

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND**

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W.D., on behalf of his minor children, A. & J.;  
J. and E. E. on behalf of their minor children,  
A. & S.; J.J., on behalf of her minor child, R.;  
L.V.G., on behalf of his four minor children;  
D. and R. J., on behalf of their minor children,  
S. & O.; K.K., on behalf of her minor children  
M. & G.; L.K., on behalf of his minor child, L.;  
M.K. on behalf of his minor child, A.; V.L., on  
behalf of her two minor children; V.M. and A.M.  
on behalf of their minor child, I.; T. and M.M.,  
on behalf of their minor children Y., N. & S.;  
K.M., on behalf of her minor children, R. & A.;  
M.P., on behalf of his minor children, Tr. and Te.;  
P., on behalf of her minor child, M.; M.R., on  
behalf of her minor children R. & E.; J.R., on  
behalf of her minor child, C.; T.T., on behalf of his  
minor child, M.; Y.T., on behalf of her minor child, Y.;  
P.J. and M.O. on behalf of their minor son, A.;  
C.B. on behalf of her minor child, W.; J.H. on behalf  
of his minor children, J.M and J.H.; V.M., on behalf  
of her minor child V.M.G.; J.F. and S.L., on behalf of  
their minor child, C.L.; R.E. on behalf of her minor child,  
P.; M.R. on behalf of her minor child, K.F.; K.F., on behalf  
of her minor child A.F.; C.C., on behalf of her minor child,  
A.M.; L.C. on behalf of her minor child M.A.C.; J.M.D. on  
behalf of her minor child K.D. and C.D.; L.B. on behalf  
of his minor child M and T.N. on behalf of her minor children  
L.N. and J.N.,

Index No. \_\_\_\_\_

**VERIFIED PETITION**

Petitioners,

-against-

COUNTY OF ROCKLAND,

Respondent.

AS AND FOR A PROCEEDING BROUGHT PURSUANT  
TO ARTICLE 78 OF THE CPLR

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## INTRODUCTION

1. This is an action to challenge as arbitrary, capricious and *ultra vires*/contrary to law an unprecedented “declaration of a local emergency” and a local emergency order promulgated on or about March 26, 2019 [and amended on March 28, 2019] by the County of Rockland through its County Executive, Ed Day. See Exhibit 1 to Sussman Affirmation.

2. By that declaration, County Executive Day prohibited all persons under the age of 18 years of age who did not have at least one MMR vaccination from entering any public place for a period of at least thirty days and threatened the parents or legal guardians of such minors with six-month jail sentences or fines for its violation.

3. This declaration has caused petitioners’ children to be denied attendance at nursery programs and schools and has effectively prohibited their movement and denied them the right to congregate and assemble in public places.

4. As Mr. Day lacked authority to issue such an edict, it must be declared illegal and enjoined – temporarily, preliminarily and permanently.

5. Previous to entry of this unauthorized edict, respondent County of Rockland, acting through its Commission of Health, barred non-vaccinated students from schools in several zip-codes, including nursery programs and schools which had no known case of measles. That action also lacked authorization in state law or regulation and should be declared *ultra vires* and contrary to law and enjoined – temporarily, preliminarily and permanently.

## PARTIES

6. Petitioners – W.D., on behalf of his minor children, A. & J.; J. and E. E. on behalf of their minor children, A. & S.; J.J., on behalf of her minor child; L.V.G., on behalf of his four minor children; D. and R. J., on behalf of their minor children, S. & O.; K.K., on behalf of her

minor children M. & G.; L.K., on behalf of his minor child, L.; M.K. on behalf of his minor child, A.; V.L., on behalf of her two minor children; V.M. and A.M. on behalf of their minor child, I.; T. and M.M., on behalf of their minor children Y., N. & S.; K.M., on behalf of her minor children, R. & A.; M.P., on behalf of his minor children, Tr. and Te.; P., on behalf of her minor child, M.; M.R., on behalf of her minor children R. & E.; J.R., on behalf of her minor child, C.; T.T., on behalf of his minor child, M.; Y.T., on behalf of her minor child, Y. and P.J. and M.O. on behalf of their minor son, A. – are all parents of children who have been excluded from their school by reason of a series of shifting orders promulgated by respondent Rockland County acting through its Department of Health and Commissioner. Petitioners herein seek injunctive relief against respondent for its arbitrary and capricious actions as set forth below.

