

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL
IN AND FOR BROWARD COUNTY, FLORIDA**

ELVIN J. DOWLING, on his own behalf and on behalf of,
as parent and as prochain ami of Elvin J. Dowling-Santana,
Joshua D. Dowling-Santana and Eden Dowling-Santana

Plaintiffs,

vs.

CASE NO.

GOVERNOR RON DESANTIS and the **STATE
OF FLORIDA**,

Defendants.

_____ /

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF BASED UPON
VIOLATIONS OF THE FLORIDA CONSTITUTION**

COMES NOW the Plaintiff ELVIN DOWLING, on his own behalf and on behalf of, as parent of and as prochain ami of his children Elvin J. Dowling-Santana, Joshua D. Dowling-Santana, and Eden Dowling-Santana (hereinafter "DOWLING") sues Defendants GOVERNOR RON DESANTIS (hereinafter "DESANTIS") and THE STATE OF FLORIDA, and as grounds therefor alleges as follows:

JURISDICTION AND VENUE

1. This is an action for injunctive and declaratory relief.
2. This Court has jurisdiction pursuant to Fla. Stat. §§ 26.012(2) and (3) and § 86.011.
3. Venue is proper in Broward County, Florida, as causes of action accrued in Broward County, the Plaintiffs reside in Broward County, and the threatened harm will take place in Broward County, Florida.

PARTIES

4. Plaintiff DOWLING is, and at all times material hereto has resided in Broward County, Florida, is sui juris and is the father, legal guardian, custodian and best friend, along with his

wife, of Elvin J. Dowling-Santana, Joshua D. Dowling-Santana and Eden Dowling-Santana, who are minor children who reside in Broward County, Florida.

5. Plaintiff Elvin J. Dowling-Santana is 13 years old, is entering the 8th grade at Glades Middle School in Miramar, a public school run by Broward County School District, and is entitled by Florida law to an education in a safe school. He has been vaccinated but is still at risk due to the Defendants' actions.

6. Plaintiff Joshua D. Dowling-Santana is 10 years old, is too young to receive a Covid-19 vaccine and has a history of childhood asthma. Due to Defendants' actions, it is not safe for Joshua to attend public school in Broward County and therefore he must attend school virtually.

7. Plaintiff Eden Dowling-Santana is 6 years old and is thus, too young to receive a Covid-19 vaccine. Due to the actions of the Defendants, it would not be safe for her to attend a public school in Broward County, and therefore she will attend school virtually

8. Defendant DESANTIS, is over 18 years old, is sui juris and is the Governor of Florida.

9. Defendant, FLORIDA, is a political entity that governs the State of Florida and has jurisdiction over some functions performed in the public schools of Broward County, Florida.

COMMON ALLEGATIONS

10. On July 30, 2021, Defendant DESANTIS signed Executive Order 21-175, which purports to direct State agencies to withhold funds to local school boards that institute a mask mandate (a rule that requires all students, teachers and employees on campus to wear a face mask except while eating).

11. Due to imprecise and flawed wording, the Executive Order does not prohibit a local school board from instituting a mask mandate for all students and school employees. However, it is

most likely the case that local school boards such as the Broward County School Board, will fear losing this funding and will therefore be pressured to rescind their planned mask mandate.

12. Because Plaintiff DOWLING'S children under 12 are unable to obtain a vaccine, they would be at great risk of contracting the deadly Covid-19 and transmitting it to each other, their parents, and to their friends and family, thus contributing to the spread of the pandemic.

13. Plaintiff's 10 year old son Joshua, has a history of childhood asthma, and without access to the Covid-19 vaccine, returning to school unmasked could be lethal.

14. According to the Centers for Disease Control and Prevention ("CDC"), the virus spreads from person-to-person "between people who are in close contact with one another (within about 6 feet) through respiratory droplets produced when an infected person coughs, sneezes or talks." It is understood that the virus can be spread by human contact with surfaces contaminated with droplets containing the virus.

15. Florida is among the states with the highest number of Covid-19 victims in the country, and the number of afflicted people is growing rapidly. The danger to Plaintiff and his children and all others they come into contact with is severe, unreasonable, and growing by the day.

16. Executive Order 21-175, which has been interpreted by some to permit the Defendants to withdraw funds from School Boards in Florida which impose a mask mandate, requires in subsection 1 that any such action not violate Florida Constitutional freedoms.

17. As described herein, numerous Florida Constitutional freedoms would be violated if funds were withheld to the school boards, and thus if Executive Order 21-175 is used for the purpose of seeking to intimidate or prevent local school boards from enacting a mask mandate, it would violate its own terms.

