

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

CHRISTOPHER SEAMAN and ELIZABETH
ALLISON LYONS, individually and on
behalf of C.S., a minor, et al.,

Plaintiffs,

v.

THE COMMONWEALTH OF VIRGINIA, et
al.,

Defendants.

Case No. 3:22-cv-6-NKM

**DEFENDANTS' ANSWER TO THE FIRST AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Defendants the Commonwealth of Virginia, Governor Glenn Youngkin, Attorney General Jason Miyares, Virginia Superintendent of Public Instruction Jillian Balow, and Acting Virginia Health Commissioner Colin Greene (collectively, the “Defendants”), by counsel, respectfully submit the following answer to Plaintiffs’ First Amended Complaint filed on February 18, 2022 (ECF No. 24). In response to the First Amended Complaint, Defendants admit, deny, or otherwise aver as follows:

INTRODUCTION¹

1. Defendants admit the allegation in the first sentence of Paragraph 1. Defendants admit only the allegation in the second sentence of Paragraph 1 that the General Assembly passed S.B. 739 on February 16, 2022. Defendants deny the allegations in the last two sentences of

¹ For ease of reference, Defendants refer to Plaintiffs’ headings and titles, but to the extent those headings and titles could be or are construed to contain factual allegations, those allegations are denied.

Paragraph 1. Executive Order No. 2 and S.B. 739 speak for themselves, and Defendants deny any allegations in Paragraph 1 that are inconsistent with that order and statute.

2. Defendants deny the allegations in Paragraph 2.

3. Statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 3 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 3 that are inconsistent with those updates.

4. Statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 4 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 4 that are inconsistent with those updates. Defendants admit the allegation in the second sentence of Paragraph 4.

5. Statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 5 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 5 that are inconsistent with those updates.

6. Defendants deny the allegation in Paragraph 6 that Executive Order No. 2 and S.B. 739 “have made it more difficult for [school districts] to protect the health and safety of Virginia’s children.” Executive Order No. 2 and S.B. 739 speak for themselves, and Defendants deny any allegations in Paragraph 6 that are inconsistent with that order and statute.

7. Defendants admit the allegation in the first sentence of Paragraph 7. Defendants admit only the allegation in the second sentence of Paragraph 7 that the General Assembly passed S.B. 739 on February 16, 2022. Executive Order No. 2 and S.B. 739 speak for themselves, and Defendants deny any allegations in Paragraph 7 that are inconsistent with that order and statute.

8. Executive Order No. 2 and S.B. 739 speak for themselves, and Defendants deny any allegations in Paragraph 8 that are inconsistent with that order and statute.

9. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the first and second sentences of Paragraph 9. Statements of the Centers for Disease Control and Prevention speak for themselves. Defendants deny any allegations in Paragraph 9 that are inconsistent with those statements.

10. Paragraph 10 presents conclusions of law to which no response is required. To the extent a response is required, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act speak for themselves, and Defendants deny any allegations in Paragraph 10 that are inconsistent with those statutes.

11. Defendants deny the allegations in Paragraph 11.

12. Defendants deny the allegation in the first sentence of Paragraph 12 that Executive Order No. 2 and S.B. 739 “are directly contrary to the CDC’s guidance for COVID-19 Prevention in K-12 Schools.” The statements of the Centers for Disease Control and Prevention speak for themselves, and Defendants deny that Plaintiffs’ characterization in Paragraph 12 of the Centers for Disease Control and Prevention’s guidance is accurate or complete. Defendants only admit that Plaintiffs have accurately quoted portions of the Centers for Disease Control and Prevention website referenced in Paragraph 12 as it currently exists. The cited website, however, states that “CDC’s new COVID-19 Community Levels recommendations align precautions for educational

settings with those for other community settings. CDC is in the process of updating this page with these new recommendations. Updates will be posted here when available.” Defendants deny any remaining allegations in Paragraph 12.