7. Petitioners W.D., on behalf of his minor children, A. & J.; J. and E. E. on behalf of their minor children, A. & S.; J.J., on behalf of her minor child, R.; L.V.G., on behalf of his four minor children; D. and R. J., on behalf of their minor children, S. & O.; K.K., on behalf of her minor children M. & G.; L.K., on behalf of his minor child, L.; M.K. on behalf of his minor child, A.; V.L., on behalf of her two minor children; V.M. and A.M. on behalf of their minor child, L.; T. and M.M., on behalf of their minor children Y.,N. & S.; K.M., on behalf of her minor children; M.P., on behalf of his minor children, Tr. and Te.; L.P., on behalf of her minor child, M.; M.R., on behalf of her minor children R. & E.; J.R., on behalf of her minor child, C. and T.T., on behalf of his minor child, M. and Y.T., on behalf of her minor child, Y. and P.J. and M.O. on behalf of their minor child, A. all reside in the County of Rockland or enrolled his/her/their child in the Green Meadow Waldorf School or its Otto Specht sister school [serving students with special needs] [collectively referred to hereinafter as “GMWS”] which are both located in the County of Rockland.

8. These petitioners are each adversely affected as well by the emergency declaration, dated March 26, 2019, which bars their unvaccinated children from any public places within the County of Rockland for a period of at least thirty days.

9. Petitioners C.B. on behalf of her minor child, W.; J.H. on behalf of his minor children, J.M and J.H.; V.M., on behalf of her minor child V.M.G.; J.F. and S.L. on behalf of their minor child, C.L.; R.E. on behalf of her minor child, P.; M.R. on behalf of her minor child, K.F.; K.F., on behalf of her minor child A.F.; C.C., on behalf of her minor child, A.M.; L.C. on behalf of her minor child M.A.C.; J.M.D. on behalf of her minor child K.D. and C.D.; L.B. on behalf of his minor child M. and T.N. on behalf of her minor children L.N. and J.N. are all parents of minor children who reside in the County of Rockland. None of their children attends the Green Meadow Waldorf School and several were covered by the exclusion orders issued by the County between December 6, 2018 and March 26, 2019 as their children attended Peace Through Play Nursery School. Since the Declaration and local emergency order issued by County Executive Day on March 26, 2019, all of petitioners' minor children have been barred from their nursery schools and/or schools and all other public places in Rockland County for at least thirty (30) days.

10. Respondent is the County of Rockland, a municipal corporation which acted, as challenged herein, through its duly elected County Executive and duly appointed Commissioner of Health.

## JURISDICTION

11. As the challenged orders are final orders entered by the County, this Court has jurisdiction under CPLR Article 78 to review them and under CPLR Section 3001 to declare them arbitrary, capricious and contrary to state law.

## AS AND FOR A FIRST CAUSE OF ACTION

12. On or about March 26, 2019, acting through County Executive Day, respondent declared a “local state of emergency” and, on that ground, entered a local emergency order which barred and prohibited each and every one of petitioners’ identified children from being in public places, including their schools, for at least 30 days.

13. At the time County Executive Day declared this public health emergency, there were no more than four active cases of measles in a population of 325,000 people and no deaths or serious side effects have been reported from any case of measles.

14. At the time County Executive Day declared this public health emergency, respondent had failed to use authority provided it by state law to quarantine those infected with measles and those living in close proximity to them.

15. At the time County Executive Day declared this public health emergency, there had been a total of less than 160 cases of measles reported during the prior six months and nearly each reported case developed in the Orthodox/Hasidic community or amongst a person working in the home of such a family.

16. Executive Law § 24 permits a County Executive to declare a public emergency “in the event of a disaster, rioting, catastrophe, or similar public emergency within the territorial limits of any county, city, town or village, or in the event of reasonable apprehension of immediate danger thereof, and upon a finding by the chief executive thereof that the public

safety is imperiled thereby.” The law also allows for the entry, filing and publication of local emergency orders intended to implement measures to quell the disaster, catastrophe, rioting or other similar event. Such orders may be issued for a period of up to five days or shorter if the condition which caused their issuance no longer justified their implementation.

