

**STATE OF NEW YORK, SUPREME COURT
COUNTY OF SUFFOLK**

**Dina Phillips,
Bradford Phillips,
Michael Capuano,
Stacy Ortiz Goldberg,
Kristen Rossi,
Paula Hughes
Peggy Brown,
Dina DeVito,
Melissa Clements,**

SUMMONS

Index Number _____

Plaintiffs/Petitioners,

v.

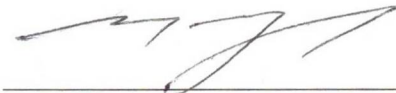
**Andrew Cuomo, in his official capacity
as Governor of the State of New York,**

**Howard Zucker, in his official capacity as
Commissioner of Health for the State of New York,**

Defendants/Respondents.

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiffs/Petitioners an answer to the Complaint and Verified Article 78 Petition in this action within twenty days (20) days after service of this summons, exclusive of the day of service (or within thirty (30) days after the service is completed if this summons is not personally delivered to you within the State of New York), and in the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint and Verified Petition pursuant to CPLR Article 78.

DATED: November 10, 2020



Carl J. Schwartz, Jr., Esquire
Attorney for Plaintiffs/Petitioners
131 Main Street, Suites 201-204
P.O. Box 681
Penn Yan, New York 14527

Finger Lakes Law Group
ADVOCATING WITH
INTEGRITY
THE LOWN'S BUILDING
SUITES 201-210
131 MAIN STREET
P.O. BOX 681
PENN YAN, NY
14527

NEW YORK STATE, SUPREME COURT
COUNTY OF SUFFOLK

Dina Phillips,
Bradford Phillips,
Michael Capuano,
Stacy Ortiz Goldberg,
Kristen Rossi,
Paula Hughes,
Peggy Brown,
Dina DeVito,
Melissa Clements,

Plaintiffs/Petitioners,

COMPLAINT & ARTICLE 78
VERIFIED PETITION

Index No. _____

Against

Andrew Cuomo, in his official capacity as
Governor of the State of New York,

Howard Zucker, in his official capacity as
Commissioner of Health for the State of New York,

Defendants/Respondents.

AS AND FOR A PROCEEDING BROUGHT PURSUANT TO
ARTICLE 78 AND 3001 OF THE CPLR.

Plaintiffs/Petitioners, allege through counsel, the following:

NATURE OF THE PROCEEDING

1. This proceeding is brought pursuant to CPLR Articles 78 and 3001, seeking an injunction and declaratory relief, challenging as unlawful and unconstitutional, emergency measures, specifically, but not limited to as updated from time to time,

executive orders 202.1, 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.9, 202.10, 202.11, 202.13, 202.18, 202.48, 202.49, 202.53, 202.55, 202.28, 202.29, enacted by the Defendants/Respondents in their official capacities as Governor of the State of New York, and Commissioner of Health of New York State, in response to the Covid19 pandemic.

2. Plaintiffs/Petitioners allege that the emergency measures referenced above violate the rights of assembly and free speech clauses of the First Amendment of the Constitution of the United States.

3. Plaintiffs/Petitioners allege that the emergency measures referenced above violate the government's taking and due process (being deprived of life, liberty or property, without due process of law) clauses of the Fifth Amendment of the Constitution of the United States.

4. Plaintiffs/Petitioners allege that the emergency measures referenced above violate the right of due process clause as well as the right to privacy as specifically set forth by the United States Supreme Court in the case of *Roe v. Wade*, 410 U.S. 113, citing the Fourteenth Amendment of the Constitution of the United States.

5. Plaintiffs/Petitioners allege that the emergency measures referenced above violate the rights of Plaintiffs/Petitioners to a plethora of medical rights including but not limited to those rights afforded by the Health Insurance Portability And Accountability Act (HIPAA) passed by the United States Congress at Public Law 104-191 on August 21, 1996.

PARTIES

6. Plaintiffs/Petitioners Dina and Bradford Phillips are residents of Selden, County of Suffolk, State of New York, and the parents of 2 school age children in the Middle Country School District, who are all subject to the rules and mandates issued out of Albany that are being adopted by the local school district and that are limiting and restricting their full and free access to the normal and customary educational and extracurricular activities that would otherwise be enjoyed. This includes masking, social distancing, hybrid or online schooling, lack of social interaction, and excessive medical mandates/Covid-19 procedures being imposed upon families through the New York State. Plaintiff, Bradford Phillips, an employee of a business subject to the mandates and various executive orders of the Respondents, has been furloughed and has not been able to return, creating a financial hardship for Plaintiffs. Plaintiffs, Dina and Bradford Phillips, are the parents of a child who, but for arbitrary and capricious regulations being foisted upon our houses of worship, was prepared to participate in the holy sacrament of Confirmation in the Catholic Church. The rules that the Church felt compelled to obey as dictated by Respondents, rendered the sacrament and the ceremony so devoid of its holy nature that the Plaintiffs were unable to participate in the sacrament at this time.

Plaintiff/Petitioner Michael Capuano is a resident of Sound Beach, County of Suffolk, State of New York. Plaintiff is a father of 1 school age child in the Sachem Central School District. The district's insistence on full compliance with ALL mandates, guidelines and orders issued by Respondents has severely affected plaintiff's child's ability to learn and thrive. Social distancing has impacted her social and emotional health and forced isolation has stunted normal childhood development. The masking and limited

school day has compelled Plaintiff to seek private school instruction for his child which has impacted Plaintiff's family financially, creating additional stress. Plaintiff is a landlord who has been significantly impacted by the Covid-19 shutdowns and New York State mandates/guidelines. Plaintiff's tenants have fallen behind in paying their monthly rent or do not pay on time. Due to the new regulations put in place by the State of New York, Plaintiff has no legal recourse at this time to collect rent. Plaintiff, Michael Capuano, and his family have been deprived the ability to attend weekly services and assemble as they see fit at their local church due to the excessive and unnecessary mandates restricting worship in New York State.

Plaintiff/Petitioner Stacy Ortiz Goldberg is a resident of Selden, County of Suffolk, State of New York, and a working parent of 2 school-age children in the Middle Country Central School District, who have been emotionally, mentally and physically impaired due to the rules and regulations imposed by the State including social distancing, restriction of extracurricular activities (and sports), and masking policies. Plaintiff, Stacy Ortiz Goldberg, is a parent of a hearing-impaired child who has not received any specialized care from the district since school closed in March 2020 and the child has regressed due to the school's closure. Current school policies include masking at all times in addition to social distancing. These draconian regulations do not allow children who are hearing impaired to see teacher's mouths. Masking, specifically, does not allow for children to practice forming words correctly, see tongue placement, or mimic phonetics due to facial hindrance. Children with hearing impairments require

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.