compared to earlier forms of the virus, has genetic characteristics that predict greater transmissibility, evasion of immunity or diagnostic testing or more severe disease.

A variant of concern has been observed to be more infectious, more likely to cause breakthrough or re-infections in those who are vaccinated or previously infected. These variants are more likely to cause severe disease, evade diagnostic tests, or resist antiviral treatment. Alpha, beta, gamma, and delta variants of the SARS-CoV-2 coronavirus are classified as variants of concern.

A variant of high consequence is a variant for which current vaccines do not offer protection. As of now, there are no SARS-CoV-2 variants of high consequence.

Robert Bollinger, M.D., M.P.H, and Stuart Ray, M.D., *Covid Variants: What You Should Know*, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/a-new-strain-of-coronavirus-what-you-should-know> (January 14, 2022).

9.

The original COVID-19 virus, SARS-CoV-2, has mutated into variants.

10.

There are five COVID-19 variants of concern: Alpha (first detected in the U.S. in December 2020), Beta (first detected in the U.S. in January 2021), Gamma (first detected in the U.S. in January 2021), Delta (first detected in the U.S. in March 2021), and Omicron (first detected in the U.S. in December 2021). See University of Utah Health Communications, *Understanding Omicron and Other Covid-19 Variants*, <https://healthcare.utah.edu/healthfeed/postings/2021/01/covid19-variants.php> (Dec 1, 2021).

11.

Delta and Omicron have been the dominant variants in the United States. Recent statistics show close to 100% of all new cases are caused by Omicron.

12.

The Delta variant caused the surge of cases in the summer of 2021. Although milder than the original strain of the virus, the Delta variant was highly transmissible. See *Delta Variant: What We Know About the Science*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html> (last visited Sept. 16, 2021). By early November 2021, Delta accounted for 98.7% of all reported cases in the United States. See CDC COVID Data Tracker, Variant Proportions (Updated Jan. 25, 2022), <https://covid.cdc.gov/covid-data-tracker/#variant-proportions> (for the week ending November 6, 2021.).

13.

According to the CDC, by mid-December the Delta variant was replaced by the Omicron variant as the predominant strain. It now accounts for 99.9% of all cases in the United States:



CDC COVID Data Tracker, Variant Proportions (Updated Jan. 25, 2022), <https://covid.cdc.gov/covid-data-tracker/#variant-proportions>.

14.

Fortunately, Omicron is much milder than both the original virus and the Delta variant. See CDC, *Trends in Disease Severity and Health Care Utilization During the Early Omicron Variant Period Compared with Previous Sars-CoV-2 High Transmission Periods—United States, December 2020-January 2022* (Jan. 25, 2022), <https://www.cdc.gov/mmwr>.

15.

According to the most recent CDC study, “[t]he omicron variant of COVID-19 may be more transmissible than previous variants, but it is also associated with less severe disease, accounting for fewer deaths, fewer visits to intensive care units, and shorter hospital stays[.]” Paul Best, Fox News, *Omicron causes less severe infections than delta and other variants, according to CDC study*, <https://www.foxnews.com/us/omicron-causes-less-severe-infections-than-delta-and-other-variants-according-to-cdc-study>, citing *Trends in Disease Severity and Health Care Utilization During the Early Omicron Variant Period Compared with Previous SARS-CoV-2 High Transmission Periods — United States, December 2020–January 2022* https://www.cdc.gov/mmwr/volumes/71/wr/mm7104e4.htm?s_cid=mm7104e4_w (“Despite Omicron seeing the highest reported numbers of COVID-19 cases and hospitalizations during the pandemic, disease severity indicators, including length of stay, ICU admission, and death, were

lower than during previous pandemic peaks.”). *See also* Manojna Maddipatla and Lero Leo *COVID is less severe with Omicron than Delta, U.S. study suggests*, <https://www.reuters.com/world/us/covid-is-less-severe-with-omicron-than-delta-us-study-suggests-2022-01-25/> (“The Omicron variant appears to result in less severe COVID-19 than seen during previous periods of high coronavirus transmission including the Delta wave, with shorter hospital stays, less need for intensive care and fewer deaths, according to a new U.S. study.”).

16.

Even the CDC Director has acknowledged that Omicron is dramatically less severe than Delta. *See* <https://news.yahoo.com/cdc-walensky-cites-study-showing-173151295.html>, *CDC’s Walensky cites study showing Omicron has 91% lower risk of death than Delta* (Jan 12,2022).

17.

In addition, the majority of people have had COVID-19 and recovered. It is widely recognized that natural immunity provides robust protections against the virus. *See* <https://www.msn.com/en-us/health/medical/cdc-says-natural-immunity-outperformed-vaccines-against-delta-strain/ar-AASWPCZ?li=BBnb7Kz>.

18.

Simply put, the risk posed by Omicron to most people—especially children—is *de minimis*, far below the risks posed by many other diseases and activities of daily life. For example, the risk to a New Orleans resident or visitor of injury in an automobile¹ or of being the victim of violent crime (1 in 74)² is greater than the risk of severe illness from the Omicron variant.

The COVID-19 “Vaccines”

19.

In 2020, the United States Food and Drug Administration (FDA) granted “Emergency Use Approval” (EUA) for three COVID-19 vaccines currently available in the United States: Pfizer-BioNTech (two-dose vaccine); Moderna (two-dose vaccine); and Janssen (Johnson & Johnson, one-dose vaccine) (collectively, the “COVID Vaccines”).³

¹ *See Complete New Orleans, LA accident reports and new*, <https://accidentdatacenter.com/us/louisiana/new-orleans-la/new-orleans>

² *See New Orleans Crime Rates and Statistics*, www.neighborhoodscout.com/la/new-orleans/crime.

