IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

FLORIDA EDUCATION ASSOCIATION; STEFANIE BETH MILLER; LADARA ROYAL; MINDY FESTGE; VICTORIA DUBLINO-HENJES; and, ANDRES HENJES,

Plaintiffs,

v. Case No.: 2020-CA-001450

RON DESANTIS, in his official capacity as Governor of the State of Florida; RICHARD CORCORAN, in his official capacity as Florida Commissioner of Education; FLORIDA DEPARTMENT OF EDUCATION; FLORIDA BOARD OF EDUCATION,

Defendants.
_____/

MONIQUE BELLEFLEUR, individually and on behalf of D.B. Jr., M.B., and D.B., and KATHRYN HAMMOND,

Plaintiffs,

v. Case No.: 2020-CA-1467

RON DESANTIS, in his official capacity as Governor of the State of Florida, et al.,

Defendants.
_____/

DEFENDANTS' SUPPLEMENTAL RESPONSE TO PLAINTIFFS' PROPOSED ORDER ON THE ISSUE OF SEVERANCE

Defendants Ron DeSantis, in his official capacity as Governor of the State of Florida; Richard Corcoran, in his official capacity as Commissioner of Education; Andy Tuck, in his official capacity as the chair of the Florida Board of Education; Jacob Oliva, in his official

capacity as Chancellor, Division of Public Schools, Florida Department of Education (the "DOE"); and the Florida Board of Education (collectively, the "Defendants"), submit this supplement to their Proposed Order Denying Injunctive Relief as permitted by this Court. Defendants propose that the following section be added to their Proposed Order:[1]

1. Plaintiffs' Request That the Court "Sever" Portions of the Emergency Order Must be Denied as Plaintiffs Have Failed to Demonstrate that the Order is Unconstitutional and Even If Proper, the Requested Revision Would Violate the Separation of Powers and Answer a Political Question

For the first time in this nearly month-long litigation, in response to a question from this Court during closing argument, Plaintiffs have finally articulated their requested relief. They ask this Court to stand in the shoes of the Governor and the Department of Education, assume their emergency powers, and re-write the Emergency Order in a way that benefits the Plaintiffs but completely ignores the intent of the order and the harm that will be suffered by millions of children whose access to essential services provided by public schools will be delayed if not denied.

For Plaintiffs to have this Court even reach the concept of severance, they must demonstrate that the Emergency Order is unconstitutional. Plaintiffs cannot use the doctrine of severance as an end-around to their failure to establish that the Emergency Order is unconstitutional in the first instance. The standards found in Article IX, section 1, for example, are not judicially enforceable and cannot form the basis of a constitutional violation. *Citizens for*

[1] Additionally, if an injunction is granted Plaintiffs are required to post a bond. Their Proposed Order makes no mention of this requirement. Fla. R. Civ. P. 1.610(b) ("No temporary injunction shall be entered unless a bond is given by the movant in an amount the court deems proper, conditioned for the payment of costs and damages sustained by the adverse party if the adverse party is wrongfully enjoined."). Defendants request an evidentiary hearing as to the amount of the bond if an injunction is issued. *See Fla. Georgia Grove, LLP v. Collier Cnty.*, 95 So. 3d 948, 950 (Fla. 2d DCA 2012).

Strong Sch., Inc. v. Florida State Bd. of Educ., 232 So. 3d 1163, 1168-74 (Fla. 1st DCA 2017), *approved,* 262 So. 3d 127 (Fla. 2019). Even assuming arguendo that the standards of "safe" and "secure" could be teased out from the other terms such as "high quality" or "uniform," the Plaintiffs have not met their burden to show that the Emergency Order threatens the safety and security of the education system. "Safe" in this context is not readily definable. There is a required balancing between the risk of opening schools and the risk of not opening schools.

There is no clear standard for defining when the risk of opening in terms of a threat to health is appropriate. Dr. Jayanta Bhattacharya testified, for example, to a growing body of research finding that children are much less likely to spread the disease to adults or to suffer severe health consequences. This research is emerging and does not yet provide an adequate standard for judicial relief, let alone a basis to determine that the Emergency Order is constitutionally infirm. On the other hand, as made clear by the testimony of virtually all of the witnesses and as is collected in the medical guidance from the CDC, AAP, and others [Defense Exhibits 3, 4 and 5] the cost of not reopening is clear. In either event, weighing these two risks in this context is not for the Court and would be a violation of the separation of powers and the political question doctrine. *See Citizens*., 232 So. 3d 1163.

Moreover, Plaintiffs ignore that the Court does not deal here with an act of the legislature. In contrast with statutes, which are adopted by a majority of two collegial bodies and the executive, executive and emergency orders are adopted by a single person. A further contrast is that statutes remain effective until they are repealed, whereas executive and emergency orders automatically expire after 60 days.[2] To determine whether or not sever a statute, a court must

[2] Fla. Stat. s 252.36(2) ("The state of emergency shall continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and she or he terminates the state of emergency by executive order or proclamation,

decide whether a majority of the House and Senate along with the Governor would have approved the bill without the challenged provision. That is certainly a difficult determination. That analysis is inapplicable here because executive and emergency orders are entered by a single public official. It follows that the only reasonable presumption is that the public official entered the exact order he or she intended to enter. And, even if there were intervening changed circumstance, given the power of the public official to amend or rescind the order, judicial modification would be improper. Further, any such efforts would endlessly entangle the Judicial and Executive Branches. The executive is charged with responding to the emergency, which might entail extending or modifying the order. Inserting the Judiciary into that process would be both unworkable and a blatant violation of the separation of powers.

Here the Court deals with an emergency order of a single officer of the executive department where the intent is clear. The parties have not disputed the actual purpose of the Emergency Order, which is abundantly clear on its face: to provide for the safe reopening of schools while ensuring "the well-being of students and families, such as nutrition, socialization, counseling, and extra-curricular activities" and to "ensure the quality and continuity of the education process." *See* Defense Exhibit 1.

Indeed, no divination is necessary to determine the intent. It is repeated clearly on page 2:

> I, Richard Corcoran, . . . issue this order to accomplish the goals of: (1) reopening brick and mortar schools with the full panoply of services for the benefit of Florida students and families (2) suspending and adjusting reporting requirements [to ensure financial continuity]; (3) retaining high-quality school choices for Florida students and families with a focus on eliminating achievement daps, which may have been exacerbated by the crisis; and (4) maintaining services that are legally required for all students, such as low-income, English language learning and students with disabilities.

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but no state of emergency may continue for longer than 60 days unless renewed by the Governor.). Executive order 20-52 had been renewed and extended by 20-114, and 20-166.

Defense Exhibit 1, at 2.

Nevertheless, Plaintiffs seek to limit the intent of the Emergency Order and uncouple the waiver provisions from the direction to open schools. On its face there is no basis to believe that such an uncoupling is possible. Waivers that allow for guaranteed funding are provided in the Emergency Order only as an incentive to school districts to reopen and provide the "full panoply of services" for students and families who rely on them. Plaintiffs' requested "severance" is no severance at all, but a new order. One that guarantees funding to all schools without regard to the choice made by 1.6 million children and their parents to return to school. "[C]ourts should be mindful of the Legislature's intent in determining whether an unconstitutional provision can be severed from the remainder of a statute." *Florida Dept. of State, Div. of Elections v. Martin*, 916 So. 2d 763, 773 (Fla. 2005). The Court cannot accomplish what Plaintiffs seek without ignoring the intent and thereby improperly invading the roles of its co-equal branches.

