

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Drake Snell; Jesse Wiederholt; Jennifer Pine; Michelle Johnson; Angela Zorn; Arielle Brandenburg; Nourish Family Wellness, P.L.L.C.; Dr. Elizabeth Berg; Lisa Hanson; Jayne Huber; Christine Luetgers; Thomas O’Keefe; John Bruski; Northland Baptist Church of St. Paul, Minnesota; Aaron Kessler; and Diane Smith,

Petitioners,

v.

Tim Walz, Governor of Minnesota, in his official capacity; Attorney General Keith Ellison, in his official capacity; and James Backstrom, Dakota County Attorney, in his official capacity,

Respondents.

Court File No. _____

**PETITION FOR A WRIT OF
QUO WARRANTO**

INTRODUCTION

1. “[C]itizens . . . are guaranteed freedom of speech, of the press, and of assembly, meetings, street processions and demonstrations. Exercise of these political freedoms is ensured by putting public buildings, streets, and squares at the disposal of the . . . people and their organizations, by broad dissemination of information, and by the opportunity to use the press, television, and radio.

Citizens . . . are guaranteed freedom of conscience, that is, the right to profess or not to profess any religion, and to conduct religious worship, or atheistic propaganda. Incitement of hostility or hatred on religious grounds is prohibited.”

2. As the late Justice Antonin Scalia explained to his audience in quoting this passage, these were the ‘rights’ guaranteed by the 1977 Constitution of the Union of Soviet Socialist Republics. As Justice Scalia noted, they “were not worth the paper they were printed on . . . [t]hey

are what the Framers of our Constitution called ‘parchment guarantees.’” Antonin Scalia, *Foreword: The Importance of Structure in Constitutional Interpretation*, 83 Notre Dame L. Rev. 1417, 1418 (2008).

3. These rights were worthless, as Justice Scalia said, because “the provisions that establish the institutions of government [in the USSR]. . . do not prevent the centralization of power in one man or one party, thus enabling the guarantees to be ignored. Structure is everything.” *Id.*

4. Justice Scalia’s words were prescient given the circumstances in Minnesota today. Governor Tim Walz has arrogated to himself the powers of Governor, Legislature, and Judge with his Executive Order rule-by-decree. Governor Walz’ self-grant of power purports to nullify Petitioners’ constitutional rights.

5. With the principle that “structure is everything” in mind, the petitioners here seek a writ of quo warranto to enjoin Governor Tim Walz from enforcing Emergency Executive Order (“EO”) 20-81 using authority allegedly derived from Minnesota Statutes, Chapter 12, and from issuing new EOs mandating the use of masks via his purported powers under Minnesota Statutes, Chapter 12.

6. First, EO 20-81 conflicts with Minn. Stat. § 609.735, which forbids the use of masks in public places subject only to a few exceptions, none of which apply in the current circumstances. Governor Walz’ attempt to unilaterally set aside this properly enacted law in EO 20-81 is of no force or effect under Chapter 12, as Minn. Stat. § 12.32 only allows the Governor to set aside “[r]ules and ordinances of any agency or political subdivision of the state” that conflict with an EO. Minn. Stat. § 609.735 is not a rule or ordinance; it is a statute.

7. Second, even if Minn. Stat. § 12.32 were incorrectly interpreted to allow the

Governor to set aside a properly enacted statute passed by a Legislature and signed by a Governor, that construction would cause Chapter 12 to violate the non-delegation principle underlying the separation of powers established in the Minnesota Constitution’s Article III, section 1. If the Governor can, by unilateral decree, override existing statutes, then Chapter 12 imposes no intelligible principle of limitation on the Governor’s powers—it would be a pure transfer of legislative authority from the Legislature to the Governor and thus unconstitutional. Interpreting a statute in a way which results in its unconstitutionality is impermissible if there is any alternative construction, pursuant to Minn. Stat. § 645.17(3).

8. Third, Minn. Stat. § 12.31, subdivision 2, does not authorize the Governor to invoke emergency powers for public health purposes. There is no allowance for a “public health” emergency in the statute. And, in fact, the Legislature removed this specific language from Section 12.31 in 2005, and a measure seeking to re-enact it in 2020 failed. All of the Governor’s EOs, including EO 20-81, are void because there is no authority for Governor Walz to declare a peacetime emergency due to COVID-19.

9. Fourth, a mandatory dress code of this type has no support in American jurisprudence. *See, e.g., Minn. Voters Alliance v. Mansky*, 138 S. Ct. 1876 (2018). The First Amendment prohibits a state from forcing its citizens to “virtue signal” their agreement or endorsement of the speculative “science” behind the public mask protocol related to COVID-19, which was repeatedly dismissed just a few months ago by the United States Surgeon General, and Dr. Anthony Fauci himself. And, the mask mandate infringes on the sincerely held religious beliefs of those who believe wearing a mask is sinful.

