

STATE OF INDIANA )  
 ) SS:  
COUNTY OF TIPPECANOE ) CAUSE NO.: 79C01-\_\_\_\_\_-MI-\_\_\_\_\_

MICHAEL BRYANT, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CITY OF WEST LAFAYETTE, INDIANA, )  
 and JOHN R. DENNIS, in his official )  
 capacity as the Mayor of the City of West )  
 Lafayette, Indiana, )  
 )  
 Defendants. )

**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR DEPRIVATION OF CIVIL LIBERTIES AND CONSTITUTIONAL RIGHTS**

Plaintiff, Michael Bryant, by counsel, for his complaint for declaratory and injunctive relief against Defendants, City of West Lafayette, Indiana and John R. Dennis, in his official capacity as the Mayor of the City of West Lafayette, Indiana, states as follows:

**INTRODUCTION**

1. This is an action requesting declaratory and injunctive relief to prevent Defendant, City of West Lafayette, Indiana (“City”), from enforcing an unconstitutional executive order mandating that all individuals within the City wear a face-covering or mask over the individual’s nose and mouth while in a public place, using public transportation and in a place of business that is open to the public, among other places. Michael Bryant Aff. in Supp. of Mot. Prelim. Inj. ¶ 4 (July 21, 2020), attached as Exhibit A; Mayor of the City of West Lafayette, Indiana Executive Order 2020-01 (July 13, 2020) (“Mayor’s Mask Order”), attached as Exhibit A-1.

2. As states begin to loosen their COVID-19 restrictions, several state and local governments have issued some form of mask-wearing order aimed at slowing or preventing the

spread of COVID-19. Public health guidance on the effectiveness of mask-wearing has conflicted, leaving individuals to make their own choices about wearing masks in the absence of government mandates.<sup>1</sup>

3. Wearing a mask or face-covering in public has become a divisive subject, as state and local mask-wearing mandates have sparked public backlash. Media outlets, public figures and politicians criticize President Trump and many of his supporters for refusing to wear masks in public in light of the recent spike in the number of new COVID-19 cases; indeed, mask-wearing in public has become a political issue.<sup>2</sup> Moreover, refusing to wear a mask has become

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<sup>1</sup> See Interview by Dr. Jon LaPook with Dr. Anthony Fauci, Director of Nat'l Inst. of Allergy and Infectious Diseases (March 2020) (“[T]here’s no reason to be walking around with a mask. When you’re in the middle of an outbreak, wearing a mask might make people feel a little better and it might even block ‘a droplet,’ but it’s not providing the perfect protection that people think it is. And often, there are unintended consequences—people keep fiddling with the mask and they keep touching their face.”); see Jacqueline Howard, *WHO Stands by Recommendation to Not Wear Masks If You Are Not Sick or Not Caring for Someone Who Is Sick*, CNN (Mar. 31, 2020) (quoting Dr. Mike Ryan, Executive Director, World Health Organization, Health Emergencies Program), <https://www.cnn.com/2020/03/30/world/coronavirus-who-masks-recommendation-trnd/index.html> (“There is no specific evidence to suggest that the wearing of masks by the mass population has any potential benefit. In fact, there’s some evidence to suggest the opposite in the misuse of wearing a mask properly or fitting it properly.”); see Julie Bosman, *Amid Virus Surge, Republicans Abruptly Urge Masks Despite Trump’s Resistance*, N.Y. TIMES (July 1, 2020) (citing CTRS. FOR DISEASE CONTROL & PREVENTION, CONSIDERATIONS FOR WEARING CLOTH FACE COVERINGS (last updated June 28, 2020), [https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprevent-getting-sick%2Fcloth-face-cover.html](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprevent-getting-sick%2Fcloth-face-cover.html)), <https://www.nytimes.com/2020/07/01/us/coronavirus-masks.html> (“Early in the pandemic, government officials instructed Americans not to buy or wear masks. In April, they revised that guidance, advising that cloth face coverings were recommended.”).