What is left after Plaintiffs' requested corrections is an order that waives Florida funding statutes in a way that is only possible through the emergency authority granted to the Governor and delegated to the Department of Education. Florida law expressly gives the Governor (or his designee) the authority to amend executive orders. § 252.36(1)(b), Fla. Stat. ("the Governor may issue executive orders, proclamations, and rules and may amend or rescind them."). Granting Plaintiffs' requested injunction would cross the line from judicial decision-making into judicial law-making.

The impropriety of Plaintiffs' request speaks for itself and, on its face, violates each of the elements required for severance. *Schmitt v. State*, 590 So. 2d 404, 415 (Fla. 1991) (severing portion of a sexual exploitation statute that was overbroad). It violates the clear purpose of the order to guarantee funding as a "strong incentive[]" to "force accountability for results." Fla.

Stat. § 1000.03(2)(b).[3] Funding is frequently used by governments to further a policy. Here the policy that is being promoted is expanding access to in-person instruction. *Florida ex rel. McCollum v. U.S. Dept. of Health and Human Services*, 716 F. Supp. 2d 1120, 1158 (N.D. Fla. 2010) ("no coercion is present if a state—even when faced with the possible 'sacrifice' of a large amount of federal funding—voluntarily exercises its own choice in accepting the conditions attached to receipt of federal funds; noting that a 'politically painful' choice does not compulsion make") (citations omitted). The funding incentive cannot be separated from the reopening requirement. *Sloban v. Florida Bd. of Pharmacy*, 982 So. 2d 26, 32 (Fla. 1st DCA 2008) (portion of statute that violated nondelegation doctrine could not be severed without frustrating legislative intent).

In conclusion, Plaintiffs' insistence on severance demonstrates that striking the Emergency Order does more harm than good. Under the existing Emergency Order, 67 school districts are opening school with roughly 50% of the students attending remotely, while still being registered at their local public school. Given that funding for virtual education is roughly 25% less than in-person, striking the Emergency Order with its waiver of funding requirement would disturb the status quo and disadvantage school districts. Plaintiffs requested severance is not a severance at all but a complete revision of an order issued by the Executive Branch pursuant to emergency authority delegated by the Legislature. Severance cannot lie where it would defeat the intent of the act. *Florida Dept. of State, Div. of Elections v. Martin*, 916 So. 2d 763, 773 (Fla. 2005); *Schmitt v. State*, 590 So. 2d 404, 415 (Fla. 1991). The stated intent of the

[3] While districts operate local schools, the State Board supervises the system of education. "This broader supervisory authority may at times infringe on a school board's local powers, but such infringement is expressly contemplated—and in fact encouraged by the very nature of supervision—by the Florida Constitution." *Sch. Bd. of Palm Beach County v. Florida Charter Educ. Found., Inc.*, 213 So. 3d 356, 360 (Fla. 4th DCA 2017)).

Emergency Order, and the purpose Defendants have been arguing throughout this case, is to incentivize school districts to reopen brick-and-mortar schools by offering to waive Florida funding statutes so that parents and children will have more educational choices. This policy preference expressed in the Emergency Order is consistent with the supervisory role of the State Board of Education and the Governor's emergency powers. And, it is consistent with the wishes of approximately 1.6 million parents who have requested in-person instruction. To take that choice away by nullifying or amending the Order would impermissibly interfere with the operation and supervision of Florida's system of free public schools and with the emergency powers of the Governors. This the Court cannot do.

Respectfully submitted,

GUNSTER, YOAKLEY & STEWART, P.A.

/s/ Nathan W. Hill
David M. Wells
Florida Bar No.: 309291
dwells@gunster.com
Nathan W. Hill
Florida Bar No.: 91473
nhill@gunster.com
200 South Orange Avenue, Suite 1400
Orlando, Florida 32801
Tel: (407) 648-5077
Facsimile: (407) 849-1233
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2020, the foregoing was electronically filed using the E-filing Portal System, and a copy was furnished by email on the following Service List:

By: /s/ *Nathan W. Hill*

SERVICE LIST

COFFEY BURLINGTON, P.L.
Kendall B. Coffey, Esquire
Josefina M. Aguila, Esquire
Scott A. Hiaasen, Esquire
kcoffey@coffeyburlington.com
jaguila@coffeyburlington.com
shiaasen@coffeyburlington.com
yvb@coffeyburlington.com
service@coffeyburlington.com
lperez@coffeyburlington.com
Counsel for Plaintiffs in Case No. 2020-CA-001450

PHILLIPS, RICHARD & RIND, P.A.
Lucia Piva, Esquire
Mark Richard, Esquire
Kathleen M. Phillips, Esquire
lpiva@phillipsrichard.com
mrichard@phillipsrichard.com
kphillips@phillipsrichard.com
Counsel for Plaintiffs in Case No. 2020-CA-001450

MEYER, BROOKS, BLOHM & HEARN, P.A.
Ronald G. Meyer, Esquire
rmeyer@meyerbrookslaw.com
Counsel for Plaintiffs in Case No. 2020-CA-001450

FLORIDA EDUCATION ASSOCIATION
Kimberly C. Menchion, Esquire
kimberly.menchion@floridaea.org
Counsel for Plaintiffs in Case No. 2020-CA-001450

Jacob V. Stuart
Jacob V. Stuart, P.A.
1601 East Amelia Street
Orlando, FL 32803-5421
(407) 434-0330
Email: jvs@jacobstuartlaw.com
Counsel for Plaintiffs in Case No. 2020-CA-1467

William J. Wieland, II
Wieland & DeLattre, P.A.
226 Hillcrest Street
Orlando, FL 32801-1212
Telephone: (407) 841-7699
E-Mail: billy@wdjustice.com
Counsel for Plaintiffs in Case No. 2020-CA-1467

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION

FLORIDA EDUCATION ASSOCIATION; STEFANIE BETH MILLER; LADARA ROYAL; MINDY FESTGE; VICTORIA DUBLINO-HENJES; ANDRES HENJES; NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC., and NAACP FLORIDA STATE CONFERENCE, Plaintiffs, vs. RON DESANTIS, in his official capacity as Governor of the State of Florida; RICHARD CORCORAN, in his official capacity as Florida Commissioner of Education; FLORIDA DEPARTMENT OF EDUCATION; FLORIDA BOARD OF EDUCATION; and, CARLOS GIMENEZ, in his official capacity as Mayor of Miami-Dade County, Defendants.	)	Case No. 2020 CA 001450
MONIQUE BELLEFLUER, individually and on behalf of D.B. Jr., M.B., and D.B.; KATHRYN HAMMOND; ASHLEY MONROE, and JAMES LIS Plaintiffs, vs. RON DESANTIS, Governor of Florida, in his official capacity as Chief Executive Officer of the State of Florida; ANDY TUCK, in his official capacity as the chair of the State Board of Education; STATE BOARD OF EDUCATION; RICHARD CORCORAN, in his official capacity as Commissioner of the Florida Department of Education; FLORIDA DEPARTMENT OF EDUCATION; JACOB OLIVA, in in his official capacity as Chancellor, Division of Public Schools; Defendants.	)	Case No. 2020 CA 001467

ORDER GRANTING MOTION FOR TEMPORARY INJUNCTION

An evidentiary hearing was held on August 19 and 20, 2020 on the Plaintiffs' motions[1] for temporary injunction. The Court has considered the testimony, the matters of record, the memoranda of the parties, and the law. Based on upon those considerations, the motion for temporary injunction is GRANTED.