³ On August 23, 2021, the FDA granted full approval of the Pfizer-Comirnaty vaccine marketed in Europe, and declared it “interchangeable” with the Pfizer-BioNTech marketed in the U.S. Pfizer-BioNTech, itself, has not been fully approved and continues under the EUA designation. It

20.

Prior to the rise of the Delta Variant, it was wrongly assumed that the COVID Vaccines would protect against both infection and transmission of the disease, like traditional vaccines such as those developed for small pox, measles, mumps, chicken pox, and rubella.

21.

President Biden’s assurance in May 2021 that “if you’re fully vaccinated you can take your mask off” quickly unraveled after several high-profile outbreaks involving vaccinated persons, leading the CDC to issue “updated guidance” on July 27, 2021 recommending that everyone—vaccinated and unvaccinated—wear a mask in high transmission areas. *See Interim Public Health Recommendations for Fully Vaccinated People*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html> (last updated Sept. 1, 2021).

22.

Public officials responded to the CDC’s call for retreat. On August 2, 2021, Louisiana Governor Jon Bel Edwards re-instituted a mask mandate in Louisiana. At the news conference, the Governor emphasized that the COVID Vaccines do not prevent transmission, stating: “Based on recent CDC data, vaccinated people who do get infected have just as much virus in their systems as unvaccinated people, meaning they can likely spread the virus simply because of the power of the Delta variant.” The Governor’s top health advisor, Dr. Joseph Kanter, added: “[I]f you are fully vaccinated and do become infected, then you can still relatively transmit the virus” and that “you will have just as much virus in your body as the early days of the pandemic as someone who was unvaccinated.”⁴

23.

Like all vaccines, the COVID-19 Vaccines pose certain risks that vary from person to person depending on many factors. Many are non-life threatening and considered mild, but some

is not clear how the Pfizer-Comirnaty “full approval” actually impacts the Pfizer-BioNTech EUA designation. *See* Glenn Kessler, *The False Claim that Fully Approved Pfizer Vaccine Lacks Liability Protection*, THE WASHINGTON POST (Aug. 30, 2021), <https://www.washingtonpost.com/politics/2021/08/30/false-claim-that-fully-approved-pfizer-vaccine-lacks-liability-protection/>.

⁴ *Gov. Edwards Press Conference 08/02/2021*, LOUISIANA PUBLIC BROADCASTING, <https://www.youtube.com/watch?v=UzxWZ8qe0oU> (last visited Sept. 16, 2021).

are severe. Over time, the data regarding adverse events has evolved in the direction of recognizing more risk, not less.

24.

In 1990, Congress created the Vaccine Adverse Events Reporting System (VAERS) to track reports of adverse reactions resulting from vaccination. According to VAERS, the reports of adverse reactions to the COVID Vaccines compared to all other vaccines since 1990 are as follows:

Event	COVID-19 Vaccines	All other vaccines	TOTAL
Total Adverse Events	731,280	755,842	1,487,122
Deaths	10,125	5,254	15,379
Life Threatening	11,338	9,911	21,249
Hospitalizations	48,970	38,828	87,798
Permanent Disabilities	11,825	12,830	24,655
Office Visits	143,325	47,304	190,629
ER Visits	90,918	202,975	293,893

See Centers for Disease Control and Prevention, *About the Vaccine Adverse Event Reporting System (VAERS)*, <https://wonder.cdc.gov/vaers.html> (last visited Jan. 27, 2022).⁵

25.

All people are not the same for purposes the Covid Vaccines. The benefits and risks vary from person to person based on many factors.

26.

The decision whether to vaccinate is a highly personal choice. It can result in short and long-term injuries and expensive hospitalizations. It raises serious religious and conscientious objections. And it should not be made by government officials based on crude generalizations.

⁵ Because VAERS relies on voluntary reporting, the data should be considered in context. “‘Underreporting’ is one of the main limitations of passive surveillance systems.” Guide to Interpreting VAERS Data, <https://vaers.hhs.gov/data/dataguide.html>.

The Governor's Response to the Pandemic

27.

The same day the WHO declared a pandemic, Governor Edwards declared a statewide public health emergency under the Louisiana Health Emergency Powers Act, La. R.S. 29:760, *et seq.* See Proclamation No. 25 JBE 2020. Since that time, Governor Edwards has issued a series of legally-questionable orders in response to the pandemic, none of which impose any kind of vaccinate-or-test requirement.

28.

Although the Governor supports the addition of COVID-19 to the student vaccination schedule (a matter now in litigation), he has assured the public that “No child will be forced to be vaccinated against the will of his or her parents,” as provided by law. Blake Paterson, *Gov. John Bel Edwards will add COVID vax to school shots list, overriding Louisiana lawmakers*, The Advocate, Dec. 14, 2021, https://www.theadvocate.com/baton_rouge/news/article_1926ebfe-5d21-11ec-9d27-fb72ab61494c.html. See La. R.S. 17:179(E) (allowing “written dissent” to student vaccination); La. R.S. 17:170.1(C)(1) (allowing “personal reasons” exemption for meningitis vaccine); La. R.S. 40:2022 (requiring hospitals to recommend certain vaccines for newborns, but allowing parents to decline).

Defendant's Response to the Pandemic

29.

On March 16, 2020, Mayor Cantrell issued “Mayoral Proclamation to Promulgate Emergency Orders During the State of Emergency,” which imposed a mask requirement and placed restrictions on public and private gatherings. It was extended on April 16, 2020.

30.

On May 15, 2020, Mayor Cantrell issued “Mayoral Proclamation to Further Promulgate Emergency Orders During the State of Emergency Due to COVID-19,” easing restrictions in response to the waning first wave of the pandemic (the “Reopening Order”). Exhibit B. See City of New Orleans Health Department Guidelines for COVID-19 Reopening, City of New Orleans Department of Health, May 15, 2021, <https://ready.nola.gov/NOLAReady/media/Documents/Coronavirus/Guidelines/NOHD-Guidelines-for-reopening-May-15-2021-corrected-May-19.pdf>.

