

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

NEW HANOVER COUNTY

FILE NO. \_\_\_\_\_

2021 OCT 14 P 4:19

DAVID A. PERRY,

NEW HANOVER CO. PETITION FOR DECLARATORY  
JUDGEMENT & RELIEF

PLAINTIFF,

BY \_\_\_\_\_

vs.

NEW HANOVER COUNTY BOARD OF  
EDUCATION;

Stephanie Adams, in her official capacity;

Nelson Beaulieu, in his official capacity;

Judy Justice, in her official capacity;

Stephanie Kraybill, in her official capacity;

Hugh McManus, in his official capacity;

Stephanie Walker, in her official capacity;

Peter Wildeboer, in his official capacity;

NEW HANOVER COUNTY SHERIFF'S  
OFFICE;

Edward McMahon, in his official capacity

DEFENDANTS;

**A TRUE COPY**  
CLERK OF SUPERIOR COURT  
NEW HANOVER COUNTY  
BY: *Nathalie Lovell*  
Asst. Clerk of Superior Court

Pursuant to N.C. Gen. Stat. § 1-253 et seq., § 143-318.16, § 143-318.16A, and  
Rules 3, 8, and 57 of the North Carolina Rules of Civil Procedure, the Plaintiff hereby files this  
Petition for Declaratory Judgement, and for injunctive relief.

## INTRODUCTION

The Plaintiff brings this Petition for Declaratory Judgement seeking a judicial determination that the New Hanover County Board of Education's practice of requiring attendees to wear masks at open sessions of its public meetings violates the NC Open Meetings Act (G.S. 143-318, 9 – 18) and infringes on the Plaintiff's right of assembly and petition as guaranteed by the NC Constitution (Article I, Sec. 12) and the US Constitution (1<sup>st</sup> Amendment). The Plaintiff requests prospective injunctive relief that would bar the New Hanover County Board of Education and the New Hanover County Sheriff's Office from denying entry or removing the Plaintiff, or any other similarly situated non-disruptive individual, from any open sessions of future meetings of the New Hanover County Board of Education, solely on the basis that they are not wearing a mask. Furthermore, pursuant to G.S. 143-318.16A, the Plaintiff requests retrospective relief in the form of this Court nullifying all actions that the New Hanover County Board of Education has taken in the 45 days prior to the filing of this petition up to the time said relief is granted.

Even though the Plaintiff, and thousands of other New Hanover County residents, feel that mask mandates are an unconstitutional infringement on our personal liberty, this case is not about that. It is irrelevant whether this Court holds a contrary viewpoint. This case is simply about the fact that citizens who hold this viewpoint and adamantly refuse to comply with mask mandates should not lose their fundamental right to equally assemble and petition the very same government bodies that are responsible for creating these mask mandates.

Like many, the Plaintiff is not in a financial position to hire an attorney to represent them in civil litigation, and therefore the Plaintiff must proceed pro se. The Plaintiff humbly requests that this Court nonetheless fully respect the importance of this case, grant some

1 leeway for the Plaintiff unknowingly breeching rules of procedure, and give fair hearing to the  
2 Plaintiff's arguments, even though the Plaintiff does not possess a law degree.

### 3 4 **JURISDICTION**

5 The Plaintiff is a permanent resident of New Hanover County, North Carolina.  
6  
7 The New Hanover County Board of Education and New Hanover County Sheriff's Office are  
8 local government entities whose sole jurisdiction is New Hanover County, North Carolina.  
9 Therefore, this Court has jurisdiction as outlined in G.S. 143-318.16A(a).  
10

### 11 12 **STANDING**

13 Pursuant to G.S. 143-318.16A(a), the Plaintiff "need not allege or prove special  
14 damage different from that suffered by the public at large." Therefore, as a permanent resident of  
15 New Hanover County, North Carolina, the Plaintiff has sufficient standing to bring this case.  
16

### 17 18 **PARTIES**

19 The Plaintiff, David A. Perry, his wife Marlisa M. Perry, his step-daughter Lakyn  
20 B. Stoner, and his grandson Lucas M. Stoner (age 5, and attending Kindergarten at Coddington  
21 Elementary School), all reside at 4709 Cornus Drive, Wilmington, NC 28412 and within the  
22 confines of New Hanover County, North Carolina.  
23

24 The Defendant, the New Hanover County Board of Education, administers and  
25 provides public education, K-12, for the Plaintiff, his grandson, and for all residents and children  
26 residing within New Hanover County, North Carolina.  
27