I. PROCEDURAL HISTORY

On March 9, 2020, Governor Ron DeSantis declared a state of emergency in the State of Florida due to the COVID-19 pandemic. On March 23, 2020, Defendant Richard Corcoran, the Commissioner of Education of Florida, issued Emergency Order 2020-EO-1 strongly recommending school closures and suspending strict adherence to the Florida Education Code. Students across the state of Florida switched to a virtual learning, or distance learning, platform for the remainder of the 2019-2020 academic year. As a result of the pandemic, whether schools would reopen for traditional face-to-face learning in August 2020 remained uncertain until at least early July.

On July 6, 2020, Commissioner Corcoran issued Emergency Order 2020-EO-6 (the "Order"). This Order is the subject of the dispute presently before the Court. The Order states that school districts must submit a reopening plan that satisfies the requirements of the Order to receive "reporting flexibility and financial continuity." Importantly, the Order waives the October 2020 student surveys which determine school funding based on the number of students

[1] To preserve judicial economy, Case Nos. 2020-CA-001450 and 2020-CA-001467 have been consolidated before this Court. Both sets of Plaintiffs moved for temporary injunctive relief. Plaintiffs in case ending in 1450 are Florida Education Association, Stefanie Beth Miller, Ladara Royal, Mindy Festge, Victoria Dublino-Henjes, Andres Henjes, the NAACP, Inc. and the NAACP, Florida State Conference (collectively, the "**FEA Plaintiffs**"). Plaintiffs in case ending 1467 are Monique Bellefluer, Kathryn Hammond, Ashely Monroe, and James Lis (collectively, the "**Orange County Plaintiffs**").

physically in the classroom in October. Upon submission of a reopening plan, the Department of Education will approve or reject the plan. Only school districts with approved plans would receive the statutory waivers contained in the Order. In order to receive approval, a school reopening plan must be consistent with following language in the Order:

> Upon reopening in August, all school boards and charter school governing boards must open brick and mortar schools at least five days per week for all students, subject to advice and orders of the Florida Department of Health, local departments of health, Executive Order 20-149 and subsequent executive orders. Absent these directives, the day-to-day decision to open or close a school must always rest locally with the board or executive most closely associated with a school, the superintendent or school board in the case of district-run school, the charter governing board in the case of a public charter school or the private school principal, director or governing board in the case of a nonpublic school.

Order at 2.

On July 19, 2020 the Orange County Plaintiffs filed their complaint and motion for emergency temporary injunctive relief against Governor DeSantis, Andy Tuck, the chair of the State Board of Education, Commissioner Corcoran, the Florida Department of Education, Jacob Oliva, the Chancellor of the Division of Public Schools (collectively, the "State Defendants"), and a number of Orange County entities. The case against the State Defendants were severed and transferred to Leon County on August 7, 2020. Similarly, on July 20, 2020, the FEA Plaintiffs filed their lawsuit against Governor DeSantis, Commissioner Corcoran, the State Board of Education, the Florida Department of Education (also referred to as the "State Defendants"), and the Mayor of Miami-Dade County. That case was also transferred to Leon County on August 7, 2020. The cases were consolidated on August 12, 2020. The Mayor of Miami-Dade was voluntarily dismissed from this case.

Both Complaints seek to enjoin the Order from forcing schools to reopen unsafely and a declaration from this Court that unsafely reopening schools is a violation of Article IX, Section 1(a) of the Florida Constitution. The FEA Plaintiffs also seek an injunction and a declaration that the Order is arbitrary and capricious in violation of Article I, Section 9 of the Florida Constitution.

According to the Plaintiffs, the Order unconstitutionally burdens the safety of schools by conditioning funding on a reopening plan that provides a brick and mortar option in August, regardless of the dangers posed by a surging pandemic in Florida. Moreover, the Order's application has been arbitrary and capricious across the state of Florida. In response, the Defendants argue that the Order is a reasonable exercise of emergency powers by the executive branch that balances their constitutional obligations to Florida's students and the difficulty of this unprecedented pandemic. At this juncture, Plaintiffs seek temporary injunctive relief staying the requirements of the Order to preserve the status quo while the parties litigate the merits of their claims.

II. LEGAL STANDARD

To obtain a temporary injunction, the moving party must establish (1) a substantial likelihood of success on the merits; (2) lack of an adequate remedy at law; (3) irreparable harm absent the entry of an injunction; and (4) that injunctive relief will serve the public interest. *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1258 (Fla. 2017); *Fla. Dep't of Health v. Florigrown, LLC*, No. 1D18-4471, 2019 WL 2943329, at *2 (Fla. 1st DCA July 9, 2019). "The purpose of a temporary injunction is to preserve the status quo until a final hearing may be held and the dispute resolved." *Bailey v. Christo*, 453 So. 2d 1134, 1136–37 (Fla. 1st DCA 1984). "One critical purpose of temporary injunctions is to prevent injury so that a party will not

be forced to seek redress for damages after they have occurred." *Id.* at 1137 (citing *Lewis v. Peters*, 66 So.2d 489 (Fla. 1953)). "The granting of a temporary injunction rests in the trial court's sound judicial discretion, guided by established rules and principles of equity jurisprudence in view of the facts of the particular case." *Id.*

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

A. SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS

"A substantial likelihood of success on the merits requires a showing of only *likely* or probable, rather than *certain* success." *Schiavo ex rel Schindler v. Schiavo*, 358 F. Supp. 2d 1161, 1164 (M.D. Fla. 2005) (emphasis in original). Article IX, Section 1(a) of the Florida Constitution provides:

> The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. **Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education** . . .

(emphasis added.) The Florida Constitution requires that state entities and public officials ensure that our schools operate safely. However, the Defendants, through the Order, have placed an unconstitutional burden on school safety. If the individual school districts choose safety, that is, delaying the start of schools until they determine that it is safe to do so, they risk losing state funding. This policy "runs afoul of the Supreme Court's long-standing admonition that the government 'may not deny a benefit to a person on a basis that infringes his constitutionally protected interests.'" *Lebron v. Secretary, Fla. Dep't of Children and Families*, 710 F.3d 1202, 1217 (11th Cir. 2013) (citing *Perry v. Sindermann*, 408 U.S. 593, 597 (1972)). "Under the well-settled doctrine of unconstitutional conditions, the government may not require a person to give

up a constitutional right in exchange for a discretionary benefit conferred by the government where the benefit sought has little or no relationships to the right." *Id.* (citing *Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994)). Put another way, "what the state may not do directly it may not do indirectly." *Id.* (citations and quotations omitted). Because the Defendants cannot directly force schools to reopen without regard to safety during a global pandemic, they cannot do it indirectly through the Order.

The case of Hillsborough County is illustrative. During the evidentiary hearing, the Plaintiffs presented evidence that the Hillsborough County School Board called a special board meeting with a panel of seven doctors to assess whether it was safe to reopen schools based on the current levels of COVID-19 in the community. Under the language of the Order, schools should open in August "subject to advice and orders of the Florida Department of Health [and] local departments of health[.]" Therefore, in an effort to comply with the Order, the Hillsborough School Board asked each doctor on the panel whether he or she believed it was safe to reopen schools. Five of the seven doctors stated that it was not safe at the present time (August 6, 2020). One of the doctors stated that it was not safe that day but maybe it would be in a few weeks. The seventh doctor, the director of the local health department, declined to give an opinion. Based on this information, the Hillsborough County School Board voted to delay the start of in-person learning by three weeks, from August 24, 2020 to September 14, 2020. Virtual learning would still begin on August 24, 2020.

