

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

NEW YORK STATE AMATEUR
HOCKEY ASSOCIATION, INC.,
WESTERN NEW YORK AMATEUR
HOCKEY LEAGUE, INC., and
H.P.P. RINX, INC. d/b/a/ THE RINX,

VERIFIED PETITION

Index No.:

Petitioners,

v.

ANDREW M. CUOMO, in his official capacity as the
Governor of the State of New York,
NEW YORK STATE DEPARTMENT OF HEALTH,
NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT
d/b/a EMPIRE STATE DEVELOPMENT CORPORATION,

Respondents.

Petitioners NEW YORK STATE AMATEUR HOCKEY ASSOCIATION,
INC. (“NYSAHA”) and WESTERN NEW YORK AMATEUR HOCKEY
LEAGUE, INC. (“WNYAHL”), as and for their Verified Petition against
Respondents ANDREW M. CUOMO, in his official capacity as the Governor of
the State of New York, NEW YORK STATE DEPARTMENT OF HEALTH
 (“NYSDOH”), NEW YORK STATE DEPARTMENT OF ECONOMIC
DEVELOPMENT d/b/a EMPIRE STATE DEVELOPMENT CORPORATION
 (“ESDC”), by and through their undersigned counsel HOGANWILLIG, PLLC,
hereby and herein respectfully and collectively allege as follows:

NATURE OF ACTION

1. This is a special proceeding brought under Articles 4 and 78 of the CPLR, and 42 U.S.C. § 1983 and 1988, seeking injunctive relief: (i) issuing a temporary restraining order, preliminary injunction, and ultimately a permanent injunction, enjoining Respondents from enforcing the restrictions imposed against Petitioners on the basis of ice hockey’s designation as a “higher risk” sport, and permitting Petitioners to operate as if under the proper “low risk” designation; (ii) a declaratory judgment declaring that the classification of ice hockey as a “higher risk” sport, and the corresponding restrictions on the basis of that designation, violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and corresponding provisions of the New York State Constitution, together with a preliminary and permanent injunction prohibiting the enforcement of such Executive Orders and regulations by Respondents; (iii) a judgment declaring that the continued designation of ice hockey as a “higher risk” sport violates the plain text of Executive Law 29-a(2)(a), together with a preliminary and permanent injunction prohibiting the designation of “higher risk” sports by Respondents; (iv) a judgment declaring that Executive Law 29-a is unconstitutional to the extent it purports to give the Governor the power to issue directives which have the force of law without requiring the consent of the State Legislature in conformance with the bicameral law-making process set forth in the

Constitution of the State of New York, together with a preliminary and permanent injunction prohibiting the Governor from enforcing directives under Executive Law 29-a unless and until these directives are approved by both houses of the legislature; (v) a temporary restraining order, preliminary injunction, and ultimately a permanent injunction, enjoining Respondents from enforcing the arbitrary, capricious, unconstitutional, and illegal restrictions imposed against Petitioners; and (vi) such other and further additional relief as this Court may deem just, proper, and equitable.

2. New York’s children have responded admirably to the COVID-19 health crisis. Their worlds have been turned upside down due to issues many are too young to truly understand. They should not be required to endure arbitrary and capricious burdens beyond what is necessary. The law does not allow Respondents to impose such burdens arbitrarily and capriciously upon our youth. Respondents’ restrictions on allegedly “higher risk” youth sports unfairly single out children for harm despite State officials being aware their decision lacks even a rational factual, scientific, or medical basis. This Petition challenges those arbitrary and capricious burdens.

3. Petitioner NEW YORK STATE AMATEUR HOCKEY ASSOCIATION, INC. (“NYSAHA”) is a not-for-profit corporation organized under the laws of the State of New York.

4. NYSAHA is the New York affiliate of USA Hockey. NYSAHA claims complete jurisdiction as the governing body of amateur ice hockey in New York State in concert with USA Hockey. The mission of the NYSAHA is to promote the growth of ice hockey and to provide the best possible experience for all participants in New York State by encouraging, developing advancing and administering the sport. In 2019-2020, the NYSAHA had 55,063 members, including 47,428 players, 5,519 coaches, and 2,116 officials (*see* Baudo Affidavit).

5. Petitioner WESTERN NEW YORK AMATEUR HOCKEY LEAGUE, INC. (“WNYAHL”) is a youth ice hockey league, consisting of over 350 teams comprised of girls and boys aged six to nineteen, across dozens of member clubs throughout the State of New York and two in the State of Pennsylvania, including:

- Amherst Knights
- Aurora Youth Hockey
- Batavia Rampart
- Bradford
- Brockport Tri-County
- Buffalo Jr. Sabres
- Bud Bakewell Ice Hawks
- Buffalo Bisons
- Buffalo Stars
- Buffalo Regals
- Canandaigua
- Cazenovia
- Cheektowaga
- Clarence
- Fredonia NCCYHA
- Geneseo/Livingston Blue

- Hamburg
- Jamestown CCYHA
- Lockport
- Monroe County
- NJPE
- Olean
- Perinton Blades
- Rochester Youth Hockey
- Rochester Grizzlies
- Saints
- Southtowns
- St. Francis
- Syracuse
- Tonawanda Lightning
- Webster
- West Seneca Wings
- Wheatfield Blades

6. Petitioner H.P.P. RINX, INC. d/b/a/ THE RINX is a corporation organized under the laws of the State of New York, with a principal place of business in Suffolk County.

7. This petition does not seek to challenge the gravity of the current health pandemic. Rather, it challenges the arbitrary and capricious nature of restrictions imposed against Petitioners and their member organizations, athletes, coaches, and officials.

8. Specifically, Respondents have erroneously, arbitrarily, and capriciously categorized ice hockey as a “higher risk” sport for COVID-19 transmission, contrary to extensive scientific evidence establishing that ice hockey poses no increased risk to COVID-19 transmission.

9. The consequence of this classification is that competitive ice hockey has been suspended indefinitely in the State of New York, due to Respondents' Interim Guidance restricting allegedly "higher risk" sports from engaging in any activities beyond "individual or distanced group training and organized no/low-contact group training."