13. Defendants deny the allegation in the first sentence of Paragraph 13 that Executive Order No. 2 and S.B. 739 are “inconsistent with the national medical consensus.” Statements of the American Academy of Pediatricians and the American Medical Association speak for themselves, and Defendants deny that Plaintiffs’ characterizations of those statements in Paragraph 13 are accurate or complete. Defendants deny any remaining allegations in Paragraph 13.

14. Defendants deny the allegations in Paragraph 14.

15. Defendants deny the allegations in Paragraph 15.

16. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations regarding why Plaintiffs are bringing this action. Defendants deny the allegation in the first sentence of Paragraph 16 that Executive Order No. 2 and S.B. 739 will have “potentially calamitous consequences for students with disabilities.” Executive Order No. 2 and S.B. 739 speak for themselves, and Defendants deny any allegations in the first clause of the second sentence of Paragraph 16 that are inconsistent with that order and statute. Defendants deny the allegation in the second clause of the second sentence of Paragraph 16. The last sentence of Paragraph 16 presents conclusions of law to which no response is required, and Defendants deny any allegations in Paragraph 16 that are inconsistent with the cited authority and the allegation that they are forcing “parents to make such a choice.”

JURISDICTION AND VENUE

17. Paragraph 17 presents conclusions of law to which no response is required.

18. Paragraph 18 presents conclusions of law to which no response is required. Defendants deny that this Court has subject matter jurisdiction because Plaintiffs lack Article III standing.

19. Paragraph 19 presents conclusions of law to which no response is required. Defendants, however, deny the allegations in Paragraph 19 because Plaintiffs lack Article III standing.

20. Paragraph 20 presents conclusions of law to which no response is required.

PARTIES

21. Defendants deny the allegations in the last two sentences of Paragraph 21. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 21.

22. Defendants deny the allegations in the second to last sentence of Paragraph 22. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 22.

23. Defendants deny the allegations in the second to last sentence of Paragraph 23. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 23.

24. Defendants admit only the allegation in the sixth sentence of Paragraph 24 that the Chesterfield Public Schools Board voted to not require student masking. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 24, including any allegation that the Chesterfield Public Schools Board's vote was in order to "to follow Executive Order 2."

25. Defendants admit only the allegation in the second to last sentence of Paragraph 25 that Cumberland County Public Schools voted to not require student masking. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 25, including the allegation that the Cumberland County Public Schools voted to not require student masking “in response to Executive Order 2.”

26. Defendants deny the allegations in the first half of the second to last sentence of Paragraph 26. Defendants deny the allegations in the last sentence of Paragraph 26. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 26.

27. Defendants admit only the allegation in the second to last sentence of Paragraph 27 that the Bedford County Public School Board voted to make masks optional for students. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 27.

28. Defendants admit only that the Chesapeake Public Schools Board adopted an optional masking policy for students on January 20, 2022. Defendants deny the allegations in the last sentence of Paragraph 28. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 28.

29. Defendants admit only the allegation in the sixth sentence of Paragraph 29 that Loudoun County Public Schools no longer required students to wear masks beginning February 17, 2022. Defendants deny the allegations in the second to last sentence of Paragraph 29. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 29.

30. Defendants deny the allegations in the last sentence of Paragraph 30. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 30.

31. Defendants admit only that the Chesapeake Public Schools Board adopted an optional masking policy for students on January 20, 2022. Defendants deny the allegations in the last sentence of Paragraph 31. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 31.

32. Defendants admit only that Loudoun County Public Schools do not currently require students to wear masks. Defendants deny the allegations in the second clause of the last sentence of Paragraph 32. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 32.

33. Defendants admit the allegations in Paragraph 33.

34. Defendants deny the allegation in the first sentence of Paragraph 34 that the Governor is responsible for overseeing, managing, and directing policy for the Office of the Attorney General. Defendants admit the remaining allegations in the first sentence of Paragraph 34. Defendants admit the allegations in the second sentence of Paragraph 34. Statements of the Governor and members of his cabinet speak for themselves. Defendants deny any allegations in Paragraph 34 that are inconsistent with those statements. The last sentence of Paragraph 34 is a conclusion of law to which no response is required.