31.

The Reopening Order expressly relies on La. R.S. 29:727(F) and (G) and Section 4-1202 of the Home Rule Charter of the City of New Orleans (the “City Charter”). It is the primary order governing all subsequent actions at issue herein.

32.

On July 30, 2021, the Mayor reinstated the mask mandate and other restrictions in response to the surge of cases caused by the Delta variant. *See* Jeff Adelson, *New Orleans restores mask mandate in COVID surge, requires vaccines for employees*, NOLA.com, Jul. 30, 2021, https://www.nola.com/news/coronavirus/article_2eb474bc-f17b-11eb-b8ff-bf22b0bafb1b.html.

33.

On August 13, 2021, the Health Department issued “Guidelines” implementing the Reopening Order, requiring “anyone 12 years of age or older” to provide proof of having received “at least one dose” of a COVID vaccine or a “negative PCR test within 72 hours of access” to enter restaurants, hotels, bars, indoor gyms and fitness centers, indoor entertainment facilities, and large outdoor events (the “Vaccinate or Test Mandate”). *See* City of New Orleans Health Department Guidelines for COVID-19 Reopening, City of New Orleans Department of Health, Aug. 13, 2021, <https://ready.nola.gov/NOLAReady/media/Documents/Coronavirus/NOHD-Guidelines-for-reopening-August-13-Vaccine-Requirement-final.pdf>.

34.

On October 29, 2021, the mask mandate was lifted but the Vaccinate-Test Mandate was maintained. *See* City of New Orleans Health Department Guidelines for COVID-19 Reopening, City of New Orleans Department of Health, Oct. 29, 2021, https://ready.nola.gov/NOLAReady/media/Documents/Coronavirus/NOHD-Guidelines-for-reopening-October-29-2021-FINAL_1.pdf.

35.

Meanwhile, in November 2021, the federal government issued a now-enjoined rule through the Occupational Safety and Health Administration imposing a vaccinate-or-test requirement covering over 80 million workers, after announcing its intent to issue this mandate in September 2021, causing a nationwide shortage in the availability of over-the-counter antigen tests. Consequently, any “test” requirement was effectively a fictional option, as such tests were and still

are largely unavailable. No matter. Omicron quickly rendered such testing useless because the tests are not as sensitive to it and produce large numbers of false negative results.

36.

Notwithstanding widespread new facts about risks of the available vaccine and a lack of facts about vaccinating young children, lack of test availability, a surge in testing demand due to Omicron, the unreliability of antigen tests, and the uselessness of masks, on January 3, 2022, the Health Department expanded the Vaccinate or Test Mandate to include individuals “5 years of age or older.” *See* City of New Orleans Health Department Guidelines for COVID-19 Reopening, City of New Orleans Department of Health, Jan. 3, 2022, <https://ready.nola.gov/NOLAReady/media/Documents/Coronavirus/NOHD-Guidelines-for-reopening-Jan-3-Final-CDC.pdf>.

37.

On January 12, 2022, the Health Department restated the Vaccinate-or-Test Mandate and reissued a mask mandate for all individuals “over the age of 2 and without breathing complications ... when in indoor spaces outside the household” and “while riding in a vehicle with members outside of the household” (the “Mask Mandate”).⁶ *See* Guidelines for COVID-19 Reopening (the “Current Guidelines), Exhibit C (highlights in original, reflecting changes from January 3, 2022).

38.

Effective February 1, 2022, the Vaccinate or Test Mandate will be amended to require proof of full vaccination—all required doses⁷—or proof of testing for the same facilities and activities, but adding Carnival and Marching Clubs parades, and the Mask Mandate will “remain[] in effect for all public indoor spaces” (unlike “indoor spaces outside the home” under the Current Guidelines). *See* [https://ready.nola.gov/incident/coronavirus/safe-reopening/#:~:text=Beginning%20Tuesday%2C%20February%201st%20for,bars%2C%20and%20other%20businesses%20\(test](https://ready.nola.gov/incident/coronavirus/safe-reopening/#:~:text=Beginning%20Tuesday%2C%20February%201st%20for,bars%2C%20and%20other%20businesses%20(test).

⁶ The federal government recently issued a mask mandate for two-year-olds in Head Start programs, which has been enjoined by federal courts in Louisiana and Texas based in part on declarations that masking children this young is dangerous, impedes speech and language development, and imposes ever harsher burdens on children with disabilities. *See Louisiana v. Becerra*, No. 3:21-cv-4370, --- F.Supp.3d ---, 2022 WL 16571 (W.D. La. Jan. 1, 2022) (covering 25 states), and *Texas v. Becerra*, No. 5:21-cv-0300, 2021 WL 6198109 (N.D. Tex. Dec. 31, 2021).

⁷ “Full vaccination” is a moving goalpost, which will eventually include multiple boosters.

39.

Violation of the mandates, though nowhere to be found in state law or any municipal ordinance, are purportedly punishable by criminal prosecution and a fine not to exceed \$500 or confinement to jail for up to six months, per offense. *See* Exhibit C at 14.

40.

Further, the Current Guidelines require private facility owners, operators, and employees to act as public enforcement officers or they face criminal prosecution, closure, revocation of permits or certificates of registration, and denial of municipal services—including the “cessation of electrical services.”⁸ Again, such limitations on licensing, access to municipal services, and criminal sanctions are nowhere to be found in state law or the municipal code.

COUNT I

THE VACINATE OR TEST MANDATE VIOLATES THE RIGHT TO PRIVACY UNDER ARTICLE I, SECTION 5 OF THE LOUISIANA CONSTITUTION

41.