1 The Defendant, Stephanie Adams, is the Chairperson of the New Hanover County  
2 Board of Education. The Defendant, Nelson Beaulieu is the Vice-Chairperson of the New  
3 Hanover County Board of Education. The Defendants, Judy Justice, Stephanie Kraybill, Hugh  
4 McManus, Stephanie Walker, and Peter Wildeboar are all members of the New Hanover County  
5 Board of Education.  
6

7 The Defendant, the New Hanover County Sheriff's Office, is a law enforcement  
8 agency whose jurisdiction covers the entirety of New Hanover County, North Carolina. In  
9 addition, this defendant has the power to prevent people from entering meetings of the New  
10 Hanover County Board of Education, and to remove people from those meetings as well.  
11

12 The Defendant, Edward McMahon, is the duly elected Sheriff of New Hanover  
13 County, and is responsible for administering the New Hanover County Sheriff's Office.  
14

### 15 **FACTS**

16 The statewide mask mandate for North Carolina's schools ended on July 30, 2021  
17 when Governor Roy Cooper did not extend it. While the Governor still recommended that school  
18 districts require masks in K-8 classrooms, he left the ultimate decision up to each school district  
19 within the state.<sup>1</sup> The New Hanover County Board of Education held its regular meeting on  
20 August 3, 2021, and the issue of the mask mandate was on the agenda. While this meeting was  
21 originally scheduled to be held at a physical location, a board member became infected with  
22 COVID-19 and the meeting was held virtually. Approximately 700-800 members of the public,  
23 including the Plaintiff, emailed the Board regarding this issue. The public comment section of  
24 the meeting was limited to those who registered to speak and who left a no longer than 2-minute  
25 comment on the school board's voicemail system. While the News Hanover County Board of  
26  
27  
28



1 Education provided a YouTube channel for members of the Public to view the meeting, it did  
2 NOT provide a physical location for the Plaintiff and other members of the public to view the  
3 meeting, pursuant to G.S. 143-318.13(a). The Board voted 6-0 to implement a mask mandate for  
4 all students, teachers, and staff, and for all grades K-12.<sup>2</sup>

5  
6 On August 25, 2021 the NC General Assembly passed a wide-ranging  
7 coronavirus bill for public schools. Included in this legislation was a requirement that local  
8 school boards meet monthly to decide whether masks should or should not be required in the  
9 school district for the next month. On August 30, 2021 Governor Roy Cooper announced that he  
10 had signed the legislation and that it had become law.<sup>3</sup>

11  
12 On October 5, 2021 the New Hanover County Board of Education again met, but  
13 this time they met physically at 1802 S. 15<sup>th</sup> Street, Wilmington, NC 28409. According to the  
14 “Call to the Audience” document on the Board’s website, members of the public were allowed to  
15 sign up to speak online to the Board on October 4, 2021, and that five people would be allowed  
16 to present their comments live and in-person at the meeting.<sup>4</sup> Again, no physical location for the  
17 Plaintiff and other members of the public to view the meeting, pursuant to G.S. 143-318.13(a)  
18 was provided. Dozens of people who share the Plaintiff’s viewpoint that parents should have the  
19 choice on whether their children wear masks in our public schools rallied outside the location.  
20 According to news reports, approximately 10 of these people entered the meeting, and then were  
21 quickly thrown out of the meeting for not wearing a mask. They were escorted out of the  
22 building by deputies of the Defendant, the New Hanover County Sheriff’s Dept. These deputies  
23 then proceeded to block entrance to the building to the dozens still out protesting outside the  
24 building. While these protesters loudly vocalized their desire to enter the meeting, there seems  
25 to be no indication that any physical violence was directed towards the Defendant’s deputies.  
26  
27  
28

1 Ultimately, save 1 vote by Defendant Peter Wildeboar, the New Hanover County Board of  
2 Education voted to extend the K-12 mask mandate for an additional month.<sup>5</sup>

3 According to the New Hanover County Board of Education website, the next  
4 scheduled interim meeting of the Board is to be held live on October 19, 2021 (5 pm) at 1802 S.  
5 15<sup>th</sup> Street, Wilmington, NC 28409. The next scheduled regular meeting will be held at the same  
6 location on November 2, 2021.<sup>6</sup> Given the current state law regarding monthly decisions  
7 regarding the mask mandates in the New Hanover County school district, it is likely that the  
8 Plaintiff, along with possibly hundreds of others with the same viewpoint, will wish to attend  
9 these meetings in person for the foreseeable future.  
10  
11