10. Moreover, Respondents have arbitrarily and capriciously prohibited competitive tournaments requiring travel.

11. The restrictions now imposed upon Petitioners by Respondents are *without any factual, scientific, medical, or otherwise credible basis, and without any ascertainable link between playing ice hockey and an increase in COVID-19 cases.*

12. There is no evidence that ice hockey games present an increased risk of spreading COVID-19. Respondents have not presented any credible proof or data offered that it presents such a risk, whether in the State of New York, or elsewhere. Speculative myths about the risk of competitive ice hockey have been debunked by experts.

13. To the contrary, the data released to date by Respondent ANDREW M. CUOMO ("Respondent Cuomo" or "Governor Cuomo") indicates that *all sports* contribute only marginally to the spread of COVID-19 (*see* Exhibit H).

14. Data and scientific principles that Respondents know, or should know, demonstrate that banning competitive ice hockey is certain to harm the young and is likely to *increase*, not reduce, the spread of COVID-19 in New York communities.

15. The prohibition on gameplay is anything but an insignificant restriction. Many children lose interest in the game after nearly a year without competition. Rinks such as Petitioner H.P.P. RINX, INC. d/b/a/ THE RINX are losing millions in revenue. Officials are losing income with no games to referee. Rink employees are without work or with reduced work. Teams are traveling out of State to play games where it is not prohibited, and where the State of New York has no control over social distancing and other regulations.

16. Petitioners request this Court find Respondents' classification of ice hockey as a "higher risk" sport to be arbitrary and capricious, which will permit them to commence playing competitive games, as all currently "low" and "moderate" risk sports are currently permitted. It will alleviate the negligently overlooked consequences set forth above.

17. Petitioners further request this Court find Respondents' prohibition of competitive tournaments requiring travel, for all risk classifications, to be arbitrary and capricious.

PARTIES

18. At all times relevant hereto, Petitioner NYSAHA was and is a domestic non-for profit corporation with a principal place of business located in the County of Erie, State of New York.

19. At all times relevant hereto, Petitioner WNYAHL was and is a domestic non-for profit corporation with a principal place of business located in the County of Chautauqua, State of New York.

20. At all times relevant hereto, Petitioner H.P.P. RINX, INC. d/b/a/ THE RINX was and is a corporation with a principal place of business located in the County of Chautauqua, State of New York.

21. Upon information and belief, and at all times relevant hereto, Respondent ANDREW M. CUOMO (“Respondent Cuomo” or “Governor Cuomo”) was and is the Governor of the State of New York, and was and is acting under color of State law and in his official capacity with a principal place of business located at the State Capitol Building, Albany, New York 12224.

22. Upon information and belief, and at all times relevant hereto, Respondent NEW YORK STATE DEPARTMENT OF HEALTH (“NYSDOH”) was and is an agency of the New York State Government with a principal place of business located at Corning Tower, Empire State Plaza, Albany, New York 12237.

23. Upon information and belief, and at all times relevant hereto, Respondent NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT d/b/a EMPIRE STATE DEVELOPMENT CORPORATION (“ESDC”) was and is a division of the New York State Government responsible for commerce and economic development, with a principal place of business located at 633 Third Avenue, Floor 37, New York, New York 10017.

JURISDICTION AND VENUE

24. This Court has jurisdiction over this special proceeding under Articles 4 and 78 of the CPLR, the United States Constitution, 42 U.S.C. § 1983 and 1988 New York State Constitution Article 6, § 7, and the common law of the United States and State of New York.

25. Erie County is a proper venue for this proceeding under CPLR §§ 503(a), 506(b), and 7804(b) because a substantial part of the events giving rise to Petitioners’ claims occurred in Erie County, and/or because at least one of the Petitioners is a resident of Erie County.

STATEMENT OF FACTS

26. In support of this Petition, Petitioners submit the following exhibits, which are annexed hereto and incorporated herein by reference:

- a. **EXHIBIT A** – NYSDOH, *Interim Guidance for Sports and Recreation During the COVID-19 Public Health Emergency*.

- b. **EXHIBIT B** – NYSDOH, *Reopening New York*.
- c. **EXHIBIT C** - USA Hockey, *Responding to Speculation of Enhanced Risk of Hockey Relative to COVID-19*.
- d. **EXHIBIT D** – McGregor, Ph.D., *Report Regarding Immediate Proximity Associated with Body Contact in Ice Hockey*.
- e. **EXHIBIT E** - USA Hockey, *Returning to the Rinks*.
- f. **EXHIBIT F** - USA Hockey, *We're in this Together – Strategies for Mitigating Risk*.
- g. **EXHIBIT G** - USA Hockey, *Spit Guard Information*.
- h. **EXHIBIT H** - New York State Contact Tracing Data (Reproduced from Governor Cuomo's December 11, 2020 press conference).
- i. **EXHIBIT I** – Cavaretta Letter to Governor Cuomo, October 20, 2020.
- j. **EXHIBIT J** – Wisehockey, *Player Close Range Exposure Analysis*.
- k. **EXHIBIT K** – NFHS, *Guidance for Opening Up High School Athletics and Activities*.
- l. **EXHIBIT L** – American Academy of Pediatrics, *Organized Sports for Children, Preadolescents, and Adolescents*, available at: <https://pediatrics.aappublications.org/content/pediatrics/143/6/e20190997.full.pdf>
- m. **EXHIBIT M** - Andrew Watson, MD, *COVID-19 in Wisconsin High School Athletics: Study Summary*, https://www.wiaawi.org/Portals/0/PDF/Health/Covid/WI_HS_SportCOVID-19.pdf.
- n. **EXHIBIT N**: U.S. Department of Health and Human Services, *National Youth Sports Strategy* (2019), excerpt, full text available at

https://health.gov/sites/default/files/2019/10/National_Youth_Sports_Strategy.pdf).

- o. **EXHIBIT O:** U.S. Department of Health and Human Services, *Physical Activity Guidelines for Americans Midcourse Report: Strategies to Increase Physical Activity Among Youth*, (2012), excerpt, full text available at <https://health.gov/sites/default/files/2019-09/pag-mid-course-report-final.pdf>.
- p. **EXHIBIT P:** Mental Health, *Related Emergency Department Visits Among Children Aged <18 Years During the COVID-19 Pandemic*, available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm>
- q. **EXHIBIT Q:** COVID-19 Parental Resources Kit – Adolescence <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/parental-resource-kit/adolescence.html>
- r. **EXHIBIT R:** Mental Health America, *The State of Mental Health in America*, excerpt, full text available at: https://mhanational.org/sites/default/files/2021%20State%20of%20Mental%20Health%20in%20America_0.pdf
- s. **EXHIBIT S:** NYSDOH – *Interim Guidance on Mandatory COVID-19 Testing in Public and Non-Public Schools...*
- t. **EXHIBIT T:** October 7, 2020 letter from USA Hockey Executive Director to Governor Cuomo and Commissioner Zucker.
- u. **EXHIBIT U:** December 22, 2020 letter from Assemblyman McDonough to Governor Cuomo.