Plaintiffs repeat and incorporate by reference each of the allegations stated above.

42.

Article 1, § 5, titled “Right to Privacy provides that “[e]very person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy.” La. Const. art. I, § 5.

43.

Louisiana’s constitutional right to privacy “is one of the most conspicuous instances in which our citizens have chosen a higher standard of individual liberty than that afforded by the jurisprudence interpreting the federal constitution.” *State v. Brennan*, 99-2291 (La. 5/16/00); 772 So. 2d 64 (quoting *State v. Hernandez*, 410 So. 2d 1381, 1385 (La. 1982)).

44.

The right to privacy under Article I, § 5 includes “the right to decide whether to obtain or reject medical treatment.” *Hondroulis v. Schuhmacher, M.D.*, 553 So. 2d 398, 410 (La. 1988), *on*

⁸ “Enforcement measures may include, but are not limited to, prohibiting a business from offering take-out services, revocation of a business’s ability to open under these guidelines, revocation of any special event or live entertainment permits, revocation of certificates of registration, misdemeanor charges for owners, managers, and/or staff, and cessation of electrical service to the business. Businesses holding Alcoholic Beverage Outlet permits from the City are also advised that the right to maintain such permits is contingent on the business following all applicable laws, including those contained in any Mayoral Proclamation and in these guidelines or any subsequently issued by the City.” Exhibit C at 14.

reh'g (La. 1989) (“The decision to obtain or reject medical treatment clearly should be recognized as falling within this cluster of constitutionally protected choices.”). See also *Roberson v. Provident House*, 576 So. 2d 992 (La. 1991) (“Recently, this Court concluded that the right to privacy contained in Art. 1, § 5 of the 1974 Louisiana Constitution protects an individual’s right to decide whether to obtain or reject medical treatment” citing *Hondroulis*); *Ciko v. City of New Orleans*, 427 So. 2d 80 (La. App. 4 Cir. 1983) (recognizing that “right to refuse medical treatment ... is protected by law.”).

45.

“The right to decide whether to obtain or to refuse medical treatment is a fundamental right protected by Article I, Section 5 of the 1974 Louisiana Constitution.” *Boyd v. Louisiana Med. Mut. Ins. Co.*, 593 So. 2d 427, 429 (La. App. 1 Cir. 1991), *writ denied*, 594 So. 2d 877 (La. 1992). See also *Hondroulis*, 553 So.2d at 41, and *State v. Perry*, 610 So.2d 746, 760 (La. 1992).

46.

The decision to vaccinate against any disease is a matter of personal privacy protected by Article I, § 5. See *Boyd*, 593 So.2d 427 (involving polio vaccination).

47.

Defendants’ Vaccinate or Test Mandate infringes on the fundamental right to privacy by imposing coercive conditions on the general public, denying access to public accommodations and threatening criminal prosecution as a means to coerce consent to medical treatment. Effectively, it attempts to force compliance by threatening to punish the exercise of a fundamental right.

48.

Strict scrutiny applies to governmental action that “impinges on a fundamental right explicitly or implicitly protected by the constitution.” *Bazley v. Tortorich*, 397 So.2d 475, 483 (La.1981). “[W]here a decision as fundamental as those included within the right of personal privacy is involved, state action imposing a burden on it may be justified only by a compelling state interest, and the state action must be narrowly confined so as to further only that compelling interest. [*Hondroulis*] at 415. Only such strict judicial scrutiny is sufficiently protective of a person's right of privacy or personhood to avoid unwarranted governmental interference with his body, mind, and medical autonomy.” *State v. Perry*, 610 So.2d at 760.

49.

There is no compelling interest in coercively mandating vaccination against the COVID-19, particularly when the shot does not prevent transmission of the virus, an acknowledged medical fact the proclamation entirely ignores.

50.

Further, the Vaccinate-or-Test Mandate is not narrowly tailored. Rather, it bluntly applies to *all* demographics regardless of age, risk factors, pre-dispositions, and means of transmission.

51.

The Vaccinate or Test Mandate is facially unconstitutional under Article I, § 5, because it invades the right to individual privacy, which has been found to include the right to refuse medical treatment, and it cannot meet strict scrutiny.

COUNT II

THE VACINATE OR TEST MANDATE VIOLATES THE RIGHT TO EQUAL PROTECTION UNDER ARTICLE 1, SECTION 3 OF THE LOUISIANA CONSTITUTION

52.

Plaintiffs repeat and incorporate by reference each of the allegations stated above.

53.

Article I, § 3 guarantees that “[n]o person shall be denied the equal protection of the laws.” La. Const. art. I, § 3.

54.

The function of the equal protection clause is to measure the validity of classifications created by state laws. *Rudolph v. Massachusetts Bay Insurance Co.*, 472 So.2d 901, 904 (La.1985). “The principles for the determination of the constitutionality of a legislative enactment are equally applicable” to ordinances passed by a municipal authority under a home rule charter. *City of Baton Rouge/Par. of E. Baton Rouge v. Myers*, 2013-2011, p. 5 (La. 5/7/14); 145 So.3d 320, 327, citing *Fransen v. City of New Orleans*, 2008–0076 (La.7/1/08), 988 So.2d 225, 233–34.

55.

Where a fundamental right is threatened, the guarantee of equal protection means that “separate classifications are invalid in circumstances where it is not demonstrable that a ‘compelling governmental interest’ exists.” *Everett v. Goldman*, 359 So.2d 1256, 1265–66 (La.1978), quoting *Shapiro v. Thompson*, 394 U.S. 618 (1969).

56.

“In the traditional equal protection analysis the initial determination is whether a given act disadvantages a suspect class or infringes upon a fundamental right. If it does not, then the act need only rationally further some legitimate, articulated state purpose or goal. This level of scrutiny rarely renders an act constitutionally infirm. However, with a finding that a suspect class or fundamental right is involved, an act will frequently fall short of ‘promoting’ a compelling state interest, the strict scrutiny level of review.” *Clark v. Manuel*, 463 So.2d 1276, 1284 (La.1985).

