

IN THE UNITED STATES DISTRICT
COURT WESTERN DIVISION FOR THE
NORTHERN DISTRICT OF OHIO

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)	
)	
<u>Michael Renz, Eric Calderaro, et. al</u> ,)	
Plaintiff)	CASE NO. <u>3:20-cv-1948</u>
Attorneys:)	
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1907 W State St. #162)	
Fremont, OH 43420)	
&		
Robert Gargas (Bar ID 7136)		
1670 Cooper Foster Park Rd.		
Lorain, OH 44053		
-vs-)	JUDGE:
)	
)	
)	
<u>State of Ohio, Gov. Mike DeWine, Amy Acton,</u>)	COMPLAINT, DEMAND
<u>Lance Himes, Ottawa County Department of Public</u>)	FOR A JURY TRIAL,
<u>Health</u>)	MOTION FOR
Defendant(s))	
)	

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Introduction and Prayer for Relief

1 Over 110 years ago, at a time when medicine was not yet sufficiently advanced to have developed penicillin and the germ theory of medicine was still new, the Supreme Court of the United States made a ruling related to a citizen's rights in healthcare that has remained largely unaddressed to this day. Over the century plus of time that has since passed the court has decided many critical cases revolving around individual rights that have never been squared with Jacobson. Jacobson v. Massachusetts, 197 U.S. 11 (1905).

2 A century ago many of our most sacred and fundamental rights were still being sorted out. Suffrage had not yet occurred, civil rights barely existed, critical cases on fundamental rights such as interstate travel and bodily privacy had not come into play and the administrative state that we live in today simply did not exist.

3 Today, under the guidance of an unelected administrative structure, many of the rights our Supreme Court has determined are fundamental under our Constitution are being denied. These fundamental rights are being denied, not out of prudence, they are being denied due to unfounded fear and intentional manipulation. So successful is this manipulation that even our esteemed Chief Justice, the Honorable Justice Roberts, was misled in a recent decision.¹

¹ See Attachment A.1 and also: Dr. Ngozi Ezike - Director Illinois Department of Public Health – explained what it means to die “of” COVID. A clip of the press conference found on Redstate shows her making this incredible statement: “The case definition is...is...very simplistic. It means at the time of death...uhm...it was a COVID positive diagnosis. So that means if you were in hospice and had already been given, you know, a few weeks to live, and then you were also found to have COVID that would be counted as a COVID death. It means that

4 But all is not lost. In its wisdom, the *Jacobson* court made clear that it never intended its decision to bar further review. To the contrary, the Court in *Jacobson* specifically stated:

1. “Before closing this opinion, we deem it appropriate, in order to prevent misapprehension as to our views, to observe -- perhaps to repeat a thought already sufficiently expressed, namely -- that the police power of a State, whether exercised by the legislature or by a local body acting under its authority, may be exerted in such circumstances or by regulations so arbitrary and oppressive in particular cases as to justify the interference of the courts to prevent wrong and oppression.” (*Id.*, 197 US 38)

if...uhm...technically even if you died of a clear alternate cause but you had COVID at the same time it's still listed as a COVID death. So, uhm, everyone who is listed as a COVID death doesn't mean that that was the cause of the death but they had COVID at the time of death.”

Nick Arama, [Watch: Illinois Explains What Qualifies as a ‘COVID Death’](https://www.redstate.com/nick-arama/2020/04/25/watch-illinois-explains-what-qualifies-as-a-covid-death/), REDSTATE, (April 25, 2020) <https://www.redstate.com/nick-arama/2020/04/25/watch-illinois-explains-what-qualifies-as-a-covid-death/>

5 In recent months, entire states have been imprisoned without due process and with the clear threat to impose such lockdowns again,² interstate travel has been severely restricted,³ privacy

² Under the Ohio Public Health Advisory System, when the indicators are met for “Level 4/Purple Emergency” the guidelines for the public clearly state that people should stay at home and “only leave home for supplies and services.” Ohio COVID-19 Risk Level Guidelines for the Public, CORONAVIRUS.OHIO.GOV, (Last visited August 20, 2020),

<https://coronavirus.ohio.gov/static/OPHASM/COVID-19-Risk-Level-Guidelines-GP.pdf>; Amy

Acton, et al., Director’s Stay Safe Ohio Order, CORONAVIRUS.OHIO.GOV (Apr. 30, 2020),

<https://coronavirus.ohio.gov/static/publicorders/Directors-Stay-Safe-Ohio-Order.pdf>

³“Many jurisdictions have responded to the unevenness of the unfolding pandemic by battening down their borders. Nearly half the states have imposed interstate travel restrictions to date...”

David M. Studdert, LL.B., Sc.D, et al., Partitioning the Curve — Interstate Travel Restrictions During the Covid-19 Pandemic, NEW ENGLAND JOURNAL OF MEDICINE, (Aug. 5, 2020)

<https://www.nejm.org/doi/full/10.1056/NEJMp2024274>; This has been done without meeting the

strict scrutiny standard that has repeatedly be applied to the right to travel in Shapiro v

Thompson, 394 US 618, 629-631 (1969); and In 1966 in United States v. Guest 383 U.S. 745

(1966), the Court rearticulated that the Constitution did not explicitly mention the right to travel

because: a right so elementary was conceived from the beginning to be a necessary concomitant

of the stronger Union the Constitution created.... The constitutional right to travel from one State

to another ... Occupies a position so fundamental to the concept of our Federal Union. It is a right

that has been firmly established and repeatedly recognized.

rights have been devastated,⁴ numerous business takings without compensation, and many regulations being implemented without statutory process requirements under the guise of a health emergency that is roughly as dangerous as a seasonal influenza outbreak.⁵ The plaintiffs in this case have all been injured in various capacities by these unconstitutional actions, and without action by the Court, will be left without redress. More terrifying, without action by the Court, the Court will be setting future precedent that will allow states to withhold fundamental Constitutional rights, in violation of US Supreme Court precedent, circumventing the various levels of scrutiny applied to such rights, and justify such actions under public health emergency orders without subjecting those orders to any real review – just trust the bureaucrats because they are the experts.

6 We humbly ask the Court in this case to:

1. Reaffirm its position as a coequal branch of the government.
2. Reaffirm the US Constitution is the supreme law of the land and that rights, especially fundamental rights, may not be abridged unless necessary to serve a compelling governmental interest, and that even then, those restrictions must be narrowly tailored to meet a compelling governmental interest.
3. Ensure there is an opportunity for redress under any emergency declaration.
4. Recognize that the political process and operative orders are invalid if based on false or misleading information⁶ and recognize the criticality that all future emergency

⁴Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973) ; Contact tracing: Laura Matrajt, et al., Evaluating the Effectiveness of Social Distancing Interventions to Delay or Flatten the Epidemic Curve of Coronavirus Disease, EID JOURNAL (Aug 2020)

https://wwwnc.cdc.gov/eid/article/26/8/20-1093_article

⁵ See below, page 43.

⁶ In Romer v Evans, 517 U.S. 620, 631 (1996) the Court stated actions must bear a rational relationship to some legitimate end. It necessarily follows that if the actions are based on false or fraudulent information that no rational relationship could be found.

orders be based and maintained on clear, honest facts - particularly when such orders are infringing on Constitutional rights.

7 Underlying all of this, and the foundation of this case is this question: if an emergency can be declared without the appropriate level of review based on the rights being limited, and under the guise of that emergency all rights are only subject to a rational basis review, how then do any previous judicial opinions or Constitutional principles have any meaning whatsoever? Further, if under the same circumstances different levels of scrutiny are applied to the various rights being limited under an emergency declaration than would otherwise be applicable, what is the value of having various levels of review?

Motions, Prayer for Relief, and Request for Trial by Jury:

8 Plaintiff's request a trial by an independent jury of their peers. While we also ask the Court to consider and address the above questions, our specific prayer for relief humbly requests the court:

1. Grant a preliminary injunction against all current state actions and orders in Ohio issued under the COVID-19 Emergency Declaration and against the declaration itself until this case has been decided by the court. We further ask the Court to review this emergency declaration and request for preliminary injunction under the strict scrutiny standard of review since fundamental Constitutional rights have been abridged under the guise of the emergency actions (*see* Motion for Preliminary Injunction).
2. Declare that the exigencies underlying the declaration for emergency no longer exist.
3. Declare that the public health emergency based on Executive Order 2020-01D has ended.
4. Declare that all actions taken under Executive Order 2020-01D are invalid
5. Declare that Executive Order 2020-01D is no longer valid pursuant to ORC 119.03G(1).
6. Declare all orders issued by state agencies under authority of the State Emergency Declaration are terminated 120 days after issuance pursuant to ORC 119.03G(1).

7. Grant injunctive relief against future public health emergency declarations in the State of Ohio without enabling legislation.
8. Grant permanent injunctive relief against future actions taken under the guise of this or any other public health emergencies that violate legislative or Constitutional rights without meeting the appropriate standards of review under established law or precedent.
9. Declare that the lowest standard of review available under an emergency declaration is intermediate scrutiny though higher standards are still available.
10. Grant permanent injunction against future public health emergencies for more than an extremely limited period of time without regular reauthorization by the legislative body.
11. Grant injunctive relief against any future enforcement actions by the Ottawa County Board of Health against the implementation or enforcement of illegal or unconstitutional State emergency orders against 20th Century Lanes as discussed throughout this Complaint.
12. Damages for Plaintiffs in an amount of \$75,000.00 each or an amount determined appropriate by the jury pursuant to 42 U.S. Code § 1983.

9 Plaintiffs also make the unique request that this case be tried by a jury in a traditional courtroom setting as it is clear that isolating jury members in “COVID Chambers” will bias the jury in this case. We further ask that the courtroom and trial be conducted in “normal” conditions so as not to bias the rights of the Plaintiffs. This case is a critical Constitutional case of first impression and if ever there were a demonstration of the fact that the Constitution must be honored at all times, especially in times of crisis, that time is now. We welcome the opportunity to brief the Court on this issue should it be necessary.

Parties

Plaintiffs affidavits are attached and incorporated by reference and Plaintiffs include:
Kristen Beckman - 3223 Dogwood Dr., Oregon, Ohio 43616

Eric J. Calderaro - 315 Whispering Pines Dr., Loveland, Ohio 45140

Tara L. Calderaro - 315 Whispering Pines Dr., Loveland, Ohio 45140

Jessica Franz - 4285 US Route 40, Tipp City, Ohio 45371

Renee D. Hedges - 2692 Hawthorne Rd., Cuyahoga Falls, Ohio 44221

Kirsten Hill - 44905 N. Ridge Rd., Amherst, Ohio 44001

Lisa Knapp - 228 Hideaway Ct., Powell, Ohio 43065

Michael B. Renz – 14244 West State Route 105, Oak Harbor, Ohio 43499

Defendants are as follows:

The Governor, Michael DeWine, is a resident of Columbus, Ohio

The Former Director of the Ohio Department of Health, Amy Acton, a resident of Columbus

The Interim Director of the Ohio Department of Health Lance Himes, is based out of Columbus,

Ohio

The State of Ohio

Department of Health for Ottawa County, Ohio

Standing, Venue, and Jurisdiction

10 This Court has subject matter jurisdiction over this matter as it pertains to multiple Federal Constitutional issues arising under the 1st, 4th, 5th, 6th, 9th, and 14th amendments and related precedent under 28 U.S.C. 1331. This Court also maintains subject matter jurisdiction to claims under 42 U.S. Code § 1983 within this case as they all include violations of Constitutional law. Under 28 U.S.C. 1367 this Court maintains supplemental jurisdiction over state constitutional claims.

11 Venue is proper within this Court under 28 U.S.C. 1391 as at least one of the defendants resides in this district and also under Local Rule 3.8 whereas at least one plaintiff resides within this division of the district and the relevant claims have also occurred in this district.

12 Standing requires that the plaintiff must personally have: 1) suffered some actual or threatened injury; 2) that injury can fairly be traced to the challenged action of the defendant; and 3) that the injury is likely to be redressed by a favorable decision.⁷ As noted above and within the incorporated affidavits and declarations (see Attachment J), the Plaintiffs have all suffered substantial injury in various ways due to the State’s unconstitutional actions in response to COVID-19 and those injuries can be redressed through the various prayers for relief included in this complaint.

Facts

13 The fact pattern for this case is extremely complex. A number of sections below discuss errors or the debunking of what is intentionally misleading information put forth by the State or CDC. It is indisputable that COVID-19 is roughly as dangerous as the seasonal flu (see below), less dangerous than many other infectious diseases that we have not taken such drastic steps to stop, and also that the reaction to COVID-19 is the definition of arbitrary and capricious. The continuation of this overreaction has only occurred due to the reality that the facts are complex enough that few have realized how badly they have been misled. Here we attempt to simplify the facts into a digestible narrative.

14 Injury occurred through the issuance of various orders and also promulgated under the emergency declaration as discussed below.

⁷ Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992). Importantly, standing is not “dispensed in gross,” and, accordingly, a plaintiff must demonstrate standing for each claim “he seeks to press and for each form of relief that is sought.” See Davis v. FEC, 554 U.S. 724, 734 (2008). Moreover, when there are multiple parties to a lawsuit brought in federal court, “[f]or all relief sought, there must be a litigant with standing, whether that litigant joins the lawsuit as a plaintiff, a coplaintiff, or an intervenor as of right.” See Town of Chester v. Laroe Estates, Inc., 581 U.S. ___, No. 16–605, slip. op. at 6 (2017).

Timeline

2019

- 11/17 - Potential Patient Zero (Wuhan, China).⁸
- 11/12 - On 7/2/20 Pike County, Ohio General Health District reported “the earliest symptom onset of the 2nd positive antibody case was November 12th after out of state travel”⁹

⁸ Coronavirus: DOD Response Timeline, U.S. DEPARTMENT OF DEFENSE, (Last visited Aug 29, 2020) <https://www.defense.gov/Explore/Spotlight/Coronavirus/DOD-Response-Timeline/>

⁹ This is Ohio’s first known case even though ODH COVID dashboard shows earliest case to be 1/2/20. See attached PPT document with screen shots.

Pike County Health Commissioner Matt Brewster stated, “This (antibody) test checks your blood by looking for antibodies from a previous exposure – not the active virus. When you are exposed to COVID-19 or any infection for that matter, your immune system builds up antibodies, which are proteins that help fight off that infection. This test is looking for those antibodies.” “Positive antibody tests will count as a probable case per ODH (Ohio Department of Health) reporting requirements – not confirmed.” “We can use these positive results to help determine how long the virus has actually been in our county using epidemiological questioning and medical history,” said Brewster. “We already know there are reports of positive antibody cases in several other Ohio counties that have been traced back to mid-December. It will be very interesting and helpful to know if the virus was in Pike County in November, December, or January.”

Julie Billings, Pike County General Health District conducts first round of antibody testing, THE PIKE COUNTY NEWS WATCHMAN (July 7, 2020),

- 12/8 - First person to test positive (Wuhan, China).¹⁰
- 12/31 - WHO China Country Office was informed of cases of pneumonia of unknown etiology (unknown cause) detected in Wuhan City, Hubei Province of China¹¹

2020

- 1/1 - Wuhan, China officials close seafood market, thought to be the source of the first viral pneumonia cases.¹²
- 1/2 – Is the date ODH shows as the earliest onset case date in its Summary Data CSV file (downloaded 8/27/20)¹³
- 1/7 - China confirms a COVID-19 case.¹⁴
- 1/7 - CDC establishes the Coronavirus Incident Management System.¹⁵
- 1/10 - COVID-19 sequence was known in NIH’s vaccine trial – per Fauci’s congressional testimony on 5/12/20. Please note NIH/Fauci began a vaccine trial 2 days before WHO or China even released the COVID-19 sequence on 1/12. This was before there was even a confirmation it had spread outside of China on 1/13, before WHO confirmed it could even spread between humans on 1/14 and before declared it a public health emergency on 1/30. Fauci’s congressional testimony is not consistent with the WHO facts - he testified “we actually started that [vaccine development] in January, literally days after the virus

https://www.newswatchman.com/community/article_733f9315-c9cf-5c30-95f7-c1da993fe9e1.html

¹⁰ *Id* at 8

¹¹ Pneumonia of unknown cause – China, WORLD HEALTH ORGANIZATION, (Jan 5, 2020),

<https://www.who.int/csr/don/05-january-2020-pneumonia-of-unkown-cause-china/en/>

¹² *Id* at 8

¹³ COVID-19 Dashboard, OHIO DEPARTMENT OF HEALTH, (Last visited Aug 27, 2020),

<https://coronavirus.ohio.gov/wps/portal/gov/covid-19/dashboards/overview>

¹⁴ *Id* at 8

¹⁵ *Id* at 8

was known and its sequence was published. (Timestamp 01:16:50¹⁶) Unless CDC Director Redfield's comments saying he personally had discussions with Chinese scientists 1/3 explains the discrepancy (timestamp 03:14:50¹⁷).