27. Petitioners have been severely, profoundly, and negatively impacted by the COVID-19 pandemic, and have, through no fault of their own, been forced to operate under arbitrary and capricious restrictions set forth by Respondents.

28. When the COVID-19 pandemic began, the New York State Legislature unconstitutionally empowered Governor Cuomo to unilaterally issue emergency Executive Orders to address the impending pandemic, vis-à-vis their amendment of Executive Law § 29-a.

29. Four days later, Governor Cuomo issued Executive Order 202, which declared a Disaster Emergency for the State of New York on March 7, 2020.

30. On April 26, 2020, Governor Cuomo announced a phased approach to reopen industries and businesses in New York in phases based upon an allegedly data-driven regional analysis (*see* Exhibit A at 2).

31. On May 4, 2020, the Governor provided that the regional analysis would consider several public health factors, including new COVID-19 infections, as well as health care system, diagnostic testing, and contact tracing capacity (*see id.*).

32. On May 11, 2020, Governor Cuomo announced that the first phase of reopening would begin on May 15, 2020 in several regions of New York, based upon available regional metrics and indicators (*see id.*).

33. On May 29, 2020, Governor Cuomo announced that the second phase of reopening would begin in several regions of New York (*see id.*).

34. On June 11, Governor Cuomo announced that the third phase of reopening would begin on June 12 in several regions of New York. (*See id.* at 2).

35. Pursuant to the Interim Guidance for Sports and Recreation, no sports and recreation activity can occur without meeting certain minimum standards set forth in the guidelines (*see* Exhibit A at 3).

**RESPONDENTS ARBITRARILY AND CAPRICIOUSLY
CLASSIFIED ICE HOCKEY AS A “HIGHER RISK” SPORT**

36. To determine the standards applicable to any particular sport, Respondents utilized a classification system categorizing sports and recreation activities as “lower risk,” “moderate risk,” and “higher risk” (*see id.*).

37. The stated criteria for categorization are (*see id.*):

- a. the “ability to maintain physical distance and/or be done individually,” and
- b. the “ability to (1) avoid touching of shared equipment, (2) clean/disinfect equipment between uses by different individuals, or (3) not use shared equipment at all”.

38. Effective July 6, 2020, in regions that had reached or surpassed Phase 3, participants in lower and moderate risk sports were permitted to partake in all types of play, excepting competitive tournaments requiring travel (*see* Exhibit A at 5).

39. Participants in higher risk sports and recreation activities were only permitted to partake in individual or distanced group training and organized no/low contact group training. (*see id.*).

40. Prohibited for higher risk sports are: competitive team practices, games, meets, matches, scrimmages (e.g. organized leagues, pick-up sports), and competitive tournaments of multiple games, meets, matches, or scrimmages requiring travel (*see id.*).

41. Without citing evidence or providing analysis, the Interim Guidance listed ice hockey as a “higher risk” sport. As a result, ice hockey has been prohibited from partaking in competitive play due to its designation.

42. Since July 6, 2020, ice hockey players have been practicing skills and drills, with no games or competition within New York.

43. The arbitrariness and capriciousness of ice hockey’s designation is evident for multiple reasons: (1) Respondents provided no scientific or medical data to support ice hockey’s designation as a “higher risk” sport for COVID-19 transmission; (2) the available scientific and medical data establishes that ice hockey does not meet the stated criteria for designation as “higher risk”; (3) the Interim Guidance’s indication that risk assessments were determined by the ESDC, a public benefit corporation with no ostensible expertise in science, health, or athletics, demonstrates the arbitrariness and capriciousness of ice hockey’s “higher risk” designation (e.g., ice hockey is designated as “higher risk” but field hockey is not); and (4) Respondents’ refusal to reconsider its designation of ice hockey as a

“higher risk” sport, notwithstanding the evidence against such a designation, is itself an arbitrary and capricious act.

Respondents provided no scientific or medical data to support ice hockey’s designation as a “higher risk” sport for COVID-19 transmission.

44. According to the Interim Guidance, “higher risk” sports are characterized by:

- a. Least ability to maintain physical distance and/or be done individually; and
- b. Least ability to: (1) avoid touching of shared equipment, (2) clean and disinfect equipment between uses by different individuals, or (3) not use shared equipment at all.

45. Based upon the classification of ice hockey as “higher risk” under these criteria, one must question whether the individual or individuals responsible for the designation had ever seen an ice hockey game.

46. Hockey players do not use shared equipment at all (*see Cavaretta Affidavit*), which should qualify it as among the lowest-risk sports based upon the shared equipment criteria.

47. Therefore, ice hockey’s classification as high-risk would ostensibly be based solely upon the “ability to maintain physical distance” criterion.

48. Again, however, Respondents cited no data regarding hockey players’ ability to maintain physical distance. Instead, the criterion appears to have been evaluated by pure speculation.

49. Instead of relying on actual data, Respondent ESDC appears to have relied upon memories of comedic hockey movies like “Slap Shot” and “Goon” where hockey players are portrayed as, well, goons pummeling each other. But the reality of the sport, and scientific data, demonstrate that the speculative fears of the Respondents simply do not mirror reality.

50. As set forth below, if Respondents *had* considered any data, they would have realized their speculation was incorrect.

The available medical and scientific evidence demonstrates ice hockey does not meet Respondents’ own criteria for designation as “higher risk”, nor does ice hockey otherwise pose a high risk of COVID-19 transmission.

51. Initially, the scientific and medical data demonstrates that ice hockey does not meet even Respondents’ own criteria for classification as a “higher risk” sport. This alone would make such a determination arbitrary and capricious. Beyond that failure, available medical and scientific data demonstrates that there is no evidence for ice hockey or amateur sports in general posing an increased risk of COVID-19 transmission. Conversely, the arbitrary and capricious prohibitions against ice hockey are likely to cause the opposite effect, based on the scientific and medical evidence.

Competitive ice hockey does not meet Respondents' own criteria for "higher risk" sports.