<sup>2</sup> See Sarah Hansen, *Masks Help Stop the Spread of Coronavirus, Studies Say—But Wearing Them [sic] Still a Political Issue*, FORBES (June 13, 2020, 5:00 PM), <https://www.forbes.com/sites/sarahhansen/2020/06/13/masks-help-stop-the-spread-of-coronavirus-studies-say-but-wearing-them-still-a-political-issue/#23f70176604e> (“Despite a raft of data suggesting that wearing face masks (in conjunction with hand washing and social distancing) is effective in preventing person-to-person transmission of the coronavirus, the practice is still a partisan political issue in some places even as new cases continue to rise. . . . But despite the conclusive research and what seems to be a public consensus, masks remain a divisive subject.”); Ed Kilgore, *Are Masks Just for Liberals?*, INTELLIGENCER (Apr. 20, 2020) (alteration in original), <https://nymag.com/intelligencer/2020/04/are-masks-just-for-liberals.html> (“For Trump’s supporters, declining to wear a mask is a visible way to demonstrate that ‘I’m a Republican,’ or ‘I want businesses to start up again,’ or ‘I support the president,’ said Robert Kahn, a law professor at the University of St. Thomas in Minneapolis who has studied Americans’ attitudes toward masks . . . ‘Trump supporters, many of whom may live in less-populated red states, may currently know fewer people with covid, and may therefore minimize the threat,’ said Robert Klitzman, a psychiatrist at Columbia University who specializes in bioethics. ‘They don’t want to wear masks — they may feel they are being imposed and are “un-American,” perhaps something only people in the Far East do. The fact that wearing masks suggests that the virus is a real threat to them — despite what Trump has said — may further tip the balance against masks.’”).

a political statement because individuals who resist mask-wearing mandates are considered to be “Trump-supporters,” which is a label that has a negative connotation.<sup>3</sup>

4. Several states and cities in the U.S. also have some form of anti-mask law that prohibits wearing a mask in public, many of which were passed in direct response to the Klu Klux Klan.<sup>4</sup> Some of these states seek to enforce orders that effectively invalidate anti-mask laws that were designed to prevent mask-wearing Klansmen from concealing their identities with the intent to intimidate individuals and carry out violent and criminal activities.<sup>5</sup>

5. While government entities have a compelling interest in slowing or preventing the spread of COVID-19, there is not sufficient evidence to conclude that mask-wearing orders are an effective means of reducing transmission of COVID-19, particularly among college students. The risk of mask-wearing orders being enforced discriminatorily is not worth the potential

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<sup>3</sup> See Robert A. Gatter & Seema Mohapatra, *COVID-19 and the Conundrum of Mask Requirements*, 77 WASH. & LEE L. REV. ONLINE 17, 17 (May 2020), <https://scholarlycommons.law.wlu.edu/wlulr-online/vol77/iss1/2> (“[N]ot wearing a mask can also be a political statement of sorts.”); see Bosman, *supra* note 1 (“Resistance to masks began with Mr. Trump, who, as the C.D.C. urged Americans to wear face coverings, stressed that the measure was voluntary, and said, ‘I don’t think I’m going to be doing it.’ The president has continued to resist wearing a mask and views it as a ‘personal choice,’ his spokeswoman said on Monday, a stance that has led many of his supporters to refuse to wear one, even in cities and businesses where they are required.”); see German Lopez, *Polls Show Many—Even Most—Trump Supporters Really Are Deeply Hostile to Muslims and Nonwhites*, Vox (Sept. 12, 2016, 2:30 PM), <https://www.vox.com/2016/9/12/12882796/trump-supporters-racist-deplorables> (“Hillary Clinton on Friday described Donald Trump supporters in what she acknowledged were ‘grossly generalistic’ terms: ‘You could put half of Trump’s supporters into what I call the “basket of deplorables.” Right? The racist, sexist, homophobic, xenophobic, Islamophobic — you name it.’”).

<sup>4</sup> See James Pasley, *12 US States and 7 Countries That Have Barred Protesters from Wearing Masks*, BUS. INSIDER (Oct. 7, 2019, 5:35 PM), <https://www.businessinsider.com/countries-states-where-protesters-cant-wear-masks-2019-10> (“Laws banning masks were also passed in direct response to the Klu Klux Klan. In Alabama, it’s been illegal since 1949 to wear a mask in public . . .”).

<sup>5</sup> See Martin Austerhuhle, *D.C. Makes It a Crime to Wear Masks. So Why Was a Group of White Nationalists Able to?*, NPR (Feb. 12, 2020), <https://www.npr.org/local/305/2020/02/12/805290397/d-c-makes-it-a-crime-to-wear-masks-so-why-was-a-group-of-white-nationalists-able-to> (“Still, there were no arrests at Saturday’s white nationalist demonstration, which was escorted by a contingent of D.C. police officers. And that could largely be because many anti-mask laws rest on shaky legal foundations, often testing the careful balancing act between public safety and the First Amendment. Is a mask a means to threaten someone, or simply a tool to protect someone’s identity when they have an unpopular opinion? . . . When the D.C. Council passed the law almost four decades ago, it did so specifically because of a reported uptick in Ku Klux Klan activity in the Maryland and Virginia suburbs around D.C., and a rise in incidents in the city itself.”).

benefits that might result from an effective mandatory mask-wearing order.<sup>6</sup> As stated in a letter from U.S. Senators Kamala Harris and Cory Booker:

On April 3, the CDC recommended that individuals “wear[] face coverings in public settings where other social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies), especially in areas of significant community-based transmission.” Less than one week later, African American men began reporting incidents of racial profiling for adhering to the CDC’s guidance. . . .