57.

The Vaccine-or-Test Mandate classifies persons based on vaccination status. Unvaccinated persons are subject to the mandate under pain of criminal sanction. Vaccinated persons are not. This classification scheme threatens the fundamental right to privacy protected by Article I, § 5. Moreover, it applies to children and interferes with the parental authority over children by limiting their access to public places with their children and exposing them to fines and criminal sanctions, thereby interfering with their right to make medical decisions regarding their children. Parental rights are fundamental rights, protected by the State Constitution and jurisprudence.⁹

58.

The Vaccine-or-Test Mandate is neither narrowly tailored nor directed to a compelling governmental purpose. It therefore denies equal protection under Article I, § 3.

COUNT III

THE MASK MANDATE IS VOID FOR VAGUENESS UNDER ARTICLE I, SECTION 2 OF THE LOUISIANA CONSTITUTION

59.

Plaintiffs repeat and incorporate by reference each of the allegations stated above.

60.

Article I, § 2 provides: “No person shall be deprived of life, liberty, or property, except by due process of law.” La. Const. art. I, § 2.

61.

“A law is fatally vague and offends due process when a person of ordinary intelligence does not have a reasonable opportunity to know what is prohibited so that he may act accordingly

⁹ Parental rights are recognized as fundamental rights under the federal constitution as well, but this Petition raises only claims arising under the State Constitution, State law, and the City Charter.

or if the law does not provide a standard to prevent arbitrary and discriminatory application.” *Med Exp. Ambulance Serv., Inc. v. Evangeline Parish Police Jury*, 96–0543 (La.11/25/96), 684 So.2d 359, 367, citing *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 487-99 (1982).

62.

“Under the ‘void-for-vagueness’ doctrine, a criminal statute must meet two requirements to satisfy due process: (1) adequate notice to individuals that certain contemplated conduct is proscribed; and (2) adequate standards for those charged with determining the guilt or innocence of an accused.” *State v. David*, 468 So.2d 1126, 1128 (La.1984), supplemented, 468 So.2d 1133 (La.1985).

63.

“A criminal statute must provide adequate standards by which a party may be determined to be guilty or not guilty so that an individual's fate is not left to the unfettered discretion of law enforcement.” *State v. Hair*, 2000-2694, p. 7 (La. 5/15/01); 784 So.2d 1269, 1274, citing *State v. Muschkat*, 96–2922 (La.3/4/98), 706 So.2d 429, 432. “This occurs where a statute either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. In such instances, the statute violates due process of law.” *Hair*, 784 So.2d at 1274, citing *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926).

64.

The Mask Mandate states: “All individuals over the age of 2 and without breathing complications (*i.e.*, use of oxygen) are subject to an indoor mask requirement and are required to wear a face covering over the nose and mouth[.]” See Exhibit C at 4. This language is impermissibly vague. *First*, the exception for “breathing complications” is not adequately defined. Is it limited to “use of oxygen” as stated parenthetically, or is use of oxygen merely an example? Who decides whether the mask causes breathing complications? How does one demonstrate a child meets this exception? Are other medical complications categorically excluded from the exclusion? *Second*, “face covering” is undefined. A mask is a face covering, but a face covering is not necessarily a mask. And not all masks (or face coverings) are the same. This ambiguity is compounded by the statement that individuals “are subject to an indoor mask requirement *and* are required to wear a face covering...”

65.

Vagueness in this key requirement results in highly indiscriminate compliance and confrontations between persons subject to the mandate and private individuals conscripted as enforcement officers, all of whom face criminal sanction and civil penalties for noncompliance. Because the mandate purports to carry criminal sanctions, it also invites confrontations with the police, which often escalate and can have other consequences for the parent and child relationship.

66.

The Mask Mandate facially offends Due Process.

COUNT IV

THE ENFORCEMENT PROVISION UNLAWFULLY CONSCRIPTS PRIVATE PERSONS IN VIOLATION OF ARTICLE I, SECTION 2 OF THE LOUISIANA CONSTITUTION

67.

Plaintiffs repeat and incorporate by reference each of the allegations stated above.

68.

Article I, § 2 provides: “No person shall be deprived of life, liberty, or property, except by due process of law.” La. Const. art. I, § 2.

69.

“The conscription of manpower is a more vital interference with the life, liberty and property of the individual than is the conscription of his property or his profits or any substitute for such conscription of them.” *Lichter v. United States*, 334 U.S. 742, 756 (1948).

70.

Defendants’ mandates are expressly directed to the individuals subjected to the requirements. But to enforce the mandates, business owners, operators and employees are conscripted to act as public enforcement officers under threat of criminal prosecution and other harsh penalties, such as revocation of permits and termination of utility services.

71.

There is *no authority* permitting Defendants to impose such a requirement on members of the public. Even the City Charter imposes limits on the City Council regarding “limited prohibitions” that may be applied to license and permit holders.

72.

The enforcement requirements directed to third-party individuals and business violates the due process guarantee of Article I, § 2.

COUNT V

**THE VACCINE-OR-TEST MANDATE FACIALLY VIOLATES
THE SEPARATION OF POWERS**

73.

Plaintiffs repeat and incorporate by reference each of the allegations stated above.

74.

It is a fundamental tenant of constitutional law that there are three branches of government and no one can exercise powers allotted to the others. La. Const. art. II, § 1. The legislative branch makes the laws under Article III, and the executive branch enforces them under Article IV. This structural limitation applies with equal force to a local government under a home rule charter. *See* La. Const. art. VI, § 5(A) (“Subject to and not inconsistent with this constitution, any local government subdivision may draft, adopt, or amend a home rule charter in accordance with this Section.”). *Morial v. Council of City of New Orleans*, 413 So.2d 185, 188 (La. Ct. App.1982), writ denied, 420 So.2d 170 (La.1982) (“The [New Orleans Home Rule] Charter clearly intended a separation of powers”).