52. Stephen J. McGregor, a Ph.D. of Applied Physiology, of the Sport Performance Technology Laboratory at the School of Health Promotion and Human Performance of Eastern Michigan University, prepared a report for USA Hockey (the governing body for organized ice hockey in the United States) on May 19, 2020.

53. The "Report Regarding Immediate Proximity Associated with Body Contact in Ice Hockey," (Exhibit D), utilized wearable sensors to collect data for on-ice activities from players from 12-18 years old, amounting to over 15,000 sessions (at 2). Notably, this data was collected in 2019, prior to the commencement of the COVID-19 pandemic, with no possible bias regarding COVID-19, and utilizing objective instruments incapable of bias.

54. Dr. McGregor's report concluded that based on the average duration and number of impacts per game, corroborated by video, "*the duration of immediate proximity with other individuals totals 1.23 seconds per player per game.*" (at 3). The study noted that even from the entire data set without video corroboration, the immediate proximity was "*still less than 3 seconds for each and [every] level*" (at 3).

55. As further noted in the report, in ice hockey "strategy generally dictates players maintain a structure that keeps them spread over the entire zone in

relatively even proportions (at 4). “[A]lthough hockey is a dynamic game, where players do come within immediate proximity numerous times per game, the players are not limited to small distances and therefore may not be in close proximity for substantial amounts of time” (at 4).

56. The study concluded that “using a relatively large, robust dataset collected in ecologically valid settings (i.e., on-ice practices and games), it can be determined that youth hockey players are in immediate proximity for less than a few seconds for practices and games, regardless of age or level of play” (at 5).

57. Additionally, a Finnish analytics company, Wisehockey, prepared a report demonstrating that close range exposure time during youth hockey games, even with full contact allowed, ranged from 3-4 minutes of a player being within 2 meters of another (*see* Exhibit J).

58. Beyond the minimal time spent by players in immediate proximity of each other, every hockey player necessarily wears personal protective equipment from head to toe (*see* Cavaretta Affidavit). Many players wear full-face “bubble shields” (*see id.*). Equipment manufacturers have started producing “spit guards” to attach to helmets (*see* Exhibit G).

59. Finally, while hockey may technically be a “contact” sport, checking is prohibited in many age levels (and prohibited altogether in women’s hockey) (*see* Cavaretta Affidavit). Regardless, as borne out by the above report, immediate

proximity of hockey players is incredibly minimal, even in the case of a “checking” game.

60. The National Federation of High School Associations’ Sports Medicine Advisory Committee (SMAC) – a 15-member advisory committee composed of medical doctors, certified athletic trainers, high school coaches and officials, research specialists and state high school association executives –released a document titled “Guidance for Opening up High School Athletics and Activities” (Exhibit K).

61. Adopting a risk classification approach that emphasized potential exposure to respiratory droplets, the report categorized ice hockey as a “moderate risk” sport (*see id.* at 9).

62. In contrast to the state of New York, which utilized ESDC to determine sport risk classifications, NFHSA utilized actual medical and athletic experts (*see generally id.*).

63. Again, Respondents have not provided any public data to demonstrate or even suggest that ice hockey has been an exposure source for COVID-19 at any greater rate than those sports and recreational activities designated “moderate” or “lower” risk. By Respondents own data, sports in total have been a very low to *de minimis* source.

64. Conversely, the above scientific data Respondents refuse to take into consideration, or outright ignore, demonstrates that ice hockey does not impose an increased risk of viral transmission.

Speculation regarding ice hockey's risk of COVID-19 transmission has been further debunked by experts.

65. USA Hockey prepared a report entitled “Responding to Speculation of Enhanced Risk of Hockey Relative to COVID-19” (Exhibit C).

66. The information and commentary included within the report was developed with guidance from USA Hockey’s medical experts, led by Dr. Michael Stuart, chief medical and safety officer of USA Hockey from the Mayo Clinic, who has access to the wide network of subject matter experts at the Mayo Clinic and beyond; and Dr. Deverick Anderson, a noted national infectious disease expert and epidemiologist from Infection Control Education for Major Sports, who has consulted with major professional sports leagues and other sports entities, including the NHL and NFL. (*See Exhibit C at 1.*)

67. In the report, Drs. Stuart and Anderson debunked multiple speculative myths regarding ice hockey and COVID-19 risk (*see id.*).

68. For example, “contrary to the notion that air flow is restricted, ice rinks have mechanical systems in place to circulate the air regularly. Industry standards for indoor sports and entertainment facilities, including ice rinks, specify

minimum ventilation rates and other measures for new and existing buildings that are intended to provide indoor air quality that is acceptable to human occupants and that minimize adverse health effects” (*id.* at 2.)

69. In response to a news report that an asymptomatic referee in Maine exposed up to 400 people in two days, Drs. Stuart and Anderson noted that there were “no reported cases by teams or officials involved in these games in the week after this occurred” (*id.*).

70. In sum, Drs. Stuart and Anderson’s report established that there was no factual, scientific, or medical data to support speculative fears that ice hockey had been the source of any on-ice transmission (*see generally id.*).

Amateur youth athletics do not pose an increased risk of COVID-19 transmission.

71. Respondents’ *own contract tracing data* demonstrates that ice hockey does not present an increased risk of viral transmission justifying the arbitrary and capricious restrictions Respondents have imposed (*see Exhibit H*).

72. Specifically, Respondents’ data demonstrates that household/social gatherings account, state-wide, for 73.84% of COVID-19 cases. *All sports* have been the exposure source for only 1.04% of COVID-19 cases (*see id.*).

73. In addition to Respondents’ contact tracing data regarding sports, other scientific studies have demonstrated the absence of increased COVID-19 risk from youth sports.

74. A University of Wisconsin study evaluated athletes from 207 schools that restarted fall sports in September 2020. Those schools represented more than 30,000 athletes, more than 16,000 practices and more than 4,000 games (*see* Exhibit M).

75. No sports were found to have a higher incidence of COVID-19 in their participants than similarly situated students matched by age (*id.* at 3 [“In fact, no specific sport had a statistically higher incidence rate than the background incidence among adolescents across the state during the same time period”]).

76. Of the 209 athletes who knew where they contracted the virus, only one case was attributed to participation in sports (*id.* at 2). The vast majority of cases were contacted in their household (55.0%), or in their community (not sport or school) (40.7%) (*id.* at 2).