17. If the county executive wishes to extend a local emergency order beyond five days, s/he must do so in a manner proscribed by Executive Law section 24 and then only for a period of an additional five days at any one time.

18. Here, County Executive Day’s declaration included a broad local emergency order which purports to last for thirty days, far in excess of that permitted by law for such an order.

19. Moreover, New York State law provides means and measures for dealing with an outbreak of the measles and other contagious diseases, specifically authorizing both the exclusion of non-vaccinated students from a school in which a case of measles has been reported and/or the quarantining of a person/place infected by the disease.

20. Neither the Commissioner of Health for the New York State nor the Governor has declared a public health emergency in Rockland County.

21. Each petitioner identified as C.B. on behalf of her minor child, W.; J.H. on behalf of his minor children, J.M and J.H.; V.M., on behalf of her minor child V.M.G.; J.F. and S.L. on behalf of their minor child, C.L.; R.E. on behalf of her minor child, P.; M.R. on behalf of her minor child, K.F.; K.F., on behalf of her minor child A.F.; C.C., on behalf of her minor child, A.M.; L.C. on behalf of her minor child M.A.C.; J.M.D. on behalf of her minor child K.D. and C.D.; L.B. on behalf of his minor child M, and T.N. on behalf of L.N. and J.N. has had his/her child(ren) excluded from school or a nursery school program since March 26, 2019 and as a direct consequence of Day’s unlawful local emergency order..

22. Each petitioner is irreparably harmed by the operation of Day's local emergency order violation of which may subject them to six months' imprisonment and/or fines.

23. The local emergency order has restricted each petitioner and their children in their activities, travel and daily routines.

24. As a consequence of the unlawful local emergency order, each school district or nursery program petitioners' children attended has now barred their children from attendance.

25. With respect to the petitioners identified in paragraph 81 above, said exclusions have occurred despite the absence of any prior prohibition as against the children of these petitioners.

26. Said exclusions are now being implemented outside of the only two zip codes in which cases of measles have been reported.

27. Each of these petitioners has a religious exemption for his/her child(ren).

28. County Executive Day's local emergency order is county-wide and bars children under 18 who are unvaccinated or whose vaccine-induced immunity is no longer protective from places of public assembly, including schools and nursery school programs, synagogues, churches, malls, libraries and parks for thirty days.

29. County Executive Day's local emergency order does not cover unvaccinated persons over the age of 18.

30. County Executive Day's local emergency order impermissibly extinguishes the force and effect of lawful religious exemptions which continue to be recognized by the State of New York.

31. County Executive Day's local emergency order is arbitrary, capricious and contrary to law in that its issuance lacks legal authority and, is, therefore *ultra vires* and contrary to law.

**WHEREFORE**, and for the several reasons set forth *supra.*, this Honorable Court should declare that respondent's declaration and local emergency order promulgated on March 26, 2019, and amended on March 28, 2019, disallowing unvaccinated children under 18 from public places, including their schools and nursery school programs, synagogues, churches, libraries, parks and malls for a period of thirty (30) days are arbitrary, capricious and contrary to law and, accordingly, null and void and without the force of law.

**AS AND FOR A SECOND CAUSE OF ACTION**

32. Petitioners incorporate paras. 1-31 as if fully repeated herein.

33. By dint of County Executive Day's declaration and local emergency order, petitioners C.B. on behalf of her minor child, W.; J.H. on behalf of his minor children, J.M and J.H.; V.M., on behalf of her minor child V.M.G.; J.F. and S.L. on behalf of their minor child, C.L.; R.E. on behalf of her minor child, P.; M.R. on behalf of her minor child, K.F.; K.F., on behalf of her minor child A.F.; C.C., on behalf of her minor child, A.M.; L.C. on behalf of her minor child M.A.C.; J.M.D. on behalf of her minor child K.D. & C.D.; L.B. on behalf of his minor child M, and T.N. on behalf of L.N and J.N. have had their children excluded from school even though there is no reported case of measles in their zip codes or in their schools.

34. Said exclusions, which are the direct consequence of Day's local emergency order, are arbitrary, capricious and contrary to law.