In other cases, African American men are reportedly being harassed for *not* wearing masks and face coverings in public.<sup>7</sup>

Ex. B, at 1.

6. Many of the mandatory mask-wearing orders allow law enforcement to impose fines and/or arrest individuals who violate such orders. Thus, any individual who does not wear a face-covering invites an encounter with law enforcement, perhaps facilitating a warrantless search of the perpetrator—circumventing the perpetrator’s right to be secure against unreasonable searches and seizures under Ind. Const. Art. 1 § 11. “Any police encounter is

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<sup>6</sup> See Conor Ahern, *COVID-19: Mask for Discrimination?*, WORKING FOR JUSTICE BLOG (May 2, 2020), <https://sanfordheisler.com/covid-19-mask-for-discrimination/> (“[I]f only select individuals are singled out for reductions, it is possible that the employer is using the pandemic as pretext for accomplishing discriminatory ends.”); Letter from Kamala D. Harris, U.S. Senator, to Alex M. Azar II, Secretary, Dep’t of Health & Human Svcs., at 1 (Mar. 27, 2020), <https://www.warren.senate.gov/imo/media/doc/2020.03.27%20Letter%20to%20HHS%20re%20racial%20disparities%20in%20COVID%20response.pdf> (“It is critical that the federal government make a concerted effort to account for existing racial disparities in health care access and how persistent inequities may exacerbate these disparities in the weeks and months to come as our nation responds to this global health pandemic.”); see also Gatter & Mohapatra, *supra* note 3 (demonstrating that “there is good reason to believe that the law will not be an effective check against racial discrimination by police when enforcing such a requirement”).

<sup>7</sup> Letter from Kamala D. Harris & Cory A. Booker, U.S. Senators, to William Barr, Attorney General, Dep’t of Justice, & Christopher Wray, Director, FBI, at 1 (Apr. 17, 2020), [https://www.harris.senate.gov/imo/media/doc/Harris%20Booker%20Letter%20re%20Bias%20and%20Enforcement%20\(FINAL%204.17\).pdf](https://www.harris.senate.gov/imo/media/doc/Harris%20Booker%20Letter%20re%20Bias%20and%20Enforcement%20(FINAL%204.17).pdf); see *id.* (“In Wood River, Illinois, for instance, two African American men in surgical masks recorded themselves being followed by a police officer as they left Walmart. The police officer reportedly asked for their identification and erroneously told them the city’s ordinance prohibited wearing masks in public.”); *id.* (“In Miami, Florida, an African American doctor wore a mask as he prepared for a volunteer shift to test homeless individuals for COVID-19; he was subsequently handcuffed and detained outside his home.”); *id.* (“On April 9, the Southeastern Pennsylvania Transportation Authority (SEPTA) issued a policy requiring all riders to wear facial coverings on public transit. The next day, an African American man without a mask was depicted on video being forcibly dragged from a bus by at least four officers.”).

fraught with fear for black Americans due to the targeting by police.”<sup>8</sup> “Given the discriminatory enforcement that is likely . . . the likelihood of increased racial discrimination undercuts the public health justification for a mask requirement.”<sup>9</sup>

7. A public health emergency should not open the door for any government entity to infringe on individuals’ constitutional and civil rights. As the Supreme Court has recognized, when laws “purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.” *Jacobson v. Massachusetts*, 197 U.S. 11, 31 (1905).

8. The recent spike in the number of COVID-19 cases coincides with a 12-week decline in death rate and increased availability of testing.<sup>10</sup> Nonetheless, Defendant, John R. Dennis, in his official capacity as the Mayor of the City of West Lafayette, Indiana (“Mayor Dennis”), has effectively exercised legislative power and attempted to accomplish by executive order what the General Assembly declined to do by statute and many governors, including Governor Holcomb, declined to do through executive order. For example, South Carolina Governor Henry McMaster has stood firm that he will not issue a state-wide mandatory mask

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<sup>8</sup> Gatter & Mohapatra, *supra* note 3, at 30.

<sup>9</sup> *Id.* at 29.