18. Upon information and belief, it appears that the decisions of Governor DESANTIS as described herein, are not based on the best interests of students, teachers, or the people of Florida, or upon his duty to protect the lives and safety of Floridians, nor upon any rational or compelling basis, but are rather based on purely political motives, despite the purported reasons stated in Executive Order 21-175.

19. The Delta variant of Covid-19 is extremely contagious, more virulent and poses more danger than other strains of the disease. The Delta variant is rapidly spreading throughout Florida and health experts and federal health agencies, such as the CDC, (Centers for Disease Control) warn that sending children into public schools without a mask mandate is highly dangerous.

20. The state of Florida, is one of many epicenters of the most lethal pandemic to afflict our nation in a century, the coronavirus. The virus has no boundaries—and is particularly pernicious and contagious in indoor settings where large numbers of people congregate, such as our public schools. Sending thousands of children, teachers and school personnel into our public schools unmasked, places Plaintiffs and all others in Florida at great risk of serious illness and death.

21. The threatened injury to the lives of Plaintiffs and to Florida residents outweighs any possible harm to Defendants. There is no rational or compelling reason to make a decision that endangers the health, education and lives of students, teachers and all other Floridians.

22. The Plaintiffs' injuries cannot be compensated adequately by damages or remedied at law. No one can put a price on human life, the loss to a society when excellent and devoted teachers flee from the teaching profession because the schools are unsafe and the stress of being forced to return to an incubus of death or give up the noble profession of teaching, working under dangerous conditions, and none can put a price on the sadness of children unable to return to school because the Defendants have rendered them unsafe by their actions.

COUNT 1: VIOLATION OF FLORIDA CONSTITUTION ARTICLE IX, § 1.

23. Plaintiffs repeat the allegations of Paragraphs 1 through 22 above as if fully set forth herein.

24. The Florida Constitution provides that “[a]dequate provision shall be made by law for a uniform, efficient, **safe, secure**, and high quality system of free public schools.” Fla. Const. Art. IX, § 1. (emphasis added). The highlighted amendment to the Florida Constitution was passed in 1998 by public referendum when over 2 million Floridians voted to demand that the State of Florida assure the people of this state that its schools would be safe and secure, in addition to the requirement that the State provide a high quality education.

25. The Defendants’ unconstitutional handling of their duties violates this mandate and requires the courts to issue necessary and appropriate relief. Florida students, parents, teachers, and the public deserve and are constitutionally entitled to the protections needed to assure a lawful and safe learning environment.

26. Plaintiffs bring this suit to safeguard the safety, security and quality of education in our public schools, all of which are threatened by Defendants’ actions.

27. The CDC guidelines provide the most authoritative criteria for the safe reopening of a broad range of facilities, operations, and activities, including schools. With no rational basis for ignoring the CDC guidelines, the Defendants are requiring thousands of people, including the Plaintiffs, to walk into a death trap during the middle of a raging pandemic while others are unmasked and thus free to spread this pandemic to Plaintiffs’ children who are too young to receive the vaccine.

28. Thus, the Plaintiff must choose between depriving his children of in class instruction which jeopardizes their education or force them into a deadly situation which jeopardizes their health and the health of all those with whom they come into contact.

29. Absent the requested relief, plaintiffs, all school personnel, their families and the people of Florida will be at grave risk of serious illness and death.

30. Emergency relief is needed from this Court to protect the community from Defendant's arbitrary and unconstitutional actions and omissions during a raging pandemic in Florida.

31. The full extent of the danger from the pandemic in Florida is not known due to the Defendants' efforts to hide the truth, silence its critics, and misrepresent the full extent of the harm posed by Covid-19.

32. The granting of the relief sought herein will serve the public interest and will protect Plaintiffs and the public from harm.

33. The Plaintiffs in this case have a substantial likelihood of success on the merits, will suffer irreparable harm if the requested relief is not granted, have no adequate remedy at law, and a ruling in their favor would serve and definitely not harm the public interest.

34. An injunction in this case will allow local school boards to make safety determinations for the reopening of schools without interference from the Defendants. This is what the local school boards were elected to do.

WHEREFORE the Plaintiffs respectfully request that this Court grant injunctive relief declaring Defendants' actions a violation of the Florida Constitution Article 9, Section 1 and prohibiting the Defendants from enforcing Executive Order 21-175 and/or prohibiting the Defendants from threatening or in any way attempting to interfere with a local school board's right and freedom to impose a mask mandate within the public schools of Broward County, Florida or any other county in Florida, and further requests that this Court grant any further relief deemed just and proper by this Court.

COUNT II: INJUNCTIVE RELIEF BASED ON FLORIDA CONSTITUTION ARTICLE 1, § 9 WHICH PROVIDES FOR DUE PROCESS OF LAW

35. Plaintiffs repeat and reallege paragraphs 1 through 34 as if fully set forth herein.

36. 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[.]” 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).