35. None of these petitioners' children has measles.

36. None of the schools to which these petitioners send their children has had a reported case of measles.

37. No authority permits respondent, acting through its County Executive, to effectively bar from school attendance children in such a circumstance.



38. Barring these petitioners' children from school creates irreparable harm and achieves no valid public purpose, particularly in light of the recognized religious exemption each parent has and the absence of any measles case in the school or nursery program his/her child attends.

39. **WHEREFORE**, this Honorable Court should declare that respondent's declaration and local emergency order, which disallowed unvaccinated children under 18 from public places, including their schools and nursery school programs, churches, synagogues, libraries, parks and malls, for a period of at least thirty (30) days, are arbitrary, capricious and contrary to law and null and void and without lawful effect.

**AS AND FOR A THIRD CAUSE OF ACTION**

40. Petitioners incorporate paras. 1-39 as if fully incorporated herein.

41. During the 2018-19 school year, the minor children of petitioners W.D., J. and E. E., J.J., L.V.G., D. & R. J., K.K., L.K., M.K., V.L., V.M. and A.M., T., K.M., M.P., L.P., M.R., J.R., T.T., Y.T., P.J. and M.O. attended GMWS in Chestnut Ridge, New York, a private, non-sectarian school.

42. GMWS offers and implements an entirely unique pedagogy premised on the teachings of Rudolf Steiner.

43. During the 2018-19 school year, GMWS educated approximately 300 children in grades nursery-12 at a single campus in Chestnut Ridge.

44. Waldorf schools exist throughout the world and the United States.

45. Amongst the distinctive features of the schools are their small class sizes, the assignment of a single main lesson teacher to a class between first and eighth grades and the offering of a very broad curriculum which includes substantial emphasis on the development of the whole child, as opposed to an emphasis on rote learning verified by standardized testing.

46. Each petitioner chose to enroll his/her children in GMWS because of its distinctive and unique educational philosophy and pedagogy and its respect for their deeply held religious beliefs, including their religiously-based opposition to vaccination for reasons set forth in the accompanying Affidavits of each petitioner.

47. Pursuant to the laws and regulations established by the State of New York, each petitioner applied for and received religiously-based exemptions from vaccinations from GMWS.

48. Petitioners' religious exemptions were valid and effective during the 2018-19 school year and allowed their minor children to attend school without vaccinations, including the MMR vaccination, which is the only available vaccination covering measles.

49. At the commencement of the 2018-19 school year, approximately half of the students attending GMWS were not vaccinated for measles.

50. During the months of September and October 2018, not a single case of measles was reported at the GMWS school or in the Threefold Community which surrounds it.

51. On October 18, 2018, after the reporting of several cases of measles in Rockland County, respondent, acting through its Department of Health, issued an order requiring unvaccinated students to be excluded from any school in which a case of measles had been reported. See Exhibit 1 to Satriano Affidavit.

52. This order was predicated on a state regulation which authorized the respondents to so act where a case of measles was reported in a specific school.

53. The reported cases of measles were isolated to the Hasidic population, which lives in segregated areas in Rockland County, specifically New Square and areas of Monsey/Spring Valley, and, upon information and belief, to several persons who worked for Hasidic families.

54. Respondent supported this exclusion order by reference to Title 10, section 66-2.6, which authorizes exclusion of non-vaccinated students from, and only from, a school which experiences an outbreak of measles.

55. As no case of measles had been reported by that date amongst its students, GMWS was not within the reach or scope of this initial exclusion order, and these petitioners' children continued to attend school at GMWS.

56. At no time since October 18, 2018 has there been any reported case of measles amongst students attending the GMWS or enrolled in GMWS.

57. On October 22, 2018, the New York State Department of Health sent GMWS a letter which reaffirmed, in relevant part, respondent's directive as follows, "For schools that **DO NOT** have a positive measles case, the schools should **NOT** exclude students who are unvaccinated [i.e., those that have a valid religious or medical exemption]." [emphases in original]. See Exhibit 2 to Satriano Affidavit.

58. The New York State Department of Health further directed schools **which reported at least one case of measles** to exclude unvaccinated students for 21 days "after the last date of exposure". Id.