- 1/10 - CDC launches dedicated COVID-19 website.¹⁸
- 1/11 - Vaccine Research Center met to develop a plan – per Fauci's congressional testimony on 5/12/20 (Timestamp 32:41)¹⁹
- 1/11 - First coronavirus death worldwide is reported in Wuhan, China.²⁰
- 1/12 China publicly shared the genetic sequence of COVID-19.²¹
- 1/13 - Officials confirm a case of COVID-19 in Thailand, the first recorded case outside of China.²²
- 1/14 - Officially started vaccine development - per Fauci's congressional testimony on 5/12/20²³ (Timestamp 32:41)
- 1/14 - WHO's technical lead for the response noted in a press briefing there may have been limited human-to-human transmission of the coronavirus (in the 41 confirmed cases), mainly through family members, and that there was a risk of a possible wider outbreak.²⁴
- 1/20 - First reported U.S. coronavirus case in Washington State.²⁵ Other cases have since been discovered to exist prior to this date (*see below*).

¹⁶ Dr. Anthony Fauci & CDC Director Senate Testimony Transcript May 12, REV.COM

(Timestamp 01:16:50, May 12, 2020), <https://www.rev.com/blog/transcripts/dr-anthony-fauci-cdc-director-senate-testimony-transcript-may-12>

¹⁷ *Id* at 16

¹⁸ *Id* at 8

¹⁹ *Id* at 16

²⁰ *Id* at 8

²¹ Archived: WHO Timeline - COVID-19, WORLD HEALTH ORGANIZATION, (April 27, 2020),

<https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19>

²² *Id* at 21

²³ *Id* at 16

²⁴ *Id* at 21

²⁵ *Id* at 8

- 1/23 WHO considered it “still too early to declare a Public Health Emergency of International Concern (PHEIC)”²⁶
- 1/23 - China puts Wuhan on lockdown.²⁷
- 1/23 – ODH issued a Director’s Journal Entry making COVID-19 a Class A reportable disease in Ohio²⁸
- 1/28 – ODH hosted first statewide call with local health departments and healthcare providers regarding COVID-19²⁹
- 1/29 - POTUS establishes a COVID-19 interagency task force.³⁰
- 1/29 - DOD approves Health and Human Services request for assistance for March Air Reserve Base providing approximately 200 beds for State Department officials evacuated from Wuhan, China.³¹
- 1/30 – The International Health Regulations Emergency Committee of the WHO declared the outbreak of COVID-19 a public health emergency of international concern³²
- 1/30 - CDC identifies person-to-person transmission in the United States.³³

²⁶ Rolling updates on coronavirus disease (COVID-19), WORLD HEALTH ORGANIZATION, (July 31, 2020), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>

²⁷ *Id* at 8

²⁸ Directors Stay Safe Ohio Order, OHIO DEPARTMENT OF HEALTH <https://coronavirus.ohio.gov/static/publicorders/Directors-Stay-Safe-Ohio-Order.pdf>, p.11-13

²⁹ *Id* at 28

³⁰ Statement from the Press Secretary Regarding the President’s Coronavirus Task Force, (Jan 29, 2020), <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-regarding-presidents-coronavirus-task-force/>

³¹ *Id* at 8

³² *Id* at 28

³³ CDC Confirms Person-to-Person Spread of New Coronavirus in the United States, CENTERS FOR DISEASE CONTROL AND PREVENTION NEWSROOM (Jan 30, 2020) <https://www.cdc.gov/media/releases/2020/p0130-coronavirus-spread.html>

- 1/31 – Alex M. Azar II, Health and Human Services Secretary, declared a public health emergency for the US to aid the nation’s healthcare community in responding to C-19³⁴
- 1/31 – POTUS proclaims travel restriction on China for entering the United States.³⁵
- 2/1 – The ODH issued a statewide Health Alert Network to provide local health departments and healthcare providers with updated guidance for C-19 and revised Person Under Investigation (PUI) criteria³⁶
- 2/2 - First alleged death outside China due to COVID-19 occurs in the Philippines.³⁷
- 2/3 – ODH trained over 140 personnel to staff a call center for C-19, in the event it was needed³⁸
- 2/5 – ODH began updating and notifying the media of the number of PUI’s in Ohio every Tuesday and Thursday³⁹
- 2/6 - First alleged COVID-19 death in the United States.⁴⁰
- 2/6 – ODH updated all agency assistant directors and chiefs of staff on C-19 preparedness and status during the Governor’s cabinet meeting⁴¹
- 2/7 – ODH and OMEA met to conduct advance planning for C-19⁴²
- 2/11 - World Health Organization officially names the disease caused by the new coronavirus: COVID-19.⁴³

³⁴ *Id* at 28

³⁵ Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Persons who Pose a Risk of Transmitting 2019 Novel Coronavirus, (Jan 31, 2020),

<https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-persons-pose-risk-transmitting-2019-novel-coronavirus/>

³⁶ *Id* at 28

³⁷ *Id* at 8

³⁸ *Id* at 28

³⁹ *Id* at 28

⁴⁰ *Id* at 8

⁴¹ *Id* at 28

⁴² *Id* at 28

⁴³ *Id* at 8

According to DOD, the WHO at this same time stated, “Most people infected with the COVID-19 virus will experience mild to moderate respiratory illness and recover without requiring special treatment. Older people, and those with underlying medical problems like cardiovascular disease, diabetes, chronic respiratory disease, and cancer are more likely to develop serious illness.”

- 2/13 – ODH conducted a Pandemic Tabletop Exercise with State agencies to review responsive actions should there be a pandemic in Ohio⁴⁴
- 2/14 – ODH held a conference call with health professionals across the state. The purpose of the call was to inform and engage the healthcare community in Ohio. Presentations were provided by the Department of Health, Hamilton County Public Health, and the Ohio State University⁴⁵
- 2/26 - COVID-19 has now been detected in every continent except Antarctica.⁴⁶
- 2/27 – ODH and the OEMA briefed the directors of State agencies during the Governor’s cabinet meeting regarding preparedness and the potential activation of the Emergency Operations Center⁴⁷
- 2/28 – The “Governor DeWine, Health Director Update C-19 Prevention and Preparedness Plan” was sent to a broad range of associations representing healthcare, dental, long-term care, K-12 schools, colleges and universities, businesses, public transit, faith-based organizations, non-profit organizations and local governments.⁴⁸
- 3/2 – ODH activated a Joint Information Center to coordinate C-19 communications⁴⁹
- 3/5 – ODH hosted Governor’s Summit on C-19 Preparedness, a meeting with the Governor, cabinet agency directors, local health commissioners, and their staff.⁵⁰
- 3/6 – ODH opened call center to answer C-19 questions from the public⁵¹

⁴⁴ *Id* at 28

⁴⁵ *Id* at 28

⁴⁶ *Id* at 8

⁴⁷ *Id* at 28

⁴⁸ *Id* at 28

⁴⁹ *Id* at 28

⁵⁰ *Id* at 28

⁵¹ *Id* at 28

- 3/6 - POTUS signs Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 passing \$8.3B⁵²
- 3/8 - Italy declares a country-wide lockdown.⁵³
- 3/9 – Testing by ODH confirmed that three (3) patients were positive for C-19 in the state of Ohio. “This confirms the presence of a potentially dangerous condition which may affect the health, safety and welfare of citizens of Ohio.”⁵⁴
- 3/9 – OEMA activated the Emergency Operations Center⁵⁵
- 3/9 – Governor DeWine declared a State of Emergency in Executive Order 2020-01D¹ and tweets about it before the WHO declared it a pandemic.⁵⁶ 3 citizens of Ohio were known to be infected and none dead when the emergency was declared.⁵⁷
- 3/11– head of WHO declared C-19 a pandemic⁵⁸
- 3/11 – testing by the ODH confirmed that one more patient was positive for C-19⁵⁹

⁵² Remarks by President Trump at Signing of the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (Mar 6, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-coronavirus-preparedness-response-supplemental-appropriations-act-2020/>

⁵³ *Id* at 8

⁵⁴ *Id* at 28

⁵⁵ *Id* at 28

⁵⁶ Governor Mike DeWine (@GovMikeDeWine), TWITTER (Mar 9, 2020), https://twitter.com/GovMikeDeWine/status/1237092815433158656?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1237092815433158656%7Ctwgr%5E&ref_url=https%3A%2F%2Fwww.cleveland19.com%2F2020%2F03%2F09%2Fcases-coronavirus-confirmed-ohio-state-emergency-declared%2F

⁵⁷ Karen Kasler, Three COVID-19 Deaths In Ohio; New Orders Issued, WKSU 89.7, (Mar 22, 2020), (<https://www.wksu.org/post/three-covid-19-deaths-ohio-new-orders-issued-0>,

⁵⁸ *Id* at 28

⁵⁹ *Id* at 28

- 3/11– ODH and OD Veteran’s Services issued a Joint Director’s Order to limit access to Ohio nursing homes and similar facilities.⁶⁰
- 3/13 - POTUS declares the COVID-19 outbreak a national emergency.⁶¹
- 3/15 - ODH issued a Director’s Order to limit access to Ohio’s jails and detention facilities⁶²
- 3/15 - ODH issued a Director’s Order to limit sale of food, beverages, liquor, beer and wine to carry-out and delivery only⁶³
- 3/15 - The CDC issued Interim Guidance for mass gatherings or large community events stating that such events that consist of 50 or more people should be cancelled or postponed⁶⁴
- 3/16 - White House announces, "15 Days to Slow the Spread," a nationwide effort to slow the spread of COVID-19 through the implementation of social distancing at all levels of society.⁶⁵
- 3/16 - ODH issued a Director’s Order closing polling location for the 3/17/2020 primary election⁶⁶
- 3/17 - ODH issued a Director’s Order for the management of non-essential surgeries and procedures throughout Ohio⁶⁷

⁶⁰ *Id* at 28

⁶¹ Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, (Mar 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>

⁶² *Id* at 28

⁶³ *Id* at 28

⁶⁴ *Id* at 28

⁶⁵ 15 Days to Slow the Spread, (Mar 16, 2020), <https://www.whitehouse.gov/articles/15-days-slow-spread/>

⁶⁶ *Id* at 28

⁶⁷ *Id* at 28

- 3/17 - ODH issued an Amended Director’s Order to limit and/or prohibit mass gathering and the closure of venues in the State of Ohio⁶⁸
- 3/17 - West Virginia is the last state to “confirm” a COVID-19 case. All 50 U.S. states have “confirmed” cases.⁶⁹
- 3/18 - POTUS signs Family First Act, providing \$3.5B emergency supplemental appropriations related to COVID-19, as well as waivers and modifications of Federal nutrition programs, employment-related protections and benefits, health programs and insurance coverage requirements, and related tax credits during the COVID-19 public health emergency.⁷⁰
- 3/19 - ODH issued a Director’s Order closing hair salons, nail salons, barber shops, tattoo parlors, body piercing locations and massage therapy locations⁷¹
- 3/21 - ODH issued a Director’s Order closing older adult day care services and senior centers⁷²
- 3/21 - ODH issued a Director’s Order closing family entertainment centers and internet cafes⁷³
- 3/22 - ODH issued a Director’s Order that all persons are to stay at home unless engaged in essential work or activity⁷⁴
- 3/24 - National Vital Statistics System (NVSS) released the formal guidance regarding a “newly-introduced ICD code” (U07.1) to “accurately capture mortality data for Coronavirus Disease 2019 (COVID-19) on death certificates” (National Vital Statistics System, 2020). These guidelines usurped the 2003 data collection guidance that is used for all other infectious diseases and causes of death data and are unique to COVID-19.⁷⁵

⁶⁸ *Id* at 28

⁶⁹ *Id* at 8

⁷⁰ Statement by the President, (Mar 18, 2020), <https://www.whitehouse.gov/briefings-statements/statement-by-the-president-35/>

⁷¹ *Id* at 28

⁷² *Id* at 28

⁷³ *Id* at 28

⁷⁴ *Id* at 28

⁷⁵ NVSS: National Vital Statistics System COVID-19 Alert No. 2., CENTERS FOR DISEASE CONTROL AND PREVENTION. (Mar 24, 2020),

- 3/24 - ODH issued a Director's Order to close facilities providing childcare services⁷⁶
- 3/27 - POTUS signs \$2T+ in relief package, providing emergency relief to families and small businesses that have been impacted by COVID-19.⁷⁷
- 3/27 - USNS Mercy arrives in Los Angeles⁷⁸
- 3/28 - Wuhan, China, partially re-opens after two-month lockdown.⁷⁹
- 3/29 - POTUS extends social distancing guidelines through April 30, 2020.⁸⁰
- 3/30 - USNS Comfort arrives in New York five days ahead of schedule, providing 1,000 patient beds⁸¹
- 3/30 - ODH issued an Amended Director's Order that closed all K-12 schools in the State of Ohio.⁸²
- 4/2 - ODH issued an Amended Director's Order that all persons are to stay at home unless engaged in essential work or activity⁸³

<https://www.cdc.gov/nchs/data/nvss/coronavirus/Alert-2-New-ICD-code-introduced-for-COVID-19-deaths.pdf>

⁷⁶ *Id* at 28

⁷⁷ President Donald J. Trump Is Providing Economic Relief to American Workers, Families, and Businesses Impacted by the Coronavirus, (Mar 27, 2020),

<https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-providing-economic-relief-american-workers-families-businesses-impacted-coronavirus/>

⁷⁸ *Id* at 8

⁷⁹ *Id* at 8

⁸⁰ *Id* at 8

⁸¹ *Id* at 8

⁸² *Id* at 28

⁸³ *Id* at 28

- 4/2 - POTUS issues memo providing continued federal support for governors' use of the National Guard to respond to COVID-19 in the states of Georgia, Hawaii, Indiana, Missouri, New Hampshire, New Mexico, Ohio, Rhode Island, Tennessee and Texas.⁸⁴
- 4/2 - 1M+ people have confirmed cases of COVID-19 worldwide.⁸⁵
- 4/3 - DeWine asks judges to consider releasing some Ohio inmates due to coronavirus threat⁸⁶
- 4/3 - CDC advises the public to wear face coverings in public.⁸⁷
- 4/4 - DOD notifies Indiana, Missouri, New Jersey, Ohio, Rhode Island, and Tennessee governors of Title 32 authorization.⁸⁸
- 4/6/20 - DeWine announced his team selected six sites around the state to serve as alternative hospital facilities.⁸⁹
- 4/8 - Wuhan, China, ends its more than two-month lockdown⁹⁰.

⁸⁴Memorandum on Providing Federal Support for Governors' Use of the National Guard to Respond to COVID-19, (Apr 2, 2020), <https://www.whitehouse.gov/presidential-actions/memorandum-providing-federal-support-governors-use-national-guard-respond-covid-19-4/>

⁸⁵ *Id* at 8

⁸⁶ Gov. Mike DeWine asks judges to consider releasing some Ohio inmates due to coronavirus threat, CLEVELAND.COM, (April 3, 2020), <https://www.cleveland.com/coronavirus/2020/04/gov-mike-dewine-asks-judges-to-consider-releasing-some-ohio-inmates-due-to-coronavirus-threat.html>

⁸⁷ *Id* at 8

⁸⁸ *Id* at 8

⁸⁹ Seth A. Richardson, Six Ohio sites identified as temporary hospitals in coronavirus crisis, CLEVELAND.COM, (April 6, 2020), <https://www.cleveland.com/open/2020/04/case-western-reserve-universitys-health-education-campus-will-be-temporary-hospital-in-coronavirus-response.html>

⁹⁰ *Id* at 8

- 4/9 - Federal Reserve announces actions to provide up to \$2.3T in loans to support the economy.⁹¹
- 4/10 - New York state now has more reported COVID-19 cases than any country in the world.⁹²
- 4/11 - U.S. death toll allegedly surpasses 20,000, the highest number of fatalities of any country.⁹³
- 4/11 - With POTUS approving Wyoming's disaster declaration, a major disaster declaration has been issued in all 50 states for the first time in American history.⁹⁴
- 4/14 - POTUS announces he is halting funding to the World Health Organization while a review is conducted to assess its role in managing COVID-19.⁹⁵
- 4/14 - All 50 states report at least one COVID-19 related death.⁹⁶
- 4/15 - Global COVID-19 case tally tops 2 million.⁹⁷
- 4/16/20 - The Cleveland Clinic and Columbus Convention Center have completed their emergency hospital spaces. But as current modeling predicts, Ohio may never need them.⁹⁸

⁹¹ *Id* at 8

⁹² *Id* at 8

⁹³ *Id* at 8

⁹⁴ *Id* at 8

⁹⁵ *Id* at 8

⁹⁶ *Id* at 8

⁹⁷ *Id* at 8

⁹⁸ Tino Bovenzi, Ohio's 3 COVID-19 Emergency Surge Hospitals Remain Unused,

SPECTRUMNEWS1, (Apr. 16, 2020),

<https://spectrumnews1.com/oh/columbus/news/2020/04/16/ohio-s-3-covid-19-emergency-surge-hospitals-remain-unused->