On August 7, 2020, the Superintendent and Chair of the Hillsborough County School Board received a letter from Commissioner Corcoran stating that their proposal was not consistent with the Order. If they chose not to revise their plan, they would not receive the financial flexibility provided by the Order. After another proposal, to delay reopening until

September 7th, was also rejected, Hillsborough County agreed to reopen brick and mortar schools on August 31, 2020. Thus, the Defendants have arbitrarily prioritized reopening schools in August over safety and the advice of health experts.

Taking into consideration the importance of safety, as they must during a declared state of emergency, the Defendants provided language in the Order which indicates that the decision to reopen schools should be left to the local leaders *subject to* the advice of local health officials. However, the Plaintiffs presented evidence that the Department of Health instructed the Directors of each local department of health not to provide an opinion on the reopening of schools. Indeed, the Plaintiffs presented substantial evidence that the Department of Health did not advice anyone during the re-opening schools debate. Thus, the constitutional guarantee of a safe education is reduced to an empty promise in violation of the Florida Constitution.

With regard to Plaintiffs' claim that the Order is arbitrary and capricious, Plaintiffs have also met their burden. Article I, Section 9 of the Florida Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law[.]" "The Due Process Clause of the United States and Florida Constitutions encompasses both substantive and procedural due process." *A.M. v. Dep't of Children and Families*, 223 So. 3d 312, 315 (Fla. 4th DCA 2017). If a statute or government order is arbitrary and capricious, it violates due process rights guaranteed by the Florida Constitution. *See State v. Saiez*, 489 So. 2d 1125, 1128 (Fla. 4th DCA 1986). A government act is arbitrary and capricious if it is taken with improper motive, without reason or is meaningless. *See City of Sweetwater v. Solo Const. Const. Corp.*, 823 So. 2d 798, 802 (Fla. 3d DCA 2002). Moreover, an order is unconstitutional if it is vague and susceptible to arbitrary and capricious application. *See State v. Jenkins*, 454 So. 2d 79, 80 (Fla. 1st DCA 1984).

Here, the evidence established that the Department of Education allowed Miami-Dade County, Broward County, and Palm Beach County to begin the school year with distance learning until September 30th or beyond when virus indicators improve for those districts. These counties were permitted to heed the advice of local health experts. However, when Hillsborough County and Monroe County attempted to adopt similar plans, their proposals were denied. The Defendants' witness for the Department of Education, Jacob Oliva, also a Defendant in this case, explained that this was because Miami-Dade, Broward, and Palm Beach County were in phase 1 of reopening. However, there is no mention of "phases" in the Order. Without prescribed standards for approval of plans, the Commissioner has engaged in *ad hoc* and unconstitutional decisionmaking without taking into account safety and the medical opinions of experts, local or otherwise.[2] Indeed, the Department of Health, the agency charged with making health and safety related decisions in the state of Florida, was noticeably absent from the Defendants' decision-making process. Thus, Plaintiffs have demonstrated a substantial likelihood of success in procuring a judgment declaring that the Order is being applied arbitrarily across Florida.

Plaintiffs presented various theories of arbitrary and capricious state action. The Defendants testified that the Order was entered because school districts and school superintendents were asking for guidance regarding how state funding and the October survey would work if parents and students chose, in large numbers, to continue distance learning in the fall semester. According to Defendants, the Order was intended to ensure flexibility in funding as school districts determined their reopening plans. However, there is no evidence in the record

[2] Both parties presented expert testimony from medical experts regarding the COVID-19 pandemic. On balance, the medical literature is still in flux and difficult to parse. Defendants' expert, Dr. Battacharya, testified that he does not think he will ever work on such a deadly epidemic in his life. Whether children ultimately transmit it to adults is left to be determined. What has been established is that there is no easy decision and opening schools will most likely increase COVID-19 cases in Florida.

that to provide flexibility in funding or waivers of certain statutes, the Defendants must require school districts to provide a brick and mortar option *no later than August 31, 2020.* Significantly, Commissioner Corcoran suspended the Florida Education Code on March 23, 2020 without reference to dates or conditions. Thus, the stated goal of providing funding guidance to the school districts was an unfounded premise for entering an Order that threatens to withhold funding if school districts do not provide a brick and mortar option in August.

Lastly, Plaintiffs have established a substantial likelihood of success on the merits of their claim to enjoin the Order. "To obtain a permanent injunction, the petitioner must establish a clear legal right, an inadequate remedy at law and that irreparable harm will arise absent injunctive relief." *Liberty Counsel v. Fla. Bar Bd. Of Governors*, 12 So. 3d 183, 186 n.7 (Fla. 2009) (internal citations and quotations omitted). Here, Plaintiffs have a clear legal right to be free from significant threats to public health, including outbreaks of infectious diseases. *See State Dept. of Environmental Regulation v. Kaszyk*, 590 So. 2d 1010, 1012 (Fla 3d DCA 1991) (finding clear legal right and granting injunction where statutes and regulations being violated were meant to protect public health and welfare). As detailed below, Plaintiffs have an inadequate remedy at law and will suffer irreparable harm if an injunction is not granted. Moreover, if Plaintiffs ultimately prevail on any of their theories establishing the unconstitutionality of the Order, Defendants will be enjoined from enforcing an unconstitutional Order.

Therefore, the Court finds that Plaintiffs have established a substantial likelihood of success on the merits.

B. IRREPARABLE HARM AND INADEQUATE REMEDY AT LAW

The Court finds that the Plaintiffs have established irreparable harm and an inadequate remedy at law. An injury is irreparable, and thus supports the issuance of a temporary injunction,

where the potential damages may be calculated only by conjecture and not by an accurate standard. *JonJuan Salon, Inc. v. Acosta*, 922 So.2d 1081, 1084 (Fla. 4th DCA 2006). The Plaintiffs presented evidence that teachers throughout the state are deciding whether to retire, resign, or put themselves and their families in harms way. One witness testified that because of his pre-existing condition, his doctor has advised that COVID-19 will likely be fatal for him. If he is forced to return to school, he will be risking his life on a daily basis. The cost of life of countless teachers and their family members cannot be readily calculated.

The Plaintiffs presented evidence that the most widely prevailing standard for determining when the virus is under control and it is safe to reopen businesses and schools is a 5% positivity rate. The World Health Organization and the Florida Chapter of the American Academy of Pediatrics use this standard in their guidelines and advisory opinions. The Defendants did not present an alternative safety standard. Based on the record before the Court, not a single county in Florida is currently at or below 5% positivity. Applying this standard, reopening schools when the virus is out of control would pose serious risk of illness and increased community spread.