77. The study concluded that “participation in sports is not associated with an increased risk of COVID-19 among Wisconsin high school student-athletes” (*id.* at 3).

78. This conclusion aligns with other data that has found find that participation in youth sports have lower risk of COVID-19 relative to the background incidence in the respective community (*see id.*).

79. For example, that study found that among youth soccer players sampled, the COVID-19 rate was 310 cases of COVID-19 per 100,000 children (*id.* at 2). They compared this to matched data from the American Academy of Pediatrics, stating that during the 10 weeks prior to the survey (6/18/2020 through 8/27/2020) the nationwide case rate among children in the United States was 477 cases per 100,000 children (*id.*). Again, the case rate among athletes in organized sports was shown to be actually *less* than youth in the population at large.

Respondents failed to account for the negative consequences of their prohibition against competitive sports.

80. Of course, any restriction imposed by Respondents should consider whether the negative consequence of such restriction outweigh potential benefits. Overwhelming scientific and medical evidence establishes the benefit of youth sports, and further establish the negative impact burdensome COVID-19 restrictions have imposed on children.

81. According to the American Academy of Pediatrics' 2019 clinical report entitled "Organized Sports for Children, Preadolescents, and Adolescents":

It has been well documented that sports involvement has an overall positive effect on mental health in kids of all ages. Relative to other activities, sports help develop emotional regulation, and both parents and kids report that better emotional control and exploration are benefits of athletics. Athletes report higher scores on mental health scales, and teenagers participating in organized sports report fewer mental health problems and have lower odds of emotional distress compared with peers. Members of sports clubs show greater stress resistance and have a lower prevalence of psychosomatic symptoms.

Sports have been inversely associated with depression in athletes, and fewer depressive symptoms and higher confidence and competence are some of the most commonly associated positive outcomes of participation. More athletic adolescents appear better adjusted, feel less nervous and anxious, and are more often full of energy and happy about life. Athletes also feel sad, depressed, or desperate less often than those less involved in sports. The protective effect of sports on mental health is further indicated by the fact that children who drop out of organized sports may experience greater psychological difficulties and social and emotional problems. Sports participation may have a lasting effect on mental health, as well. Involvement in school sports during adolescence is an associated predictor of lower depression symptoms, lower perceived stress, and higher self-rated mental health in young adults.

The beneficial effect of sports on mental health and depression applies to suicide, as well. After controlling for physical activity, team sports protect against feelings of hopelessness and suicidality, and organized sports participation is associated with a lower likelihood of suicidal behavior. . . .

(Exhibit L at 6).

82. According to a 2019 report issued by the U.S. Department of Health and Human Services, “The benefits for youth who engage in regular physical activity are clear: they have improved bone health, weight status, cardiorespiratory and muscular fitness, cardiometabolic health, and cognitive function and a reduced risk of depression” (Exhibit N at 11).

83. President Obama’s Council on Fitness, Sports & Nutrition (the “President’s Council”) issued a report highlighting the importance of youth sports as to combat decreasing youth activity levels in America, citing several studies showing the value of sports and youth (*see* Exhibit O). This report found that “Despite the importance of regular physical activity in promoting lifelong health and well-being, current evidence shows that levels of physical activity among youth remain low, and that levels of physical activity decline dramatically during adolescence” (*id.* at 1).

84. Numerous sources have raised significant concerns regarding stress and challenges for youth in 2020. According to a Centers for Disease Control and Prevention (“CDC”) report issued on October 17, 2020:

Emergency departments (EDs) are often the first point of care for children’s mental health emergencies. U.S. ED visits for persons of all ages declined during the early COVID-19 pandemic (March–April 2020). . . . Beginning in April 2020, the proportion of children’s mental health–related ED visits among all pediatric ED visits increased and remained elevated through October. Compared with 2019, the proportion of mental health–

related visits for children aged 5–11 and 12–17 years increased approximately 24% and 31%, respectively.

Children’s mental health during public health emergencies can have both short- and long-term consequences to their overall health and well-being. . . . CDC supports efforts to promote the emotional well-being of children and families and provides developmentally appropriate resources for families to reduce stressors that might contribute to children’s mental health–related ED visits.

(see Exhibit P).

85. A COVID-19 Parental Resources Kit for parents published by the CDC describes numerous challenges for young people in 2020:

School closures due to COVID-19 have meant that adolescents have been participating in learning from home. . . . School closures have also meant a break in access to some essential developmental services like occupational, behavioral, or speech therapy. It could also have impeded continuity in adolescents’ development of athletic or hands-on vocational skills, with potential impacts on their higher education and professional future.

Physical distancing can feel as if one is placing life on hold. . . . Social distancing, stay-at-home orders and limits to gatherings have affected their ability to gather in person with friends and family to celebrate or grieve in typical ways. Grief is a normal response to losing someone or something important to you. It is important for family and friends to help adolescents find alternate, creative and safe ways to connect and support each other at a distance.

(see Exhibit Q).

86. Mental Health America (“MHA”)—a national nonprofit dedicated to addressing mental illness and promoting mental health—recently summarized mental health screening results from January to September 2020 for 1,560,288 individuals across the United States who used MHA’s online mental health screening tool. Among other findings, the organization found:

- “The number of people looking for help with anxiety and depression has skyrocketed.”
- “The number of people screening with moderate to severe symptoms of depression and anxiety has continued to increase throughout 2020 and remains higher than rates prior to COVID-19.”
- “More people are reporting frequent thoughts of suicide and self-harm than have ever been recorded in the MHA Screening program since its launch in 2014.”
- “Young people are struggling most with their mental health. . . . throughout the COVID-19 pandemic youth ages 11-17 have been more likely than any other age group to score for moderate to severe symptoms of anxiety and depression.”
- “In September 2020, over half of 11-17-year-olds reported having thoughts of suicide or self-harm more than half or nearly every day of the previous two weeks.”

(see Exhibit R at 33).

ESDC’s involvement with sports risk designations demonstrates the arbitrariness and capriciousness of ice hockey’s “higher risk” designation.

87. Confounding is the Interim Guidance’s statement that the risk of activities was determined by Respondent ESDC (*see* Exhibit A at 1, 5). ESDC is a public-benefit corporation with no ostensible relationship to, or expertise in, athletics or public health or science.

88. According to the Interim Guidance, Respondent ESDC determined whether any sport fit the criteria for designation as a “low”, “moderate”, or “higher risk” sport. However, there is no evidence or record of how it made these designations.