37. Executive Order 21-175 and/or any other effort by the Defendants to prevent local school boards from protecting the health, safety and welfare of the students, teachers and employees of the School Board is capricious and lethal to the health of Plaintiffs, their family and all Floridians.

38. Politics, rather than health, education, public welfare or the best interests of Floridians is the basis for the actions of the Defendants and therefore they violate the Plaintiffs’ constitutional rights to life, liberty and the pursuit of happiness as well as the Due Process of Law.

39. The actions of the Defendants are unreasonable, inconsistent, arbitrary and capricious. This is creating fear and anxiety among Plaintiffs and all other teachers, parents and the public in matters that affect life and death while Florida is trying to deal with a deadly pandemic.

40. Plaintiffs are being denied the right to rely on their locally elected school board officials who are tasked by the State of Florida to make decisions affecting the health, safety and welfare of the Plaintiffs and all those who enter our public schools

41. The Defendant is usurping its constitutional function. Parents and public-school employees have a right to rely on their elected officials to make decisions safeguarding their health and the health and safety of their families.

42. Defendants’ actions are arbitrary and capricious, and violate Plaintiffs’ due process.

43. The decisions as to how and when to safely reopen schools are subject to the school boards and should be based on current and accurate information and in cooperation with each counties' public health authorities. Defendants have failed to fulfill their duties and obligations and are attempting to interfere in areas where they have no jurisdiction to the detriment of the Plaintiffs.

44. Plaintiffs have a substantial likelihood of success on the merits. Without an injunction, Plaintiffs and thousands of students, teachers, District employees and others will be placed at an unnecessarily increased risk of physical injury, illness, and potential death from the COVID-19 virus. Employees and students should not have to risk grave illness or death by being required to be in school with others who are may or may not take the prudent safety precaution of wearing a mask during a raging pandemic with a highly contagious coronavirus variant.

45. If Defendants are not enjoined from their actions and omissions, Plaintiffs and all Floridians face irreparable harm.to their education health and wellbeing.

WHEREFORE the Plaintiffs respectfully request that this Court grant injunctive relief prohibiting the Defendants from enforcing Executive Order 21-175 and/or prohibiting the Defendants from threatening or in any way attempting to interfere with a local school board's right and freedom to impose a mask mandate within the public schools of Broward County, Florida or any other county in Florida.

COUNT 3: DECLARATORY JUDGMENT REGARDING VIOLATIONS OF FLORIDA CONSTITUTION ARTICLE 1, SECTION 9 AND ARTICLE 9, SECTION 1

46. Plaintiffs repeat and reallege paragraphs 1 through 45 as if fully set forth herein.

47. Fla. Stat. § 86.011 gives circuit courts of this state jurisdiction and power "to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed."

48. Article IX, Section 1(a) of the Florida Constitution provides:

Section 1. Public education.--

(a) 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.)

49 The Florida Constitution requires that state entities and public officials, who are charged with overseeing the funding and operations of public education, ensure that our schools operate safely. Protecting the health and safety of each person connected with the state's education system is undisputedly a matter of paramount importance. Defendants cannot legally deny students, public school staff, their family members, and the public with whom they come in contact within the public-school system their basic human needs for health and safety.

50. Plaintiffs seek a declaratory judgment determining that the Defendants have failed to abide by the requirements of the Florida Constitution Article 1, Section 9 and Article 9, Section 1 by seeking to prohibit local school boards from enacting reasonable measures to keep students such as the Plaintiffs, their teachers, school employees and everyone else in Florida safe and secure in our public schools.

51. Our public schools and public education are the bedrock of our democracy, the right of all students and among the most important obligations of the Defendants.

52. Defendants are the enforcement arm of the state and are bound by the provisions of the Florida Constitution.

53. An actual controversy currently exists between Plaintiffs and the Defendant. A declaration is needed from this Court to protect the community from this back to school order and to provide guidance as to the rights of the parties in this matter.

WHEREFORE, Plaintiffs seek a declaration from this Court that Executive Order 21-175 is unconstitutional and further requests that this Honorable Court rule that other efforts by Defendants to prevent local school boards from taking necessary and reasonable precautions to keep students, teachers and others safe in our schools, such as with a mask mandate, violate Plaintiffs' rights under the Due Process Clause of the Florida Constitution, Article 1, § 9, and/or violate their right to learn in a public school that provides a safe, secure and high quality education to them and other students as guaranteed by the Fla. Const. Art. IX, § 1.

Respectfully submitted August 6, 2021

By: /s/ Barry Silver

Barry Silver FBN 382108

(561) 302-1818

barryboca@aol.com