35. Defendants admit the allegations in the first sentence of Paragraph 35. The second sentence of Paragraph 35 presents a conclusion of law to which no response is required. Defendants admit the allegation in the third sentence of Paragraph 35. Statements of the Attorney General speak for themselves. Defendants deny any allegations in Paragraph 35 that are

inconsistent with those statements. The last sentence of Paragraph 35 is a conclusion of law to which no response is required.

36. Defendants admit the allegations in the first and second sentences of Paragraph 36. Defendants admit that the Virginia Department of Education has updated its Guidance for COVID-19 Prevention in Virginia PreK-12 Schools. That guidance speaks for itself. Defendants deny any allegations in Paragraph 36 that are inconsistent with that guidance. The last sentence of Paragraph 36 is a conclusion of law to which no response is required.

37. Defendants admit the allegations in the first and second sentences of Paragraph 37. Defendants admit that the Virginia Department of Health has updated its Guidance for COVID-19 Prevention in Virginia PreK-12 Schools. That guidance speaks for itself. Defendants deny any allegations in Paragraph 37 that are inconsistent with that guidance. The last sentence of Paragraph 37 is a conclusion of law to which no response is required.

38. Paragraph 38 presents conclusions of law to which no response is required.

39. Paragraph 39 presents conclusions of law to which no response is required.

STATEMENT OF FACTS

The Current State of the COVID-19 Pandemic

40. Defendants admit the allegations in Paragraph 40.

41. Statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 41 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 41 that are inconsistent with those updates.

42. Statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 42 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 42 that are inconsistent with those updates.

43. Statements of the Virginia Hospital and Healthcare Association speak for themselves. Defendants deny any allegations in Paragraph 43 that are inconsistent with those statements.

44. Statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 44 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 44 that are inconsistent with those updates.

45. Defendants admit only the allegation in the first clause of the second sentence of Paragraph 45 that children under 5 years of age currently remain ineligible for COVID-19 vaccination. As to the remaining allegations in Paragraph 45, statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 45 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 45 that are inconsistent with those updates.

COVID-19 Poses Extreme Risks to Students with Disabilities

46. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the first sentence of Paragraph 46. Statements of the Centers for Disease

Control and Prevention speak for themselves. Defendants deny any allegations in Paragraph 46 that are inconsistent with those statements.

47. Statements of the Centers for Disease Control and Prevention speak for themselves. Defendants deny any allegations in Paragraph 47 that are inconsistent with those statements. The Nature Communications article cited in Paragraph 47 speaks for itself. Defendants lack knowledge or information sufficient to form a belief about the remaining allegations in Paragraph 47.

48. Statements of the U.S. Department of Education speak for themselves. Defendants deny any allegations in Paragraph 48 that are inconsistent with those statements. Defendants lack knowledge or information sufficient to form a belief about the remaining allegations in Paragraph 48.

49. Statements of the Centers for Disease Control and Prevention and the U.S. Government Accountability Office speak for themselves. Defendants deny any allegations in Paragraph 49 that are inconsistent with those statements. Defendants lack knowledge or information sufficient to form a belief about any remaining allegations in Paragraph 49.

50. Defendants deny the allegations in the first sentence of Paragraph 50. Statements of the Centers for Disease Control and Prevention speak for themselves. Defendants deny any allegations in Paragraph 50 that are inconsistent with those statements.

51. Defendants deny the allegations in the first sentence of Paragraph 51. Statements of the Centers for Disease Control and Prevention and the studies cited in Paragraph 51 speak for themselves. Defendants deny any allegations in Paragraph 51 that are inconsistent with those statements.

52. Statements of the Centers for Disease Control and Prevention speak for themselves. Defendants deny any allegations in Paragraph 52 that are inconsistent with those statements.

Executive Order 2 and S.B. 739

53. Defendants admit only the allegation that “Governor Youngkin, on his first day in office, issued Executive Order 2” in Paragraph 53. Defendants deny the remaining allegations in Paragraph 53.