<sup>10</sup> See CTRS. FOR DISEASE CONTROL & PREVENTION, COVIDVIEW, A WEEKLY SURVEILLANCE SUMMARY OF U.S. COVID-19 ACTIVITY (last updated July 10, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html> (“Based on death certificate data, the percentage of deaths attributed to pneumonia, influenza or COVID-19 (PIC) decreased from 8.1% during week 27 to 6.4% during week 28, representing the twelfth consecutive week during which a declining percentage of deaths due to PIC has been recorded. The percentage is currently above the epidemic threshold but will likely change as more death certificates are processed, particularly for recent weeks.”).

order because “it runs against personal liberties and it is difficult to enforce. . . . Everyone should wear a mask, . . . [b]ut we cannot force people to do what they don’t want to do.”<sup>11</sup>

9. The Mayor’s Mask Order was issued primarily because incoming college students present unique risks and challenges to the West Lafayette community. Ex. A-1, at 1. However, on June 5, 2020, the World Health Organization (“WHO”) released its Interim Guidance specifically addressing mask-wearing among young adults living in university residences in the United States, which states: “At present, there is no direct evidence (from studies on COVID-19 and in healthy people in the community) on the effectiveness of universal masking of healthy people in the community to prevent infection with respiratory viruses, including COVID-19.”<sup>12</sup> Ex. A-2, at 6.

10. Defendants cannot present conclusive evidence that masks are an effective measure for preventing the spread of COVID-19, and the Mayor’s Mask Order unnecessarily restricts young, healthy adults, which are not in the high-risk category of people likely to become infected with COVID-19. Thus, the City will not be able to establish that the Mayor’s Mask Order is narrowly tailored to further the City’s compelling interest in preventing the spread, particularly among college students. There are less restrictive and potentially more rational means of slowing the spread that the West Lafayette City Council can implement through an ordinance after approval by a majority vote of its members.

11. The purpose of this lawsuit is not to reach a conclusion on the effectiveness of mask-wearing. Plaintiff brings this action requesting the Court to declare that the Mayor’s Mask

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<sup>11</sup> Maayan Schechter & John Monk, *Gov. McMaster Refuses Call for State Mask Rule, Pushes Reopening As SC ‘Hot Spot’ Surges*, THE STATE (July 19, 2020, 5:00 AM), <https://www.thestate.com/news/coronavirus/article244213327.html>.

<sup>12</sup> World Health Organization, *Advice on the Use of Masks in the Context of COVID-19*, 2 (June 5, 2020), [file:///C:/Users/ariel/Downloads/WHO-2019-nCov-IPC\\_Masks-2020.4-eng.pdf](file:///C:/Users/ariel/Downloads/WHO-2019-nCov-IPC_Masks-2020.4-eng.pdf).

Order is unconstitutional and to obtain a preliminary injunction preventing the enforcement and execution of the Order. Plaintiff intends to imminently and fully exercise his civil liberties and constitutional rights, free of any chilling effect or punishment, by peaceable assembling and expressing his opposition to government abuse of power and government orders mandating mask-wearing without wearing a mask. He can no longer enjoy public areas within the City of West Lafayette and freely speak about any subject, including discriminatory enforcement and abuse of government power, without violating the Mayor's Mask Order unless he wears a mask. Ex. A ¶¶ 5-8.

### **PARTIES**

12. Plaintiff, Michael Bryant, is and was at all relevant times a citizen of the State of Indiana who resides in West Lafayette, Indiana, which is located within Tippecanoe County, Indiana.

13. Defendant, City of West Lafayette, Indiana, is and was at all relevant times a municipality organized pursuant to Ind. Code § 36-1-2-11 and located in Tippecanoe County, Indiana.

14. Defendant, John R. Dennis, in his official capacity as the Mayor of the City of West Lafayette, Indiana, is and was at all relevant times the Mayor of the City of West Lafayette, Indiana and the author of and authority issuing Executive Order 2020-01.

### **JURISDICTION AND VENUE**

15. This is an action for declaratory judgment pursuant to Indiana Rule of Trial Procedure 57 and Ind. Code § 34-14-1-1 for the purpose of determining an actual controversy between the parties. Plaintiff also seeks injunctive relief for pursuant to Ind. Code § 34-26-1-5 and Ind. Rule of Trial Procedure 65.

16. Tippecanoe County is a preferred venue under Rule 75(A) because all parties reside in or are located in Tippecanoe County, the effects of the actions complained of are within Tippecanoe County and the subject of this Complaint is the constitutionality, authority and actions of Defendants over persons within Tippecanoe County.