The Defendants argue that Plaintiffs cannot meet their burden of establishing irreparable harm for teachers because they can choose to take sick leave, retire early, file workers compensation claims, or go through the grievance procedures in their collective bargaining agreements. (Defendants' Response at 17.) As an initial matter, taking sick leave or filing workers compensation claims would require a teacher to become sick first. The purpose of an injunction is to prevent injury before damages occur. *Bailey*, 453 So. 2d at 1137. Furthermore, the grievance process though the union's collective bargaining agreements only determines whether a breach of the collective bargaining agreement has occurred. The collective bargaining

arbitrators do not have jurisdiction or authority to decide constitutional questions like those pending before this Court. "Moreover, because all of the defendants are either state governmental entities or state governmental actors, absent a waiver of sovereign immunity . . . , which is not present, no monetary damages could be recovered at law for the constitutional violations." *Florigrown*, 2019 WL 2943329 at *4. There is simply no remedy available to the Plaintiffs under these circumstances. Thus, this element is met.

C. PUBLIC INTEREST

The Plaintiffs have also shown that a temporary injunction will serve the public interest. An injunction in this case will allow local school boards to make safety determinations for the reopening of schools without financial penalty. This is what the local school boards were elected to do. Defendants' own fact witness and expert testified that any decision to reopen schools should be based on local conditions. Reasoned and data-driven decisions based on local conditions will prevent further community spread of COVID-19, severe illness, and possible death of children, teachers and school staff, their families, and the community at large. This unequivocally serves the public interest.

IV. SEVERABILITY OF UNCONSTITUTIONAL PORTIONS

The Plaintiffs ask the Court to sever the unconstitutional portions of the Order.

> When a part of a statute is declared unconstitutional the remainder of the act will be permitted to stand provided: (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.

Schmitt v. State, 590 So. 2d 404, 415 (Fla. 1991). The Court finds that each of these elements is met here. The illegal language in the Order can be separated from the remaining valid language

"without rendering the enactment nonsensical or otherwise changing its essential meaning beyond what is necessary to cure the constitutional defect." *Id.*

Schools should reopen when the local decision-makers determine, upon advice of medical experts, that it is safe to do so. The Court, therefore, severs Section III, the requirement of a reopening plan, and any reference to statutory waivers being conditioned upon said "approved reopening plans" and references to a required start date in August. The legislative purpose, as stated in the Order's WHEREAS clauses, is to open schools consistent with safety precautions and ensure the continuity of funding and the educational process. These goals can be accomplished independently of the provisions that are unconstitutionally void. Schools will still reopen where it is safe, as many have, and continue to reopen slowly as conditions improve across the State. The Plaintiffs and Defendants agree that this is the ultimate goal: to get kids back in school.

The Court finds that the good and bad features are not so inseparable in substance that the Department of Education would have passed the one without the other. Commissioner Corcoran suspended the Florida Education Code in March in response to a declared state of emergency. He did not condition this suspension or waiver on a date certain or upon any form of virtual learning plan from the districts. Thus, there is evidence that Commissioner Corcoran would pass the one without the other. Lastly, after severance, the Order "would still meet the requirement of being complete in itself." *Searcy, Denney, Scarola, Barnhart & Shipley, etc. v. State*, 209 So. 3d 1181, 1196 (Fla. 2017). The Order would still accomplish its intended purpose of providing flexibility and continuity in funding while remaining "consistent with safety precautions as defined by the Florida Department of Health, local health officials and supportive of Floridians[.]" (Order at 1.)

V. CONCLUSION

The Court finds that the Plaintiffs have met their burden. The Emergency Order is unconstitutional as long as it arbitrarily disregards safety, denies local school boards free decisionmaking with respect to reopening brick and mortar schools, and conditions funding on an approved reopening plan with a start date in August. The Emergency Order can, however, be granted constitutional vitality severing its unconstitutional portions.

Therefore, the Court strikes the following language:

I. Reopening Requirements.

a. All schools open. ~~Upon reopening in August, all school boards and charter school governing boards must open brick and mortar schools at least five days per week for all students, subject to advice and orders of the Florida Department of Health, local departments of health, Executive Order 20-149 and subsequent executive orders. Absent these directives,~~ the day-to-day decision to open or close a school must always rest locally with the board or executive most closely associated with a school, the superintendent or school board in the case of a district-run school, the charter governing board in the case of a public charter school or the private school principal, director or governing board in the case of a nonpublic school. Strict compliance with requirements of section 1001.42(4)(f), Florida Statutes, requiring school districts to establish a uniform and fixed date for the opening and closing of schools is waived to the extent necessary to give effect to this Order. In addition, strict compliance with sections 1003.02 and 1011.60(2), Florida Statutes, requiring school districts to operate public schools for a minimum of 180 days or an hourly equivalent is waived to the extent necessary to give effect to this Order~~, consistent with an approved reopening plan~~. Further, strict compliance with the reporting requirements for educational planning and information, as set forth in section 1008.385, Florida Statutes, and Rule 6A-l.0014, Florida Administrative Code, is waived to the extent necessary to give effect to this Order~~, consistent with an approved reopening plan~~.

b. Full panoply of services. Pursuant to the authority granted in section 1001.10(8), Florida Statutes, school ~~districts~~ **boards** and charter school governing boards ~~must~~ **may** provide the full array of services that are required by law so that families who wish to educate their children in a brick and mortar school full time have the opportunity to do so; these services include in-person instruction (barring a state or local health directive to the contrary), specialized instruction and services for students with Individualized Education Programs (IEPs) or live synchronous or asynchronous instruction with the same curriculum as in-person instruction and the ability to interact with a student's teacher and peers ~~as approved by the Commissioner of Education~~. Required services must be provided to students from low-income families, students of migrant workers,

students who are homeless, students with disabilities, students in foster care, students who are English Language Learners, and other vulnerable populations.

II. Reopening Plans – Strike entire section.

III. Reporting Flexibility and Financial Continuity.
School districts and charter school governing boards ~~with an approved reopening plan~~ will receive reporting flexibility that is designed to provide financial continuity for the 2020 fall semester.

a. [remains as is]

b. **Full FTE credit for innovative learning environments**. ~~Although it is anticipated that most students will return to full-time brick and mortar schools,~~ some parents will continue their child's education through innovative learning environments, often due to the medical vulnerability of the child or another family member who resides in the same household. As described in this Order, school boards and charter school governing boards ~~with an approved reopening plan~~ are authorized to report approved innovative learning students for full FTE credit. However, students receiving virtual education will continue to receive FTE credit as provided in section 1011.61(1)(c)1.b.(III)-(IV), Florida Statutes.

c. [as is]

IV. [as is]

~~All of the statutory and rule waivers set forth in this Order for school districts and charter schools are contingent upon having an approved reopening plan for the 2020 fall semester.~~

The Court retains jurisdiction to enforce the provisions of this Order.

DONE and **ORDERED** in Tallahassee, Leon County, Florida, on this ___ day of August, 2020.