- 4/16 - POTUS announces guidelines on the three phases of Opening Up America Again.⁹⁹
- 4/17 - China revises upwards the number of COVID-19 deaths in Wuhan by 50 percent, to almost 4,000.¹⁰⁰
- 4/24 - POTUS signs into law the Paycheck Protection Program and Health Care Enhancement Act, providing additional funding to support Americans impacted by the coronavirus.¹⁰¹
- 4/26 - USNS Comfort reports all patients are discharged.¹⁰²
- 4/27 - POTUS announces blueprint for testing to help safely open America again.¹⁰³
- 4/28 - The United States surpasses 1M “confirmed” coronavirus cases, a third of all cases around the globe. So far, over 56,000 have been alleged to die and 112,000 have been reported recovered in the United States.¹⁰⁴
- 4/30 - POTUS announces several new initiatives aimed at protecting America's seniors from COVID-19.¹⁰⁵
- 4/30 - U.S. COVID-19 related deaths were reported to surpass 60,000.¹⁰⁶
- 4/30 – Amy Acton ordered all persons are to continue to stay at home or their place of residence unless they are engaged in Essential Activities, Essential Governmental

⁹⁹President Donald J. Trump Announces Guidelines for Opening Up America Again, (April 16, 2020), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-announces-guidelines-opening-america/>

¹⁰⁰ *Id* at 8

¹⁰¹ *Id* at 8

¹⁰² *Id* at 8

¹⁰³ *Id* at 8

¹⁰⁴ *Id* at 8

¹⁰⁵President Donald J. Trump Remains Committed to Caring for Our Nation’s Seniors During the Coronavirus Pandemic and Beyond, (April 30, 2020), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-remains-committed-caring-nations-seniors-coronavirus-pandemic-beyond/>

¹⁰⁶ *Id* at 8

Functions or operate Essential or Unrestricted Business Operations as set forth in this order. Remains in full force until 5/29/2020.¹⁰⁷

- 5/5 - The U.S. surpasses 1.2M “confirmed” COVID-19 cases; COVID-19 related deaths allegedly surpass 70,000.¹⁰⁸
- 5/8 - Bureau of Labor Statistics reports the U.S. jobless rate reached 14.7% in April, the highest level since the Great Depression. The White House noted that many of the job losses are due to temporary layoffs.¹⁰⁹
- 5/12 - Under the new order, retail, service and consumer businesses allowed to reopen¹¹⁰
- 5/20 - For the first time since U.S. states implemented stay-at-home measures to mitigate the spread of COVID-19, all 50 states have begun to partially lift restrictions.¹¹¹
- 5/27 - U.S. COVID-19 related deaths allegedly surpass 100,000.¹¹²
- 5/30 - POTUS announces he plans a U.S. withdrawal from the World Health Organization and will redirect the nation's contribution funds to help meet global public health needs.¹¹³
- 5/31 - Global COVID-19 cases allegedly surpass 6M.¹¹⁴

¹⁰⁷Director’s Stay at Home Order’s, OHIO DEPARTMENT OF HEALTH,

https://content.govdelivery.com/attachments/OHOOD/2020/03/22/file_attachments/1407840/Stay%20Home%20Order.pdf

¹⁰⁸ *Id* at 8

¹⁰⁹ *Id* at 8

¹¹⁰Camryn Justice, Reopening Ohio: Gov. DeWine gives dates, protocols for reopening businesses beginning May 1, NEWS5 CLEVELAND, (April 27, 2020),

<https://www.news5cleveland.com/news/continuing-coverage/coronavirus/reopening-ohio-gov-dewine-gives-dates-protocols-for-reopening-businesses-beginning-may-1>

¹¹¹ *Id* at 8

¹¹² *Id* at 8

¹¹³ *Id* at 8

¹¹⁴ *Id* at 8

- 6/5 - POTUS signs into law the Paycheck Protection Flexibility Act of 2020, modifying provisions for loan forgiveness under the Paycheck Protection Program.¹¹⁵
- 6/8 The U.S. reaches 2M “confirmed” COVID-19 cases; COVID-19 related deaths allegedly surpass 106K.¹¹⁶
- 6/22 - Contact practice reopened for all sports as long as safety protocols are observed.¹¹⁷
- 6/26 – Gov DeWine Tweets: “The science is irrefutable. If people wear masks and practice social distancing, we will have a decrease in the spread of #COVID19. We can get through this, but we’ve got to keep this virus down.”¹¹⁸
- 7/2 OPHAS created by Gov. DeWine. “Today I’m announcing our new Ohio Public Health Advisory Alert System to help make clear the dangers happening in counties in #Ohio. The color-coded system is built on data to assess #COVID19 spread and inform and empower individuals, businesses, & local gov’t in their response.”¹¹⁹
- 7/1 - The U.S. allegedly has more than 50K new daily COVID-19 cases.¹²⁰
- 7/4 - POTUS signs into law a bill that reauthorizes lending under the Paycheck Protection Program through August 8, 2020 and separates the authorized limits for commitments under the program from other Small Business Administration loan programs.¹²¹

¹¹⁵Bill Announcement, (June 5, 2020), <https://www.whitehouse.gov/briefings-statements/bill-announcement-98/>

¹¹⁶ *Id* at 8

¹¹⁷ Governor Mike DeWine (@GovMikeDeWine), TWITTER (June 18, 2020)

<https://twitter.com/GovMikeDeWine/status/1273685473463058438>

¹¹⁸ COVID-19 Update: 19 Red Alert Level Three Counties, Executive Order, PPE Manufacturing Grants, OHIO DEPARTMENT OF HEALTH, (July 16, 2020),

<https://coronavirus.ohio.gov/wps/portal/gov/covid-19/resources/news-releases-news-you-can-use/19-red-alert-level-three-counties>

¹¹⁹ Governor Mike DeWine (@GovMikeDeWine), TWITTER (July 2, 2020),

<https://twitter.com/GovMikeDeWine/status/1278760992353239051>

¹²⁰ *Id* at 8

¹²¹ *Id* at 8

- 7/8 – ODH mandates face coverings in public in all counties that are designated as a Red Alert Level 3 Public Health Emergency or a Purple Alert Level 4 Public Health Emergency.¹²²
- 7/16- Governor DeWine designates 19 counties as being in a Red Alert Level 3 Public Health Emergency as defined by the Ohio Public Health Advisory System.¹²³
- 7/17 - Cleveland Clinic coronavirus surge space was never used, now being dismantled¹²⁴
- 7/20 – Nursing homes can begin outdoor visits as long as safety standards are met.¹²⁵ Nursing homes were closed to visitors on 3/11. Some residents went four months and nine days without seeing their loved ones.
- 7/23 - The U.S. allegedly reaches 4M confirmed COVID-19 cases.¹²⁶
- 7/23 – ODH mandates masks in any indoor location that is not a residence, outdoors where you cannot social distance of more than 6’ for everyone over the age of 10.¹²⁷

¹²²COVID-19 Update: Face Coverings to be Required in High-Risk Counties, OHIO

DEPARTMENT OF HEALTH, (July 7, 2020), <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/resources/news-releases-news-you-can-use/face-coverings-required-in-high-risk-counties>

¹²³ *Id* at 118

¹²⁴ Julie Washington, What is Northeast Ohio’s hospital capacity? Cleveland Clinic coronavirus surge space was never used, now being dismantled, CLEVELAND.COM, (July 17, 2020)

<https://www.cleveland.com/coronavirus/2020/07/what-is-northeast-ohios-hospital-capacity-cleveland-clinic-coronavirus-surge-space-was-never-used-now-being-dismantled.html>

¹²⁵ Governor Mike DeWine (@GovMikeDeWine), TWITTER (June 29, 2020),

<https://twitter.com/GovMikeDeWine/status/1277668681938612225>

¹²⁶ *Id* at 8

¹²⁷ Director’s Order, OHIO DEPARTMENT OF HEALTH,

<https://coronavirus.ohio.gov/static/publicorders/Directors-Order-Facial-Coverings-throughout-State-Ohio-reader.pdf>

- 7/29 - U.S. COVID-19 related deaths allegedly surpass 150K.¹²⁸
- 8/4 - Governor DeWine announced today that the Ohio Department of Health will issue a health order requiring that K-12 children wear face coverings while at school.¹²⁹
- 8/6 - The U.S. State Department, in coordination with the CDC, lifts its Global Level 4 Health Advisory that had been in place since March 19 which advised U.S. citizens to avoid all international travel due to the global impact of COVID-19.¹³⁰
- 8/9 - The U.S. reaches 5M “confirmed” COVID-19 cases¹³¹
- 8/23 - The Food and Drug Administration has issued an emergency use authorization for convalescent plasma to treat COVID-19.¹³²
- 8/24 - The U.S. surpasses 2M recovered COVID-19 cases.¹³³
- 8/25 - POTUS announces additional steps, including new testing requirements, to help protect nursing home residents from COVID-19.¹³⁴

¹²⁸Governor Mike DeWine (@GovMikeDeWine), TWITTER (June 26, 2020),

<https://twitter.com/GovMikeDeWine/status/1276598607362224130>

¹²⁹COVID-19 Update: Masks in Schools, Rapid Testing, Community Spread and Spread from Faith-Based Settings, Dr. Amy Acton, OHIO DEPARTMENT OF HEALTH, (Aug 4, 2020),

<https://coronavirus.ohio.gov/wps/portal/gov/covid-19/resources/news-releases-news-you-can-use/covid-19-update-08-04-20>

¹³⁰Lifting of Global Level 4 Global Health Advisory, U.S. DEPARTMENT OF STATE, (Aug 6, 2020), <https://www.state.gov/lifting-of-global-level-4-global-health-advisory/>

¹³¹*Id* at 8

¹³²Remarks by President Trump in Press Briefing, (Aug 23, 2020),

<https://www.whitehouse.gov/briefings-statements/remarks-president-trump-press-briefing-august-23-2020/>

¹³³ *Id* at 8

¹³⁴ *Id* at 8

What Happened to the Curve?

15 When COVID-19 first struck in the USA there was a tremendous amount of discussion related to flattening the curve. We were told that there was a very real danger that our healthcare system would be overrun, and people could be dying in the streets.¹³⁵ Because of this unprecedented danger, we were told that an emergency would be declared so that we could flatten the curve and that once it was flattened we could begin moving towards normalization.¹³⁶

16 The curve was a reference to the CDC's graph (model) that predicted a tremendous surge in the need for hospitalization around the country due to COVID-19.¹³⁷ To deal with this potential crisis both the State of Ohio, other states around the country, and the federal government declared emergencies to allow for the bypass of laws and procedures that would have slowed their ability to create a mechanism to deal with this upcoming crisis. PPE (Personal Protective Equipment) and ventilators were inventoried, temporary hospitals were built to deal with overflow, and funding was approved.¹³⁸

¹³⁵ Helen Branswell, [Why 'flattening the curve' may be the world's best bet to slow the coronavirus](https://www.statnews.com/2020/03/11/flattening-curve-coronavirus/), STATNEWS.COM, (Mar. 11, 2020), <https://www.statnews.com/2020/03/11/flattening-curve-coronavirus/>

¹³⁶ "...with several weeks of focused action, we can turn the corner and turn it quickly," said President Trump. Gideon Lichfield, [We're not going back to normal](https://www.technologyreview.com/2020/03/17/905264/coronavirus-pandemic-social-distancing-18-months/), MIT TECHNOLOGY REVIEW, (Mar. 17, 2020), <https://www.technologyreview.com/2020/03/17/905264/coronavirus-pandemic-social-distancing-18-months/>

¹³⁷ Caitlin O'Kane, ["Flattening the curve": Why we need to cancel everything and stay home to help stop coronavirus](https://www.cbsnews.com/news/flattening-the-curve-coronavirus-graph-social-distancing-self-quarantine-no-large-events-covid-19/), CBS NEWS, (Mar. 13, 2020), <https://www.cbsnews.com/news/flattening-the-curve-coronavirus-graph-social-distancing-self-quarantine-no-large-events-covid-19/>

¹³⁸ Carrie Ghose, [Covid-19 field hospital ready in Greater Columbus Convention Center](#), COLUMBUS BUSINESS FIRST, (Apr. 14, 2020),

17 Despite the substantial political noise made, the dreaded curve never happened. The emergency supplies or hospitals were simply not needed and, to our knowledge, all of them have since been dismantled.¹³⁹ This leads to the question, if the emergency was based on preventing our healthcare system from being unable to deal with the potential danger of COVID-19, why would this additional capacity be removed if there is still a need for an emergency?

18 Another critical point to make regarding the curve is the fact that it was clearly stated, multiple times, while making the case for the emergency declaration that COVID-19 could not be stopped. CDC and State “experts” said that we could flatten the curve but that the disease would continue to run through the population and that we simply would have to learn to live with it.¹⁴⁰ Given this fact, we ask the following: if the curve has been flattened enough to take down temporary hospitals and we have no alternative but to live with it, then why is there still a need for an emergency? We also ask, given these facts, how could we possibly argue that the continuation of this emergency be considered anything but arbitrary and capricious – let alone act as justification for the limitation of fundamental rights subject to strict scrutiny (see below)?

<https://www.bizjournals.com/columbus/news/2020/04/14/covid-19-field-hospital-ready-in-greater-columbus.html>

¹³⁹ Convention Center hospital for COVID-19 overflow not needed, being dismantled, WCPO ABC 9, (May 4, 2020) <https://www.wcpo.com/news/local-news/convention-center-hospital-for-covid-19-overflow-not-needed-being-dismantled>

¹⁴⁰ *Id* at 4 (Matrajt, et al);

https://m.facebook.com/story.php?story_fbid=10222704815947962&id=1200823867; *Id* at 8;

“The coronavirus is not gone. It is real. And it is deadly. This new phase that we are now in is about learning to live with this virus. It is with us -- it will remain with us -- and we must do all we can to contain it and keep it from killing our fellow citizens.” Governor Mike DeWine (@GovMikeDeWine), TWITTER (2:25 PM May 19, 2020)

Deaths

19 The reporting of deaths related to COVID-19 is so incredibly misleading that, as noted above, even the Supreme Court of the United States was misled. At the time of this writing it is being claimed that there have been over 150,000 COVID-19 deaths in the United States.¹⁴¹ That is simply untrue. While we hope to develop a more accurate number through the discovery process, the number of deaths primarily caused from COVID-19 is likely less than 50,000 and has been estimated in scientific studies to be closer to 20,000.¹⁴²

20 This will seem like an incredible statement for anyone listening to the news. The key to understanding this statement is that the 150,000 number could be an accurate number of the people in the United States that have died with COVID-19 but instead has been presented as the number of people that have died from COVID-19.¹⁴³

21 During the early stages of dealing with the COVID-19 “crisis” the CDC changed the rules for counting deaths.¹⁴⁴ A full discussion of this is included in Attachment A.1 but it should be noted that the changes allowed for unconfirmed cases of COVID-19 to be included in the death count contrary to both international standards and also in a way that is contrary to how every other

¹⁴¹ Cases in the U.S., CENTERS FOR DISEASE CONTROL AND PREVENTION (Last visited Aug 27, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>

¹⁴² H. Ealy, et al., If COVID Fatalities Were 90.2% Lower, How Would You Feel About Schools Reopening?, CHILDREN’S HEALTH DEFENSE (July 24, 2020), <https://childrenshealthdefense.org/news/if-covid-fatalities-were-90-2-lower-how-would-you-feel-about-schools-reopening>

¹⁴³ *Id* at 1

¹⁴⁴ NVSS: National Vital Statistics System COVID-19 Alert No. 2., CENTERS FOR DISEASE CONTROL AND PREVENTION. (Mar 24, 2020), <https://www.cdc.gov/nchs/data/nvss/coronavirus/Alert-2-New-ICD-code-introduced-for-COVID-19-deaths.pdf>

diagnosed disease death has been counted in the USA since 2003. This approach was so egregious that, it can accurately be stated that:

1. In the interest of complete clarity, according to CDC guidance as discussed here, if a person has a cough and dies, and that person lives in any of a majority of the cities in the United States (nearly all of which have a sustained, ongoing community transmission of SARS-CoV-2) then COVID-19 can be listed as either the cause of death or as a significant condition contributing to death. That death certificate can then act as evidence of a probable case of COVID-19 and earn an additional 20% reimbursement rate from Medicare¹⁴⁵ as well as then be reported as a COVID-19 death.¹⁴⁶

22 It is also critical to note the financial incentive to include deaths as COVID-19 deaths. In Ohio, according to Becker's Hospital Review, hospitals are being reimbursed an additional \$180,000 per COVID-19 case and a death from COVID-19 requires no lab test but does qualify as a case.¹⁴⁷

23 All of this has led to absurd results¹⁴⁸ with the entire count being thrown further off by epicenters for the disease, such as New York, putting the sick in nursing homes with others that

¹⁴⁵ CARES Act Sec. 3710

¹⁴⁶ *Id* at 1

¹⁴⁷ Ayla Ellison, State-by-state breakdown of federal aid per COVID-19 case, BECKER'S HOSPITAL CFO REPORT, (Apr. 14, 2020) <https://www.beckershospitalreview.com/finance/state-by-state-breakdown-of-federal-aid-per-covid-19-case.html>

¹⁴⁸ Governor DeSantis referenced a Florida motorcyclist died in a crash. It was initially counted as a COVID death and actually argued that COVID caused the crash. 2 days after a FOX 35 investigation, health officials confirm that a motorcycle death that was initially counted among COVID-19 fatalities but has since been removed from the state's data. Danielle Lama, FOX 35

are most at risk.¹⁴⁹ Because the Plaintiffs have not had the opportunity to examine the Ohio COVID-19 death certificates we cannot say with certainty how many of the deaths in Ohio being counted as COVID deaths are actually from COVID and how many are simply with COVID and more likely due to comorbidities. What we can say is that the death counts related to COVID-19 are misleading at best.