### **BACKGROUND**

17. On March 6, 2020, Governor Eric Holcomb declared a public health emergency in the State of Indiana for COVID-19 through Executive Order 20-02, and the declaration has been extended through August 3, 2020.

18. On March 10, 2020, Mitch Daniels, President of Purdue University—which is located in West Lafayette, Indiana—issued a letter to the Purdue University community stating:

While we have no cases of COVID-19 on our campus, there are confirmed cases in Indiana. . . . All faculty and staff should move their courses to online or alternative delivery before March 23 and should be prepared to continue as long as in-person instruction seems inadvisable (potentially through the end of the semester). To be clear, the campus will remain open after spring break. However, starting March 23, students must take their courses online.<sup>13</sup>

President Daniels’s letter to the Purdue University community provides a list of CDC recommendations for preventative actions, but it does not mention masks or face-coverings.

19. On July 13, 2020, Mayor Dennis issued Executive Order No. 2020-01, which mandates that all individuals within the City wear a face-covering or mask over the individual’s nose and mouth while in public or places of business accessible to the public. Ex. A-1, at 3.

20. The Mayor’s Mask Order contains the following provisions to demonstrate the City’s need for a mask-wearing mandate:

WHEREAS, Governor Holcomb’s announcement of a roadmap for reopening Indiana and his most recent Executive Order 20-35 provides that local orders may be more restrictive, which allows West Lafayette to respond to the

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<sup>13</sup> Letter from Mitch Daniels, President, Purdue University (Mar. 10, 2020), <https://protect.purdue.edu/updates/march-10th-covid-19-update-from-president-daniels-and-provost-akridge/>.

unique challenges that this pandemic presents in a densely populated college town which will soon welcome back students to Purdue University;

WHEREAS, the nature of West Lafayette's dense population and incoming college students presents unique risks and challenges for this community in combatting the spread and dangers of COVID-19;

WHEREAS, the Centers for Disease Control and Prevention (CDC) has stated that COVID-19 spreads mainly from person to person through respiratory droplets produced when an infected person coughs, sneezes, talks, or raises their voice (e.g., while shouting, chanting, or singing). These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Recent studies show that a significant portion of individuals with COVID-19 lack symptoms (are "asymptomatic") and that even those who eventually develop symptoms (are "pre-symptomatic") can transmit the virus to others before showing symptoms;

WHEREAS, to reduce the spread of COVID-19, the CDC recommends that people wear cloth face coverings in group settings when around people outside of their household, especially when other social distancing measures are difficult to maintain;

WHEREAS, cloth face coverings help prevent people who have COVID-19 from spreading the virus to others. Wearing a cloth face covering will help protect nearby people, including those at higher risk of severe illness from COVID-19 and workers who frequently come into close contact with other people (e.g., in stores and restaurants). Cloth face coverings are most likely to reduce the communitywide spread of COVID-19 when they are widely used by people in group settings[.]

21. According to the Indiana COVID-19 Data Report, there are 889 total confirmed positive COVID-19 cases and ten (10) total confirmed deaths in all of Tippecanoe County as of July 20, 2020. On July 20, 2020, seven (7) new positive cases were reported and no new deaths were reported.<sup>14</sup> Ex. C.

22. The Mayor's Mask Order includes a list of people, locations and activities that are exempt, some of which render the Order violative of a rational basis, such as the requirement to wear masks in public businesses but not while sitting and eating in a restaurant.

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<sup>14</sup> Indiana COVID-19 Data Report, IN.GOV (updated July 20, 2020), <https://www.coronavirus.in.gov/2393.htm>.

23. The Indiana Constitution's Preamble states: "To the end, that justice be established, public order maintained, and liberty perpetuated: WE, the People of the State of Indiana, grateful to Almighty God for the free exercise of the right to choose our own form of government, do ordain this Constitution." Ind. Const. Preamble.

24. Plaintiff, Michael Bryant, initiated this action because the Mayor's Mask Order deprives him and other similarly situated persons of their ability to exercise their civil liberties and constitutional rights. Specifically, the Mayor's Mask Order: (1) violates an individual's natural rights of life, liberty and the pursuit of happiness under Ind. Const. Art. 1, § 1; (2) restrains the free interchange of thought and opinion and restricts the right to speak freely on any subject under Ind. Const. Art. 1 § 9; (3) violates Ind. Const. Art. 1, § 1 because it exceeds the powers devolved upon city executives under Ind. Code § 36-4-5-3, is not within the purview of his duties as mayor under West Lafayette Municipal Code 2-131 and is a void *ultra vires* act; (4) restrains individuals' ability to assemble in a peaceable manner, to consult for their common good and restrains them from instructing their representatives in violation of Ind. Const. Art. 1, § 31; and (5) violates the right of the people to be secure against unreasonable searches or seizures under Ind. Const. Art. 1 § 11.