54. Paragraph 54 presents conclusions of law to which no response is required. To the extent a response is required, Executive Order No. 2 speaks for itself, and Defendants deny any allegations in Paragraph 54 that are inconsistent with that order.

55. Defendants admit that Executive Order No. 2 rescinded Executive Order No. 79. Executive Orders Nos. 2, 79 speak for themselves, and Defendants deny any allegations in Paragraph 55 that are inconsistent with those orders. Prior orders of the State Health Commissioner and prior guidance of the Department of Health and Department of Education speak for themselves. Defendants deny any allegations in Paragraph 56 that are inconsistent with those prior orders and guidance statements.

56. Defendants deny the allegation in the first sentence of Paragraph 56 that S.B. 1303 required Virginia schools to require mask-wearing. The prior order of the State Health Commissioner referenced in Paragraph 56 speaks for itself, and Defendants deny any allegations in Paragraph 56 that are inconsistent with that prior order. Defendants admit the allegation in the last sentence of Paragraph 56. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 56.

57. Defendants deny the allegations in Paragraph 57.

58. The media report cited in Paragraph 58 speaks for itself. Statements of the Superintendent of Chesapeake Public Schools speak for themselves. Defendants deny any allegations in Paragraph 58 that are inconsistent with those statements.

59. Defendants admit only that the Chesterfield Public Schools Board voted to provide parental choice regarding student masking. Statements of the Chesterfield Public Schools Board speak for themselves. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 59.

60. Defendants admit only that the Bedford County School Board voted to make masks optional for students. Statements of the Bedford County School Board speak for themselves. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 60.

61. Executive Order No. 2 and the cited Interim Guidance for COVID-19 Prevention in Virginia PreK-12 Schools speak for themselves. Defendants deny any allegations in Paragraph 61 inconsistent with Executive Order No. 2 and the cited interim guidance.

62. Defendants admit that Defendant Greene rescinded Order of Public Health Emergency No. 10. That order speaks for itself. Defendants deny any allegations in Paragraph 62 inconsistent with that order.

63. Statements of the Attorney General speak for themselves. Defendants deny any allegations in Paragraph 63 that are inconsistent with those statements.

64. Statements of the Governor's spokesperson, the Lieutenant Governor, and other Virginia officials speak for themselves. Defendants deny any allegations in Paragraph 64 that are inconsistent with those statements.

65. Defendants admit only the allegation in the first sentence of Paragraph 65 that the General Assembly passed, and the Governor signed, S.B. 739 on February 16, 2022. S.B. 739 speaks for itself, and Defendants deny any allegations in Paragraph 65 that are inconsistent with the statute.

66. The statements of the Manassas City Schools, Henrico County Public Schools, and Loudoun County Public Schools speak for themselves. Defendants deny any allegations in Paragraph 66 that are inconsistent with those statements.

67. Defendants deny the allegations in Paragraph 67.

68. Defendants deny the allegations in Paragraph 68.

69. Defendants deny the allegations in Paragraph 69.

Harm to the Plaintiffs

70. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 70.

C.S.

71. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 71.

72. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 72.

73. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 73.

74. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 74. Statements of the Centers for Disease Control and Prevention speak for themselves. Defendants deny any allegations in Paragraph 74 that are inconsistent with those statements.

75. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 75.

76. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 76.

77. Defendants admit the allegations in the first sentence of Paragraph 77. As to the remaining allegations in Paragraph 77, statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 77 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 77 that are inconsistent with those updates.

78. Statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 78 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 78 that are inconsistent with those updates.

79. Defendants admit only the allegation in the first sentence of Paragraph 79 that Albemarle County Schools announced that the district would continue to require student masking in January 2022. Defendants deny that requiring masking for students remains the approach of Albemarle County Schools. Defendants deny the allegations in the second sentence of Paragraph 79 and any remaining allegations in Paragraph 79.

J.N.

80. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 80.

81. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 81. Statements of the Centers for Disease Control and Prevention

speak for themselves. Defendants deny any allegations in Paragraph 81 that are inconsistent with those statements.

82. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 82.

83. Defendants admit the allegations in the first sentence of Paragraph 83. As to the remaining allegations in Paragraph 83, statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 83 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 83 that are inconsistent with those updates.

84. Statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 84 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 84 that are inconsistent with those updates.

85. Defendants admit only that the Manassas City Public School District maintained a student mask mandate for a period of time following issuance of Executive Order No. 2. Defendants lack knowledge or information sufficient to form a belief about the truth of any remaining allegations in Paragraph 85.

86. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 86.

87. Defendants deny the allegations in the first sentence of Paragraph 87. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the second sentence of Paragraph 87.

88. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 88.

B.B.

89. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 89.

90. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 90.

91. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 91. Statements of the Centers for Disease Control and Prevention speak for themselves. Defendants deny any allegations in Paragraph 91 that are inconsistent with those statements.

92. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 92.

93. Defendants admit the allegations in the first sentence of Paragraph 93. As to the remaining allegations in Paragraph 93, statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 93 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 93 that are inconsistent with those updates.

94. Statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 94 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 94 that are inconsistent with those updates.

95. Defendants admit only that Henrico County Public Schools maintained a student mask mandate for a period of time following issuance of Executive Order No. 2. Defendants lack knowledge or information sufficient to form a belief about the truth of any remaining allegations in Paragraph 95.

96. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the first and second sentences of Paragraph 96. Defendants deny the allegations in the third sentence of Paragraph 96.

97. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 97.

G.D.

98. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 98.

99. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 99. Statements of the Centers for Disease Control and Prevention speak for themselves. Defendants deny any allegations in Paragraph 99 that are inconsistent with those statements.

100. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 100.

101. Defendants admit the allegations in the first sentence of Paragraph 101. As to the remaining allegations in Paragraph 101, statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 101 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 101 that are inconsistent with those updates.

102. Statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 102 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 102 that are inconsistent with those updates.

103. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 103.

104. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the first sentence of Paragraph 104. Defendants admit only that as of January 27, 2022, there is no longer a mask mandate for students in Chesterfield County Public Schools. Defendants deny the remaining allegations in Paragraph 104.

105. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the first and second sentences of Paragraph 105. Defendants deny the allegations in the third sentence of Paragraph 105.

J.D.

106. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 106.

107. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 107.

108. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 108. Statements of the Centers for Disease Control and Prevention speak for themselves. Defendants deny any allegations in Paragraph 108 that are inconsistent with those statements.

109. Defendants admit the allegations in the first sentence of Paragraph 109. As to the remaining allegations in Paragraph 109, statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 109 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 109 that are inconsistent with those updates.

110. Statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 110 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 110 that are inconsistent with those updates.

111. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 111.

112. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 112.

113. Defendants deny the allegations in the first sentence of Paragraph 113. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the second sentence of Paragraph 113.

114. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 114.

115. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 115.

Q.O.

116. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 116.

117. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 117.

118. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 118. Statements of the Centers for Disease Control and Prevention speak for themselves. Defendants deny any allegations in Paragraph 118 that are inconsistent with those statements.

119. Defendants admit the allegations in the first sentence of Paragraph 119. As to the remaining allegations in Paragraph 119, statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 119 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 119 that are inconsistent with those updates.

120. Statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 120 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 120 that are inconsistent with those updates.

121. Defendants admit only the allegation in the second sentence of Paragraph 121 that Executive Order No. 2 became effective on January 24, 2022. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 121.

122. Defendants deny the allegations in the first sentence of Paragraph 122. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the second sentence of Paragraph 122.

123. Defendants deny the allegations in Paragraph 123.

124. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 124.

R.M.

125. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 125.

126. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 126. Statements of the Centers for Disease Control and Prevention speak for themselves. Defendants deny any allegations in Paragraph 126 that are inconsistent with those statements.

127. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 127.

128. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 128.

129. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 129.

130. Defendants admit the allegations in the first sentence of Paragraph 130.² As to the remaining allegations in Paragraph 130, statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 130 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 130 that are inconsistent with those updates.

131. Statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 131 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 131 that are inconsistent with those updates.

132. Defendants admit the allegation in Paragraph 132 that the Bedford County School Board voted to make masks optional for students. Defendants deny any remaining allegations in Paragraph 132.

² This admission assumes Paragraph 130's reference to "Stanton River Middle School" was intended to be a reference to "Staunton River Middle School."

133. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 133.

134. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 134.

C.B.

135. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 135.

136. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 136.

137. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 137. Statements of the Centers for Disease Control and Prevention speak for themselves. Defendants deny any allegations in Paragraph 137 that are inconsistent with those statements.

138. Defendants admit the allegations in the first sentence of Paragraph 138. As to the remaining allegations in Paragraph 138, statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 138 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 138 that are inconsistent with those updates.

139. Statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 139 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or

analysis of COVID-19. Defendants deny any allegations in Paragraph 139 that are inconsistent with those updates.

140. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 140.

141. Defendants only admit the allegation that the Chesapeake Public Schools Board adopted an optional masking policy for students on January 20, 2022. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 141.

142. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 142.

143. Defendants deny the allegations in the first sentence of Paragraph 143. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 143.

I.C.

144. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 144.

145. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 145. Statements of the Centers for Disease Control and Prevention speak for themselves. Defendants deny any allegations in Paragraph 145 that are inconsistent with those statements.

146. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 146.

147. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 147.

148. Defendants admit the allegations in the first sentence of Paragraph 148. As to the remaining allegations in Paragraph 148, statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 148 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 148 that are inconsistent with those updates.

149. Statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 149 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 149 that are inconsistent with those updates.

150. Defendants admit the allegations in Paragraph 150.

151. Defendants admit only the allegation in the first sentence of Paragraph 151 that on February 16, 2022, Loudoun County Public Schools announced that they would no longer require students to wear masks beginning February 22, 2022. Defendants admit the allegation in the second sentence of Paragraph 151. Defendants deny the allegations in the third sentence of Paragraph 151. Defendants lack knowledge or information sufficient to form a belief about the truth of any remaining allegations in Paragraph 151.

152. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 152.

153. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 153.

M.K.

154. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 154.

155. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 155.

156. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 156. Statements of the Centers for Disease Control and Prevention speak for themselves. Defendants deny any allegations in Paragraph 156 that are inconsistent with those statements.

157. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 157.

158. Defendants admit the allegations in the first sentence of Paragraph 158. As to the remaining allegations in Paragraph 158, statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 158 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 158 that are inconsistent with those updates.

159. Statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 159 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or

analysis of COVID-19. Defendants deny any allegations in Paragraph 159 that are inconsistent with those updates.

160. Defendants deny the allegation in the first sentence of Paragraph 160 that M.K.'s "school still requires universal masking." Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 160.

161. Defendants admit the allegations in the first sentence of Paragraph 161. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the second sentence of Paragraph 161.

162. Defendants deny the allegation in the first sentence of Paragraph 162 that "Fairfax County Public Schools are currently requiring universal masking." Defendants admit the allegation in the first sentence of Paragraph 162 that Fairfax County Public Schools challenged "the legality of Executive Order No. 2 in Arlington County Circuit Court." Defendants admit the allegations in the second sentence of Paragraph 162 that "members of the community are advocating against masking and students are arriving to school without masks." Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 162.

163. Defendants deny the allegations in Paragraph 163.

J.M.

164. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 164.

165. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 165. Statements of the Centers for Disease Control and Prevention

speak for themselves. Defendants deny any allegations in Paragraph 165 that are inconsistent with those statements.

166. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 166.

167. Defendants admit the allegations in the first sentence of Paragraph 167. As to the remaining allegations in Paragraph 167, statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 167 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 167 that are inconsistent with those updates.

168. Statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 168 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 168 that are inconsistent with those updates.

169. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 169.

170. Defendants admit only the allegation that the Chesapeake Public Schools Board adopted an optional masking policy for students on January 20, 2022. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 170.

171. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 171.

172. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 172.

173. Defendants deny the allegations in Paragraph 173.

L.R.

174. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 174.

175. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 175.

176. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 176. Statements of the Centers for Disease Control and Prevention speak for themselves. Defendants deny any allegations in Paragraph 176 that are inconsistent with those statements.

177. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 177.

178. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 178.

179. Defendants admit the allegations in the first sentence of Paragraph 179. As to the remaining allegations in Paragraph 179, statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 179 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 179 that are inconsistent with those updates.

180. Statements of the Virginia Department of Health speak for themselves. Defendants deny any allegations in Paragraph 180 that are inconsistent with those statements. Additionally, the Virginia Department of Health continues to update its statements regarding data about or analysis of COVID-19. Defendants deny any allegations in Paragraph 180 that are inconsistent with those updates.

181. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 181.

182. Defendants admit the allegation in Paragraph 182.

183. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 183.

184. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 184.

FIRST CLAIM FOR RELIEF

TITLE II OF THE AMERICANS WITH DISABILITIES ACT

42 U.S.C. § 12131 *et seq.*

185. In response to Paragraph 185, Defendants incorporate by reference their responses to the foregoing paragraphs as if set forth fully here.

186. Defendants deny any allegations in Paragraph 186 that are inconsistent with the cited authority.

187. Defendants deny any allegations in Paragraph 187 that are inconsistent with the cited authority.

188. Defendants deny any allegations in Paragraph 188 that are inconsistent with the cited authority.

189. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 189. Additionally, Paragraph 189 presents conclusions of law to which no response is required.

190. Paragraph 190 presents conclusions of law to which no response is required.

191. Paragraph 191 presents conclusions of law to which no response is required.

192. Defendants deny the allegations in Paragraph 192, including the allegations in subparagraphs (a) through (d).

193. Defendants deny the allegations in Paragraph 193.

194. Defendants deny the allegations in Paragraph 194.

195. Defendants deny the allegations in Paragraph 195.

196. Defendants deny the allegations in Paragraph 196.

SECOND CLAIM FOR RELIEF

VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973

29 U.S.C. § 794 *et seq.*

197. In response to Paragraph 197, Defendants incorporate by reference their responses to the foregoing paragraphs as if set forth fully here.

198. Defendants deny any allegations in Paragraph 198 that are inconsistent with the cited authority.

199. Defendants deny any allegations in Paragraph 199 that are inconsistent with the cited authority.

200. Defendants deny any allegations in Paragraph 200 that are inconsistent with the cited authority.

201. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 201. Additionally, Paragraph 201 presents conclusions of law to which no response is required.

202. Paragraph 202 presents conclusions of law to which no response is required.

203. Paragraph 203 presents conclusions of law to which no response is required.

204. Defendants deny the allegations in Paragraph 204, including the allegations in subparagraphs (a) through (e).

205. Defendants deny the allegations in Paragraph 205.

206. Defendants deny the allegations in Paragraph 206.

207. Defendants deny the allegations in Paragraph 207.

208. Defendants deny the allegations in Paragraph 208.

THIRD CLAIM FOR RELIEF

FEDERAL PREEMPTION UNDER THE AMERICANS WITH DISABILITIES ACT, SECTION 504, AND THE AMERICAN RESCUE PLAN ACT OF 2021

209. In response to Paragraph 209, Defendants incorporate by reference their responses to the foregoing paragraphs as if set forth fully here.

210. Defendants deny any allegations in Paragraph 210 that are inconsistent with the cited authority.

211. Defendants deny any allegations in Paragraph 211 that are inconsistent with the cited authority.

212. Defendants deny the allegations in Paragraph 212.

213. Defendants deny the allegations in Paragraph 213.

214. Defendants admit that the second sentence of Paragraph 214 accurately recites the statement of Congressman John Yarmuth. The remaining allegations of Paragraph 214 present conclusions of law to which no response is required.