PARTIES

10. Petitioner Drake Snell is a resident of Lyon County, Minnesota.

11. Petitioner Jesse Wiederholt is a resident of Dakota County, Minnesota.
12. Petitioner Jennifer Pine is resident of Dakota County, Minnesota.
13. Petitioner Michelle Johnson is a resident of Martin County, Minnesota.
14. Petitioner Angela Zorn is a resident of Dakota County, Minnesota.
15. Petitioner Arielle Brandenburg is a resident of Carver County, Minnesota.
16. Petitioner Nourish Family Wellness, P.L.L.C. is a Minnesota professional limited liability corporation with its principal place of business in Ramsey County, Minnesota.
17. Petitioner Dr. Elizabeth Berg is a resident of Anoka County, Minnesota.
18. Petitioner Lisa Hanson is a resident of Hennepin County and works in Wright County, Minnesota.
19. Petitioner Jayne Huber is a resident of Scott County, Minnesota.
20. Petitioner Christine Luetgers is a resident of Hennepin County, Minnesota.
21. Petitioner Thomas O’Keefe is a resident of Dakota County, Minnesota.
22. Petitioner John Bruski is a resident of Ramsey County, Minnesota.
23. Petitioner Northland Baptist Church of St. Paul, Minnesota is a Minnesota non-profit corporation with its principal place of business in Ramsey County, Minnesota.
24. Petitioner Aaron Kessler is a resident of Ramsey County, Minnesota.
25. Petitioner Diane Smith is a resident of Washington County, Minnesota.
26. Respondent Tim Walz is the Governor of Minnesota. His office address is 130 State Capitol, 75 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, Minnesota 55155. Petitioners’ claims are against Governor Walz in his official capacity only.
27. Respondent Keith Ellison is the attorney general of the State of Minnesota. His office address is 445 Minnesota Street, Saint Paul, Minnesota 55101. Petitioners’ claims are

against Attorney General Ellison in his official capacity only.

28. Respondent James Backstrom is the county attorney for Dakota County, Minnesota. Upon information and belief, the Dakota County Attorney is charged with the enforcement of petty misdemeanors for cities of less than 600 people, including the residence and workplace of Petitioner Jesse Wiederholt. County Attorney Backstrom is charged with the enforcement of EO 20-81 against Petitioner Wiederholt in Miesville, Minnesota, where he works. County Attorney Backstrom's office address is 1560 Highway 55, Hastings, Minnesota 55033. Petitioners' claims are against County Attorney Backstrom in his official capacity only.

JURISDICTION AND VENUE

29. The Minnesota Constitution, Article VI, Section 2, gives the Minnesota Supreme Court "original jurisdiction in such remedial cases as are prescribed by law." This includes the power to issue the writ of quo warranto. Minn. Stat. § 480.04 (2018). *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 174 (Minn. 2020).

30. Although the Minnesota Supreme Court has original jurisdiction to issue the writ of quo warranto, in *Rice v. Connolly*, the Minnesota Supreme Court instructed that petitions for the writ should be filed in the first instance in district court. 488 N.W.2d 241, 243-44 (Minn. 1992). *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 174 (Minn. 2020).

31. The Court of Appeals does not have jurisdiction under Minnesota Statutes § 14.44 to judicially review the Governor's EOs. *Free Minnesota Small Business Coalition, et al. v. Tim Walz, Governor of Minnesota*, Case No. A20-0641 (Minn. App. May 26, 2020).

32. Therefore, this Court has jurisdiction over this petition.

33. Venue is proper in this Court because the Defendants are located in Ramsey County, Minnesota.

FACTS

Executive Order 20-81 Conflicts With Minn. Stat. § 609.735 and Is Full of Vague Exemptions

34. In 1963, the Minnesota Legislature passed, and the Governor signed into law, Minn. Stat. § 609.735, which made it illegal to conceal one’s identity in public “by means of a . . . mask.” <https://www.revisor.mn.gov/laws/1963/0/Session+Law/Chapter/753/pdf/>.

35. Amendments to the statute in the subsequent decades added exceptions to the law, which include, in today’s iteration, mask uses based on “religious beliefs, or incidental to amusement, entertainment, protection from weather, or medical treatment.” Minn. Stat. § 609.735.

36. Wearing a mask to prevent one-self or others from contracting COVID-19 or spreading COVID-19 is not “medical treatment” under any definition of the term.

37. On July 22, 2020, Governor Walz issued EO 20-81, which makes it illegal for any Minnesotan over the age of 5 not to wear a mask in “indoor businesses and indoor public settings.” <https://www.leg.state.mn.us/archive/execorders/20-81.pdf>.