### 12 ALLEGATIONS

- 14 1. That the New Hanover County Board of Education has set a rigid policy that requires that  
15 all people physically attending a non-virtual meeting of that board must wear masks  
16 during the entirety of the meeting. No exceptions are provided.  
17
- 18 2. That the New Hanover County Board of Education has enlisted the aid of the New  
19 Hanover County Sheriff's Department to enforce this policy. Sheriff's deputies have  
20 physically denied entry into the meeting space for those who are not wearing a mask.  
21 Sheriff's deputies, upon instruction of the New Hanover County Board of Education or  
22 upon their own discretion, have physically removed individuals from the aforementioned  
23 meetings who have removed their masks.  
24
- 25 3. That the aforementioned rigid policy requiring masks, both as enumerated and as  
26 enforced, has deprived the Plaintiff (and possibly hundreds of others who refuse to wear  
27  
28

1 face masks) of his statutory right to attend the meeting. Pursuant to G.S. 143-318.10(a),  
2 “any person is entitled to attend such a meeting.”

- 3 4. That the New Hanover County Board of Education, pursuant to G.S. 143-318.13(a), has  
4 failed to comply with its statutory obligation to provide a physical location where  
5 members of the public may view the proceedings of electronic meetings  
6
- 7 5. That by forcing the Plaintiff (and other members of the public who refuse to wear masks)  
8 to observe the meeting via the Board’s You Tube channel, and by forcing the Plaintiff  
9 (and other members of the public who refuse to wear masks) to leave their public  
10 comments on the board’s voicemail, the New Hanover County Board of Education has  
11 created a “separate, inferior, and unequal” scheme of public participation that violates the  
12 Plaintiff’s rights (and the rights of other members of the public who refuse to wear  
13 masks) to assembly and petition.  
14
- 15 6. That the rights of assembly and petition are guaranteed by the NC Constitution, Article I,  
16 Section 12.  
17
- 18 7. That the rights of assembly and petition are guaranteed by the US Constitution, 1<sup>st</sup>  
19 Amendment, and are applicable to the states through the Equal Protection Clause of the  
20 US Constitution, 14<sup>th</sup> Amendment.  
21
- 22 8. That the rights of assembly and petition are fundamental rights, and any restriction upon  
23 those rights is subject to strict scrutiny.
- 24 9. That, given current CDC statistics<sup>7</sup>, any COVID-19 “pandemic” that currently exists, is  
25 clearly limited to those who have freely chosen not to receive one of the COVID-19  
26 vaccines. Given the fact that COVID-19 vaccinations are freely available to almost every  
27  
28

1 American, there is no legitimate and compelling government interest which would justify  
2 restrictions upon the fundamental rights of assembly and petition.

3 10. That even if the government has a legitimate and compelling interest in the matter, the  
4 fact that the New Hanover County Board of Education does not provide an exception for  
5 members of the public who can show proof of being fully vaccinated against COVID-19  
6 (like the Plaintiff and many others can) demonstrates that the restriction is not narrowly  
7 tailored.  
8

9 11. That other less restrictive measures (singularly or combined) exist which would be as  
10 effective in combatting any legitimate and compelling government interest in combatting  
11 the COVID-19 virus. A non-exhaustive list of possible measures follows:  
12

- 13 a. Make an exception to the mask policy for those who can show proof that they are  
14 fully vaccinated.
- 15 b. Make an exception to the mask policy for those who can provide proof of a negative  
16 COVID-19 test which was conducted within 48 hours prior to the start of the meeting.  
17
- 18 c. Conduct meetings outdoors (possibly under a tent) to reduce the transmission of the  
19 COVID-19 virus.
- 20 d. Conduct meetings in a larger indoor space where seating can be spaced out further for  
21 the purposes of safe social distancing.
- 22 e. Create a special seating section for those who are not wearing masks.
- 23 f. Create special entryways for those who are not wearing masks.
- 24 g. Provide a separate microphone and podium for guest speakers, and for members of  
25 the public speaking during the public comment portion of the meeting, who are not  
26 wearing masks.  
27  
28



1 h. Provide more hand sanitizer stations within the meeting place to help reduce the  
2 transmission of the COVID-19 virus.