59. This language mirrored the substance of the County's October 18, 2018 exclusion order and was compliant with state law.

60. Between October 18 and December 3, 2018, there was no reported case of measles amongst the students or families of students attending GMWS or within the broader Threefold Community which is proximate to the school.

61. Between October 18 and December 3, 2018, respondent did not order any form of quarantine of those persons infected with measles or those in direct contact with those so infected.

62. Between October 18 and December 7, 2018, these petitioners' children continued to attend GMWS and none contracted measles.

63. Regardless of this fact and the language of the operative regulation, on December 3, 2018, acting through its Department of Health, respondent extended the school exclusion order to GMWS on the ground that the school is located "near a confirmed case within the community and ha[s] a low overall vaccination rate, which is an indicator that there is a large number of students/children at risk for contracting measles." See Exhibit 3 to Satriano Affidavit.

64. The same letter states, "In an effort to minimize exclusions, while simultaneously controlling the outbreak, exclusions in this category are being made in schools and day cares with the lowest vaccination rates. Schools and day cares that are currently subject to exclusion requirements in this category will remain subject to such requirements for 21 days from the date your school or day care exclusions were required to be begin [sic]." Id.

65. The same letter commanded GMWS to exclude unvaccinated children "until 21 days after the last case of measles is identified within your school...or in close geographic proximity to your school..." Id.

66. Said letter did not define "close geographic proximity".

67. At the time respondent implemented this new policy, no new case of measles had been reported outside of the Orthodox/Hasidic Jewish community or amongst those having direct contact with a member of an infected family.

68. Upon inquiry by GMWS staff, respondent irrationally defined “close proximity” as within the same zip code, an area exceeding 11 square miles.

69. This definition bore no reasonable relationship to the area of contagion for the measles and was entirely overbroad and arbitrary.

70. By dint of the December order, respondent excluded students from GMWS even though there was no reported case of measles in the school or the broader Waldorf community and even though the referenced zip code encompassed a very large area, inclusive, eleven [11] square miles, and included insular populations [with some incidence of measles] with whom students attending GMWS had, and were likely to have, no contact and, certainly, no contact while at GMWS which enrolls no students from the Hasidic community.

71. Further, after December 7, 2018, respondent continued to make no effective effort to limit or restrict the movement of those with, or likely directly exposed to, measles.

72. Respondent failed to quarantine affected persons even though state law specifically authorized the County to do so.

73. Indeed, to this date, respondent has not imposed any restriction or quarantine specifically against those with measles or those living with them.

74. On or about December 3, 2018, respondent’s agents advised GMWS that if the school attained an immunization rate of 80%, it would then vacate the exclusion order and allow it to re-admit all its students.

75. Respondent’s agents never put this representation in writing but repeated it during several conversations with Maureen Satriano, R.N., M.P.H., GMWS’s nurse.

76. On December 7, 2018, the GMWS complied with respondent’s edict and excluded all non-vaccinated children from its pre-k through 12 school.

77. On behalf of the GMWS, on December 10, 2018, Eric Silber, the Executive Director of the Threefold Community which operates the school, propounded numerous questions to respondent. See Exhibit 4 to Satriano Affidavit.

78. Respondent did not respond to these inquiries.

79. On December 21, 2018, weeks after the exclusion order was initially applied to the GMWS, respondent's Commissioner of Health altered her prior order, now advising GMWS that, "the School Exclusion order will be lifted when your school reaches an immunization rate for MMR vaccine of 95%." See Exhibit 5 to Satriano Affidavit.

80. In the same letter, Commissioner Ruppert wrote, "I appreciate your continued cooperation as I remain committed to raise immunization rates in Rockland County." Id.

81. An immunization rate of 95% is wholly incompatible with the number of families attending GMWS with *bona fide* and recognized religious exemptions to immunization, and its implementation effectively excludes large numbers of children from continuing with their educations at GMWS regardless of the fact that the school's enrollees had not experienced a single instance of measles during the 2018-19 school year.

82. In light of the dearth of other proximate Waldorf schools outside the affected zip codes, such an exclusion order effectively and substantially limited the educational choices available for parents like petitioners committed to educating their children at a Waldorf school.