89. Among other concerns, Respondents have inextricably singled out collegiate and professional sports for favored treatment and relaxed criteria in comparison to youth sports.

90. Professional and collegiate athletes generally fall between 18 and 35 years old—an age range well-established to be at higher risk of infection and illness from COVID-19 than the youth sports prohibited from competing due to their “higher risk”.

91. The ESDC’s involvement, and this favorable treatment, has raised justified speculation that Respondents’ COVID-19 restrictions do not apply to those with deep pockets and loud voices, while our State’s youth are being asked to

shoulder a factually, medically, and scientifically unjustified, and entirely disproportionate share of society's burden in controlling COVID-19.

92. Any feigned argument about professional and collegiate sports being easier controlled environments is nothing beyond a red herring. Youth athletes are already extensively tested for school. Moreover, Respondents have failed to even listen to demonstrable methods by which youth athletics are, or can be, safer than collegiate and professional athletics (*see, e.g., Exhibit S, Interim Guidance on Mandatory COVID-19 Testing in Public and Non-Public Schools...*).

Respondents' refusal to reconsider their designation of ice hockey as a "higher risk" sport, notwithstanding the evidence against such a designation, is itself an arbitrary and capricious act.

93. Not only is the classification arbitrary and capricious, but so is Respondents' refusal to reconsider the classification. Despite the evidence clearly demonstrating that ice hockey is not a "high-risk" sport for COVID-19 transmission, and the pleas of USA Hockey, WNYAHL, NYSAHA, among others, Respondents have not, to date, cited any data underlying their classification of hockey as "high-risk," and have refused to reconsider the erroneous classification.

94. Myriad individuals and organizations have reached out to Respondents to reconsider their misclassification of ice hockey as a "higher risk" sport.

95. For example, on October 7, 2020, Pat Kelleher, the Executive Director of USA Hockey, wrote a letter to Governor Cuomo and Health Commissioner Howard Zucker, in support of the NYSAHA's request for ice hockey games and scrimmages to be permitted to be played in the State of New York (*see* Exhibit T).

96. On October 20, 2020, WNYAHL's Executive Director sent a letter to Governor Cuomo outlining the argument for resumption of competitive ice hockey (*see* Exhibit I, Cavaretta Affidavit).

97. In her letter, Ms. Cavaretta included "Returning to the Rinks" (Exhibit E), which was created by USA Hockey in conjunction with the U.S. Ice Rink Association and U.S. Figure Skating, to set forth procedures for the safe resumption of ice sports and recreation.

98. The Returning to the Rinks guide includes detailed plans for reopening ice rinks, addressing adherence to State and Local guidelines, personnel, cleaning and disinfection, operations, communications, and programs and activities (*id.* at 3-8).

99. The guide further addresses issues specific to USA Hockey, including general considerations, programming considerations, and considerations for parents and spectators (*id.* at 15-18).

100. As Ms. Cavaretta further noted, the prohibition against competitive ice hockey in New York has had the unintended consequences of encouraging New

York teams to travel to neighboring states to compete, or registering to play for programs in neighboring states (*see* Exhibit I).

101. Since July 6, 2020, skills training had occurred with minimal cases of COVID-19, all of which were handled quickly and appropriately, resulting in no known cases of spread related to on-ice activities (*see* Exhibit I).

102. Ms. Cavaretta's letter proposed a five-phased plan to recommence competitive ice hockey in New York. Phase 1 maintained the status quo. Phase 2 would permit games with reduced players and no contact. Phase 3 would permit games with full rosters, but limited regionally, and limited spectators. Phase 4 would permit competitive games against teams from states not on New York's quarantine list. Phase 5 would constitute a return to normal. Each phase would include safeguards consistent with social distancing and other COVID-19 guidelines (*see* Exhibit I).

103. On October 22, 2020, 14th District Assemblyman David G. McDonough wrote to Governor Cuomo requesting reclassification of ice hockey as a moderate risk sport, permitting hockey games to be allowed to resume in New York State (*see* Exhibit U).

104. On November 2, 2020, Janice Cavaretta of the WNYAHL, with the assistance of Senator Timothy M. Kennedy, had a phone call with members of

Governor Cuomo’s team regarding the resumption of ice hockey (*see* Cavaretta Affidavit).

105. There are only a few of the examples of pleas for the resumption of competitive ice hockey falling on the deaf ears of Respondents.

106. The arbitrary and capricious nature of Respondents’ refusal to reconsider the classification of hockey as “higher risk” is further evident from the fact that New York is, as of January 22, 2021, the only of the fifty United States to have a blanket prohibition against hockey games.

**RESPONDENTS’ PROHIBITION OF
COMPETITIVE TOURNAMENTS REQUIRING TRAVEL
IS ARBITRARY AND CAPRICIOUS**

107. The proper classification of ice hockey as a “lower” or “moderate” risk sport for COVID-19 transmission would permit member associations to resume gameplay, consistent with Respondents’ Interim Guidance for Sports and Recreation. However, Respondents’ prohibition of competitive tournaments requiring travel, for any risk level, is arbitrary and capricious, and should be enjoined by this Court.

108. Significantly, Respondents’ arbitrary and capricious guidelines have prevented, or are preventing, Petitioner NYSAHA from hosting two tournaments. The first are the New York State Championships, originally scheduled to take place from March 5-21, 2021, in Buffalo, New York. The second is the USA

Hockey National Championships for Youth Tier I 16U and 18U age groups, presently scheduled to be held in Amherst, New York from April 28 through May 3, 2021, in Amherst, New York.

109. As with the classification of ice hockey as a “higher risk” sport, Respondents have failed to set forth any justification for their prohibition against competitive tournaments requiring travel.

110. Again, data released by Respondents demonstrates that household/social gatherings account, state-wide, for 73.84% of COVID-19 cases. *All sports* have been the exposure source for only 1.04% of COVID-19 cases.

111. The state has not provided any public data to demonstrate or even suggest that competitive tournaments requiring travel would cause any increased risk of COVID-19 transmission.

112. Notably, there are no generally applicable intrastate travel restrictions in New York arising from the threat of COVID-19 transmission. If there were an ascertainable threat, it would be logical for Respondents to restrict intrastate travel generally, rather than singling out athletics for intrastate travel restrictions. Likewise, there is no basis to prohibit out-of-state teams from competing in New York if they otherwise follow all interstate travel restrictions.