24 A final point on death counts. Some discussion of undercounting has been made. In light of the discussion herein that seems absurd. Given the \$180,000.00 bonus per case paid out in Ohio (the amount varies in other states), and the fact that a COVID-19 case can be diagnosed under CDC guidelines if an individual has nothing more than a cough and lives in a vast majority of places in the nation it is hard to imagine undercounting. That said, the plaintiffs will discuss the issue briefly here.

25 Excess deaths are calculated based on an estimate of how many people are expected to die during any given time period.¹⁵⁰ It goes without saying that no one can actually predict how

INVESTIGATES: Questions raised after fatal motorcycle crash listed as COVID-19 death,
FOX35 ORLANDO, (JULY 18, 2020), <https://www.fox35orlando.com/news/fox-35-investigates-questions-raised-after-fatal-motorcycle-crash-listed-as-covid-19-death>; Andrew Mark Miller,
Florida health official says man who died in motorcycle crash listed as coronavirus death,
WASHINGTON EXAMINER, (July 17, 2020), <https://www.washingtonexaminer.com/news/florida-health-official-admits-man-who-died-in-motorcycle-crash-listed-as-coronavirus-death>

¹⁴⁹ Joe Ruiz, Cuomo says New York followed federal guidelines when sending coronavirus patients to nursing homes, CNN, (May 23, 2020), <https://www.cnn.com/2020/05/23/politics/cuomo-new-york-nursing-homes-coronavirus-patients/index.html>

¹⁵⁰ According to the CDC this number is simply an average based on the same time period from the years 2017-2019. Daily Updates of Totals by Week and State, Table 1, Note 2., CENTERS FOR

many people will die at any given time and that many things impact this number. According to the CDC, as of August 21, 2020, the total number of COVID deaths involving COVID-19 (which includes all deaths where COVID-19 was present even when it was not the cause of death – *see above*) was 159,865. The total number of deaths from all causes was 1,737,141 and the percent of expected deaths was 111%. Basic math tells us the following:

- If 1,737,141 is 111% of expected deaths, then the total expected deaths would be 1,564,991.891891
- This would mean that there are approximately 172,150 excess deaths as of August 21, 2020
- The difference between the expected deaths and deaths that have occurred is the basis for the argument that there is undercounting.

26 We have demonstrated that the number of deaths from COVID-19 is nowhere near the number presented by the CDC, so how can we be experiencing so many excess deaths if they are not coming from COVID-19? The answer is frankly beyond disturbing and is answered in the next section.

The Impact of Our Reaction to COVID-19

27 The answer to the excess deaths question is the same as the answer to why this case is so critical. In both instances the answer is that the damage being done by the response to COVID-19, whether to our rights, or the welfare of the general public, is beyond count. Attached in Attachment F is a brief overview of some of the issues that have occurred due to the response to COVID-19. The following is a very short synopsis of Attachment F which clearly demonstrates the reality that the true danger to Ohioans and the American public stems not from COVID-19, but from the public health nightmare caused by the response to it:

1. Impact on Hospitals & Patient Care

DISEASE CONTROL AND PREVENTION (Last visited Aug 29, 2020)

https://www.cdc.gov/nchs/nvss/vsrr/COVID19/?fbclid=IwAR1bGRFVVkvPepVwEixo01c7sgg1a52wH-aenp_VxrEKwGPKTNYlgh-GNTA

- a. Loss of revenue due to the shutdown has closed a number of healthcare facilities and/or caused a number of hospital systems to consider further closures. This seems not only arbitrary and capricious, but counterproductive to ensuring the legal duty to protecting our freedoms is fulfilled when a pandemic is occurring.
 - b. Substantial evidence that patients are avoiding treatments that could prevent more severe conditions is accumulating. This has and will result in excess deaths because people fear getting the treatment they need.
 - c. As the lockdown has continued, we are now seeing a surge in non-COVID patients and deaths (as would be expected given Points A and B). There were also reports of suicide hotlines seeing calls increase as much as 600% after the lockdown and one article references 600 physicians calling the lockdown a “mass casualty event”.
2. Impact on Health
- a. Lower levels of physical and mental health as well as weaker immune systems and other issues due to mandatory mask wearing, the lockdown, isolation and social distancing.
 - b. Substantial negative impacts on the wellbeing of mothers and children due to reductions in routine health services. It is estimated that the result will be a substantial increase in the number of maternal and child deaths.
 - c. Mask mouth (referring to dental problems resulting from wearing a mask) has the potential to be very dangerous. Some dentists are already reporting issues in as high as 50% of their patients.
 - d. Mental health is seeing a tremendous decline with depression, anxiety, and other impacts. Many of these seem to be particularly serious in children.
3. Impact on Substance Abuse, Violence, & Deaths of Despair
- a. There has been a substantial spike in domestic violence.
 - b. Drug and alcohol usage has spiked and overdose deaths have surged to record levels. Addiction will increase resulting creating a long-term impact.
 - c. Suicide rates have increased dramatically – particularly in younger people. California doctors have seen “a year’s worth of suicides” in 4 weeks and many more deaths from suicide than COVID-19. CDC Director Robert Redfield stated

“But there has been another cost that we’ve seen, particularly in high schools...We’re seeing, sadly, far greater suicides now than we are deaths from COVID. We’re seeing far greater deaths from drug overdose that are above excess that we had as background than we are seeing the deaths from COVID.”

- d. Even motor vehicle fatalities have spiked by 23.5% in May due to reductions in enforcement and the assumption that empty roads mean there is no need to follow a speed limit.
 - e. One study estimated that there will be 75,000 additional “deaths of despair” due to the response to COVID-19. Others, including the Cleveland Clinic, have seen dramatic increases in “broken-heart syndrome” due to the response.
4. Impacts on Human Trafficking
- a. There was an estimated 40% increase in human trafficking during the statewide house arrest orders (also known as shelter-in-place orders).
 - b. This has likely occurred because an estimated 75% of humanitarian operations worldwide stopped due to the COVID-19 response.
5. Impacts on Children
- a. The economic impact on many families is likely to result in malnutrition for children.
 - b. In families that are food secure, many other children will be at risk for obesity as they are isolated and given fewer options for activity.
 - c. One study estimated that if actions continue there could be an additional 1.2 million child deaths and 56,700 maternal deaths around the world.
6. Impacts on the Economy
- a. The economic shock brought on by the reaction to COVID-19 is greater than the 2008-2009 meltdown and likely more similar to the Great Depression.
 - b. Over 45 million Americans filed jobless claims as a result of the COVID-19 reaction.
 - c. Housing insecurity is at a crisis level with an estimated 50+ million renters living in households that have suffered job or income loss.
 - d. Foreclosures and evictions will be at an all time high, comparable to the real estate crash of 2009-10, causing more families to be homeless.

7. Policies Related to Nursing Homes (see Attachment A.1)

- a. More than 40% of US COVID-19 cases have been linked to nursing homes.
- b. Nursing homes house the highest-risk population in regard to COVID-19 (elderly people with comorbidities).
- c. States such as New York implemented policies that placed or allowed people with COVID-19 to be in nursing homes.
- d. The total deaths resulting from these policies is not yet known but it will undoubtedly be well over 10,000.

28 In short, the plaintiffs do not doubt that there are substantial numbers of excess deaths occurring in the United States and in Ohio; in fact, we submit that the number will continue to increase. These increases, however, are not due to COVID-19, rather they are due to the incredibly unconstitutional abridgement of our freedoms that has occurred and the inability of a state and nation to adapt to the foundational freedoms we have grown to rely on being shattered.

29 A final note on the impacts of the reaction to COVID-19 – the Plaintiffs recognize that the Court’s role is not to determine policy and do not ask it to do so. That said, the fact that the policy is causing greater harm than the disease, which again is roughly as dangerous as the seasonal flu, clearly demonstrates that the policy is arbitrary and capricious. The State simply cannot claim it is declaring an emergency to save life and then take actions to harm it. Further, arbitrarily taking actions such as this, is simply not Constitutional when it is infringing on our rights (which we discuss below).

Testing and Cases

30 The Plaintiffs begin this section by repeating the statement above with a few variations.

According to CDC guidance and similarly to Ohio Department of Health guidance, if a person has a cough whether they die or not, and that person lives in any of a majority of the cities in the United States (many of which have a sustained, ongoing community transmission of SARS-CoV-2) then they can be counted as a COVID-19 case.¹⁵¹ As noted above, according to Becker’s Hospital Review this results in a payment of \$180,000 for each COVID diagnosis to the relevant hospital in Ohio.

¹⁵¹ *Id* at 1

31 Naturally, there are other methods of determining whether a patient has COVID-19 and laboratory testing is among them. The problem with laboratory testing is that the tests are simply unreliable.

32 At this point, over 100 companies are manufacturing COVID-19 tests with approval from the FDA under emergency use authorization (EUA)¹⁵². This means that these tests are not validated using the typical, rigorous, scientific methods. These tests also being created with no defined standard from any centralized source (like the CDC or FDA) for what it means to “have” COVID-19.¹⁵³ This basically means that what qualifies as a “case” (i.e. positive result) of COVID-19 in a test from one manufacturer may not qualify as a case in a test from another.

33 There are two main approaches to testing, a Polymerase Chain Reaction (“PCR”) test and an antibody test. The antibody test can determine if a person has been exposed but not whether they are infected and so should not be used to test for existing infections.¹⁵⁴ Further, the antibody testing can mistake antibodies from diseases such as the common cold for COVID-19 and so their accuracy is poor at best.¹⁵⁵

34 The PCR tests are generally viewed as the means of determining if a patient has COVID-19. The problem is that the inventor of the PCR test, who won a Nobel Prize in chemistry for the invention, specifically stated that the test was not well-suited to and never designed to diagnose disease.¹⁵⁶ Much has been made about this in the press and elsewhere but the reason there are issues with PCR testing in relation to COVID is that PCR testing cannot detect how much of a

¹⁵² Pride D. “Hundreds of different coronavirus tests are being used – which is best?”, THE CONVERSATION, (Apr 4 2020)

¹⁵³ Attachment B

¹⁵⁴ Attachment C.1

¹⁵⁵ Amanda Morris, People look to COVID-19 antibody testing for answers, but no test offers guarantees, (Apr 27, 2020), <https://www.azcentral.com/story/news/local/arizona-health/2020/04/27/questions-linger-covid-19-antibody-tests-even-demand-grows/5170052002/>

¹⁵⁶ *Id* at 154

virus exists in a person.¹⁵⁷ Exposure of the existence of incomplete traces of a virus do not mean a person is infected with a disease which is part of the reason the PCR tests have an elevated rate of false positives.¹⁵⁸

35 Despite the unreliability of the tests, the State has gone to great lengths to argue recently that the number of cases of COVID-19 in Ohio are increasing.¹⁵⁹ Given the prior discussion in this section, that statement is meaningless but we will point out an underlying fact that again demonstrates the intentionally misleading nature of the State's position.

36 According to recent data from the Ohio COVID-19 Dashboard, we can see that the "spike" in cases is actually just a spike in testing. The State went from a few thousand tests per day to 25,000 tests plus per day. The positivity rate for COVID-19 has remained fairly steady but there have been more tests. Many successive tests which are positive for the same person may be counted as "cases".

37 When the Emergency was declared we heard a daily drumbeat about the danger and deaths related to COVID-19.¹⁶⁰ Now that the case fatality rate has been shown to be roughly the same as the yearly flu (see below) those numbers are simply not scary to the public. As a result, the State sees no impact from talking about fatalities and has instead begun testing more so they could tell us there are more cases and cause more fear in the general public

¹⁵⁷ *Id* at 154

¹⁵⁸ *Id* at 154

¹⁵⁹ Attachment D

¹⁶⁰ Diane Grendell, [Grendell Testifies In Support Of 'Truth In COVID-19 Statistics' Legislation](http://www.ohiohouse.gov/diane-v-grendell/press/grendell-testifies-in-support-of-truth-in-covid-19-statistics-legislation), OHIOHOUSE.GOV, (May 27, 2020), www.ohiohouse.gov/diane-v-grendell/press/grendell-testifies-in-support-of-truth-in-covid-19-statistics-legislation

Manipulation – the Psychological Approach to State/National Public Manipulation

38 Plaintiffs begin this section with the titles of some well-known studies that are valuable in understanding the communications (manipulation) approaches being taken by the CDC and Ohio officials:

- A meta-analysis of fear appeals: implications for effective public health campaigns¹⁶¹
- Predicting Public Support for Government Actions in a Public Health Crisis: Testing Fear, Organization-Public Relationship, and Behavioral Intention in the Framework of the Situational Theory of Problem Solving¹⁶²
- The fear of COVID-19 and its role in preventive behaviors¹⁶³
- How Fear Appeal Approaches in COVID-19 Health Communication May Be Harming the Global Community¹⁶⁴

¹⁶¹ K.Witte, et al., A meta-analysis of fear appeals: Implications for effective public health campaigns, HEALTH EDUCATION AND BEHAVIOR, (Oct 1, 2000), <https://doi.org/10.1177/109019810002700506>

¹⁶² MG Chon, et al., Predicting Public Support for Government Actions in a Public Health Crisis: Testing Fear, Organization-Public Relationship, and Behavioral Intention in the Framework of the Situational Theory of Problem Solving, HEALTH COMMUNICATION, (Dec 9, 2019), <https://doi.org/10.1080/10410236.2019.1700439>

¹⁶³ A.H. Pakpour, et al., The fear of COVID-19 and its role in preventive behaviors. JOURNAL OF CONCURRENT DISORDERS. (Apr 3, 2020), <https://concurrentdisorders.ca/2020/04/03/the-fear-of-covid-19-and-its-role-in-preventive-behaviors/>

¹⁶⁴ JA Stolow, et al., How Fear Appeal Approaches in COVID-19 Health Communication May Be Harming the Global Community, HEALTH EDUCATION AND BEHAVIOR (June 11, 2020), <https://doi.org/10.1177/1090198120935073>

39 The idea of using fear to manipulate the public is not new and is quite commonly used in public health. The underlying idea of each of the first three articles cited above can be summed up in a quote from the fourth article which states:

1. "... behavior change can result by increasing people's perceived severity and perceived susceptibility of a health issue through heightened risk appraisal coupled by raising their self-efficacy and response-efficacy about a behavioral solution. In this model, fear is used as the trigger to increase perceived susceptibility and severity."¹⁶⁵

40 It is interesting to note that this article was specifically published to make the point that the use/continued use of fear appeals in response to COVID-19 was against the recommendation of the authors. The reason for the article stems from the well-known fact that fear based appeals are being used to manipulate the public and have been the core justification for 6 months of incredibly unlawful behavior by states such as Ohio. Bearing in mind that after 6 months, COVID-19 has not even resulted in 4000 deaths in Ohio (even with the highly incentivized miscounting that is occurring), here are some relevant quotes:

1. 03/03/20 Acton is on video being asked about a public health initiative to supply Ohioans with a kit that include masks. She is on video stating, "I think some of these things are already out there...like they are out there for the flu *but do we listen when we're not afraid? I think that's one of the hardest things about public health...*" Acton acknowledges fear is a necessary component to drive behavior.
<https://www.facebook.com/clevelandcom/videos/657156418376138/>
2. "@DrAmyActon: This is not unlike a war..." Governor Mike DeWine (@GovMikeDeWine), TWITTER (March 18, 2020)
<https://twitter.com/GovMikeDeWine/status/1240353742555414531>
3. "... *With or without a test the virus is here. It lives among us. And we must be at war with it. We're at war with a very dangerous, lethal enemy.*" Governor Mike DeWine (@GovMikeDeWine), TWITTER (March 18, 2020)
<https://twitter.com/GovMikeDeWine/status/1240342732796813312>