75.

Following this structure, the City Charter provides: “All legislative powers of the City shall be vested in the Council and exercised by it in the manner and subject to the limitations hereinafter set forth.” Home Rule Charter of the City of New Orleans, Art. III, § 3-101.

76.

For executive powers: “All executive and administrative powers of the City shall be vested in and exercised by the Executive Branch.” Home Rule Charter of the City of New Orleans, Art. IV, § 4-101. Under Section 4-206, the Mayor is “the chief executive officer of the City” and charged with administering executive power.

77.

Although the procedures may be suspended, this structural constitutional limit on *who* has authority to make law *cannot* be suspended, even in an emergency. *See* La. R.S. 29:727(F)(1) (providing for suspension of regulatory ordinances during declared emergency);

78.

The Mayor's proclamation purports to create new laws which carry both civil and criminal penalties. Nothing in the State constitution, state law, or the City Charter permits the Mayor to make *new* municipal laws. Only the City Council has this authority. Plaintiffs are unaware of any municipal law that contains any of the restrictions imposed or sanctions attached thereto (including threatening to cut off sewer, water, or electricity services).

COUNT VI

UNCONSTITUTIONAL DELEGATION OF POWER IN VIOLATION THE SEPARATION OF POWERS AS APPLIED

79.

Plaintiffs repeat and incorporate by reference each of the allegations stated above.

80.

The Louisiana Supreme Court has long recognized that a legislative body cannot delegate unbounded legislative authority to the executive branch. *Krielow v. Louisiana Dep't of Agric. & Forestry*, 2013-1106, p. 5 (La. 10/15/13); 125 So.3d 384, 388 (“legislative power, conferred under constitutional provisions, cannot be delegated by the Legislature either to the people or to any other body of authority”). Any such attempt at open-ended, unbounded delegation of legislative authority is an unconstitutional violation of the separation of powers. *Id.*; *City of Alexandria v. Alexandria Fire Fighters Assn.*, 220 La. 754, 57 So.2d 673 (1952). “Delegation of purely legislative authority violates the separation of powers, but the delegation of ministerial or administrative authority does not.” *State v. McKey*, 16-270 (La.App. 5 Cir. 5/24/16), *writ denied*, 2016-1195 (La. 10/10/16); 207 So.3d 405, *State v. All Pro Paint & Body Shop, Inc.*, 93–1316, pp. 5–6 (La.7/5/94), 639 So.2d 707, 711.

81.

The Mayor's proclamation points to only two bases for authority: State law under Title “29:721, et.seq.” and, more specifically, La. R.S. 29:727(F)(7) (power to control ingress and egress) (See Mayoral Proclamation, No. 2020-3129) and the power granted to the Department of Health under the City Charter in Section 4-1202. But *neither* grant her unlimited power, *as neither could* without violating separation of powers. Neither grant her the power to make law, which is expressly a power reserved to the City Council under the Charter, and therefore limits the scope of both the Mayor and the Health Departments powers. Indeed, the very idea that the Mayor can exercise unlimited power to make things up as she goes along, attach criminal sanctions to such

new legislative rules, and then enforce them through the police, zoning, and other licensing boards with no temporal or substantive limits is the very definition of an unconstitutional delegation of legislative authority that is repugnant to the separation of powers in both the State Constitution *and* the City Charter.

82.

The Mayor is plainly applying La. R.S. 29:727(F)(7) and Section 4-1202 of the City Charter in violation of the nondelegation doctrine.

RELIEF

DECLARATORY JUDGMENT

83.

Plaintiffs repeat and incorporate by reference each of the allegations stated above.

84.

“Courts of record within their respective jurisdiction may declare rights, status, and other legal relations whether or not further relief is or could be claimed.” La. C.C.P. art. 1871. Declaratory judgment is proper to determine “any question of construction or validity arising under the ... statute ... and obtain a declaration of rights, status, or other legal relations thereunder” (La. C.C.P. art. 1872) in order to “remove the uncertainty or terminate the dispute.” *Louisiana Associated Gen. Contrs. v. State ex rel. Div. of Admin., Office of State Purchasing*, 95-2105 (La. 3/8/96); 669 So. 2d 1185, 1191.

85.

Plaintiffs are entitled to a judgment declaring the Defendants’ Vaccinate or Test Mandate unlawful.

INJUNCTIVE RELIEF: TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND PERMENANT INJUCTION

86.

Plaintiffs repeat and incorporate by reference each of the allegations stated above.

87.

Under La. C.C.P. art. 3601, “[a]n injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant[.]” *Newburger v. Orkin, L.L.C.*, 2019-383, p. 7 (La. App. 3 Cir. 11/6/19); 283 So. 3d 549, 554. “Irreparable harm or injury generally refers to a loss that cannot be adequately compensated in money damages or measured by a pecuniary standard.” *Id.*

88.

“A petitioner is entitled to injunctive relief without the requisite showing of irreparable injury when the conduct sought to be restrained is unconstitutional or unlawful, i.e., when the conduct sought to be enjoined constitutes a direct violation of a prohibitory law and/or a violation of a constitutional right., 555 So. 2d 1370 (La.1990). Once a plaintiff has made a prima facie showing that the *South Cent. Bell Tel. Co. v. Louisiana Pub. Serv. Comm'n* conduct to be enjoined is reprobated by law, the petitioner is entitled to injunctive relief without the necessity of showing that no other adequate legal remedy exists.” *Jurisich v. Jenkins*, 99-0076, p. 4 (La. 10/19/99); 749 So. 2d 597, 599–600.