_____
Hon. Charles Dodson
Circuit Judge

Respectfully submitted,

COFFEY BURLINGTON, P.L.
2601 South Bayshore Drive, Penthouse
Miami, FL 33133
Tel: 305-858-2900

By: */s/Kendall B. Coffey*
Kendall B. Coffey, Fla. Bar No. 259861
Josefina M. Aguila, Fla. Bar No. 0119719
Scott A. Hiaasen, Fla. Bar No. 103318
kcoffey@coffeyburlington.com
jaguila@coffeyburlington.com
shiaasen@coffeyburlington.com
yvb@coffeyburlington.com
lperez@coffeyburlington.com
service@coffeyburlington.com

- and -

MEYER, BROOKS, BLOHM & HEARN, P.A.
131 North Gadsden Street
Tallahassee, FL 32301
Tel: 850-878-5212

By: */s/Ronald G. Meyer*
Ronald G. Meyer, Fla. Bar No. 148248
rmeyer@meyerbrookslaw.com

- and -

Kimberly C. Menchion, General Counsel
FLORIDA EDUCATION ASSOCIATION
213 South Adams Street
Tallahassee, FL 32301
Tel: 850-224-7818

By: */s/Kimberly C. Menchion*
Kimberly C. Menchion, Fla. Bar No. 425613
kimberly.menchion@floridaea.org

- and -

PHILLIPS, RICHARD & RIND, P.A.
9360 S.W. 72nd Street, Suite 283
Miami, FL 33173

Tel: 305-412-8322

By: */s/Lucia Piva*
Lucia Piva, Fla. Bar No. 119340
Mark Richard, Fla. Bar No. 305979
Kathleen M. Phillips, Fla. Bar No. 287873
lpiva@phillipsrichard.com
mrichard@phillipsrichard.com
kphillips@phillipsrichard.com

Counsel for Florida Education Association, Stefanie Beth Miller, Ladara Royal, Mindy Festge, Victoria Dublino-Henjes and Andres Henjes

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to all counsel of record on the service list below:

David Wells
Nathan W. Hill
Gunster
200 South Orange Avenue, Suite 1400
Orlando, FL 32801
Tel: 407-849-1233
dwells@gunster.com
dculmer@gunster.com
eservice@gunster.com
bhill@gunster.com
dmowery@gunster.com

Counsel for Ron DeSantis, Andy Tuck, State Board of Education, Richard Corcoran, Florida Department of Education, Jacob Oliva, Teresa Jacobs, School Board of Orange County, Barbara Jenkins and Orange County Public Schools

William J. Wieland, II
Wieland & DeLattre, P.A.
226 Hillcrest Street
Orlando, FL 32801
Tel: 407-841-7699
billy@wdjustice.com

Counsel for Monique Bellefluer and Kathryn Hammond

Jacob V. Stuart
Jacob V. Stuart, P.A.
1601 East Amelia Street
Orlando, FL 32803
Tel: 407-434-0330
jvs@jacobstuartlaw.com

Counsel for Monique Bellefluer and Kathryn Hammond

By: */s/Kendall B. Coffey*

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

MONIQUE BELLEFLEUR, individually and on behalf of D.B. Jr., M.B., and D.B., KATHRYN HAMMOND, ASHLEY MONROE, and JAMES LIS
Plaintiffs, **CASE NO: 2020 CA 001467**

vs.

RON DESANTIS, Governor of Florida, in his official capacity as Chief Executive Officer of the State of Florida, ANDY TUCK, in his official capacity as the chair of the State Board of Education, STATE BOARD OF EDUCATION, RICHARD CORCORAN, in his official capacity as Commissioner of the Florida Department of Education, FLORIDA DEPARTMENT OF EDUCATION, JACOB OLIVA, in his official capacity as Chancellor, Division of Public Schools, TERESA JACOBS, in her official capacity as the chair of the School Board of Orange County, SCHOOL BOARD OF ORANGE COUNTY, BARBARA JENKINS in her official capacity as the Superintendent of Orange County Public Schools, and ORANGE COUNTY PUBLIC SCHOOLS
Defendants.
_____/

ORDER GRANTING PLAINTIFFS' VERIFIED EMERGENCY MOTION FOR TEMPORARY INJUNCTION

THIS CAUSE comes before the Court on Plaintiffs' Verified Emergency Motion for Temporary Injunction, filed by Plaintiffs, a parent, **MONIQUE BELLEFLEUR,** individually and on behalf of D.B. Jr., M.B., and D.B., and three teachers, **KATHRYN HAMMOND, ASHLEY MONROE,** and **JAMES LIS**. Having reviewed the Motion, heard testimony and arguments of the parties, and being otherwise fully advised in the premises, it is hereby **ORDERED AND ADJUDGED** as follows:

FINDINGS OF FACTS

Jurisdiction

This Court has jurisdiction over this lawsuit pursuant to Article V, § 20(c)(3), of the Florida Constitution, § 86.011, Fla. Stat. (2020), § 86.061, Fla. Stat. (2020), and § 26.012(2)(c), (3), Fla. Stat. (2020).

Complaint Charges

In early 2020, the citizens of Florida, along with the rest of the world, learned of a "novel coronavirus," which causes the disease COVID-19 in humans. The virus that causes COVID-19 is thought to spread mainly from person to person, mainly through respiratory droplets produced when an infected person coughs, sneezes, or talks. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Spread is more likely when people are in close contact with one another (within about 6 feet). COVID-19 seems to be spreading easily and sustainably in the community ("community spread") in many affected geographic areas. Community spread means people have been infected with the virus in an area, including some who are not sure how or where they became infected.

The Plaintiffs in this case, four individuals, as a grassroots initiative, filed suit as a parent and three teachers residing and teaching in Orange County Florida, seeking declaratory and injunctive relief to ensure and to protect the health, safety, well-being, and security of Florida's 2.8 million children and over 204,000, full-time Instructional Staff; including 179,000 Teachers; as well as the part-time Instructional Staff and part-time and full-time Support Staff; working in Florida's 4,200 public schools. After filing in Orange County, Florida, this case was transferred to Leon County, Florida, and consolidated by this Court with another case filed by the Florida Education Association, a teachers' union.

In response the distinct threat of COVID-19, Governor DeSantis issued Executive Order 20-51 on March 1, 2020, directing the State Health Officer and Surgeon General to declare a public health emergency in Florida. Governor DeSantis also directed the State Health Officer and Surgeon General to follow the guidelines provided by the CDC and establish protocols to control the spread of COVID-19 and educate the public on the prevention of the virus.

Governor DeSantis followed up with Executive Order 20-52 on March 9, 2020, declaring

a State of Emergency in Florida. Governor DeSantis again references CDC guidelines, which at the time, recommended mitigation measures for communities experiencing an outbreak, including staying at home when sick, keeping away from others who are sick, limiting face-to-face contact with others as much as possible, consulting with your healthcare provider if individuals or members of a household are at high risk for COVID-19 complications, wearing a facemask if advised to do so by a healthcare provider or by a public health official, staying home when a household member is sick with respiratory disease symptoms if instructed to do so by public health officials or a health care provider.

On March 23, 2020, Commissioner Corcoran entered DOE Order 2020-EO-01, closing public schools in the state of Florida due to COVID-19. The 2019/2020 school year was ultimately completed through distance learning.

On April 29, 2020, Governor DeSantis, "based on guidance provided by the White House and the Centers for Disease Control and Prevention (CDC), the Occupational Safety and Health Administration (OSHA), and the Florida Surgeon General and State Health Officer, Dr. Scott Rivkees" entered Executive Order 20-112, detailing the beginnings of a phased approach to re-opening Florida, moving most of Florida, including Orange County, from Phase 0 to Phase 1. All of Florida was moved into Phase 1 on May 15, 2020. The phased re-opening plan is detailed in a report by the Re-Open Florida Task Force. The plan details four phases, Phase 0, 1, 2, and 3. This plan is available for public viewing online. Both Phases 0 and 1 strongly discourage public gatherings of more than ten (10) people at a time, which would eliminate the ability of public schools to operate.

On June 3, 2020, Governor DeSantis "in concert with the efforts of President Donald J. Trump, and based on guidance provided by the White House and the Centers for Disease Control and Prevention (CDC), the Occupational Safety and Health Administration (OSHA), and the Florida Surgeon General and State Health Officer," moved most of Florida, to Phase 2 by Executive Order 20-139.