¹⁶⁵ *Id* at 164

4. “In one prison dorm where we did widespread testing: 152 were positive for #COVID19, but 60 had no symptoms. This is why we must assume everyone out there is positive.” Governor Mike DeWine (@GovMikeDeWine), TWITTER (April 17, 2020)
<https://twitter.com/GovMikeDeWine/status/1251213381119479808>
5. “@DrAmyActon: This is a war. It has been a silent enemy all along. A pandemic does more than kill people - it disrupts civil society and supply chains. It can turn us against each other.” Governor Mike DeWine (@GovMikeDeWine), TWITTER (Apr 21, 2020)
<https://twitter.com/GovMikeDeWine/status/1252668353203900416>
6. “The virus is still out there. It is still killing people. The more we open up, and the more contacts you have - no matter how careful you are - cases are going to go up. This is a balance. To throw the doors open on May 1 would be totally irresponsible.” Governor Mike DeWine (@GovMikeDeWine), TWITTER (Apr 27, 2020)
<https://twitter.com/GovMikeDeWine/status/1254861184437596160>
7. “The next phase of our #ResponsibleRestartOhio plan begins Tues. w/ the reopening of consumer/retail, but #COVID19 is still out there. We can't relax. All Ohioans have the individual responsibility to continue to be cautious - if not for you, be careful for others. #StaySafeOhio” Governor Mike DeWine (@GovMikeDeWine), TWITTER (May 11, 2020) <https://twitter.com/GovMikeDeWine/status/1259858325811924992>
8. “We are in a crisis. It is a very serious crisis. It’s a crisis that we have not seen in this state for a 102 years. I hope we don’t see it for another 102 years. I hope we never see a crisis like this again. We have to treat it like the crisis it is. And having the ability, the tools, to very carefully do things that need to be done is an essential part of that. Ohio is not alone. If you look at what other states are facing, what other states are doing, governors who certainly gave every indication they would never require masks to be worn are requiring masks to be worn. And they’re doing it because they’re looking at the data. They’re doing it because frankly they’re afraid. And they’re justifiably afraid of what is going on.” “What is a stake here is the lives of Ohioans. This is a matter of life and death.” “What’s going on in these counties is very frightening. It should frighten the people of those counties. But the good news is we can fight back.” “There is something that we can do...masks, social distancing, etc.” Governor Mike DeWine Press

Conference, (time stamp 38:22-40:12, July 7, 2020),

<https://ohiochannel.org/video/governor-mike-dewine-7-7-2020-covid-19-update>

9. “Today, #COVID19 is spreading with a vengeance across parts of #Ohio. *It lurks, waiting to attack victims* in all 88 counties. Tragically, in 4 months, we’ve already lost 3,075 Ohioans to this dreaded disease - *nearly the same number of Ohioans who died in the Vietnam War.*” Governor Mike DeWine (@GovMikeDeWine), TWITTER (July 15, 2020), <https://twitter.com/GovMikeDeWine/status/1283515778730545155>

10. Dr. Andrew Thomas, Chief Clinical Officer, OSU Wexner Medical Center, explaining why none of the color coded counties are green, “The reason none of the counties are green is no matter what county you live in, you are at risk for contracting COVID-19. There is activity, to some degree, across the entire state. Until we have a vaccine or until we have a pharmacologic medication treatment that is known to the incidence of the disease and the spread of the disease, **no county will be anything less than yellow because no matter where you live you are at risk for this.**” Governor Mike DeWine Press Conference, (time stamp 13:56, July 16, 2020),

<https://ohiochannel.org/video/governor-mike-dewine-7-16-2020-covid-19-update>

41 It is difficult to argue that the State of Ohio is not intentionally manipulating the public. Plaintiffs submit that the lack of credibility we have shown herein must not be allowed to continue in the courts and, while at this point, we are not addressing the lawfulness of these actions, we do note that the opportunity to amend this complaint after discovery exists and that we may, with the Court’s approval, exercise that right should such behavior occur during this case.

Masks

42 The mask mandates that have been issued are the 21st century equivalent to the Tea Act that was a substantial factor in the Boston Tea Party. The main difference between the mask mandate and the Tea Act is that where the Tea Act raised money for a war the colonists were not involved in, the mask mandate serves no purpose whatsoever other than to identify who is willing to be compliant with unreasonable governmental mandates and, in fact, creates a number of issues.

43 Attachment B discusses all that is wrong with the mask mandate in detail but an overview follows:

1. The US Surgeon General, Dr. Fauci and many others have stated the public should not wear a mask in no uncertain terms.¹⁶⁶
2. Healthy individuals cannot spread the disease.¹⁶⁷
3. Facemasks do not stop the spread of COVID-19 making this a true case study in the arbitrary and capriciousness of this entire debacle.¹⁶⁸
4. The reason facemasks do not work is simple – the disease particles are smaller than the holes in the weave of facemasks so they simply pass through.¹⁶⁹
5. Even n95 respirators do not provide protection against COVID-19 or similar diseases.¹⁷⁰
6. Surgical masks also provide little to no protection from COVID-19 but come with a number of risks.¹⁷¹
7. Cloth masks do almost nothing to prevent the spread of COVID-19.¹⁷²
8. Wearing a mask can create result in dangerously low oxygen levels for people putting them at risk. Oxygen levels for people wearing masks can be lower than the levels required by OSHA (Occupational Health and Safety Administration).¹⁷³
9. The CO2 (Carbon Dioxide) levels caused by masks can actually lead to cognitive impairment.¹⁷⁴

¹⁶⁶ *Id* at 153

¹⁶⁷ *Id* at 153

¹⁶⁸ *Id* at 153

¹⁶⁹ *Id* at 153

¹⁷⁰ *Id* at 153

¹⁷¹ *Id* at 153

¹⁷² *Id* at 153

¹⁷³ *Id* at 153

¹⁷⁴ *Id* at 153

10. There are substantial psychological impacts to wearing masks that may have a particularly negative impact on children.¹⁷⁵

44 The collective data leaves us with an inexorable conclusion – there is no benefit to the use of a mask in protecting against COVID-19 and there is, arguably, no single greater example of the absurdity of the idea that an emergency is warranted than the fact that the State of Ohio is wasting the time and resources of Ohioans with unsafe, ineffective nonsense such as requiring masks.

How Dangerous is COVID-19 Really?

45 Given the above facts the natural reaction is to ask how dangerous COVID-19 really is.

Despite what has been said, the true data puts it into perspective. The table below shows both the Case Fatality Rate (“CFR”) and the Reproduction Rate of a number of well-known diseases.

Disease	Case Fatality Rate	Reproduction Rate
COVID-19 (Current)	0.26%	0.87 - 2.5 (Ohio specific) 0.7 - 1.9 (Globally)
MERS (2012)	34.3%	2-5
SARS-CoV (2002)	9.6%	2-5
2017-2018 Seasonal Flu	0.14%	1.53
Ebola (2014)	25%	1.51
1957-1960 Flu Pandemic	0.28%	1.65
1918-1920 Flu Pandemic	2.25%	1.8
Tuberculosis	12.3%	0.24 - 4.3

Table 1 - Case Fatality Rate (CFR) is the number of deaths divided by the number of cases. Reproduction rate is the number of people an infected person will infect.¹⁷⁶ This Table copied from Attachment A.2

¹⁷⁵ *Id* at 153

¹⁷⁶ Principles of Epidemiology in Public Health Practice, Third Edition

46 As you can see, COVID-19 has a CFR of 0.26%. This is barely a fraction of the CFR observed in the original SARS or MERS where no widespread action was taken. It also has shown to be far less contagious than the original SARS or MERS. The Spanish Flu, which COVID-19 is regularly compared to, had roughly nine times the CFR and was more contagious than the median reproduction rate from either Ohio or globally.

47 If we view the danger posed by this disease in terms of its potential to kill people infected with it and in conjunction with its level of contagiousness, then the answer to the question “how dangerous is COVID-19” is roughly the same as the yearly flu. We ask the Court, do we believe the yearly flu would warrant the reaction we have seen to COVID-19? Can anyone honestly believe that the founding fathers of our nation would have allowed for the egregious violation of Constitutional rights under the guise of an emergency for something akin to the yearly flu?

48 We believe the State will attempt to rely on modeling as a justification for the actions taken. While the Plaintiffs would relish in the opportunity to affirmatively rebut the State’s models, the State has gone to great lengths to hide them. Numerous FOIA requests and simple requests for information across the state have been ignored or denied¹⁷⁷ where citizens of Ohio have asked to see the models, data being used to make decisions, etc. so they could better understand the danger the State has said would be posed by COVID-19. The Plaintiffs and all the citizens of Ohio would like to know what the State has to hide.

A Final Summary of Facts

49 The bottom line is this, there is no emergency.

An Introduction to Applied Epidemiology and Biostatistics, Lesson 3, Section 3, CENTERS FOR

DISEASE CONTROL AND PREVENTION,

<https://www.cdc.gov/csels/dsepd/ss1978/lesson3/section3.html>; Paul L. Delamater, et al.,

Complexity of the Basic Reproduction Number (R₀), EID JOURNAL (Jan. 2019)

https://wwwnc.cdc.gov/eid/article/25/1/17-1901_article

¹⁷⁷See Attachment E

50 The curve was never real, but even if there were aspects of it that were true it has been flattened. This is clearly demonstrated by the fact that the temporary facilities were never used and subsequently dismantled.

51 If we use Ohio's COVID Dashboard numbers there have been less than 4000 deaths with COVID in 6 months. According to the CDC, in 2017 Ohio experienced:

- 28,008 deaths from heart disease;
- 25,643 deaths from cancer; and
- 8,971 deaths from accidents.¹⁷⁸

52 All without an emergency declaration. After discovery in this case we believe that we will see an actual number of deaths in Ohio from COVID (as opposed to primarily being due to comorbidities) of less than 1000.

53 As discussed above, cases are a meaningless measure of the danger of this disease and as demonstrated by the removal and cessation of any steps to expand the number of hospital beds available, not demonstrative of any true risk. In fact, the truth about the disease came out early when Amy Acton stated, "most people who get it will get sick like the flu. Some people will never know they had it; just like there are people with the flu who never know they had it, or just soldier on and Nyquil up and kind of keep going."¹⁷⁹

54 The testing for cases makes this even worse, given that there is not even a true standard for testing (see above). Instead we have numerous tests from numerous vendors that may or may not have a similar standard for what it means to "have" COVID-19. The CDC, governor, and ODH know this so they have allowed for the diagnosis of cases based on as meaningless criteria as a cough in a community in which COVID supposedly exists.

¹⁷⁸ Stats of the State of Ohio, CENTERS FOR DISEASE CONTROL AND PREVENTION, (Last visited Aug 27, 2020), <https://www.cdc.gov/nchs/pressroom/states/ohio/ohio.htm>

¹⁷⁹ Lisa Carpenter Knapp, FACEBOOK, (June 6, 2020), https://m.facebook.com/story.php?story_fbid=10222704815947962&id=1200823867

55 So minimal is this disease that the governor, ODH, CDC, and other such organizations had to use psychology, specifically motivational theory, to scare people into action. This is because no rational person would do what the public health industry would ask them to do if the true facts were shared.

56 Ultimately, under the 9th and 14th Amendments, an overwhelming amount of precedent, the spirit and letter of the Constitution, and the plain application of common sense, there is absolutely no legitimate argument for the State of Ohio using emergency powers to bypass legislative and judicial precedent and act as though our executive branch is akin to a king and court. Germs happen and this germ is really no worse than many others. If the Court is willing to allow an emergency declaration, particularly one that is apparently never-ending, and also to allow our fundamental rights to be destroyed under that emergency declaration over this, then our democratic republic is truly lost.

57 Let me say this again, there is no emergency.

Update to Facts

58 After drafting and before filing this complaint several critical new facts have come to light that are critically relevant. The first comes directly from the CDC:

1. “Table 3 shows the types of health conditions and contributing causes mentioned in conjunction with deaths involving coronavirus disease 2019 (COVID-19). For 6% of the deaths, COVID-19 was the only cause mentioned. For deaths with conditions or causes in addition to COVID-19, on average, there were 2.6 additional conditions or causes per death. The number of deaths with each condition or cause is shown for all deaths and by age groups.”¹⁸⁰

59 This incredible statement substantiates our entire discussion related to the misleading nature of the death counts. It also means that of the total reported “COVID-19 deaths” (178,998 as of

¹⁸⁰ Weekly Updates by Select Demographic and Geographic Characteristics, CENTERS

FOR DISEASE CONTROL AND PREVENTION, (Last visited Aug 28, 2020),

https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/index.htm#Comorbidities

08/28/2020¹⁸¹) only 10,739.88 of those deaths did not include “conditions or causes” other than COVID-19. This is not to say that COVID-19 was not a part of additional deaths but clearly indicates that it is incredibly unlikely that we have reached 100,000 deaths caused from COVID-19 even at this late date. It is inarguable that the Supreme Court of the United States, the American public, and the citizens of Ohio have been egregiously misled.

60 Another document also came to light that is critical in demonstrating the egregiously misleading nature of the public COVID-19 data. On the final paragraph of page 39 of a document published by the FDA regarding instructions for a COVID-19 test is the following quote:

1. Since no quantified virus isolates of the 2019-nCoV are currently available, assays designed for detection of the 2019-nCoV RNA were tested with characterized stocks of in vitro transcribed full length RNA (N gene; GenBank accession: MN908947.2) of known titer (RNA copies/ μ L) spiked into a diluent consisting of a suspension of human A549 cells and viral transport medium (VTM) to mimic clinical specimen.¹⁸²

61 In plain English this means that there are no available pure 2019-nCoV virus isolates to test against so instead an educated best guess is being used. The question this leads us to is how accurate can a test be for a virus that has not been defined (see above)? If our freedoms are to be abridged under an emergency declaration related to a disease, should it not be a requirement that the disease at least be defined?

62 Finally, we allege that this virus has been in Ohio since before the beginning of 2020 and, with no actions taken, had nearly no impact over the winter months when it would have been

¹⁸¹ CDC COVID Data Tracker, THE CENTERS FOR DISEASE CONTROL AND PREVENTION, (Last visited Aug 28, 2020), https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fus-cases-deaths.html#cases

¹⁸² See Attachment C.2

strongest. This allegation is based on the fact that a case was found in Pike County in November of 2019. While not in evidentiary format at this point, we do have saved screenshots of communications from the Pike County Health Department confirming this. We firmly believe we will be able to substantiate this and several other cases through discovery.

63 We remind the Court that under 18 U.S.C. 47 Section 1040 criminal fraud in connection with major disaster or emergency benefits is defined as:

1. Whoever, in a circumstance described in subsection (b) of this section, knowingly—
 - a. falsifies, conceals, or covers up by any trick, scheme, or device any material fact; or
 - b. makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or representation in any matter involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with a major disaster declaration under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) or an emergency declaration under section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191), or in connection with any procurement of property or services related to any emergency or major disaster declaration as a prime contractor with the United States or as a subcontractor or supplier on a contract in which there is a prime contract with the United States, shall be fined under this title, imprisoned not more than 30 years, or both.

64 We believe that this Section is relevant to many of the medical centers that are promoting this false narrative and profiting from doing so. We further remind the Court that an act of fraud is outside the scope of the authority of the various office holders in a number of State agencies. While the Plaintiffs do not supposed to be in a position to prosecute such fraud the facts seem to suggest that the State of Ohio and many others would have known that this disease is far less

dangerous than it has been shown to be and that it knowingly concealed and covered up relevant data.

Law

Count 1

See Attached Motion for Preliminary Injunction

Count 2

The exigencies underlying the declaration for emergency no longer exist.

65 Under Home Building & Loan Assn. v. Blaisdell, 290 U.S. 398 (1934) the Supreme Court stated, “Whether the emergency still exists upon which the continued operation of the law depends is always open to judicial inquiry.” P. 290 U. S. 442. Citing Chastleton Corp. v. Sinclair, 264 U.S. 543 (1924). It is under this precedent that we challenge the continuation of the emergency declaration in the state of Ohio.

66 In *Sinclair* the Court stated that “A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change.” P. 264 U. S. 547. Both *Blaisdell* and *Sinclair* provide clear authority that an emergency and the rules promulgated thereunder must end when the facts of the situation no longer support the continuation of the emergency. *Sinclair* focused almost entirely on the concept that a change in circumstance and, in reversing the lower Court’s decision stated, “the facts should be gathered and weighed by the court of first instance and the evidence preserved for consideration by this Court if necessary.” P. 264 U. S. 549

67 This is clearly similar to the situation faced by Plaintiffs here. The State emergency declaration was premised on, at best, incorrect information and misleading information. We have demonstrated on the face of this complaint that the exigencies underlying the declaration for emergency no longer exist and will show at trial the full extent to which this is true. As such we humbly ask the Court to recognize that these exigencies no longer exist pursuant to Count 2.

Count 3

The public health emergency based on Executive Order 2020-01D has ended.

68 If the exigencies supporting an emergency declaration no longer exist, then the emergency declaration itself must end pursuant to *Blaisdell*. Plaintiffs have demonstrated in this complaint and will further demonstrate at trial that the facts used to justify the emergency declared to mitigate COVID-19 were incorrect and/or false and so the declaration itself is no longer valid. The *Sinclair* Court stated, “a Court is not at liberty to shut its eyes to an obvious mistake when the validity of the law depends upon the truth of what is declared.” That simply could not be more relevant, nor more controlling than as applied to the case at hand and, as such, Plaintiffs humbly request the Court to declare an end to the public health emergency declared in Ohio.

Count 4

All actions taken under Executive Order 2020-01D are invalid

69 Pursuant to Count 3, and under *Sinclair* Plaintiffs humbly request the Court to declare that all orders issued under the authority of the public health emergency in Ohio are invalid. Again, under *Sinclair*, these orders were issued under the authority of an emergency declared on false or misleading statements of facts and are thus unlawful.