## COUNT I

### **Declaratory Judgment – Violation of Ind. Const. Art. 1, § 1**

25. Plaintiff repeats and realleges paragraphs 1 through 24 previously set forth in this Complaint and incorporate them as though fully stated herein.

26. Ind. Const. Art. 1, § 1 states: "WE DECLARE, that all people are created equal; that they are endowed by their CREATOR with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that all power is inherent in the people; and that all free

governments are, and of right ought to be, founded on their authority, and instituted for their peace, safety, and well-being. For the advancement of these ends, the people have, at all times, an indefeasible right to alter and reform their government.”

27. The Mayor’s Mask Order prohibits Plaintiff and other healthy citizens from fully exercising their civil liberties and constitutional rights to peaceably express their opposition to government orders mandating mask-wearing and prevents them from fully enjoying public areas within the City of West Lafayette.

28. The Mayor’s Mask Order may be enforced discriminatorily by law enforcement, resulting in certain persons being denied equal protection of laws and deprived of life, liberty and pursuit of happiness without due process—in violation of the Equal Protection Clause.

WHEREFORE, Plaintiff, Michael Bryant, respectfully requests that the Court enter a judgment declaring that the Mayor’s Mask Order violates Ind. Const. Art. 1, § 1 because the likelihood of discriminatory enforcement and chilling of political speech will result in a denial of due process and equal protection of laws and a deprivation of life, liberty and pursuit of happiness, and for all other relief just and proper in the premises.

## COUNT II

### **Declaratory Judgment – Violation of Ind. Const. Art. 1, § 9**

29. Plaintiff repeats and realleges paragraphs 1 through 28 previously set forth in this Complaint and incorporate them as though fully stated herein.

30. Ind. Const. Art. 1, § 9 states: “No law shall be passed, restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject whatever: but for the abuse of that right, every person shall be responsible.”

31. “Common in state constitutions, this formulation is sometimes called the ‘freedom-and-responsibility standard.’ Under this standard, a legislature may not impair the flow of ideas; instead, its sole authority over expression is to sanction individuals who commit abuse. Understanding the notion of “abuse” is therefore critical to resolving cases under § 9.” *Price v. State*, 622 N.E.2d 954, 958 (Ind. 1993); *see id.* at 959 (“[W]e conclude that § 9 derives its function from a constitutional arrangement calculated to correlate the enjoyment of individual rights and the exercise of state power such that the latter facilitates the former. Abuse then lies in that expression which injures the retained rights of individuals or undermines the State’s efforts to facilitate their enjoyment. As such, § 9 limits legislative authority over expression to sanctioning encroachments upon the rights of individuals or interference with exercises of the police power.”).

32. Specifically, the Mayor’s Mask Order violates Ind. Const. Art. I, § 9 because enforcing it amounts to a material burden on political speech. *See Price v. State*, 622 N.E.2d 954, 961 (Ind. 1993) (“State’s prosecution stems from what all concede was a protest about the legality and appropriateness of police conduct. When a citizen’s protest is occasioned by the conduct of government actors and regards a matter of public concern, it is squarely within the public pale. Citizen concern about the role of the police in their neighborhoods is as serious as it is timely. Therefore, . . . we conclude that her overall complaint constituted political speech. As such, this case presents the question of whether § 9, or some other provision of our constitution, enshrines political expression as a core value and, if so, when enforcement of an otherwise rational anti-noise statute against it amounts to a material burden.”).

33. Indiana’s Constitution limits the General Assembly’s authority to restrict expression, and the Indiana Supreme Court has established that Indiana’s Constitution enshrines political expression as a core value.

34. The Mayor’s Mask Order prevents Plaintiff and other law-abiding citizens from protesting the Mayor’s conduct and expressing their political opposition to government orders mandating mask-wearing within the City of West Lafayette, which are matters of public concern. Ex. A ¶ 8.

35. The Mayor’s Mask Order restrains the free interchange of thought and opinion on political issues and restricts the right to speak freely about the Mayor’s Mask Order and mask-wearing generally.