38. EO 20-81 has exemptions for those who are under 5 years old; those who have a medical condition, mental health condition, or disability that makes it “unreasonable” for the individual to wear a mask; and those individuals for whom mask wearing at their workplace would “create a job hazard for the individual or others, as determined by local, state, or federal regulators.”

39. What is “unreasonable” or poses a “job hazard” is undefined in EO 20-81, and the Minnesota Department of Health’s guidance does not define these terms, either. *E.g.*, <https://www.health.state.mn.us/diseases/coronavirus/facecoverfaq.html>

40. EO 20-81 allows individuals to “temporarily remove” masks in certain circumstances:

- a. When participating in organized sports in an indoor business or indoor public space while the level of exertion makes it difficult to wear a face covering.
- b. When exercising in an indoor business or public indoor space such as a gym or fitness center, while the level of exertion makes it difficult to wear a face covering, provided that social distancing is always maintained.
- c. When testifying, speaking, or performing in an indoor business or public indoor space, in situations or settings such as theaters, news conferences, legal proceedings, governmental meetings subject to the Open Meeting Law (Minnesota Statutes 2019, Chapter 13D), presentations, or lectures, provided that social distancing is always maintained. Face shields should be considered as an alternative in these situations.
- d. During practices or performances in an indoor business or indoor public space when a face covering cannot be used while playing a musical instrument, provided that social distancing is always maintained.
- e. During activities, such as swimming or showering, where the face covering will get wet.
- f. When eating or drinking in an indoor business or indoor public space, provided that at least 6 feet of physical distance is maintained between persons who are not members of the same party.
- g. When asked to remove a face covering to verify an identity for lawful purposes.
- h. While communicating with an individual who is deaf or hard of hearing or has a disability, medical condition, or mental health condition that makes communication with that individual while wearing a face covering difficult, provided that social distancing is maintained to the extent possible between persons who are not members of the same household.
- i. While receiving a service—including a dental examination or procedure, medical examination or procedure, or personal care service—that cannot be performed or would be difficult to perform when the individual receiving the service is wearing a face covering.
- j. When an individual is alone, including when alone in an office, a room, a cubicle with walls that are higher than face level when social distancing is maintained, a vehicle, or the cab of heavy equipment or machinery, or an enclosed work area. In such situations, the individual should still carry a face covering to be prepared for person-to-person interactions and to be used when no longer alone.
- k. When a public safety worker is actively engaged in a public safety role, including but not limited to law enforcement, firefighters, or emergency medical

personnel, in situations where wearing a face covering would seriously interfere in the performance of their public safety responsibilities.

41. EO 20-81 also sets forth a set of requirements and exemptions for schools and childcare services.

42. EO 20-81 states that “[b]usinesses must require that all persons, including their workers, customers, and visitors, wear face coverings as required by this Executive Order.”

43. Although EO 20-81 forces this requirement on businesses, it also says that businesses must:

- a. provide accommodations to workers such as “permitting use of an alternate form of face covering . . . or providing service options that do not require a customer to enter the business.” There is no explanation of what can be done if either of these do not apply;
- b. follow all requirements related to inquiry into conditions for workers’ exemption from the mask mandate.
- c. not inquire about the reasons behind or proof of customers’ mask-exemption conditions; and
- d. not restrain customers or remove them from the premises for violation of the mask requirement.

44. EO 20-81 claims that “[w]earing a face covering in compliance with this Executive Order or local ordinances, rules, or orders is not a violation of Minnesota Statutes 2019, section 609.735.”

45. This patchwork of mask requirements and exemptions is based on authority claimed by the Governor under Minn. Stat. §§ 12.02, 12.21, subdivision 3, 12.31, 12.32, and EO 20-83 (the most recent order related to the extension of the emergency).

***There Is No Authority Under Chapter 12 to Set Aside
Contrary Statutes—As Opposed to Rules or Ordinances***

46. Minn. Stat. § 12.32 provides that the Governor’s orders issued pursuant to Chapter

12 have “the full force and effect of law,” and “[r]ules and ordinances of any agency or political subdivision of the state inconsistent with the provisions of [Chapter 12] or with any order or rule having the force and effect of law issued under the authority of [Chapter 12], is suspended during the period of time and to the extent that the emergency exists.”

47. Minn. Stat. § 12.32 does not state that contrary *statutes* are suspended during a declared emergency.

48. EO 20-81 states that “[a]ny inconsistent rules or ordinances of any agency or political subdivision of the state are suspended during the pendency of the emergency.”

49. However, EO 20-81 also states in its paragraph 19 that “[w]earing a face covering in compliance with this Executive Order or local ordinances, rules, or orders is not a violation of Minnesota Statutes 2019, section 609.735.”