70 Ohio has a perfectly valid administrative procedures act and, should the state see fit to create these rules through a legal and democratic rulemaking process they may. The State may not, however, allow such rules to continue to stand when they have been made based on false or misleading facts.

Count 5

Executive Order 2020-01D is no longer valid pursuant to ORC 119.03G(1).

71 Under ORC 119.03G(1), Executive Order 2020-01D is no longer valid. ORC 119.03G(1) states:

1. If the governor, upon the request of an agency, determines that an emergency requires the immediate adoption, amendment, or rescission of a rule, the governor shall issue an order, the text of which shall be filed in electronic form with the agency, the secretary of state, the director of the legislative service commission, and the joint committee on agency rule review, that the procedure prescribed by this section with respect to the adoption, amendment, or rescission of a specified rule is suspended. The agency may then adopt immediately the emergency rule, amendment, or rescission and it becomes effective on the date the rule,

amendment, or rescission, in final form and in compliance with division (A)(2) of section 119.04 of the Revised Code, is filed in electronic form with the secretary of state, the director of the legislative service commission, and the joint committee on agency rule review. The director shall publish the full text of the emergency rule, amendment, or rescission in the register of Ohio.

2. Except as provided in division (G)(2) of this section, the emergency rule, amendment, or rescission shall become invalid at the end of the one hundred twentieth day it is in effect. Prior to that date the agency may adopt the emergency rule, amendment, or rescission as a nonemergency rule, amendment, or rescission by complying with the procedure prescribed by this section for the adoption, amendment, and rescission of nonemergency rules. The agency shall not use the procedure of division (G)(1) of this section to readopt the emergency rule, amendment, or rescission so that, upon the emergency rule, amendment, or rescission becoming invalid under division (G)(1) of this section, the emergency rule, amendment, or rescission will continue in effect without interruption for another one-hundred-twenty-day period, except when section 106.02 of the Revised Code prevents the agency from adopting the emergency rule, amendment, or rescission as a nonemergency rule, amendment, or rescission within the one-hundred-twenty-day period.

72 This clearly indicates that the legislature of the State of Ohio intended for emergency declarations in the State of Ohio to be limited in length to 120 days without enabling legislation. Plaintiffs believe that this clear statement of the law should apply to Executive Order 2020-01D itself and so this order should be ruled to no longer be valid.

Count 6

All orders issued by state agencies under authority of the State Emergency Declaration should be terminated 120 days after issuance pursuant to ORC 119.03G(1).

73 As noted above, any and all orders issued under Executive Order 2020-01D more than 120 days before the present date are invalid. Plaintiffs also contend that the clear legislative intent of ORC 119.03G(1) is that a modification of an order issued under an emergency declaration should not act to extend the duration of that order past 120 days. As such Plaintiffs humbly

request the Court invalidate and grant injunction against enforcement of any orders issued more than 120 days ago and any modifications of those same orders.

Count 7

Injunctive relief should be granted against future public health emergency declarations in the State of Ohio unless enabling legislation is passed.

74 Executive Order 2020-01D cites ORC 5502.22. ORC 5502.22 states:

1. There is hereby established within the department of public safety an emergency management agency, which shall be governed under rules adopted by the director of public safety under section 5502.25 of the Revised Code. The director, with the concurrence of the governor, shall appoint an executive director, who shall be head of the emergency management agency. The executive director may appoint a chief executive assistant, executive assistants, and administrative and technical personnel within that agency as may be necessary to plan, organize, and maintain emergency management adequate to the needs of the state. The executive director shall coordinate all activities of all agencies for emergency management within the state, shall maintain liaison with similar agencies of other states and of the federal government, shall cooperate with those agencies subject to the approval of the governor, and shall develop a statewide emergency operations plan that shall meet any applicable federal requirements for such plans. The executive director shall have such additional authority, duties, and responsibilities as are prescribed by the governor and the director or provided by law in all matters relating to emergency management that may be reflected in other sections of the Revised Code. The executive director shall advise the governor and director on matters pertaining to emergency management on a regular basis.
2. Whenever the disaster services agency or director is referred to or designated in any statute, rule, contract, or other document, the reference or designation shall be deemed to refer to the emergency management agency or executive director, as the case may be.
3. For the purposes of emergency management, the executive director, with the approval of the director, may participate in federal programs, accept grants from,

and enter into cooperative agreements or contractual arrangements with any federal, state, or local department, agency, or subdivision thereof, or any other person or body politic. Whenever the duties of the emergency management agency overlap with rights or duties of other federal, state, or local departments, agencies, subdivisions, or officials, or private agencies, the executive director shall cooperate with, and not infringe upon the rights and duties of, the other public or private entities.

4. Funds made available by the United States for the use of the emergency management agency shall be expended by that agency only for the purposes for which the funds were appropriated. In accepting federal funds, the emergency management agency shall abide by the terms and conditions of the grant, cooperative agreement, or contractual arrangement and shall expend the funds in accordance with the laws and regulations of the United States.

75 Nowhere in this legislation is there referenced anything related to a public health emergency. We do not believe the Governor is authorized under the Ohio Revised Code to declare an emergency for public health. This position is further backed by the fact that elsewhere in the Ohio Revised Code is language specifically related to a public health emergency. ORC 3715.74 allows the Governor to declare a public health state of emergency as to adulterated consumer product but does not mention an infectious disease. ORC 3701.834 allows for the creation of a public health emergency preparedness fund and ORC 3701 also references powers under a public health emergency but nowhere is there language enabling the Governor to actually declare a public health emergency except in reference to adulterated consumer products. 3701.048 specifically references the governor's declaration of an emergency that affects public health but as noted, the only enabling legislation to actually declare a public health emergency is under 3715.74.

76 Ultimately Plaintiff's will demonstrate at trial that, under the Ohio Revised Code, the Governor does not have authority to declare a public health emergency for an infectious disease and humbly request the Court invalidate the current emergency on those grounds and grant injunctive relief against any future emergencies being declared on that basis.

Count 8

Permanent injunctive relief against future actions taken under the guise of this or any other public health emergencies that violate legislative or Constitutional rights should be granted unless the appropriate standards of review are met under established law or precedent.

77 Under Count 9 we request the Court to declare intermediate scrutiny to be the minimal standard to review State actions taken under an emergency declaration. Several actions taken under Ohio's declaration of emergency have violated right of citizens already subject to intermediate or strict scrutiny and we discuss those here.

78 Since *Jacobson* judicial precedent has recognized a number of rights, so enshrined in our Constitution, that they are considered fundamental. Over and over the Court has ruled that these rights may not be abridged unless the State can show that it is necessary to serve a compelling governmental interest. Further, even if that incredibly high standard is met, the State must also show that it has narrowly tailored such law or regulation to use the **least restrictive** means available to serve that purpose.

79 Since the arrival of COVID-19, the State of Ohio has declared an emergency and, instead of narrowly tailoring a solution to serve a compelling governmental interest, fired a missile at the entire set of fundamental rights the Court has sought to protect. We believe the Courts are still a coequal branch of the government¹⁸³ and that a disease roughly as deadly as the seasonal flu should not serve as grounds to invalidate the precedent it has set over the past 200+ years of our nation. Further, in doing this, the State has harmed each of the plaintiffs in this case by violating their various fundamental rights as discussed above.

80 We submit to the Court that the many enumerated fundamental rights recognized since *Jacobson* cannot possibly be limited by a public health emergency order for more than the minimal amount of time necessary to ensure they are necessary to serve a compelling governmental interest. We further believe that even in the extremely rare instance in which a legitimate public health emergency exists that those same fundamental rights may only be

¹⁸³ The Court is a coequal branch of government and its role is to determine the Constitutionality of governmental actions. Marbury v. Madison, 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803)

limited in the narrowest way that allows the government to serve the stated, compelling governmental interest. Any other interpretation leads to the inevitable conclusions that state police power is superior to Constitutional rights and that the role of the federal judiciary is also subservient to those same police powers which is clearly unconstitutional.¹⁸⁴

81 The number of orders that have been issued, redacted, changed, and otherwise altered by the State of Ohio that violate established Constitutional precedent are far too extensive, and frankly convoluted, to review.¹⁸⁵ We believe the entire approach must be invalidated and that if the State chooses to take further action, that it should be reissued in compliance with established Constitutional precedent – not at the whims of an out-of-control State executive branch and unelected bureaucrats. Below is a partial list of fundamental rights that have been violated and that we believe more than substantiate our point.

Statewide House Arrest Without Due Process

82 The plaintiffs in this case have universally suffered restrictions on movement through the house arrest (shelter in place) order issued by the State of Ohio against its citizens without due process. While this order has since been lifted it has been repeatedly threatened again and remains on the State Coronavirus Dashboard as a possibility.¹⁸⁶

83 We believe the State will attempt to suggest that authority to do this under a declared emergency health situation would stem from the established right to quarantine. This terrifying abuse of law developed under the guise of state police powers truly serves to demonstrate how critical it is that the Court grant relief in this case.

¹⁸⁴Article VI, Clause 2 of the Constitution, the 14th Amendment; Hebert v. Louisiana, 272 U.S. 312 (1926)

¹⁸⁵ See Attachment G

¹⁸⁶ Ohio COVID-19 Risk Level Guidelines for the Public, OHIO.GOV, (Last visted August 20, 2020), <https://coronavirus.ohio.gov/static/OPHASM/COVID-19-Risk-Level-Guidelines-GP.pdf>

84 As a background, quarantine is generally defined as the separation of individuals exposed to an infection but who are not yet ill from those that are not exposed.¹⁸⁷ Isolation, on the other hand, is the separation of infected individuals from the uninfected.¹⁸⁸ Both of these tend to be used interchangeably though there is little legal authority specifically for isolation.

85 Authority for quarantine is well established and exists in both state and federal law. At the time of authoring this complaint we do not intend to challenge the Constitutionality of current quarantine laws and rules but think it is clear that, under no stretch of the imagination, could a statewide house arrest order be construed as a Constitutional use of quarantine powers – state or federal.

86 In Section 2929.01 of the Ohio Revised Code, house arrest is defined as:

1. "House arrest" means a period of confinement of an offender that is in the offender's home or in other premises specified by the sentencing court or by the parole board pursuant to section 2967.28 of the Revised Code and during which all of the following apply:
2. The offender is required to remain in the offender's home or other specified premises for the specified period of confinement, except for periods of time during which the offender is at the offender's place of employment or at other premises as authorized by the sentencing court or by the parole board...

87 This seems indistinguishable from the shelter in place order issued by the State starting on Monday, March 23, 2020 which stated: "With exceptions as outlined below, all individuals currently living within the State of Ohio are ordered to stay at home or at their place of residence

¹⁸⁷ Quarantine and Isolation, THE CENTERS FOR DISEASE CONTROL AND PREVENTION, (Last visited Aug 31, 2020) <https://www.cdc.gov/quarantine/>

¹⁸⁸ *Id* at 187

except as allowed in this Order.”¹⁸⁹ Within the same order Ohioans were barred from gathering together, barred from “non-essential travel”, and only allowed to leave their homes for permitted, essential activities.

88 Under this order there nothing to distinguish between infected or uninfected people. There was also nothing in the order meant to tailor these draconian measures on areas of high infection or where people were dying in significant numbers. This statewide house arrest order was not even done under the pretense of quarantine as is separately and specifically asked interstate travelers to self-quarantine.¹⁹⁰

89 We can cite no precedent for a statewide house arrest order because it has never before been done, particularly in response to a disease that is roughly as dangerous as the seasonal flu. Despite this lack of precedent, we can point to the Due Process Clause of the Constitution and state unequivocally that a statewide house arrest order is clearly unconstitutional under any circumstances and that a quarantine order should be far more narrowly tailored than this to withstand Constitutional scrutiny.

Right to Privacy, the 9th Amendment, and *Roe vs. Wade*

90 *Roe v. Wade* is, arguably, the most controversial and seminal case of the 20th Century. Whether it is good law or not, it has been upheld in more ways than can be counted. A careful reading of the ruling in this case may leave one with certain questions but one item that is clear is the Court’s position on *Jacobson* and the idea of intervening in an individual’s healthcare choices.

91 At 78 in the *Roe v. Wade* decision the Court states,

1. “ In fact, it is not clear to us that the claim asserted by some amici that one has an unlimited right to do with one’s body as one pleases bears a close relationship to the right of privacy previously articulated in the Court’s

¹⁸⁹ Director’s Stay At Home Orders, OHIO DEPARTMENT OF HEALTH,

https://content.govdelivery.com/attachments/OHOOD/2020/03/22/file_attachments/1407840/Stay%20Home%20Order.pdf

¹⁹⁰ *Id* at 4

decisions. The Court has refused to recognize an unlimited right of this kind in the past. Jacobson v. Massachusetts, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643 (1905) (vaccination); Buck v. Bell, 274 U.S. 200, 47 S.Ct. 584, 71 L.Ed. 1000 (1927) (sterilization).

2. We, therefore, conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified and must be considered against important state interests in regulation.

92 The Court then goes on to note that the right to privacy is broad enough to include abortion and, at 83, that:

1. Where certain 'fundamental rights' are involved, the Court has held that regulation limiting these rights may be justified only by a 'compelling state interest,' Kramer v. Union Free School District, 395 U.S. 621, 627, 89 S.Ct. 1886, 1890, 23 L.Ed.2d 583 (1969); Shapiro v. Thompson, 394 U.S. 618, 634, 89 S.Ct. 1322, 1331, 22 L.Ed.2d 600 (1969); Sherbert v. Verner, 374 U.S. 398, 406, 83 S.Ct. 1790, 1795, 10 L.Ed.2d 965 (1963), and that legislative enactments must be narrowly drawn to express only the legitimate state interests at stake. Griswold v. Connecticut, 381 U.S., at 485, 85 S.Ct., at 1682; Aptheker v. Secretary of State, 378 U.S. 500, 508, 84 S.Ct. 1659, 1664, 12 L.Ed.2d 992 (1964); Cantwell v. Connecticut, 310 U.S. 296, 307-308, 60 S.Ct. 900, 904-905, 84 L.Ed. 1213 (1940); see Eisenstadt v. Baird, 405 U.S., at 460, 463-464, 92 S.Ct., at 1042, 1043-1044 (White, J., concurring in result).

93 This is a clear statement that abortion is included, but not central to, privacy rights. It also means that despite it not being a core privacy right, it is still subject to a strict scrutiny review. Given that the court stated this specifically considering *Jacobson*, it is clear that the narrow ruling within *Jacobson* was intended to remain just that – a very narrowly applied ruling.

94 Within our case the state has implemented numerous orders related to contact tracing¹⁹¹, invasive testing for COVID-19¹⁹² (despite its minor risk), and other absurd items such as wearing masks¹⁹³ (which, as noted in the facts above, do not have any relation to preventing this disease.) None of these orders can possibly meet the standard of strict scrutiny and none were narrowly tailored to meet a compelling governmental interest.

95 One of two things must be true: 1) either the state must show that orders related to masks, contact tracing, and any mandatory tests for COVID-19 are necessary to serve a compelling governmental interest and that they are narrowly tailored to meet that interest, or 2) we must overturn the above related parts of Roe v. Wade which the Court has been unwilling to do for nearly 50 years.

¹⁹¹“Contact tracing involves identifying people who are likely to get sick because of being in contact with those who have tested positive. Contact tracing is an important part of Ohio moving forward as more businesses and recreation sites reopen.”, OHIO DEPARTMENT OF HEALTH, (April 28, 2020), <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/responsible-restart-ohio/contact-tracing/contact-tracing>

¹⁹² Testing in Nursing Homes, OHIO DEPARTMENT OF HEALTH, (Aug. 3, 2020) <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/healthcare-providers-and-local-health-districts/Testing-Nursing-Homes/>; Scott Springer, Mandatory COVID-19 testing for Ohio high school contact sports sparks petitions, lawsuits, CINCINNATI ENQUIRER, USA NETWORK (Aug. 4, 2020) <https://www.dispatch.com/sports/20200804/mandatory-covid-19-testing-for-ohio-high-school-contact-sports-sparks-petitions-lawsuits>

¹⁹³ Governor DeWine Issues Statewide Mask Order, Travel Warning, (July 22, 2020) <https://governor.ohio.gov/wps/portal/gov/governor/media/news-and-media/covid19-update-07222020>

96 In considering this we believe that the Court should also strongly consider the 9th Amendment to the Constitution. In arguing for the 9th Amendment, James Madison stated:

1. “It has been objected also against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration; and it might follow by implication, that those rights which were not singled out, were intended to be assigned into the hands of the General Government, and were consequently insecure. This is one of the most plausible arguments I have ever heard against the admission of a bill of rights into this system; but, I conceive, that it may be guarded against. I have attempted it, as gentlemen may see by turning to the last clause of the fourth resolution.”¹⁹⁴

97 The 9th Amendment has been reviewed in many ways over the centuries and we will not include a full analysis in this document. That said, if ever there has been an example of an undeclared fundamental right that our founders would never have believed needed to be specified in the Constitution, the right to freely breathe fresh air and go about one’s business without a mask would be it. This is even more true in light of the fact that there is absolutely no valid, scientific evidence that masks are facilitating any governmental interest at all – compelling or otherwise.