Temporary Restraining Order

89.

Louisiana Code of Civil Procedure article 3603 provides for issuance of a temporary restraining order without notice when:

(1) It clearly appears from specific facts shown by a verified petition or by supporting affidavit that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and

(2) The applicant's attorney certifies to the court in writing the efforts which have been made to give the notice or the reasons supporting his claim that notice should not be required.

B. The verification or the affidavit may be made by the plaintiff, or by his counsel, or by his agent.

90.

“A TRO serves only as a temporary restraint on the defendant until the propriety of granting a preliminary injunction may be determined, objectively preserving the status quo until that determination. *Powell v. Cox*, 228 La. 703, 83 So. 2d 908, 910 (1955). It is issued preliminary to a hearing and wholly independent from the hearing on a preliminary injunction. *Id.* A TRO does not determine any controverted right, but issues as a preventative to a threatened wrong and operates as a restraint to protect the rights of all parties involved until issues and equities can be resolved in a proper subsequent proceeding. *Id.*” *Dauphine v. Carencro High Sch.*, 2002-2005, p. 6 (La. 4/21/03); 843 So. 2d 1096, 1102.

91.

Entry of a TRO enjoining enforcement of the Vaccine or Test Mandate is warranted in this instance. First, the mandate threatens irreparable, irreversible harm to individuals and is facially

unconstitutional. Second, the delays for formal service and for responsive pleadings will surely result in further irreparable harm to individuals unlawfully compelled to comply. Third, the balance of interest favors issuance of a TRO, as relieving Plaintiffs and others of the oppressive and unlawful mandate will cause no harm to Defendants during the duration of the TRO.

92.

Bond should not be required as entry of a TRO poses no threat of damage or hardship to Defendants.

Preliminary and Permanent Injunction

93.

“The purpose of a preliminary injunction is to preserve status quo until trial on merits].” *Broadmoor, L.L.C. v. Ernest N. Morial New Orleans Exhibition Hall Auth.*, 2004-0211, p. 5 (La. 3/18/04); 867 So. 2d 651, 655.

94.

“A moving party is entitled to a preliminary injunction upon showing: (1) that the injury, loss, or damage he will suffer if the injunction is not issued may be irreparable; (2) that he is entitled to the relief sought; and (3) that he will be likely to prevail on the merits of the case.” *Succession of Smith v. Portie*, 2019-283, p.4 (La. App. 3 Cir. 12/30/19); 289 So. 3d 77, 80 (quoting *St. Raymond v. City of New Orleans*, 99-2438, p. 3 (La. App. 4 Cir. 5/17/00); 769 So. 2d 562, 564 *rehearing denied* 99-2438 (La. App. 4 Cir. 8/2/00), 775 So. 2d 31, *writ denied* 00-2565 (La. 9/13/00), 767 So. 2d 697). Because it involves temporary relief pending a full trial on the merits, a “preliminary injunction requires less proof than is required in an ordinary proceeding for permanent injunction.” *Succession of Smith*, 289 So. 3d at 80 (quoting *Breaud v. Amato*, 94-1054, p. 5 (La. App. 5 Cir. 5/30/95); 657 So. 2d 1337, 1339). Plaintiff need only demonstrate “a prima facie showing” that he is entitled to relief. *Mary Moe, L.L.C. v. Louisiana Bd. of Ethics*, 03-2220 (La.4/14/04); 875 So. 2d 22.

95.

The violation of constitutional rights is an irreparable harm. Plaintiffs, on the face of this petition, have demonstrated continuous violations of their constitutional rights that are ongoing and causing irreparable harm. The status quo is restoration of their liberty and prohibiting the ongoing threat of criminal and civil penalties arising from the unconstitutional orders of the Mayor.

Plaintiffs request entry of a preliminary injunction following a hearing on the matter and, in due course, a permanent injunction following trial on the merits.

WHEREFORE, Plaintiffs pray as follows

1. For entry of a Temporary Restraining Order in the form presented herewith restraining Defendants, their officers, agents, employees, and all persons in active concert or participation from enforcing the mask requirements under the City of New Orleans Health Department Guidelines for COVID-19 Reopening January 12, 2022;
2. That this Petition be served as required by law;
3. That Defendants be cited to appear, answer and respond;
4. That after due proceeding be had, for entry of a Declaratory Judgment in favor of Plaintiffs and against Defendants declaring the vaccinate-or-test requirements and the mask requirements under the City of New Orleans Health Department Guidelines for COVID-19 Reopening January 12, 2022 unlawful and unenforceable; and
5. For issuance of a Preliminary Injunction and thereafter a Permanent Injunction prohibiting enforcement of the unlawful requirements.

Respectfully submitted,

FAIRCLOTH MELTON SOBEL & BASH, LLC

By: _____

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ATTORNEYS FOR PLAINTIFFS

PLEASE RUSH SERVICE TO:

**LaToya Cantrell, City of New Orleans,
New Orleans Health Department, and Jennifer Avegno, M.D
Through the New Orleans City Attorney
Donesia D. Turner
1300 Perdido Street, Suite 5E03
New Orleans, Louisiana 70112**

DOCKET NO. _____
DIVISION _____
SECTION _____

CHYNA ANDREWS, ET AL

CIVIL DISTRICT COURT

VERSUS

PARISH OF ORLEANS

LaTOYA CANTRELL, in her official capacity as Mayor of the City of New Orleans; THE CITY OF NEW ORLEANS; NEW ORLEANS HEALTH DEPARTMENT; and JENNIFER AVEGNO, M.D., in her official capacity as Director of Health for the New Orleans Health Department.