50. Minn. Stat. § 12.32 does not give the Governor the authority to unilaterally declare a properly enacted statute void during a declared emergency—nor could it lawfully do so.

51. Because EO 20-81 conflicts with Minn. Stat. § 609.735, it is a legal nullity and void.

***If Paragraph 19 of EO 20-81 Is Interpreted As Setting Aside Minn. Stat. § 609.735,
It Violates the Separation of Powers Clause of the Minnesota Constitution***

52. If EO 20-81 is interpreted as setting aside Minn. Stat. § 609.735, then it and Minn. Stat. § 12.32 violate the separation of powers clause of Article III, section 1 of the Minnesota Constitution.

53. Article III, section 1 of the Minnesota Constitution provides that “[n]o person or persons belonging to or constituting one of the [three co-equal branches of Minnesota government] shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.”

54. Minnesota’s courts have interpreted this provision as prohibiting the Legislature from delegating pure legislative power to the Governor. *Lee v. Delmont*, 36 N.W.2d 530, 538 (Minn. 1949).

55. “Pure legislative power, which can never be delegated, is the authority to make a complete law—complete as to the time it shall take effect and as to whom it shall apply—and to determine the expediency of its enactment.” *Lee v. Delmont*, 36 N.W.2d 530, 538 (Minn. 1949).

56. The Governor cannot exercise the powers given to the Legislature in Article IV, section 22 and 23 of the Minnesota Constitution, in which a majority of the Legislature must pass a law, and then the Legislature must present it to the Governor for approval and signature.

57. EO 20-81, purportedly enacted pursuant to the authority granted by Minn. Stat. § 12.32, is an exercise of pure legislative power. EO 20-81 provides the time the mask mandate will take effect, creates punishments for violations, and tells the Attorney General and others to enforce it.

58. EO 20-81 was not passed in conformity to the rules of each house and the joint rules of the two houses and subsequently presented to the Governor.

59. If EO 20-81 is interpreted to allow the Governor to set aside Minn. Stat. § 609.735, then it also has the full force and effect of a standalone statute or a repeal, as if it had gone through the Article IV, section 22 through 23 process.

60. And, if paragraph 19 of EO 20-81 is given the construction of only “interpreting” Minn. Stat. § 609.735 as not in conflict with EO 20-81, then the Governor has illegally seized the powers of the judiciary to exercise the “judicial power” as conferred by the Constitution’s Article VI, section 1. *E.g., State ex rel. Thompson v. Day*, 273 N.W. 684, 686 (Minn. 1937).

61. Thus, even if the Court were to find that Chapter 12 allows the issuance of EO 20-

81, it violates Article III, section 1 of the Minnesota Constitution because it illegally seizes legislative and judicial functions.

Chapter 12 Does Not Allow the Declaration of a Public Health Emergency

62. Minn. Stat. § 12.31, subd. 2 allows the Governor to declare a peacetime emergency in limited circumstances: “when an act of nature, a technological failure or malfunction, a terrorist incident, an industrial accident, a hazardous materials accident, or a civil disturbance endangers life and property and local government resources are inadequate to handle the situation.”

63. There is no provision in Chapter 12 for the declaration of a public health emergency.

64. In fact, the Legislature removed the provision for declaration of a “public health emergency” from the Governor’s powers in 2005 by passing H.F. 1555.

65. H.F. No. 1555, which modified Minn. Stat. § 12.31, reads as follows, in relevant part:

Subd. 2. [DECLARATION OF PEACETIME EMERGENCY.] (a) The governor may declare a peacetime emergency. A peacetime declaration of emergency may be declared only when an act of nature, a technological failure or malfunction, a terrorist incident, ~~a public health emergency~~, an industrial accident, a hazardous materials accident, or a civil disturbance endangers life and property and local government resources are inadequate to handle the situation.

66. Tellingly, in response to the COVID-19 pandemic, House File No. 4326 was introduced on March 9, 2020, about a week before the Governor declared a peacetime emergency, to include “public health emergency” as a reason for the Governor to declare a peacetime emergency. That bill failed.

67. The repeal of the “public health emergency” text and the failure to re-enact this language means that there is no express statutory authority under Minn. Stat. § 12.31 to declare a

“public health emergency.”

68. Because the statute was amended to remove any authority to declare a “public health emergency,” and the Legislature failed to re-enact that power, there is no lawful basis for interpreting Minn. Stat. § 12.31 to include “public health emergency” within the category “act of nature,” as the Governor has attempted to do.

69. While the Governor improperly calls COVID-19 an “act of nature” in EO 20-01 and the amending EO 20-83, the Governor has repeatedly referred to COVID-19 as a “public health crisis,” including in EO 20-81.