83. Following the December 21, 2018 letter, cases of measles continued to be reported within isolated areas of the GMWS's zip code.

84. No case was reported amongst a GMWS enrollee or employee.

85. On February 7, 2019, respondent advised GMWS that it could not re-admit excluded, non-vaccinated students until 42 days after the last reported case of measles in the county.

86. Respondent has since claimed never to have issued any such order and never committed the same to writing.

87. Again reversing course, on February 7, 2019, respondent advised GMWS' nurse that it was abandoning the "zip code" as a frame of reference and stated that the school exclusion order would apply to GMWS as long as any active case of measles existed within Rockland County.

88. However, respondent abandoned this directive, claiming in mid-March 2019, that it would continue to exclude only based on cases arising within two zip codes, not county-wide.

89. By dint of the February 7 directive and the broad language of the March 26 declaration, without court intervention, petitioners' children shall remain excluded through at least April 25, 2019 and perhaps longer depending on factors totally outside of their control.

90. Assuming the efficacy of the MMR vaccination, excluding non-vaccinated children from GMWS is not necessary to protect vaccinated classmates.

91. Each of these petitioners has agreed to accept the risk of their child contracting measles through school attendance at a school which has no reported case of measles.

92. To date, respondent has never specifically quarantined those who have been exposed to measles or have measles and such persons may walk on streets, attend movies, go to supermarkets or otherwise have contact with the general population, allowing the transmission of the disease.

93. Respondent's express motivation is to exert its authority over those who have chosen not to vaccinate and to increase vaccination rates in Rockland County, eviscerating the religious exemption guaranteed by state law for those like petitioners who have demonstrated sincerely-held religious beliefs and obtained religious exemptions from vaccination.

94. Without any form of due process, respondent's cited orders have summarily excluded from GMWS numerous children whose parents, these petitioners and other similarly-situated persons, sought and attained from their school a *bona fide* religious exemption from the use of vaccinations.

95. Respondent's school exclusion order has caused, and shall continue to cause, irreparable harm to petitioners, their children and others similarly-situated persons, including, in the following ways: [a] petitioners' children's education and social relationships have been substantially disrupted; [b] petitioners' intimate, constitutionally protected life choices, including the right to exercise their *bona fide* religious beliefs and their right to choose a private school which reflects their values and beliefs, have been trammled; [c] the patterns of daily life which petitioners chose and implemented, including their work and child care schedules, have been substantially disrupted, often with significant psychological and financial costs; and [d] petitioners have been left with substantial uncertainty due to the shifting nature of respondents' edicts and when, if ever, they shall be permitted to return their children to the school of their choice.

96. The perpetuation of each of these negative effects has caused, and continues to cause, irreparable harm for petitioners in that their children are excluded from school with no viable alternative and the consequent personal injuries are not susceptible to pecuniary valuation



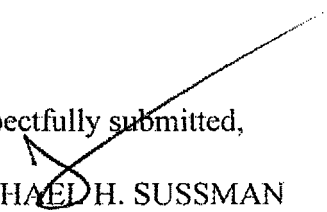
or recompense. Nor can money alone compensate petitioners for the days, weeks and months their children have been deprived of a Waldorf education.

97. The exclusion order is overbroad in that it exceeds the regulatory authority reposed in respondent.

98. The exclusion order is irrational in that the use of the “zip code” as a proxy for an area of contagion had no medical or scientific basis and works an overbroad imposition upon petitioners and their children and the current use of the county as a reference is even less supportable and more irrational.

99. That the exclusion order is irrational is best demonstrated by its deviation from prior orders: a 42-day exclusion is twice what respondent initially implemented and lacks scientific or medical justification; allowing children back into school immediately upon receiving an MMR vaccination contravenes directives of the CDC and the prior communication from the respondent itself which required even children who received one vaccination to remain home for 21 days after “exposure.”

**WHEREFORE**, this Court should declare invalid and arbitrary, capricious and contrary to law and beyond respondent’s authority to impose and vacate the exclusion order dated December 7, 2018 which currently prohibited these petitioners’ children from being re-admitted to the GMWS and award to petitioners the costs and disbursements incurred in bringing this action and enter any other relief which it deems just and necessary.

Respectfully submitted,  
  
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Dated: April 3, 2019