3 12. That by not providing exceptions to their mask policy for individuals who are usually  
4 exempt from mask mandates (such as those with a valid religious exemption or a valid  
5 medical exemption), the New Hanover County Board of Education is violating their  
6 statutory and constitutional rights to fully participate in those meetings. As a result, the  
7 Plaintiff and other likeminded individuals are being denied the right to assemble and  
8 petition jointly with these members of the public.  
9  
10

### 11 **CONCLUSION**

12  
13 By setting, implementing, and enforcing a policy that completely excludes non  
14 mask wearing members of the public from physically attending public and open-session  
15 meetings of the New Hanover County Board of Education, the Defendants have violated the  
16 Plaintiff's statutory rights to attend these meetings (pursuant to the NC Open Meetings Law),  
17 and the Plaintiff's fundamental rights to assemble and petition (pursuant to Article I, Section 12  
18 of the NC Constitution and the 1<sup>st</sup> Amendment to the US Constitution).  
19  
20

### 21 **RELIEF**

22 The Plaintiff humbly begs this Court for the following injunctive relief:  
23

- 24 1. Enter a declaratory judgement in favor of the Plaintiff that the current mask policy of the  
25 New Hanover County Board of Education (in regard to school board meeting attendance)  
26 is null and void.  
27  
28

1 2. Pursuant to G.S. 143-318.16A, declare that any and all actions taken by New Hanover  
2 County Board of Education within the last 45 days are null and void. This includes the  
3 decision by that Board on October 3, 2021 to renew its mandatory mask policy within its  
4 schools for the month of October, 2021. As a result, the Plaintiff asks this Court to issue a  
5 temporary injunction against the New Hanover County Board of Education that would  
6 prohibit them from denying any student, teacher, member of the staff, or guest from  
7 entering school buildings, solely on the basis that they are not wearing a mask. Said  
8 injunction should last until the Board of Education can meet and decide the issue properly  
9 and in full accordance with the NC Open Meetings Law.  
10

11  
12 3. Enjoin the New Hanover County Board of Education, and all its defendant members,  
13 from attempting to deny physical entry to any member of the public attempting to enter a  
14 public and open session meeting of that Board or from attempting to remove any member  
15 of the public from those meetings, based solely on the fact that they are not wearing a  
16 mask.  
17

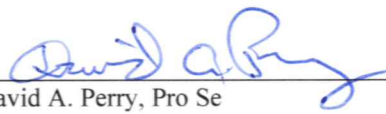
18 4. Enjoin the New Hanover County Sheriff's Dept, the defendant Sheriff Edward  
19 McMahon, or any of his deputies, from attempting to deny entry to any member of the  
20 public to open session meetings of the New Hanover County Board of Education or from  
21 removing any member of the public from those meetings, based solely on the fact they  
22 are not wearing a mask. This should hold true whether a member of the New Hanover  
23 County Board of Education has made such a request, or whether such a request came  
24 from another government official or entity.  
25

26 5. Enjoin the New Hanover County Sheriff's Dept, the defendant Sheriff Edward  
27 McMahon, or any of his deputies, from citing, arresting, or charging any member of the  
28

1 public attending an open session meeting of the New Hanover County Board of  
2 Education without a mask.

- 3 6. Any and all other relief this Court deems to be appropriate and in the interests of justice  
4 and individual liberty.  
5

6  
7 Dated this 14<sup>th</sup> day of October, 2021.  
8

9  
10   
11 David A. Perry, Pro Se

## **FOOTNOTES**

<sup>1</sup> Cooper announces new mask and safety guidelines for school districts, Spectrum News 1, <https://spectrumlocalnews.com/nc/charlotte/news/2021/07/21/cooper-announces-new-mask-and-safety-guidelines-for-school-districts>

<sup>2</sup> New Hanover County School Board votes for mandatory K-12 masking for the start of the school year, WECT News, <https://www.wect.com/2021/08/03/new-hanover-county-school-board-vote-masking-protocols-upcoming-school-year/>

<sup>3</sup> Cooper signs law that says school boards must vote each month if they require face masks, The News & Observer, <https://www.newsobserver.com/news/politics-government/article253863638.html>

<sup>4</sup> Call to the Audience, New Hanover County Board of Education, [https://docs.google.com/forms/d/e/1FAIpQLSeZJm5VQ6WHcTQ3Ja\\_\\_QNHu6dhgoUNvpGnmlo934nuA5UvYA/closedform](https://docs.google.com/forms/d/e/1FAIpQLSeZJm5VQ6WHcTQ3Ja__QNHu6dhgoUNvpGnmlo934nuA5UvYA/closedform)

<sup>5</sup> 'Permission to breathe': Protestors don't sway board, New Hanover keeps school mask mandate, Wilmington Star News, <https://www.starnewsonline.com/story/news/2021/10/05/new-hanover-school-anti-mask-protestors-mandate-schools-board-education/6009143001/>

<sup>6</sup> Board Meeting Schedule for 2021 -2022, New Hanover County Board of Education, <https://www.nhcs.net/board-of-education/meeting-schedule>

<sup>7</sup> Morbidity and Mortality Weekly Report (MMWR), Center for Disease Control and Prevention, <https://www.cdc.gov/mmwr/volumes/70/wr/mm7037e1.htm>