70. Because there is no authority in Minn. Stat. § 12.31 for the peacetime emergency declared under EO 20-83, EO 20-81, which depends on the authority in EO 20-83, is void.

***EO 20-81 Is Void Because It Violates
the First Amendment’s Free Exercise and Free Speech Clauses***

71. Each of the Petitioners in this action disagree with the Governor’s forced masking order. They believe it is illegal and violates their freedom of personal liberty and autonomy, and they disagree that masking is effective to achieve any public purpose or in preventing the spread of COVID-19.

72. Petitioners point to previous statements by the U.S. Surgeon General Jerome Adams, who said in March 2020 that masks worn by non-health professionals “actually can increase the spread of coronavirus.” <https://www.cnn.com/2020/03/02/health/surgeon-general-coronavirus-masks-risk-trnd/index.html>.

73. Although others have recently opined that masks can be effective in reducing the transmission of COVID-19, Petitioners believe that the science is unsettled on this matter, at best.

74. Petitioners believe that everyone should be able to choose whether to wear a mask.

75. Petitioners want to not wear masks because, in their view, masks have not been

proven effective in reducing risk of COVID-19 in public places.

76. Petitioners also want to not wear a mask because being forced to wear a mask requires Petitioners to “virtue-signal” their apparent agreement with the Governor’s masking policy, even though they disagree with it.

77. Petitioner Michelle Johnson, who is the pastor of a church, opposes EO 20-81 because it violates Minnesota law, as alleged herein, and because she sincerely believes that wearing a mask would be sinful and a violation of her conscience and her religious beliefs as a Christian. Ms. Johnson fears prosecution by a city or county attorney if she refuses to wear a mask as required by EO 20-81, and prosecution by Attorney General Keith Ellison for the same in relation to her performance of pastoral duties, but she does not wear a mask and does not intend to wear a mask.

78. Consequently, wearing a mask would cause Ms. Johnson to violate her conscience.

79. Petitioners reasonably fear prosecution by Attorney General Keith Ellison if they refuse to wear a mask in a public place. Attorney General Ellison recently stated, “I stand behind the legality and constitutionality of this executive order.” <https://www.mprnews.org/story/2020/08/04/lawsuit-challenges-state-mask-mandate>

80. Ellison has taken action against people and businesses who have threatened to violate or have allegedly violated Governor Walz’ COVID-19 EOs.

81. Petitioners also have a reasonable fear of prosecution because EO 20-81, paragraph 20 authorizes AG Ellison and other city and county attorneys to prosecute violators, with tickets for \$100 for individuals, and higher penalties for businesses not complying with EO 20-81.

EO 20-81 Is Void Because It Is Unconstitutionally Vague

82. As discussed above, EO 20-81 has a series of exemptions that businesses and

churches must evaluate and follow to comply.

83. EO 20-81 thus forces businesses and churches to “require” masking by customers, but customers can simply state to businesses that they have medical conditions exempting them from mask-wearing, and businesses cannot inquire further.

84. Attorney General Ellison has set up a ‘Snitch Hotline’ where he “encourages Minnesotans . . . to report suspected violations” of EOs by filing out an online complaint form.

https://www.ag.state.mn.us/Office/Communications/2020/07/31_NorthStarRanch.asp;

<https://www.ag.state.mn.us/Office/Forms/COVID19Complaint.asp>

85. Thus, businesses and churches have been forced into a position where they have no power to ask anyone to “mask up” if they state they have a reason for not wearing a mask, yet any person can complain to AG Ellison about people in their business or church not wearing a mask, which subjects them to potential enforcement for actions totally out of their control.

86. Consequently, EO 20-81 is a criminal statute that creates a standard of conduct for Petitioners and others similarly situated which is inherently unclear.

87. Persons of common intelligence must not be left to guess at the meaning of a statute nor differ as to its application. *State v. Newstrom*, 371 N.W.2d 525 (Minn. 1985).

88. Executive orders like EO 20-81 that encourage arbitrary and discriminatory enforcement also violate Minnesotans’ rights.

89. EO 20-81 is vague as to the meaning of compliance, and AG Ellison’s Snitch Hotline leads to arbitrary and discriminatory enforcement.

***The Petitioners Oppose EO 20-81 and Do Not Want to Wear a Mask,
and They Fear Prosecution for Violating EO 20-81***

90. Petitioner Drake Snell opposes EO 20-81 because it violates Minnesota law, as alleged herein, and because he believes it is ineffective in preventing the spread of COVID-19.

Mr. Snell believes that wearing a mask forces him to “virtue-signal” to others his apparent agreement with EO 20-81, when he disagrees with it. Mr. Snell fears prosecution by a city or county attorney if he refuses to wear a mask as required by EO 20-81.

