

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

ERIC MCARTHUR, et al.

Plaintiffs,

v.

SCOTT BRABRAND, et al.,

Defendants.

Civil Action No. 1:21-cv-1435

**MOTION FOR A TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

**PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 65, Plaintiffs Eric and Mary McArthur, on behalf their minor children M.M. and M.H.M. (“Plaintiffs”),¹ by and through undersigned counsel, file this Motion for a Temporary Restraining Order against Superintendent of Fairfax County Public Schools (“FCPS”) Scott Brabrand, School Board Chair Stella Pekarsky, and Director of the Fairfax County Health Department (“FCHD”) Gloria Addo Ayensu, to enjoin enforcement of the school district’s arbitrary, irrational, and discriminatory quarantine policy as to both children. As of yesterday, both children have once again been forced to stay home from school as a result of encounters with “potential close contacts” who testified positive for COVID-19 (“quarantine policy”) because they are not vaccinated, without regard to their naturally acquired immunity. Plaintiffs make this motion to prevent the ongoing violations of the children’s Due Process rights

¹ M.H.M. is being added to an amended complaint, which will be filed as soon as practicable.

under the state and federal constitutions to attend school and not be depriving of that right without a hearing, and rights to Equal Protection under the federal constitution, without which they will be irreparably harmed before the case can be adjudicated. They request both (1) a hearing on this matter as soon as possible so that a TRO can be entered, permitting the students to attend school while motion practice continues; and (2) that the TRO be converted to a Preliminary Injunction once the parties have had the opportunity to brief the matter.

As set forth in the accompanying Memorandum in Support, along with the Complaint, Plaintiffs have met their burden for entry of a TRO:

First, they have established a likelihood of success on the merits because the quarantine policy, which fails to recognize the children's naturally acquired immunity, violates their constitutional rights to Equal Protection and to Due Process, and their rights to an uninterrupted education under Virginia State law, and cannot survive rational basis let alone a higher level of review;

Second, Plaintiffs have shown that, absent an injunction, they will suffer irreparable harm as a result of ongoing violations of their constitutional rights under both federal and state law; and

Third, as the prospective injury to Plaintiffs outweighs any damage the proposed injunction may cause Defendants (which is none, because there is no evidence at all that those with recently acquired natural immunity spread COVID-19 and certainly not at higher rates than the vaccinated), and they *do not have COVID-19*, the balance of equities strongly favors an injunction. Likewise, Defendants have no legitimate interest in enforcing an unconstitutional, unscientific, and arbitrary policy.

For these reasons and those set forth in detail in the accompanying Memorandum in Support, the Court should issue a TRO enjoining Defendants from excluding M.H.M. and M.M.

from in-person school, to be converted into a Preliminary Injunction following a hearing. Plaintiffs request a hearing, at the earliest possible date given the urgency of the matter.

Respectfully submitted,

/s/ Jenin Younes

Jenin Younes*

Litigation Counsel

Jenin.Younes@ncla.legal

Admitted Pro Hac Vice

* Admitted only in New York. DC practice limited to matters and proceedings before United States courts and agencies. Practicing under members of the District of Columbia Bar.

/s/ John J. Vecchione

John J. Vecchione

Senior Litigation Counsel

New Civil Liberties Alliance

John.Vecchione@ncla.legal

Senior Litigation Counsel

Admitted in this Court

NEW CIVIL LIBERTIES ALLIANCE

1225 19th Street NW, Suite 450

Washington, DC 20036

Telephone: (202) 869-5210

Facsimile: (202) 869-5238

Attorneys for Plaintiffs