It should be noted that public schools are rarely mentioned in the Re-Open Florida Task Force guidelines, and little to no direction is given as to how to safely open and operate schools. The Re-Open Florida Task force only refers to public schools in a section on ongoing considerations, almost as an afterthought. "The Department of Education and the State University System, in consultation with state health officials, should monitor the re-opening

phases as set by this report. Comprehensive plans, however, should be made to resume on-campus learning, full-time, for the 2020-2021 school year."

After Governor DeSantis moved most of Florida to Phase 2, COVID-19 infections skyrocketed throughout Florida.

On July 6, 2020, Commissioner Corcoran has required, by DOE Order Number 2020-EO-06, as an "emergency order" that all schools throughout the State of Florida, provide in-person, face to face instruction at least 5 days a week for the upcoming school year. This Order severely limits the authority of the local school districts to start the upcoming school year as each sees fit. Instead, Commissioner Corcoran has required that all schools provide face to face education between parents and teachers at a minimum of five days a week, or risk losing substantial funding. See Paragraph I(a) on Page 2 of Order 2020-EO-06.

Testimony and Evidence

A hearing was held on this matter August 19, 2020 through August 21, 2020, to determine whether a temporary injunction should be granted to stop Defendants from forcing local school districts to open "brick and mortar" locations within Florida's 67 districts.

Plaintiffs' presented evidence[1] to this Honorable Court that included live testimony of the following witnesses:

1.) Mr. James Lis, a high-school teacher at Dr. Phillips High School in Orange County, Florida for over 20 years, was the only Plaintiff to testify in this case. Mr. Lis stated that he was being forced to return to in-person teaching despite his pleas to his administrators, and School Board, to allow him to continue teaching virtually; the first day of in-person learning was Friday, August 21, 2020. Mr. Lis testified that if he was forced to return to in-person teaching, he would choose to protect himself and his family and reluctantly resign from his true calling and passion in life. Mr. Lis also gave descriptions of the issues with his classroom trailer not having the ability to offer adequate social distancing and ventilation. Further, Mr. Lis testified there was no plan or specific direction given to him, or any teacher, in relation to the re-opening procedures and COVID-19 Pandemic.

[1] Plaintiffs, prior to being consolidated by this Honorable Court, had no affiliation with the Florida Education Association (herein "FEA") case, and claims, before this Honorable Court (Leon County Case No.: 2020-CA-1450).

2.) Plaintiff, FEA, called Ms. Courtney Coppola, the Chief of Staff at the Florida Department of Health. Ms. Coppola testified that the Florida Department of Health's role in advising Florida School Boards is providing facts and data. According to Ms. Coppola's testimony, however, the Florida Department of Health's role is not to provide advice, or any recommendation, on whether schools are safe and secure to open for in-person learning. Ms. Coppola also stated that all employees of the Department of Health, regardless of their geographical location, report to the Surgeon General and not the local County Mayor, Chair, Board, or School Board.

3.) Dr. Annette Nielsen, a pediatrician in private practice with over 6,000 patients in Central Florida, also testified as an expert in relation to the COVID-19 Pandemic and the treatment of patients. Dr. Nielsen testified that the conditions through Central Florida were unsafe to allow schools to reopen in-person learning in traditional "brick and mortar classrooms." Dr. Nielsen testified that the CDC, WHO, and AAP all agreed that schools should not reopen brick and mortar until the infection rate is below 5%. Further, Dr. Nielsen entered into the record first-hand accounts of patients (all of whom are children) in Central Florida who have suffered long-term injuries and serious conditions due to COVID-19.

4.) Dr. Thomas Burke, MD, a professor and Harvard Public Health and treating physician at Massachusetts General Hospital, testified in relation to the COVID-19 Pandemic and its impact here throughout Florida. Dr. Burke is a leading global expert in the area of Pandemics, COVID-19, and has also treated many patients with COVID-19. Dr. Burke testified that opening-up schools to in-person learning would lead to certain dramatic increases in the transmission of the novel coronavirus leading to avoidable long-term health issues and death. Dr. Burke also found, based upon his expert opinion and personal knowledge, that if children and adults who were diagnosed with COVID-19 were fortunate enough not be hospitalized or face death, they may likely face long-term health consequences. Dr. Burke testified that due to the unknown nature of COVID-19's lasting effects, Florida should not open its schools for in-person learning until there more information known. In his testimony, Dr. Burke agreed how important schools are for children and that they are safe havens for many from domestic violence or in providing regular meals. Even still, Dr. Burke

also testified that until the infection rate meets a standard of below 5%, there are no conditions or plan that would allow for schools to safely open without causing significant and unsafe rises in the transmission of the novel coronavirus and COVID-19. It should be noted that Dr. Burke stated that if conditions were in accordance with the CDC, WHO, and AAP to open schools for in-person learning, mitigation procedure must be performed in tandem including, but not limited to: (1) face-coverings, (2) trace contacting, (3) social distancing, and (4) proper hyenine. If any of these mitigation actions are not done in tandem, then there would be a substantial increase in the transmission of the novel coronavirus. Dr. Burke also testified on the record that children are able to transmit the novel coronavirus to others, including adults and that multiple studies support these findings.

5.) Mr. Andre Escobar, a high school teacher at Gateway Highschool in Osceola County, Florida, and suffers from quadriplegia, testified that his physician has advised him that he is unlikely to survive. Despite the risk, Mr. Escobar is being forced to teach in person beginning Monday, August 23, 2020. Mr. Escobar also provided testimony (and photographs into the record) in regard to lack mitigation for the transmission of novel coronavirus in his trailer classroom, in which desks are less than three (3) feet apart. Even though Mr. Escobar cannot ambulate without assisted devices, he is being asked to disinfect the class in less than five minutes between periods.

6.) Plaintiffs admitted statements from Defendants, Ron Governor DeSantis and Commissioner Richard Corcoran. In some of these exhibits, both Governor DeSantis and Commissioner Corcoran say that teachers should have choices and not be forced to teaching in-person if it threatens their well-being and life.

Plaintiffs also included numerous declarations from interested parties, public records, government reports, and relevant scientific research in support of their suit. Among other things, the CDC stated, "International studies that have assessed how readily COVID-19 spreads in schools also reveal low rates of transmission when community transmission is low."[2]

The CDC further states, "The best available evidence from countries that have opened schools indicates that COVID-19 poses low risks to school-aged children, **at least in areas with**

[2] See https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-schools.html, last viewed 8/21/20.

low community transmission, and suggests that children are unlikely to be major drivers of the spread of the virus. Reopening schools creates opportunity to invest in the education, well-being, and future of one of America's greatest assets—our children—while **taking every precaution** to protect students, teachers, staff and all their families. [3] (Emphasis added).

The CDC has also provided a "Readiness and Planning Tool", offered "to share ways school administrators can help protect students, staff, and communities, and slow the spread of COVID-19." [4] This tool has not been implemented in a standard fashion throughout Florida schools because of the limited amount of time for its implementation caused by Defendant's Emergency Order (2020-EO-06). Further, the guidance of the CDC, the Florida Department of Health, the medical community, nor any other expert whatsoever was not taken into account when Commissioner Corcoran issued his Order, requiring schools to open or face severe funding losses.