91. Petitioner Jesse Wiederholt opposes EO 20-81 because it violates Minnesota law, as alleged herein, and because it is vague as to what constitutes a “job hazard” and, Mr. Wiederholt believes, hazardous to his health. Mr. Wiederholt fears prosecution by the Dakota County Attorney if he refuses to wear a mask as required by EO 20-81. Mr. Wiederholt believes that wearing a mask forces him to “virtue-signal” to others his apparent agreement with EO 20-81, when he disagrees with it.

92. Petitioner Jennifer Pine opposes EO 20-81 because it violates Minnesota law, as alleged herein, and, Ms. Pine believes, it is hazardous to her health. Ms. Pine fears prosecution by the Dakota County Attorney if she refuses to wear a mask as required by EO 20-81. Ms. Pine believes that wearing a mask forces her to “virtue-signal” to others her apparent agreement with EO 20-81, when she disagrees with it.

93. Petitioner Michelle Johnson opposes EO 20-81 because it violates Minnesota law, as alleged herein, and because she sincerely believes that wearing a mask would be sinful and a violation of her conscience and her religious beliefs as a Christian. Ms. Johnson fears prosecution by a city or county attorney if she refuses to wear a mask as required by EO 20-81, but she does not wear a mask and does not intend to wear a mask.

94. Petitioner Angela Zorn opposes EO 20-81 because it violates Minnesota law, as alleged herein. Ms. Zorn believes that wearing a mask forces her to “virtue-signal” to others her apparent agreement with EO 20-81, when she disagrees with it. Ms. Zorn was told that, when she voted on August 11, 2020, she would be reported for prosecution. Ms. Zorn fears prosecution by

a city or county attorney if she refuses to wear a mask as required by EO 20-81.

95. Petitioner Arielle Brandenburg opposes EO 20-81 because it violates Minnesota law, as alleged herein. Ms. Brandenburg believes that mask-wearing forces her to “virtue-signal” to others her apparent agreement with EO 20-81, when she disagrees with it. Ms. Brandenburg also believes it is a violation of her right to vote to condition that right on wearing a mask. When she attempted to vote without a mask in Norwood Young America on August 11, 2020, Ms. Brandenburg was forced to provide her personal information for prosecution purposes and was not allowed to vote curbside.

96. Petitioner Nourish Family Wellness opposes EO 20-81 because it forces its patrons and employees to wear masks that interfere with their health and work and limits those who would patronize its business but cannot because of the mask requirement. Nourish also opposes EO 20-81 because it is vague as to Nourish’s responsibilities for enforcing compliance among employees and customers. Nourish fears prosecution by Attorney General Keith Ellison if it fails to comply with EO 20-81, or if it attempts to comply but is prosecuted anyway because of EO 20-81’s vagueness.

97. Petitioner Dr. Elizabeth Berg, D.C., L.C., opposes EO 20-81 because it violates Minnesota law, as alleged herein, and because she believes it is detrimental to her patients’ health and significantly reduces their oxygen intake in harmful ways, depending on the type of mask worn. Dr. Berg fears prosecution by a city or county attorney if she fails to comply with EO 20-81.

98. Petitioner Lisa Hanson opposes EO 20-81 because it violates Minnesota law, as alleged herein, and because it interferes with her work. Ms. Hanson works as a manager of manufacturing operations in Wright County, where her team has to work in open air without air

conditioning. Wearing masks makes her job and her team's job far more difficult in the heat of the summer, and it is unclear to Ms. Hanson whether wearing a mask in her job is a "job hazard" under EO 20-81. Ms. Hanson believes that wearing a mask forces her to "virtue-signal" to others her apparent agreement with EO 20-81, when she disagrees with it. Ms. Hanson fears prosecution by a city or county attorney or by Attorney General Ellison if she refuses to wear a mask as required by EO 20-81 or is reported as not complying with EO 20-81 at her workplace.

99. Petitioner Jayne Huber opposes EO 20-81 because it violates Minnesota law, as alleged herein, and because it has caused her significant health problems and interfered with her work. Ms. Huber works at the Chaska, Minnesota Target and was forced to wear a mask to work even though it was causing her to have breathing problems. Ms. Huber suffered a pulmonary infarction and lost part of one of her lungs because she was required to wear a mask. Ms. Huber is currently not being allowed to work at Target because of EO 20-81, and she fears prosecution by a city or county attorney if she refuses to wear a mask as required by EO 20-81.

100. Petitioner Christine Luetgers opposes EO 20-81 because it violates Minnesota law, as alleged herein, because mask wearing frightens her young child, and because she communicates in significant part through lip-reading. Wearing masks interferes with Ms. Luetgers' ability to communicate with others, and Ms. Luetgers believes that wearing a mask forces her to "virtue-signal" to others her apparent agreement with EO 20-81, when she disagrees with it. Ms. Luetgers fears prosecution by a city or county attorney if she refuses to wear a mask as required by EO 20-81.