STATE OF LOUISIANA

TEMPORARY RESTRAINING ORDER AND RULE TO SHOW CAUSE
ON PRELIMINARY INJUNCTION

It appearing from the verified Petition for Temporary Restraining Order (TRO), Preliminary and Permanent Injunctions, and Declaratory Judgment filed by Plaintiffs in the above-caption matter that Plaintiffs are substantially likely to prevail on their challenges against the requirements for proof of vaccination or testing (“vaccine-or-test”) for COVID-19 under the City of New Orleans Health Department Guidelines for COVID-19 Reopening January 12, 2022, that irreparable harm will likely occur in the absence of immediate relief, and that neither the Defendant nor the public will be disserved by issuance of a temporary restraining order pending a hearing on Plaintiffs’ request for a preliminary injunction;

It further appearing that Plaintiffs are substantially likely to prevail on their challenges against the mask requirements under the City of New Orleans Health Department Guidelines for COVID-19 Reopening January 12, 2022, that irreparable harm will likely occur in the absence of immediate relief, and that neither the Defendant nor the public will be disserved by issuance of a temporary restraining order pending a hearing on Plaintiffs’ request for a preliminary injunction;

It further appearing that Plaintiffs are substantially likely to prevail on their challenges against the third-party enforcement requirements under the City of New Orleans Health Department Guidelines for COVID-19 Reopening January 12, 2022, that irreparable harm will likely occur in the absence of immediate relief, and that neither the Defendant nor the public will be disserved by issuance of a temporary restraining order pending a hearing on Plaintiffs’ request for a preliminary injunction; the third-party enforcement provisions of the City of New Orleans Health Department Guidelines for COVID-19 Reopening January 12, 2022 unlawfully conscript

private citizens and businesses into public service in violation of Article I, § 2 of the Louisiana Constitution;

CONSIDERING THE ABOVE AND FOREGOING, verified Petition:

IT IS ORDERED that a **TEMPORARY RESTRAINING ORDER** be and is hereby issued to Defendants, LaTOYA CANTRELL, NEW ORLEANS HEALTH DEPARTMENT, and JENNIFER AVENGO, M.D., restraining Defendants, their officers, agents, employees, and all persons in active concert or participation from enforcing the vaccinate-or-test requirements under the City of New Orleans Health Department Guidelines for COVID-19 Reopening January 12, 2022 Mayor's Vaccine Mandate;

IT IS ORDERED that a **TEMPORARY RESTRAINING ORDER** be and is hereby issued to Defendants, LaTOYA CANTRELL, NEW ORLEANS HEALTH DEPARTMENT, and JENNIFER AVENGO, M.D., restraining Defendants, their officers, agents, employees, and all persons in active concert or participation from enforcing the mask requirements under the City of New Orleans Health Department Guidelines for COVID-19 Reopening January 12, 2022.

IT IS FURTHER ORDERED that this Temporary Restraining Order shall expire at the end of ten (10) days from the date and time stated below, unless otherwise terminated or extended by this Court for good cause;

IT IS FURTHER ORDERED that Defendants, LaTOYA CANTRELL, NEW ORLEANS HEALTH DEPARTMENT, and JENNIFER AVENGO, M.D, appear and show cause on the _____ day of February, 2022 at _____ o'clock a.m./p.m. why preliminary injunctive relief should not be granted enjoining the vaccinate-or-test requirement and the mask requirement requirements under the City of New Orleans Health Department Guidelines for COVID-19 Reopening January 12, 2022 pending a trial on permanent injunctive relief.

THUS DONE AND SIGNED in New Orleans, Louisiana this ____ day of February, 2022 at _____ o'clock ____m.

HONORABLE JUDGE, CIVIL DISTRICT COURT

PLEASE RUSH SERVICE TO:
LaToya Cantrell, New Orleans Health Department, and
Jennifer Avegno, M.D
Through the New Orleans City Attorney
Donnie D. Turner
1300 Perdido Street, Suite 5E03
New Orleans, Louisiana 70112

DOCKET NO. _____

DIVISION _____

SECTION _____

CHYNA ANDREWS, ET AL

CIVIL DISTRICT COURT

VERSUS

PARISH OF ORLEANS

LaTOYA CANTRELL, in her official capacity as Mayor of the City of New Orleans; THE CITY OF NEW ORLEANS; NEW ORLEANS HEALTH DEPARTMENT; and JENNIFER AVEGNO, M.D., in her official capacity as Director of Health for the New Orleans Health Department.

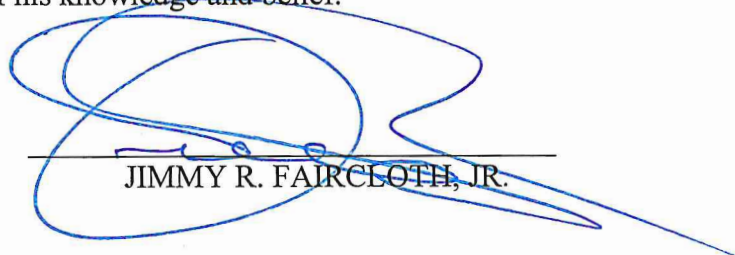
STATE OF LOUISIANA

AFFIDAVIT OF VERIFICATION

PARISH OF RAPIDES

STATE OF LOUISIANA

BEFORE ME, the undersigned Notary Public, came and appeared JIMMY R. FAIRCLOTH JR., counsel for Plaintiffs in the above-captioned matter, who being duly sworn did depose and state that he prepared the foregoing Petition for Temporary Restraining Order, Preliminary and Permanent Injunctions, and Declaratory Judgment, and all statements of fact contained therein are true and correct to the best of his knowledge and belief.



JIMMY R. FAIRCLOTH, JR.

SWORN TO AND SUBSCRIBED BEFORE ME, Notary Public, this 31st day of January, 2022, in Alexandria, Louisiana.



NOTARY PUBLIC