98 In other words, the 9th Amendment to the Constitution of the United States of America reserves to each citizen a right to breathe fresh air and exhale breath freely and without interference or limitations imposed by government. The fundamental right to breathe freely is essential to life and interference with the essence of necessary vital functions is absolute tyranny by government. The torture of water boarding is but a variant of masking a prisoner. Masking a citizen’s face to restrict air flow serves no scientific purposes except to harm the human citizen and is an unconstitutional malicious act by government.

¹⁹⁴ 1 ANNALS OF CONGRESS 439 (1789)

Future Takings Without Just Compensation

99 The State’s Orders are unconstitutional under Article 1, Section 19 of the Ohio Constitution and the 5th Amendment of the United States Constitution, taking the Plaintiffs’ private and personal property without just compensation.¹⁹⁵

100 In Ohio, property rights are the most sacred fundamental right.¹⁹⁶ In the present case the State of Ohio has and may again require the Plaintiffs to totally shut their businesses down for a period of time and has placed numerous, onerous requirements for reopening, without following a legislative rulemaking process, under the pretense of a health emergency. In Ohio, closure of a business, even if nominal, is considered a “severe burden,” which mandates the “strict scrutiny” test.¹⁹⁷

101 As discussed throughout this document there is a lack of any “compelling state interest” to justify the “severe burden” imposed on the constitutional property rights under the “strict scrutiny” test; and the State bears the burden of showing otherwise.¹⁹⁸

Freedom of Assembly & Freedom of Religion

102 If any aspect of the response to COVID-19 demonstrates the unequal protection under the law that Ohio has provided, it is related to freedom of assembly. Freedom of assembly is, as are many of the rights discussed in this complaint, a fundamental Constitutional right that should

¹⁹⁵ For just compensation for the Plaintiffs for their “temporary total regulatory takings”, Lucas vs. South Carolina Coastal Council (1992) 505 US 1003, 112 SCt 2886, 120 L. Ed 2nd 798; For just compensation for the Plaintiffs for their “temporary partial regulatory takings,” Penn Central Transportation Co. vs. New York City (1978) 438 US 104, 98 S.Ct. 2646; 57 L. Ed. 2nd 631;

¹⁹⁶ City of Norwood vs. Horney (2006) 110 OS 3rd 353;

¹⁹⁷ Property rights are the most “precious” and “fundamental” rights, *Id* at 207; Given the “severe burden” upon constitutional property rights, the “strict scrutiny” doctrine applies, *Id* at 207

¹⁹⁸ *Id* at 197

only be limited under strict scrutiny.¹⁹⁹ It is also the single most relevant right to the spread of a dangerous disease. The CDC, Ohio Department of Health, and the rest of the Executive branch of Ohio have issued numerous orders limiting or advocating against assembly for nearly every possible purpose except for the exercise of free speech. However, when the George Floyd riots occurred, and other free speech rallies happened, there was little negative response and instead, positive accommodation to even violent crowd behavior.²⁰⁰

103 Religious freedom may only be abridged under strict scrutiny.²⁰¹ How then, can the State of Ohio openly permit assembly for rioting and demonstrations²⁰² while limiting it for religious purposes? The answer is that they cannot under the Constitution or the Religious Freedom Restoration Act. These rallies and demonstrations saw nearly no one following the public health guidelines the State of Ohio was forcing upon all other citizens in every other area of life, but nothing was done to curb it. We ask that the State demonstrate how, using real data, that allowing freedom of assembly in regard to an exercise of free speech somehow meets the standard of review for strict scrutiny but gathering to exercise religious rights does not.

Overview of Constitutional Violations Not Discussed Elsewhere

104 This is our abridged list and partial discussion of issues not discussed elsewhere in the complaint. Plaintiffs welcome the opportunity to brief the Court more fully on these issues prior to trial or as needed:

1. The Freedom of Movement & Interstate Travel has been ignored - Fundamental Right to Travel:

¹⁹⁹ Clark v. Community for Creative Non-Violence, 464 U.S. 1016, 104 S.Ct. 545, 78 L.Ed.2d 721 (1983), <http://cdn.loc.gov/service/ll/usrep/usrep468/usrep468288/usrep468288.pdf#page=8>

²⁰⁰ See Attachment H

²⁰¹ Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682 (2014)

²⁰² Claire Roth, Protests Spread To Columbus Suburbs: 'You Are Elite People That Can Make Change', WOSU PUBLIC MEDIA, (Jun 3, 2020), <https://radio.wosu.org/post/protests-spread-columbus-suburbs-you-are-elite-people-can-make-change#stream/0>

- a. Shapiro v Thompson, 394 US 618, 629-631 (1969)
 - i. This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement. That proposition was early stated by Chief Justice Taney in the Passenger Cases, 7 How. 283, 48 U. S. 492 (1849): "For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States."
- b. Williams v. Fears, 179 U.S. 270, 274 (1900), quoted in Schactman v. Dulles, 225 F.2d 938, 944 (1955).
 - i. "[u]ndoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily of free transit from or through the territory of any State is a right secured by the 14th amendment and by other provisions of the Constitution."³⁵
- c. Kent v Dulles, 357 U.S. at 125.
 - i. "[t]he right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law."
- d. In 1966 in United States v. Guest, the Court rearticulated that the Constitution did not explicitly mention the right to travel because: a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created.... The constitutional right to travel from one State to another ... Occupies a position so fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.
- e. Plaintiff Renz had plans to travel over the summer that he was unable to fulfill due to prohibitions on travel that substantially interfered with this fundamental right.

- f. All clients were impacted by the house arrest orders which interfered with their fundamental right to travel even within the state.
2. The Second Amendment, Right to Bear Arms has been interfered with:
 - a. Gun stores were shut down or operation was limited thus infringing upon the right to bear arms.
 - b. District of Columbia v. Heller, 554 U.S. 570 (2008) may be the closest decision related to this issue, but Plaintiffs believe intermediate or strict scrutiny to be the appropriate level of review here.
 - c. During the business shutdown client's right to bear arms was substantially burdened by the arbitrary and capricious closure of stores dealing in arms.
3. The Right to Work has been abridged:
 - a. The right to engage in common occupations of life and earn a living has not, to Plaintiffs' knowledge, been specifically ruled on in any existing caselaw within this Court's jurisdiction though it has been referenced. We believe the reason for that is that it is so apparent that it simply has not been tested. Plaintiffs have been injured by business closures and being unable to pursue common occupations of life and earn a living.
 - b. In Butler v. Wolf the Court analyzed this issue under several relevant cases and the 14th Amendment and noted that, "There is no question, then, that the Fourteenth Amendment recognizes a liberty interest in citizens – the Business Plaintiffs here – to pursue their chosen occupation. The Court then goes on to analyze the appropriate level of scrutiny to be applied in the instance of a violation of this right ultimately deciding that the State's actions in designating some businesses as "life-sustaining" while others were not as arbitrary and capricious. While Plaintiffs believe the appropriate standard for generally denying the right to participate in the common occupations of life should be strict scrutiny, the question may be irrelevant since the Defendant's actions were, without a doubt, arbitrary and capricious. Plaintiffs also cannot help but notice the parallels between the categorizations of businesses as "life-sustaining" and "non-life sustaining" and the Ohio standards of "essential" and "non-essential".

- c. In discussing the Constitutionality of a legal alien’s right to work the Court in Truax v. Raich, 239 U.S. 33 (1915) stated, “It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure. Butchers' Union Co. v. Crescent City Co., 111 U. S. 746, 111 U. S. 762; Barbier v. Connolly, 113 U. S. 27, 113 U. S. 31; Yick Wo v. Hopkins, *supra*; Allgeyer v. Louisiana, 165 U. S. 578, 165 U. S. 589, 165 U. S. 590; Coppage v. Kansas, 236 U. S. 1, 236 U. S. 14.”

Count 9

The lowest standard of review available under an emergency declaration is intermediate scrutiny though higher standards may still apply.

105 Under *Blaisdell* the Supreme Court noted:

1. Emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved. The Constitution was adopted in a period of grave emergency. Its grants of power to the Federal Government and its limitations of the power of the States were determined in the light of emergency, and they are not altered by emergency. What power was thus granted and what limitations were thus imposed are questions which have always been, and always will be, the subject of close examination under our constitutional system.

106 Plaintiffs believe that this is critical in reviewing actions taken under an emergency declaration. Inherently, an emergency declaration allows an executive branch of the state or federal government to bypass certain legislative checks or balances. Plaintiffs contend that with these additional powers inherently come additional responsibilities in the form of heightened levels of scrutiny as applied to any actions taken under an emergency declaration. Without this extra level of protection, the balance of power will be thrown off.

107 While we do not accept that any order issued under an emergency declaration, without legislative checks and balances, should be reviewed under a rational basis, the State may argue that some do under the League of Independent Fitness, et al. v Gretchen Whitmer, et al., Case

No. 20-1581. This case could only be argued as relevant to our case as pertaining to specific executive orders abridging rights based on a rational basis review. Plaintiffs *Whitmer* apparently conceded that the issue tested in the case was to be reviewed on a rational basis, we disagree with that and intend to contest any right abridged under an emergency order reviewed on the truly toothless standard set for rational basis review under non-emergency orders.

108 Under a rational basis review of an order, law, regulation, etc. the plaintiff bears the burden of demonstrating that no rational basis exists for a state action.²⁰³ A state action taken based on fraud and/or false pretenses cannot meet the standard for a rational basis review of the action.²⁰⁴ We have demonstrated in this complaint, and will further demonstrate at trial that the actions of

²⁰³ “We have often noted that restrictions of this kind are valid provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.” Citing City Council of Los Angeles v. Taxpayers for Vincent, 466 U. S. 789 (1984); United States v. Grace, 461 U. S. 171 (1983); Perry Education Assn. v. Perry Local Educators' Assn., 460 U. S. 37, 45-46 (1983); Heffron v. International Society for Krishna Consciousness Inc., 452 U. S. 640, 647-648 (1981); Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc., 425 U. S. 748, 771 (1976); Consolidated Edison Co. v. Public Service Comm'n of N. Y., 447 U. S. 530, 535 (1980); Clark v. Community for Creative Non-Violence, 464 U.S. 1016, 104 S.Ct. 545, 78 L.Ed.2d 721 (1983), <http://cdn.loc.gov/service/ll/usrep/usrep468/usrep468288/usrep468288.pdf#page=6>

²⁰⁴ Romer v. Evans, 517 U.S. 620 (1996)

the State of Ohio are not based on facts. They are based on misleading information,²⁰⁵ nonsensical standards,²⁰⁶ and an apparent desire to terrify the public into action.²⁰⁷

109 Within the established framework for rational basis review several things become apparent. First, the Courts, particularly the Sixth Circuit, generally show extreme deference to elected officials and regulatory agencies in questions of social or economic policy. The Supreme Court went so far as to state that, “In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if any reasonably conceivable state of facts could provide a rational basis for the classification.” FCC v. Beach Communications, Inc., 508 U.S. 307 (1993). It was using this reasoning that the Sixth Circuit decided League of Independent Fitness, et al. v Gretchen Whitmer, et al., Case No. 20-1581.

110 *Beach* is an entirely different case than what we are filing and the *Whitmer* decision was made without the benefit of the Court being briefed on controlling precedence. The *Beach* decision was based entirely on a question of social/economic policy. There was no emergency declaration, no legislative or judicial checks and balances on the separation of powers were being dealt with, and the issue was based on an [arguably] proper rulemaking. Contrast that to an

²⁰⁵ *Id* at 1

²⁰⁶ Dr. Andrew Thomas, Chief Clinical Officer, OSU Wexner Medical Center, explaining why none of the color coded counties are green, “The reason none of the counties are green is no matter what county you live in, you are at risk for contracting COVID-19. There is activity, to some degree, across the entire state. Until we have a vaccine or until we have a pharmacologic medication treatment that is known to the incidence of the disease and the spread of the disease, no county will be anything less than yellow because no matter where you live you are at risk for this.” Governor Mike DeWine Press Conference, (time stamp 13:56, July 16, 2020), <https://ohiochannel.org/video/governor-mike-dewine-7-16-2020-covid-19-update>

²⁰⁷ See Attachment I

executive branch that is bypassing democracy by issuing orders under an emergency declaration, without any rulemaking or even sensible process in place, and using that power in ways that are out-of-line with even the most conservative view of Ninth Amendment rights (as demonstrated by issuing rules governing things like how far apart we must sit from each other.)

111. Under no conceivable circumstance could these rules pass the legislatively defined rulemaking process as it stands. If they could, there has been plenty of time to do so given that this emergency has continued for seven months and, according to the Governor, has no end in sight. Essentially the State of Ohio has used the concept of an emergency to bypass the will of the people and the legislatively defined processes for rulemaking. Given this, we reject, outright, that any orders issued under an emergency declaration should be reviewed on anything less than intermediate scrutiny. Our argument for this stems from the above cited *Blaisdell* and *Sinclair* cases.

112 In an emergency the rights of citizens are inherently abridged by nature of the action. The Supreme Court has specifically stated that “A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change,” *Chastleton Corp. v. Sinclair*, 264 U.S. 543 (1924), and also that “It is always open to judicial inquiry whether the exigency still exists upon which the continued operation of the law depends.” *Home Building & Loan Assn. v. Blaisdell*, 290 U.S. 398 (1934). No reading of these decisions could possibly result in any conclusion other than that the Court expects the continuation of an emergency declaration to be challengeable on the facts and that, should the facts or knowledge regarding the circumstances under which the emergency was declared were to change then the emergency would necessarily cease.

113 Plaintiffs further argue that the State must bear the burden of proof. Any Executive branch acting under any declared emergency will have far greater access to information about the emergency than its citizens. It will further have resource and experts to demonstrate the need for such actions. The costs of developing a lawsuit including hiring and recruiting experts is well beyond what is affordable for an average person and forcing that burden on citizens when the Executive branch is the one taking the actions would have a very disproportionate impact on people with less economic capacity to fight. It is further impossible to fight such an action

without the necessary information to determine the accuracy of the premise, which is whether an emergency truly exists, and which the State of Ohio is denying to its citizens to this very day.

114 In briefing the Court in the *Whitmer* case, Plaintiffs believe the Court was not made aware of the *Blaisdell* and *Sinclair* decisions and they were not referenced in the decision. These cases were frankly somewhat obscure and probably overlooked but are clearly controlling on this case. In a typical rational review case based on social or economic issues *Beach* is clear in its position that the Court does not want to step into the position of the legislature. We do not believe any aspect of our case should be reviewed under the rational basis standard. In the case of an emergency declaration the idea that facts do not matter is simply a misstatement of the law under *Sinclair* and *Blaisdell* and would allow the executive branch to step into the role of legislature. If the *Whitmer* court were briefed on the precedence in place it would have become clear that the decision to remove the factual considerations from the case runs afoul of existing precedence.

115 We finish this piece of the complaint with this: under the *Whitmer* decision this and any other emergency would be able to continue without end and without challenge for no reason beyond the fact that the State Executive branch said so. That is being demonstrated every day in Ohio. Going back to the very beginning of our judicial system, the Supreme Court stated that, "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." Marbury v. Madison, 1 Cranch 137, 5 U. S. 163. In this case, the protection of law can only be challenged through the demonstration that the "facts" the State has used as a foundation for their actions are false. Thankfully, the Court, in its wisdom realized this and gave us the precedence set in *Blaisdell* and *Sinclair* to ensure justice could be done.

Impact of Allowing Rational Basis without Review of Facts

116 As discussed, we do not believe that a rational basis review of orders issued without the legal and Constitutional protections afforded by the traditional rulemaking process (i.e. rules made under an emergency declaration) should be evaluated under any less than intermediate scrutiny. While we believe we have submitted sufficient evidence on the face of this complaint to demonstrate the arbitrary and capricious nature of the State's actions, a discussion of the impact of the Court's ruling needs to occur in regards to law this critical.

117 An emergency has been declared and rights curtailed as discussed throughout this document. Actions such as (but not limited to) arbitrarily determining which businesses can remain open and which must close are clear violations of the Fourteenth Amendment. The data provided to the public, courts, and legislature is misleading and we have shown and will continue to show that impact of this disease is roughly equal to the yearly flu. While we firmly believe that an emergency declaration that allows for the curtailing of any fundamental right would inherently be subject to intermediate or higher scrutiny, these orders are unable to even meet the rational basis test since they were premised on false or misleading information²⁰⁸ and issued under an emergency declaration.

118 The response to COVID-19 has destroyed our economy, likely killed more people than the disease itself, and violated countless rights. This was all done under emergency powers and was able to occur without question based on the incorrect application of precedence in cases like *Whitmer*. When a state can continue to take actions without the burden of justifying those actions with facts and those facts cannot be questioned, we see the absurd results occur that have happened here.