WHEREFORE, Plaintiff, Michael Bryant, respectfully requests that the Court enter a judgment declaring that the Mayor’s Mask Order violates Ind. Const. Art. 1, § 9 because it restrains the free interchange of thought and opinion by threatening to punish individuals who oppose the Mayor’s Mask Order in public places within the City of West Lafayette and amounts to a material burden on political speech, and for all other relief just and proper in the premises.

### COUNT III

#### **Declaratory Judgment – Mayor’s Mask Order Void As *Ultra Vires* Act and Violation of Ind. Const. Art. 1, § 1**

36. Plaintiff repeats and realleges paragraphs 1 through 35 previously set forth in this Complaint and incorporate them as though fully stated herein.

37. The Mayor’s Mask Order relies upon Ind. Code § 36-8-2-5 to establish the City’s authority to impose restrictions upon persons that might cause other persons to contract diseases, but Mayor Dennis exceeded the power granted to him by the City when he unilaterally issued an executive order—as opposed to the City imposing restrictions requiring mask-wearing by

enacting an ordinance approved by a majority of the City Council members. Ind. Code § 36-8-2-5 does not grant Mayor Dennis authority to impose any restrictions via executive order.

38. The Mayor’s Mask Order relies upon Ind. Code § 36-4-5-3 and West Lafayette Municipal Code 2-131 to support Mayor Dennis’s alleged duty to “insure efficient government of the City and enforce the ordinances of the City and statutes of the State.” Ex. A-1, at 2.

39. Ind. Code § 36-4-5-3 lists ten (10) powers and duties of city executives, none of which include issuing executive orders. The statute authorizes the executive to enforce the ordinances of the city and statutes of the State, but the Mayor’s Mask Order is effectively legislation—there is no enabling legislation authorizing the Mayor to issue an executive order or penalize individuals for not wearing a mask. West Lafayette Municipal Code 2-131 lists twelve (12) duties of the mayor, none of which include issuing executive orders.

40. The Mayor’s Mask Order exceeds the powers devolved upon local government units under Ind. Code § 36-8-2-5, exceeds the powers devolved upon local government executives under Ind. Code § 36-4-5-3, and it is not within the purview of his duties as mayor under West Lafayette Municipal Code 2-131. The Mayor’s Mask Order is void as an *ultra vires* act.

41. “The legislature may not under the guise of protecting public interests, arbitrarily interfere with private business or impose unnecessary restrictions upon lawful occupations. If the law prohibits that which is harmless in itself, or if it is unreasonable and purely arbitrary, requires that to be done which does not tend to promote the health, comfort, morality, safety or welfare of society, it is an unauthorized exercise of power.” *Ind. Dep’t of Env’tl. Mgmt. v. Chem. Waste Mgmt.*, 643 N.E.2d 331, 341 (Ind. 1994).

42. While these standards apply to the legislature, Mayor Dennis exercised legislative power by issuing an order allegedly designed to protect public health. *See Blue v. Beach*, 56 N.E. 89, 93 (Ind. 1900) (“As a general proposition, whatever laws or regulations are necessary to protect the public health and secure public comfort is a legislative question, and appropriate measures, intended and calculated to accomplish these ends, are not subject to judicial review. But, nevertheless, such measures or means must have some relation to the end in view, for, under the mere guise of the police power, personal rights and those pertaining to private property will not be permitted to be arbitrarily invaded by the legislative department; and consequently its determination, under such circumstances, is not final, but is open to review by the courts. If the legislature, in the interests of the public health, enacts a law, and thereby interferes with the personal rights of an individual, destroys or impairs his liberty or property, it then, under such circumstances, becomes the duty of the courts to review such legislation, and determine whether it in reality relates to and is appropriate to secure the object in view; and in such an examination the court will look to the substance of the thing involved, and will not be controlled by mere forms.”).

43. There is not sufficient evidence to conclude that mask-wearing or mask-wearing orders are an effective means of preventing the spread of COVID-19, and one man’s opinion should not dictate whether a mask-wearing mandate is rationally related to the goal of preventing the spread. The City Council should have voted to enact an ordinance so that the majority of the members had to approve the measures that were the most effective for accomplishing the goal of preventing the spread, as it is impossible to determine what led Mayor Dennis to conclude that a mask-wearing mandate is in the best interests of the City of West Lafayette. The Mayor’s Mask

Order is void as an *ultra vires* act, and it is an unauthorized exercise of legislative and police power the guise of protecting public interests in violation of Ind. Const. Art. 1, § 1.