113. Likewise, if the “competitive tournament” aspect created a greater risk for COVID-19 transmission, it would be nonsensical for Respondents to ostensibly permit competitive tournaments that do not require travel.

114. Again, as with the arbitrary and capricious “higher risk” designation, the arbitrary and capricious prohibition on competitive tournaments entitles Petitioners to relief.

AS AND FOR A FIRST CAUSE OF ACTION

PURSUANT TO CPLR ARTICLE 78

115. Petitioners repeat and reallege each and every allegation in the preceding paragraphs, as if fully set forth herein.

116. Multiple determinations of Respondents are arbitrary and capricious, resulting in the continuing prohibition against ice hockey games.

117. Respondents’ determination that ice hockey is a “higher risk” sport is arbitrary and capricious.

118. Respondents’ refusal to reconsider ice hockey’s classification as a “higher risk” sport is arbitrary and capricious.

119. Respondents’ determination to limit “higher risk” sports to distanced group training and organized no/low contact group training is arbitrary and capricious.

120. Respondents have offered *no scientific or otherwise credible evidence upon which to impose such “higher risk” designation, nor to link any increase in COVID-19 cases to the Petitioners’ activities, nor any basis for the limitations on “higher risk” sports*, which is their burden in the instant proceeding.

121. Conversely, as set forth above, the available factual medical and scientific data demonstrates that ice hockey poses no such risk.

122. Given the foregoing, Respondents should be permanently enjoined from enforcing such restrictions against Petitioners.

AS AND FOR A SECOND CAUSE OF ACTION

DECLARING RESPONDENTS’ RESTRICTIONS AGAINST PETITIONERS UNCONSTITUTIONAL UNDER THE EQUAL PROTECTION CLAUSE OF THE U.S. CONSTITUTION AND CORRESPONDING PROVISIONS OF THE NEW YORK STATE CONSTITUTION

123. Petitioners repeat and reallege each and every allegation in the preceding paragraphs, as if fully set forth herein.

124. Respondents’ designation of ice hockey as a “higher risk” sport violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (and corresponding provision of the New York State Constitution) because it restricts Petitioners, but allows the operation of other sports and businesses, including similarly situated sports and businesses that pose a

greater risk of COVID-19 transmission, despite the fact that the pre-existing NYSDOH guidance is sufficient to mitigate the risk of transmissions in ice hockey.

125. Respondents have issued and enforced executive orders and regulations that do not treat similarly situated parties in the same manner.

126. Petitioners have a clear legal right not to be subject to the subjective and discriminatory decisions and policies being made by Respondents which amount to so-called government acceptance of one sport over another sport, one business over another business, and not grounded in good science or medical data, and is thus, arbitrary and capricious as well.

127. Petitioner is suffering irreparable injury and is threatened with irreparable injury now and in the future by reason of being forced to limit their activities, and Petitioners have no plain, adequate nor complete remedy to protect the constitutional rights and to redress the wrongs and illegal acts complained of, other than immediate and continuing injunctive relief.

128. Petitioners face the prospect of a loss of their businesses and the violation of its civil rights and liberties as a result of Respondents' decision to prohibit Petitioner from operating in the same manner as similarly situated sports and businesses.

129. Absent an injunction, the harm to Petitioners in the loss of their constitutional rights exceeds any conceivable harm Respondents or the State of

New York would suffer if they were prohibited from enforcing an Executive Order or regulations that violate the Equal Protection Clause.

130. Petitioners are therefore entitled to a declaratory judgment declaring that the classification of ice hockey as a “higher risk” sport, and the corresponding restrictions on the basis of that designation, violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and corresponding provisions of the New York State Constitution, together with a preliminary and permanent injunction prohibiting the enforcement of such Executive Orders and regulations by Respondents, and such relief would not be contrary to the public interest.

AS AND FOR A THIRD CAUSE OF ACTION

**DECLARING THE IMPOSITION OF “HIGHER RISK” RESTRICTIONS
AGAINST PETITIONERS INVALID AS VIOLATIVE OF EXECUTIVE
LAW 29-a(2)(a)**

131. Petitioners repeat and reallege each and every allegation in the preceding paragraphs, as if fully set forth herein.

132. The restrictions imposed upon Petitioners as a result of their “higher risk” sport designation are not "reasonably necessary" (see Exec. Law § 29-a[2][b]) and are not "the minimum deviation . . . consistent with the goals of the disaster action deemed necessary" (see Exec. Law § 29-a[2][d]).

133. Petitioners are suffering per se irreparable injury and are threatened with irreparable injury in the future by reason of being directed and forced to cease their lawful operations, and Petitioner has no plain, adequate nor complete remedy to protect the constitutional rights and to redress the wrongs and illegal acts complained of, other than immediate and continuing injunctive relief.

134. Petitioners face the prospect of a loss of its businesses and/or the violation of their civil rights and liberties as a result of Respondents purporting to implement and enforce “higher risk” sport restrictions against Petitioners in a manner inconsistent with Executive Law 29-a(2).

135. Absent an injunction, the harm to Petitioner in the loss of its legal and constitutional and/or legal rights to operate its business exceeds any conceivable harm Respondents or the State of New York would suffer if they were prohibited from continuing to implement and enforce an Executive Order that facially exceeds the Governor's statutory authority.

136. Petitioners are therefore entitled to a judgment declaring that the continued designation of ice hockey as a “higher risk” sport violates the plain text of Executive Law 29-a(2)(a), together with a preliminary and permanent injunction prohibiting the designation of “higher risk” sports by Respondents, and such relief would not be contrary to the public interest.

AS AND FOR A FOURTH CAUSE OF ACTION

DECLARING EXECUTIVE LAW 29-a FACIALLY UNCONSTITUTIONAL

137. Petitioners repeat and reallege each and every allegation in the preceding paragraphs, as if fully set forth herein.

138. Under Executive Law 29-a, directives have the force of law, commensurate with a statute.

139. The Constitution of the State of New York requires that statutes be passed by each separate house of the legislature before they can have the force of law.

140. Specifically, Article III, Section 13 of the Constitution of the State of New York provides that: "The enacting clause of all bills shall be 'The People of the State of New York, represented in Senate and Assembly, do enact as follows,' and no law shall be enacted except by bill."

141. Executive Law 29-a unbalances this constitutional framework by allowing the Governor to issue directives, which can only be reversed by a concurrent resolution of both houses of the legislatures.