101. Petitioner Thomas O'Keefe opposes EO 20-81 because it violates Minnesota law, as alleged herein, and because he believes it is ineffective in preventing the spread of COVID-19. Mr. O'Keefe believes that wearing a mask forces him to "virtue-signal" to others his apparent

agreement with EO 20-81, when he disagrees with it. Mr. O’Keefe fears prosecution by a city or county attorney if he refuses to wear a mask as required by EO 20-81.

102. Petitioner John Bruski opposes EO 20-81 because it violates Minnesota law, as alleged herein. Mr. Bruski believes that wearing a mask forces him to “virtue-signal” to others his apparent agreement with EO 20-81, when he disagrees with it. Mr. Bruski fears prosecution by a city or county attorney if he refuses to wear a mask as required by EO 20-81.

103. Petitioner Northland Baptist Church of St. Paul, Minnesota opposes EO 20-81 because it violates Minnesota law, as alleged herein. Northland also opposes EO 20-81 because it forces its congregants to wear masks that interfere with their worship and limits those who would attend worship services, but cannot because of the mask requirement, from participating in worship. Northland also opposes EO 20-81 because it is vague as to Northland’s responsibilities for enforcing compliance among volunteers and worshippers. Northland fears prosecution by Attorney General Keith Ellison if it fails to comply with EO 20-81, or if it attempts to comply but is prosecuted anyway because of EO 20-81’s vagueness.

104. Petitioner Aaron Kessler opposes EO 20-81 because it violates Minnesota law, as alleged herein. Mr. Kessler believes that wearing a mask forces him to “virtue-signal” to others his apparent agreement with EO 20-81, when he disagrees with it. Mr. Kessler fears prosecution by a city or county attorney if he refuses to wear a mask as required by EO 20-81.

105. Petitioner Diane Smith opposes EO 20-81 because it violates Minnesota law, as alleged herein. Mrs. Smith believes that wearing a mask forces her to “virtue-signal” to others her apparent agreement with EO 20-81, when she disagrees with it. Mrs. Smith refuses to wear a mask and fears prosecution by the county or city attorney if she refuses to wear a mask as required by EO 20-81.

106. Governor Walz' actions described herein are not substantially justified, and no special circumstances make an award of attorney fees and costs in Petitioners' favor unjust.

CLAIMS FOR RELIEF

COUNT 1 QUO WARRANTO MINN. STAT. § 480.04

107. Petitioners incorporate the preceding paragraphs.

108. As alleged herein, Governor Walz' Emergency Executive Order 20-81 exceeds the Governor's statutory and constitutional authority.

109. Petitioners request that the Court grant this Petition for writ of quo warranto.

110. Petitioners request that the Court order a hearing on this Petition as soon as possible. Expedited treatment of this petition is warranted because each of the Governor's EOs extending the peacetime emergency expires within 30 days (at most) of its issuance.

111. Petitioners request that the Court order the Respondents to respond to the petition no later than 14 days before the hearing.

112. Petitioners request that the Court allow the Petitioners to reply no later than 7 days before the hearing.

113. Petitioners request that the Court, after the hearing, issue a writ of quo warranto:

- a. enjoining the Governor and any prosecuting authority from enforcing EO 20-81 or any other emergency executive order related to COVID-19 using the powers of Chapter 12 of the Minnesota Statutes, and
- b. enjoining the Governor from issuing any new emergency orders related to COVID-19 based on Chapter 12.

114. Petitioners request that the Court award Petitioners and their attorneys attorney fees and costs under the Equal Access to Justice Act, Minn. Stat. § 15.471 *et seq.*, upon a post-judgment application for the same.

COUNT 2

**COMPELLED SPEECH
U.S. CONST. AMEND. I
42 U.S.C. §§ 1983, 1988
28 U.S.C. § 2201
MINN. STAT. § 555.01**

115. Petitioners incorporate the preceding paragraphs.

116. Petitioners can bring alternative claims for relief alongside a petition for a writ of quo warranto. *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 176 (Minn. 2020).

117. Petitioners have a free speech interest in the wearing or not wearing of masks. To them, and to many Minnesotans, refusing to wear a mask expresses their dissent from the dominant government narrative regarding the spread of COVID-19 and the efficacy of masks.

118. In addition, by forcing Petitioners to wear masks, Respondents are compelling Petitioners to state the opposite despite their vehement disagreement.

119. In addition, by forcing Petitioners to wear masks, Respondents are destroying Petitioners' right to dissent from the opposing political position that mask-wearing is efficacious and good.