215. Defendants admit the allegation in Paragraph 215 that Virginia was allocated over \$2.1 billion in American Rescue Plan Elementary and Secondary School Emergency Relief.

216. Defendants deny any allegations in the first sentence of Paragraph 216 that are inconsistent with the cited authority. Defendants deny the allegations in the second sentence of Paragraph 216.

217. Defendants deny the allegations in the first sentence of Paragraph 217. Defendants deny the remaining allegations in Paragraph 217 that are inconsistent with the cited authority.

218. Defendants admit the allegation in the first sentence of Paragraph 218 that “USDOE did not mandate that local school districts adopt CDC guidance.” Defendants deny the remaining allegations in Paragraph 218 that are inconsistent with the cited authority.

219. Defendants deny the allegations in Paragraph 219.

220. Defendants deny the allegations in Paragraph 220.

PRAYER FOR RELIEF

221. Defendants deny that Plaintiffs are entitled to any of the relief requested in Paragraph 221.

222. Defendants deny that Plaintiffs are entitled to any of the relief requested in Paragraph 222.

223. Defendants deny that Plaintiffs are entitled to any of the relief requested in Paragraph 223.

224. Defendants deny that Plaintiffs are entitled to any of the relief requested in Paragraph 224.

225. Defendants deny that Plaintiffs are entitled to any of the relief requested in Paragraph 225.

226. Defendants deny that Plaintiffs are entitled to any of the relief requested in Paragraph 226.

Defendants deny each and every allegation in the First Amended Complaint not specifically admitted herein and Defendants also deny that Plaintiffs are entitled to any relief whatsoever.

DEFENSES

1. Defendants state that the court lacks subject-matter jurisdiction because Plaintiffs lack Article III standing. The challenged provisions have not injured Plaintiffs and any alleged injuries are not traceable to Defendants' conduct or redressable by this Court. In further support of this defense, Defendants incorporate by reference the arguments made in their Motion to Dismiss and supporting papers in this action (ECF Nos. 43-46, 65).

2. Defendants state that this action is not cognizable and the First Amended Complaint fails to state a claim under either the Americans with Disabilities Act ("ADA") or the Rehabilitation Act because: (a) Plaintiffs failed to exhaust their administrative remedies as required by the Individuals with Disabilities Education Act, (b) student mask mandates are not a reasonable accommodation under the ADA or the Rehabilitation Act, (c) implementing such mandates would require fundamentally altering public education, (d) if established by further investigation, discovery, or evidence presented at trial, Plaintiffs are not qualified individuals with disabilities within the meaning of the ADA and Rehabilitation Act, (e) if established by further

investigation, discovery, or evidence presented at trial, Plaintiffs' disabilities, if any, have been reasonably accommodated, (f) if established by further investigation, discovery, or evidence presented at trial, Plaintiffs failed to request reasonable accommodations of their disabilities, or failed to engage in a meaningful exchange with their schools about their alleged disability and reasonable accommodation of that alleged disability, and (g) if established by further investigation, discovery, or evidence presented at trial, Plaintiffs are barred from relief because they rejected a reasonable accommodation proffered by their schools. In further support of these defenses, Defendants incorporate by reference the arguments made in their Motion to Dismiss and supporting papers in this action (ECF Nos. 43-46, 65).

3. Defendants state that Executive Order No. 2 and S.B. 739 are not preempted by any federal law. In further support of this defense, Defendants incorporate by reference the arguments made in their Motion to Dismiss and supporting papers in this action (ECF Nos. 43-46, 65).

* * *

Defendants reserve the right to amend their responses in this Answer and to set forth any additional defenses which may come to light or otherwise reveal themselves in the course of litigation, including during discovery and at trial.

Wherefore, having fully responded to the First Amended Complaint filed against them, the Defendants request that this Court dismiss this action with prejudice and award them any other relief deemed appropriate under the circumstances.

April 19, 2022

Respectfully submitted,

By: /s/ Thomas J. Sanford
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CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2022, I electronically filed the foregoing Defendants' Answer with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to all CM/ECF participants.

/s/ Thomas J. Sanford

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