142. Thus, while the consent of both houses of the legislature is required to pass a statute, the consent of either house of the legislature is sufficient to maintain a directive issued by the Governor under Executive Law 29-a.

143. Accordingly, Executive Law 29-a and every directive issued pursuant to Executive Law 29-a violates the principle of bicameralism inherent in the New York State Constitution.

144. The implementation and enforcement by an executive branch department or division of a directive issued under Executive Law 29-a thus also violates the principle of bicameralism inherent in the Constitution of the State of New York.

145. Petitioners have a clear legal right to continue to operate under the preexisting laws of the State in the absence of a constitutionally-valid directive curtailing, limiting, or prohibiting their operation.

146. Petitioners are suffering per se irreparable injury and are threatened with irreparable injury in the future by reason of being directed and forced to cease their lawful operations, and Petitioners have no plain, adequate nor complete remedy to protect the constitutional and/or legal rights and to redress the wrongs and illegal acts complained of, other than immediate and continuing injunctive relief.

147. Petitioners face the prospect of a loss of their business and/or the violation of their civil rights and liberties as a result of the Respondents purporting to extend, implement, and/or enforce directives issued under Executive Law 29-a

with the force of law, but without the constitutionally required concurrence of both houses of the legislature.

148. Absent an injunction, the harm to Petitioners in the loss of their legal and constitutional rights to operate exceeds any conceivable harm Respondents or the State of New York would suffer if they were prohibited from continuing to implement and enforce Executive Orders and regulations that violate the separation of powers set forth in the New York State Constitution. Indeed, there can be no harm to the Respondents because Respondents can enforce statutes of identical substance if the State Legislature passed such a statute, in conformance with the bicameral law-making process set forth in the New York State Constitution.

149. Petitioners are therefore entitled to a judgment declaring that Executive Law 29-a is unconstitutional to the extent it purports to give the Governor the power to issue directives which have the force of law without requiring the consent of the State Legislature in conformance with the bicameral law-making process set forth in the Constitution of the State of New York, together with a preliminary and permanent injunction prohibiting the Governor from enforcing directives under Executive Law 29-a unless and until these directives are approved by both houses of the legislature, and such relief would not be contrary to the public interest.

AS AND FOR A FIFTH CAUSE OF ACTION

PETITIONERS ARE ENTITLED TO A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

150. Petitioners repeat and reallege each and every allegation in the preceding paragraphs, as if fully set forth herein.

151. Petitioners are entitled to a preliminary injunction, as: (i) Petitioners have demonstrated a likelihood of success on the merits of its claims; (ii) Petitioners will suffer immediate and irreparable harm if the requested injunctive relief is not granted; and (iii) the balance of equities tips in Petitioners' favor.

152. Respondents have engaged in conduct that is arbitrary and capricious, thus entitling Petitioners to relief pursuant to Article 78 of the CPLR.

153. Again, data released by Respondents demonstrates that household/social gatherings account, state-wide, for 73.84% of COVID-19 cases. *All sports* have been the exposure source for only 1.04% of COVID-19 cases.

154. Respondents have not provided any public data to demonstrate or even suggest that ice hockey has been an exposure source for COVID-19. Conversely, scientific data that the Respondents refuse to take into consideration, or outright ignore, demonstrates that ice hockey does not impose an increased risk of viral transmission.

155. Petitioners will suffer immediate and irreparable harm if the injunctive relief it has requested is not granted, as the continued restrictions

imposed upon Petitioners eliminate any possibility for Petitioners to continue operating their season.

156. Petitioners will be further irreparably harmed should the relief requested not be granted, as Petitioners cannot be made whole by the granting of monetary damages, and Petitioners can never reacquire the time and games lost.

157. The balance of the equities also tips heavily in Petitioners' favor. If properly classified as a low-risk sport, Petitioners will, at the very least, comply with all social distancing, mask, hygiene, and sanitation guidelines and mandates. Not only will the status quo be maintained, but Petitioners may also alleviate the transmission of COVID-19, which the State's own data demonstrates is likely exacerbated when people are forced into their homes instead of engaging in safer activities.

158. Respondents will not in any way be harmed if the requested relief is granted by this Court, as permitting Petitioners to operate in accordance with the with the specific guidelines contained in Interim Guidance (*see infra*) will not increase the risk of spreading COVID-19 and will, consequently, not interfere with Respondents' efforts to contain the virus.

159. Accordingly, Petitioners' request for preliminary and permanent injunctive relief, should be granted, given the arbitrary and capricious nature of Respondents' actions.

WHEREFORE, Petitioners respectfully request judgment from this Court as follows:

A. On their First Cause of Action, that this Court issue a temporary restraining order, preliminary injunction, and ultimately a permanent injunction, enjoining Respondents from enforcing the restrictions imposed against Petitioners on the basis of ice hockey’s designation as a “higher risk” sport, and permitting Petitioners to operate as if under the proper “low risk” designation;

B. On their Second Cause of Action, a declaratory judgment declaring that the classification of ice hockey as a “higher risk” sport, and the corresponding restrictions on the basis of that designation, violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and corresponding provisions of the New York State Constitution, together with a preliminary and permanent injunction prohibiting the enforcement of such Executive Orders and regulations by Respondents;

C. On their Third Cause of Action, a judgment declaring that the continued designation of ice hockey as a “higher risk” sport violates the plain text of Executive Law 29-a(2)(a), together with a preliminary and permanent injunction prohibiting the designation of “higher risk” sports by Respondents;

D. On their Fourth Cause of Action, a judgment declaring that Executive Law 29-a is unconstitutional to the extent it purports to give the Governor the

power to issue directives which have the force of law without requiring the consent of the State Legislature in conformance with the bicameral law-making process set forth in the Constitution of the State of New York, together with a preliminary and permanent injunction prohibiting the Governor from enforcing directives under Executive Law 29-a unless and until these directives are approved by both houses of the legislature;

E. On their Fifth Cause of Action, that this Court grant a temporary restraining order, preliminary injunction, and ultimately a permanent injunction, enjoining Respondents from enforcing the arbitrary, capricious, unconstitutional, and illegal restrictions imposed against Petitioners;

F. Awarding such other and further additional relief as this Court may deem just, proper, and equitable.

DATED: January 21, 2021
Amherst, New York

Respectfully submitted,

s/ COREY J. HOGAN _____
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