120. By forcing Petitioners to wear masks, Respondents thus violate Petitioners' First Amendment rights.

121. These interferences with Petitioners' free speech rights are viewpoint-based, non-neutral restrictions because they force Petitioners to voice unanimity in support of a particular topic and prohibit them from voicing dissent from a particular topic.

122. These violations are subject to strict scrutiny under the First Amendment and 42 U.S.C. § 1983.

123. These violations fail strict scrutiny because Respondents do not serve a compelling

state interest, and EO 20-81 is not narrowly tailored to achieve any state interest.

124. Most importantly, these violations are overbroad and not narrowly tailored because they apply regardless of whether one has had COVID-19 and is immune to it or not, and regardless of what part of the state in which one lives, including places that have far fewer COVID-related illnesses than Ramsey or Hennepin Counties.

125. Moreover, these violations are underinclusive because they allow people to simply lie about medical conditions to exempt themselves from the mask requirement, and businesses and government officials have no ability to ascertain whether a person actually has a medical condition that would exempt them from mask-wearing. Thus, EO 20-81 leaves a swath of conduct undeterred while subjecting honest dissidents to its requirements.

126. A justiciable controversy exists, under Minn. Stat. § 555.01, *et seq.*, and 28 U.S.C. § 2201, *et seq.*, between Petitioners and Respondents related to whether mask-wearing violates Petitioners' First Amendment rights as alleged herein. The deprivation of those First Amendment rights is a harm, and Attorney General Ellison has threatened enforcement of EO 20-81. An order declaring EO 20-81 unconstitutional would remedy the harm Petitioners are suffering.

127. Petitioners are entitled to recover reasonable attorney fees and costs upon prevailing in this matter, upon a post-judgment application for the same.

COUNT 3

**FREE EXERCISE
U.S. CONST. AMEND. I
42 U.S.C. §§ 1983, 1988
28 U.S.C. § 2201
MINN. STAT. § 555.01**

128. Petitioners incorporate the preceding paragraphs by reference.

129. Petitioner Michelle Johnson's sincerely held religious beliefs include that mask-

wearing is sinful because it forces her to associate with false beliefs and deeds of darkness.

130. EO 20-81 substantially burdens and interferes with that belief by forcing Johnson to wear a mask.

131. EO 20-81 is neither neutral nor generally applicable because it exempts a broad swath of the population, including those who lie about medical conditions to not wear a mask indoors as required by EO 20-81.

132. Respondents do not have a compelling interest in enforcing EO 20-81 because the order exempts a broad swath of conduct and punishes honest people who disagree with forced masking.

133. EO 20-81 is not narrowly tailored to any interest because it includes both those who have already had COVID-19 and those who have not, and because of the swath of conduct exempted, as described herein.

134. For these reasons and as alleged herein, EO 20-81 violates the First Amendment to the U.S. Constitution and Article I, section 16 of the Minnesota Constitution.

135. EO 20-81 is arbitrary, capricious, and unconstitutional because it is based on EO 20-83 and 20-81, which have no basis in Minnesota law.

136. A justiciable controversy exists, under Minn. Stat. § 555.01, *et seq.*, and 28 U.S.C. § 2201, *et seq.*, between Petitioner Johnson and Respondents related to whether mask-wearing violates Petitioner Johnson's First Amendment free exercise rights as alleged herein. The deprivation of those First Amendment rights is a harm, and Attorney General Ellison has threatened enforcement of EO 20-81. An order declaring EO 20-81 unconstitutional would remedy the harm Petitioner Johnson is suffering.

137. Petitioner Johnson is entitled to recover reasonable attorney fees and costs upon

prevailing in this matter, upon a post-judgment application for the same.

PRAYER FOR RELIEF

For the foregoing reasons, the petitioners request that the Court:

- A. Issue the relief described above related to the writ of quo warranto.
- B. Issue a declaratory judgment that EO 20-81 violates Petitioners' free speech and free exercise rights guaranteed by the First Amendment, Article I, section 16 of the Minnesota Constitution, and 42 U.S.C. § 1983.
- C. Issue a preliminary and permanent injunction prohibiting the enforcement of EO 20-81; and
- D. Award Petitioners their reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988, upon a post-judgment application for the same.

UPPER MIDWEST LAW CENTER

Dated: August 20, 2020

/s/ James V. F. Dickey
Douglas P. Seaton (#127759)
James V. F. Dickey (#393613)
8421 Wayzata Blvd., Suite 105
Golden Valley, Minnesota 55426
doug.seaton@umwlc.org
james.dickey@umwlc.org
(612) 428-7000

Attorneys for Petitioners

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, subd. 2, to the party against whom the allegations in this pleading are asserted.

Dated: August 20, 2020

/s/ James V. F. Dickey
James V. F. Dickey (#393613)