STANDARD

In order to prevail on a Motion for Temporary Injunctive Relief, Plaintiffs must show the following:

"(1) a likelihood of irreparable harm and the unavailability of an adequate remedy at law; (2) a substantial likelihood of success on the merits; (3) that the threatened injury to the petitioner outweighs any possible harm to the respondent and (4) that the granting of a temporary injunction will not disserve the public interest." *Allied Univ. Corp. v. Given*, 223 So. 3d 1040, 1042 (Fla. 3d DCA 2017).

CONCLUSIONS OF LAW

Plaintiffs contend that in this current COVID-19 Pandemic, Defendants have failed to fulfill their Constitutional duties in providing students and teachers a safe and secure environment for in-person learning, this Court concurs. Surely, Defendants did not cause this Pandemic but have a sacred and profound duty to protect not only the teachers and students of Florida, but all Floridians through any and all legal means necessary. Defendants have not shown an ability to open schools to live and in person classrooms and provide safe, secure and high-

[3] See id.
[4] See https://www.cdc.gov/coronavirus/2019-ncov/downloads/community/School-Admin-K12-readiness-and-planning-tool.pdf, last viewed 8/21/20.

quality classrooms as required by Article IX § 1(a) of the Florida Constitution. Further, Defendants have failed to demonstrate why the Emergency Order has the timeline of schools opening by the end of August 2020. In fact, Defendants plan to open schools only further promulgates the COVID-19 Pandemic and puts students, teachers, and Floridians in avoidable harm and, in some cases, certain death.

Absent injunctive relief, Plaintiffs will be irreparably harmed by Defendants' actions because the evidence presented to this Court show that children will be attacked by COVID-19 and many will suffer serious illness, to include death to some students. Further, absent injunctive relief, Plaintiffs will be irreparably harmed by Defendants' actions because the evidence show that teachers will either have to choose to resign their position, forfeiting their salary and benefits, or return to their jobs and will be attacked by COVID-19 and suffer serious illness to include death to some teachers.

The requested injunction serves the public interest because Defendants' proposed arbitrary and capricious decision to open live and in-person classes with full knowledge and understanding CDC guidelines and recommendation cannot be followed, will cause additional harm to the attending students and teachers. It will also serve the public interest in protecting all Floridians from a potential and avoidable second wave in the COVID-19 Pandemic.

Plaintiffs have no other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights to a safe, secure and high-quality public schools.

The irreparable harm stated herein is not speculative; the testimony and evidence in the record show with certainty that the irreparable harm to children and teachers will occur if live and in-person classes are held. Even if it could be said that the irreparable harm is only a risk of significant injury or death, that risk would still be sufficient to cause public schools to be unsafe, unsecure and not of a high quality and therefor a significant infringement upon the rights of citizens to have a safe, secure and high quality public school system.

RELIEF

It is hereby **ORDERED AND ADJUDGED** that Plaintiffs' Verified Emergency Motion for Temporary Injunction is hereby **GRANTED**. Defendant's Emergency Order (2020-EO-06) is arbitrary and capricious; in addition, the order is unconstitutional as it pertains to Article IX § 1(a) of the Constitution of the State of Florida. Defendants are also hereby enjoined from

requiring the 67 school districts of Florida to open to in-person, face-to-face instruction until the respective school board deems it safe and secure as required by Article IX § 1(a) of the Constitution of the State of Florida.

Based upon the testimony before this Honorable Court, in association with the CDC, WHO, and AAP: it will be safe and secure to re-open an individual school district for in-person learning when (1) the County in which the school district is located has reached an infection rate of less than 5% for a period of 14 days and (2) the District has demonstrated that it has proper mitigation protocols in place that are compliant with CDC guidelines. This shall include a requirement that masks be worn at all times unless a legitimate exception can be shown, proper social distancing can be maintained by all students, teachers, and support staff, appropriate protocols for air quality and cleaning the school are met, and a detailed plan is in place for contact tracing, quarantine of a classroom or group of students, teachers, and staff, and directives on when a school should be shut down temporarily, or a proven vaccine is readily available to the public. Defendants shall have 30 days to provide a proposed statewide plan, with the intent that it will be sent to all 67 districts as guidance for when an individual district is safe to re-open.

DONE and **ORDERED** in Tallahassee, Leon County, Florida, on this ___ day of August, 2020.

_____

Hon. Charles Dodson
Circuit Judge

Copies furnished to all counsel of record on the service list below.

Jacob V. Stuart
Jacob V. Stuart, P.A.
1601 East Amelia Street
Orlando, FL 32803-5421
Tel: (407) 434-0330
Email: jvs@jacobstuartlaw.com
Counsel for Plaintiffs Monique Bellefleur, individually and on behalf of D.B. Jr., M.B., and D.B, Kathryn Hammond, Ashley Monroe, and James Lis

William J. Wieland, II
Wieland & DeLattre, P.A.
226 Hillcrest Street
Orlando, FL 32801-1212
Tel: (407) 841-7699
E-Mail: billy@wdjustice.com
Counsel for Plaintiffs Monique Bellefleur, individually and on behalf of D.B. Jr., M.B., and D.B, Kathryn Hammond, Ashley Monroe, and James Lis

Gunster, Yoakley & Stewart, P.A.
David M. Wells
Nathan W. Hill
200 South Orange Avenue, Suite 1400
Orlando, FL 32801
Tel: (407) 648-5077
E-mail:
dwells@gunster.com
nhill@gunster.com
Counsel for the State Defendants

John C. Palmerini
Associate General Counsel
Orange County School Board
445 Amelia St.
Orlando, FL 32801
Tel: (407) 317-3200 x 2002954
Email: John.Palmerini@ocps.net
Counsel for Defendants Teresa Jacobs, School Board of Orange County, Barbara Jenkins, and Orange County Public Schools

COFFEY BURLINGTON, P.L.
Kendall Coffey
Josefina M. Aguila
2601 South Bayshore Drive, Penthouse
Miami, FL 33133
kcoffey@coffeyburlington.com
jaguila@coffeyburlington.com
yvb@coffeyburlington.com
service@coffeyburlington.com
Counsel for Plaintiffs Florida Education Association, Stefanie Beth Miller, Ladara Royal, Mindy Festge, Victoria Dublino-Henjes, and Andres Henjes

MEYER, BROOKS, BLOHM & HEARN, P.A.
Ronald Meyer
131 North Gadsden Street
Tallahassee, FL 32301
Tel: 850-878-5212
rmeyer@meyerbrookslaw.com
Counsel for Plaintiffs Florida Education Association, Stefanie Beth Miller, Ladara Royal, Mindy Festge, Victoria Dublino-Henjes, and Andres Henjes

FLORIDA EDUCATION ASSOCIATION
Kimberly C. Menchion, General Counsel
213 South Adams Street
Tallahassee, FL 32301
kimberly.menchion@floridaea.org *Counsel for Plaintiffs Florida Education Association, Stefanie Beth Miller, Ladara Royal, Mindy Festge, Victoria Dublino-Henjes, and Andres Henjes*

PHILLIPS, RICHARD & RIND, P.A.
Mark Richard
Kathleen M. Phillips
9360 S.W. 72nd Street, Suite 283
Miami FL 33173-3283
lpiva@phillipsrichard.com
mrichard@phillipsrichard.com
kphillips@phillipsrichard.com
Counsel for Plaintiffs Florida Education Association, Stefanie Beth Miller, Ladara Royal, Mindy Festge, Victoria Dublino-Henjes, and Andres Henjes