119 If the Courts allow precedence to be set where a State may declare an emergency and it cannot be questioned based on the facts, then the citizens run the risk of state executives ignoring the law and using emergency powers for the entire term of their tenure. No emergency has been declared banning unhealthy food but it is a leading cause of heart disease which kill far more people per year than COVID-19.²⁰⁹ No emergency or state action has been declared banning transportation despite the tremendous number of highway deaths per year and the fact that the State of Ohio clearly is unconcerned about the right of interstate travel.²¹⁰ We have not even

²⁰⁸ *Id* at 1

²⁰⁹ 647,000 Americans die from heart disease each year. Heart Disease Facts, CDC.GOV, (Last visited Aug 27, 2020) <https://www.cdc.gov/heartdisease/facts.htm>

²¹⁰ Early Estimate of Motor Vehicle Traffic Fatalities in 2018, Traffic Safety Facts, NHTSA (June 2019),

file:///C:/Users/uabah/AppData/Local/Temp/Early%20Estimate%20of%20Motor%20Vehicle%2

taken action to lock down our nation despite the apparent dangers posed by the sun and other carcinogenic things in the environment though there are projected to be 606,520 cancer deaths this year.²¹¹

120 All these actions would be legal and nearly impossible to challenge in the Courts if not for the wisdom of the Supreme Court in *Sinclair* and *Blaisdell*. If this can be done in reaction to COVID-19 the same could be done for things like highway deaths, STDs, obesity, or any of a number of other “public health issues” that cause far more damage than COVID-19. Frankly, the result is a new America that was in no way ever envisioned by our founding fathers.

Count 10

Permanent injunction against future public health emergencies for more than an extremely limited period of time without regular reauthorization by the legislative body should be granted.

121 To seek a permanent injunction, the plaintiff must pass the four-step test: (1) that the plaintiff has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for the injury; (3) that the remedy in equity is warranted upon consideration of the balance of hardships between the plaintiff and defendant; and (4) that the permanent injunction being sought would not hurt public interest. See, e.g., Weinberger v. Romero—Barcelo, 456 U.S. 305, 311–313, 102 S.Ct. 1798, 72 L.Ed.2d 91 (1982); Amoco Production Co. v. Gambell, 480 U.S. 531, 542, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987).

122 The facts demonstrate that this entire emergency declaration and all the orders promulgated from such declaration were done contra to science and with what appears to be intent to mislead the public, courts, and legislature. These facts must be reviewed under *Blaisdell* and *Sinclair* and

OTraffic%20Fatalities%20in%202018.pdf; Ohio Fatal Crash Summary Statistics by Year, Ohio State Highway Patrol, OHIO.GOV, <https://www.statepatrol.ohio.gov/statistics/statspage3.asp>

²¹¹ Cancer Statistics Center, AMERICAN CANCER SOCIETY, (last visited Aug.27, 2020),

[https://cancerstatisticscenter.cancer.org/?_ga=2.73444886.564826218.1597868910-](https://cancerstatisticscenter.cancer.org/?_ga=2.73444886.564826218.1597868910-1216452062.1597868910#!/)

[1216452062.1597868910#!/](https://cancerstatisticscenter.cancer.org/?_ga=2.73444886.564826218.1597868910-1216452062.1597868910#!/)

those facts provide a clear demonstration for the Constitutional necessity of injunctive relief against future public health emergencies, for more than a very brief period of time, without a check on the action such as repassing authorization at regular intervals in a legislature.

123 This is, to the Plaintiff's knowledge, a case of first impression. Never has the executive branch of a state government attempted to disregard the letter and spirit of the Constitution to this extent, and more so, to do so under a non-existent emergency. What we have seen occur in Ohio and around our nation is more akin to the behavior of despots than elected officials in a free republic.

124 While we recognize that there may on occasion be a legitimate public health emergency, and that under state police power the states are most equipped to protect their citizenry, allowing for an unending declaration of emergency without a check on such power is completely unconstitutional. An emergency declaration under various state and federal laws allows for the suspension of law,²¹² rights,²¹³ and many other things held dear in our nation and simply cannot ever be allowed to be used, even briefly, as a tool of oppression.

125 As discussed elsewhere in this document, many fundamental rights have been suspended under the COVID-19 "emergency." The Supreme Court has held that these rights may not be abridged without meeting the strict scrutiny test. That test simply cannot be met here given the facts of the case. It is apparently left to the Court to clarify to the State that the State is barred from misleading the public, legislative branch, and the courts and then ignoring the Constitution on those grounds.

²¹² "During an outbreak, people typically accept limits on the liberty of those who are infected as necessary to protect the uninfected." Amy Lauren Fairchild, et al., What does a state of emergency mean in the face of the coronavirus?, OSU.EDU (Apr 3, 2020),

<https://news.osu.edu/what-does-a-state-of-emergency-mean-in-the-face-of-the-coronavirus/>

²¹³"That is important because emergency powers not only allow state governments to 'provide for' populations, but also 'decide for' individuals in ways that might limit their rights." *Id* at 28

126 While it is no longer discussed by the State, it bears noting that the premise behind the declaration of this emergency was flattening the curve.²¹⁴ Even the CDC has stated that it would never be possible to stop COVID-19 and that we simply needed to flatten the curve so our healthcare system was not overrun.²¹⁵ Given that our Constitutional rights are sacred in this nation and that they should have only been limited in the narrowest possible way to achieve the [arguably] compelling governmental interest of preventing our healthcare system from being overrun, why have we dismantled the temporary emergency hospitals that were built when this started despite reopening?²¹⁶ Why have we not been working frantically to expand our infrastructure so that these noble state executives could perform their Constitutional duty to protect, rather than destroy, the rights of Ohioans and Americans in general? It appears Governor DeWine already gave his answer to this when stated that we all need to become accustomed to the “new normal...”²¹⁷ We assume, based on his actions, this new normal to be a

²¹⁴ “If our hospitals are overwhelmed thousands of Ohioans will not get the care they need. If our nurses and doctors get sick, if they die because we do not have facilities to protect them, that is a personal tragedy for them and for all of us.” Governor Mike DeWine- (@GovMikeDeWine), TWITTER (2:24PM Mar. 24, 2020); “When people are dying and people don't feel safe, the economy is not going to come back. We have to #FlattenTheCurve so that when the wave comes, it's not as big as it would have been and we are prepared for it.” Governor Mike DeWine (@GovMikeDeWine), TWITTER, (2:25PM Mar. 24, 2020)

²¹⁵ *Id* at 4

²¹⁶ Austin Williams, CDC's 'flatten the curve' graphic shows why social distancing amid coronavirus pandemic is necessary, FOX29, (Mar. 13<https://www.fox29.com/news/cdcs-flatten-the-curve-graphic-shows-why-social-distancing-amid-coronavirus-pandemic-is-necessary>)

²¹⁷ “A person who has consulted with the ODH, who requested anonymity, talked twice with high level officials inside the Ohio Department of Health and the DeWine

permanent state of emergency where the executive branch of Ohio simply places itself above the Constitution, the Courts, and the state Legislature.

127 We submit that the Plaintiffs have been and will continue to be injured by the violation of their Constitutional rights, that injunctive relief is an appropriate remedy under the law,²¹⁸ that no hardship would come on the State by granting permanent injunctive relief against further Constitutional violations, and that the public interest is best served by ensuring future actions are limited by the Constitution.

128 We leave to future legislative action the proper legal and Constitutional methods for properly dealing with emergency declarations as it is primarily a legislative question. We do, however, believe those actions must be limited by the Constitution which clearly bars unending emergency declarations unsupported by any semblance of facts.

Count 11

Injunctive relief should be granted against any future enforcement actions by the Ottawa County Board of Health against the implementation or enforcement of illegal or

administration. On both occasions, the advisor asked why data is suppressed and presented with a bias toward worst-case scenarios. On both occasions the advisor was told the message is packaged and delivered to change how people feel and think about Coronavirus. The end goal is to build compliance with the new normal.”

Jack Windsor, Governor DeWine Suppresses Data Disproving COVID-19 Policies, WMFD.COM (May 28, 2020) https://www.wmfd.com/article/governor-dewine-suppresses-data-disproving-covid-19-policies/3899?fbclid=IwAR3PgEt-W_A34afg-xyAQSCxelzs4nl1shpMsxuN1BJfYemkc7_HOSrJX1w; Governor Mike DeWine (@GovMikeDeWine), TWITTER (Apr. 29), <https://twitter.com/govmikedewine/status/1255560470670577666?lang=en>

²¹⁸ Ex Parte: Edward T. Young, 209 U.S. 123

unconstitutional State emergency orders against 20th Century Lanes as discussed throughout this Complaint.

129 The Ottawa County Board of Public Health has adopted and continued to enforce the illegal and unconstitutional orders issued by the State of Ohio as discussed herein.²¹⁹ Particularly relevant are the State's orders related to the shutdown of businesses which was originally issued on March 22, 2020.²²⁰ This order violated the equal protection of requirements of the 14th Amendment and is now void pursuant to ORC 119.03G(1). The Re-Open Ohio plan put forth by the State is nothing more than amendment to the original shutdown order and is clearly invalid under ORC 119.03G(1) yet this continues to be enforced along with a number of other orders that have already expired or were unconstitutional making them void ab initio.

Count 12

Damages should be granted for Plaintiffs in an amount of \$75,000.00 each or an amount determined appropriate by the jury pursuant to 42 U.S. Code § 1983.

130 At trial and as discussed throughout this document, Plaintiffs have and will demonstrate numerous violations of various legal and Constitutional rights. Under 42 USC 1983 Plaintiffs will be eligible for damages based on these violations.

Jacobson and Emergency Declarations

131 The State has²²¹ and most likely will rely on Jacobson v. Massachusetts, 197 U.S. 11 (1905) as controlling case law in this case. We would like to point out several key aspects of *Jacobson* to ensure proper application of the controlling law and to request clarification on aspects of the law not addressed.

²¹⁹CORONAVIRUS (Covid-19) and You, OTTAWA COUNTY HEALTH DEPARTMENT, (Last visited Oct 13, 2020), <http://www.ottawahealth.org/index.asp?id=344>

²²⁰ *Id* at 74

²²¹Hartman v. Acton, S.D.Ohio No. 2:20-CV-1952, 2020 U.S. Dist. LEXIS 72068 (Apr. 21, 2020)

132 Before addressing *Jacobson* specifically, it should be stated that no emergency was declared, nor were any fundamental rights abridged under an emergency declaration in that case. The Court in *Jacobson* ruled on a regulation that [arguably] did not infringe on fundamental rights in a majority of an entire state’s population (it was a local rule). It is inconceivable to see how any part of the *Jacobson* ruling would constitute justification for a statewide emergency declaration that suspended the rights of individuals at the whim of a state executive branch without any clear end to such action.

133 The first item of note related to *Jacobson* is that it was decided in 1905 and arose from a criminal prosecution. As noted herein, medicine has changed substantially since that time. The *Jacobson* decision was also based on smallpox. Smallpox is a truly dangerous disease that is thought to date back to the 3rd century BC. According to the CDC the historic case fatality rate was approximately 30% and those that survived were left scarred. The smallpox vaccination was initially developed around the year 1800 and had been demonstrated effective for over 100 years at the time of *Jacobson*.²²²

134 COVID-19, by comparison, is nowhere near as dangerous – as noted elsewhere in this document the case fatality rate is closer to that of the yearly flu or around (and likely under) 0.26%²²³ - and is, according to the CDC, new. While we will not get into a debate as to the novelty of this disease, the application of *Jacobson*, a criminal case based on a properly legislatively passed state law regarding a legitimately dangerous and well-known disease, to the current situation with COVID-19 does not serve as justification for the actions taken by Ohio’s executive branch.

135 The language of the *Jacobson* ruling indicates that the needs of a small minority should not control the rights of the vast majority. The Court actually states, “We are unwilling to hold it to be an element in the liberty secured by the Constitution of the United States that one person, or a minority of persons, residing in any community and enjoying the benefits of its local

²²² History of Smallpox, CENTERS FOR DISEASE CONTROL AND PREVENTION,

<https://www.cdc.gov/smallpox/history/history.html>

²²³ See Page 43

government, should have the power thus to dominate the majority when supported in their action by the authority of the State.” As noted in the facts above and attached documents, the emergency declaration in Ohio occurred when only three cases were present.²²⁴ Since then it has become a well-established fact that COVID-19 presents nearly no risk to a majority of the population and a substantial risk to only a very few.²²⁵ The response to COVID-19, however, is impacting everyone which was clearly not the intent of the Court in *Jacobson*.

136 The Court in *Jacobson* also addressed the issue of a vaccine ordinance being a political question. The *Jacobson* Court states, “These offers, in effect, invited the court and jury to go over the whole ground gone over by the legislature when it enacted the statute in question... the defendant did not offer to prove that, by reason of his then condition, he was, in fact, not a fit subject of vaccination...” This case differs substantially in that regard as we have included substantial proof with this filing that the actions taken by the State of Ohio are not justified by data and will show further evidence validating our position throughout this case.

137 The case at hand also differs in that no legislation passed at the state level has given the Governor or Department of Public Health authority for a never-ending emergency declaration that is based on ever-changing standards and allows for the indefinite bypassing of numerous state laws and federal Constitutional rights. While we will not here debate whether there were grounds for an emergency declaration in March, we do not see anything in the *Jacobson* case or elsewhere that would suggest an unending emergency declaration for a disease roughly as dangerous as the flu is a legal exercise of power that should not be reviewed by the courts. Passing on this case as a political question leaves the people of the State of Ohio without any legitimate form of recourse.

²²⁴ See Table on page 43

²²⁵ According to the Ohio COVID Dashboard dated 07/28/2020 52% of the less than 4000 deaths occurred in individuals 80+ years old and 91% of the deaths in people over 60. This leaves less than 10% of the deaths in Ohio to people under 60 years old with all of this being based on Ohio’s misleading numbers that have yet to be verified.

138 In *Jacobson*, the issue was based on a single individual refusing a fine for a local regulation about an established vaccine. The ruling in this case did not even require Jacobson to get the vaccine – only to pay the fine. The Court did, however, state,

1. “Before closing this opinion, we deem it appropriate, in order to prevent misapprehension as to our views, to observe -- perhaps to repeat a thought already sufficiently expressed, namely -- that the police power of a State, whether exercised by the legislature or by a local body acting under its authority, may be exerted in such circumstances or by regulations so arbitrary and oppressive in particular cases as to justify the interference of the courts to prevent wrong and oppression.”²²⁶

139 The *Jacobson* Court spent substantial time in the ruling noting that this ruling was not meant to bar future review of public health issues when Constitutional issues were involved. The last line of the ruling states, “We now decide only that the statute covers the present case, and that nothing clearly appears that would justify this court in holding it to be unconstitutional and inoperative in its application to the plaintiff in error.”

140 At this point we can definitively say that we are not dealing with strong, historic, and widespread scientific support that COVID-19 is anywhere comparable to smallpox. Rather we are dealing with intentionally misleading information being used to invalidate Constitutional rights under the guise of public health. If the court is unwilling to review any action based on public health it is essentially rendering itself invalid. Public health has been viewed as encompassing everything from obesity, to drugs, to racism. Should the court allow a racially discriminatory state law under the theory that it is somehow a remedy to a public health issue? Of course it should not and neither should it use the cover of a political issue to avoid recognizing that a public health emergency declared based on invalid science and false pretense is an acceptable excuse to ignore Constitutional rights as have been ignored here.

141 The bottom line is that instead of citing *Jacobson* as precedent supporting the State’s position, an unbiased reading of *Jacobson* supports the premise that the Court must invalidate this entire emergency declaration and all rules promulgated thereby.

²²⁶ *Jacobson v. Mass.*, 197 U.S.11(U.S. 1905)

Conclusion

142 The emergency declaration and subsequent actions taken by the State of Ohio are not and have never had even a rational basis. The State has a duty to protect the rights of its citizens. When those rights must be abridged, they may only be abridged after meeting the proper level of review for any given right. Broad actions that wipe away all that it means to be an American can never be permitted and such actions should never be taken again.

143 The evidence submitted, and this complaint demonstrate, on their face, that the State's actions are based on false and misleading data and are wholly unconstitutional. This is a case of first impression, but it is only a case of first impression because never in American history has a state so completely disregarded the Constitutional rights of citizens to this extent.

144 Had the State followed the letter of the law, they would have worked to expand the number of beds and emergency equipment, kept that additional capacity in place, and removed it when the "curve" had been flattened. Such actions would have been narrowly tailored to both preserve our rights and protect the public. Instead the State, based on false and misleading data simply fired a missile at our Constitutional and God given rights and instead went down the road of authoritarianism.

145 We implore the Court to exercise its role as a coequal branch of the government and fulfill its duty to clarify the indisputable fact that the actions taken by the State of Ohio are unconstitutional. We humbly ask the Court to order that the emergency declaration and all actions taken subsequent to it in Ohio be declared void and order that no further actions against the rights of the people of Ohio be taken in violation of the letter and spirit of the Constitution.

Respectfully submitted,

/s Thomas Renz

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The Plaintiffs hereby demand a trial by jury on all issues so triable.

Respectfully submitted,

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