WHEREFORE, Plaintiff, Michael Bryant, respectfully requests that the Court enter a judgment declaring that the Mayor’s Mask Order is void as an *ultra vires* act and violates Ind. Const. Art. 1, § 1 because it: restricts inalienable rights; usurps power that is inherent in the citizens of the City of West Lafayette; exceeds the powers devolved upon local government units under Ind. Code § 36-8-2-5; exceeds the powers devolved upon local government executives under Ind. Code § 36-4-5-3; and is not within the purview of a mayor’s duties under West Lafayette Municipal Code 2-131; and for all other relief just and proper in the premises.

#### COUNT IV

##### **Declaratory Judgment – Violation of Ind. Const. Art. 1, § 31**

44. Plaintiff repeats and realleges paragraphs 1 through 43 previously set forth in this Complaint and incorporate them as though fully stated herein.

45. Ind. Const. Art. 1, § 31 states: “No law shall restrain any of the inhabitants of the State from assembling together in a peaceable manner, to consult for their common good; nor from instructing their representatives; nor from applying to the General Assembly for redress of grievances.”

46. Indiana’s Constitution limits the General Assembly’s authority to restrict expression, and the Indiana Supreme Court has established that Indiana’s Constitution enshrines political expression as a core value.

47. The Mayor’s Mask Order prevents Plaintiff and other healthy citizens from assembling in a peaceable manner to protest the Mayor’s conduct and expressing their political opposition to government orders mandating mask-wearing, which are matters of public concern.

WHEREFORE, Plaintiff, Michael Bryant, respectfully requests that the Court enter a judgment declaring that the Mayor's Mask Order violates Ind. Const. Art. 1, § 31 because it prevents Plaintiff and other healthy citizens from assembling in a peaceable manner to protest the Mayor's Mask Order and expressing their political opposition to government orders mandating mask-wearing within the City of West Lafayette, and for all other relief just and proper in the premises.

### COUNT V

#### **Declaratory Judgment – Violation of Ind. Const. Art. 1, § 11**

48. Plaintiff repeats and realleges paragraphs 1 through 47 previously set forth in this Complaint and incorporate them as though fully stated herein.

49. Ind. Const. Art. 1, § 11 states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized."

50. The Mayor's Mask Order allows law enforcement to impose fines of \$100 for a first offense and \$250 for each subsequent offense against any individual who violates any provision of the Order. Any person who does not wear a face-covering invites an encounter with law enforcement, which may lead to a warrantless search of the perpetrator—circumventing the perpetrator's right to be secure against unreasonable searches and seizures.

WHEREFORE, Plaintiff, Michael Bryant, respectfully requests that the Court enter a judgment declaring that the Mayor's Mask Order violates Ind. Const. Art. 1, § 11 because the threat of punishment by fine for violating the Order infringes on a person's right to be secure in

their persons and effects against unreasonable search or seizure in public places within the City of West Lafayette, and for all other relief just and proper in the premises.

## COUNT VI

### **Injunctive Relief – No Authority to Enforce Mayor’s Mask Order**

51. Plaintiff repeats and realleges paragraphs 1 through 50 previously set forth in this Complaint and incorporate them as though fully stated herein.

52. Pursuant to Ind. Code. § 34-14-1-1, to obtain a preliminary injunction in Indiana, the moving party must show by a preponderance of the evidence that:

- (1) the movant’s remedies at law are inadequate, thus causing irreparable harm pending resolution of the substantive action;
- (2) the movant has at least a reasonable likelihood of success at trial by establishing a prima facie case;
- (3) threatened injury to the movant outweighs the potential harm to the nonmoving party resulting from the granting of an injunction; and
- (4) the public interest would not be disserved.

53. The Indiana Supreme Court has established that Indiana’s Constitution enshrines political expression as a core value, and the Mayor’s Mask Order infringes upon inalienable rights and usurps power that is inherent in the citizens of West Lafayette.

54. The Mayor’s Mask Order cannot be constitutionally applied to require individuals to wear masks or face-coverings because enforcing it without evidence that the individual has a communicable disease—or has been exposed to the extent that it is nearly certain the individual has become infected—is a violation of due process.

55. Defendants cannot demonstrate that they or the citizens of West Lafayette will suffer harm if the requested injunctive relief is granted, and the likelihood of discriminatory enforcement and violations of core constitutional and inalienable rights undercuts the public health justification for a mask requirement given the absence of conclusive scientific evidence

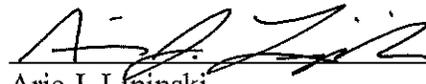
establishing that mask-wearing and/or mask-wearing orders are an effective measure for slowing the spread of COVID-19.

WHEREFORE, Plaintiff, Michael Bryant, respectfully requests that the Court issue the injunctive relief to enjoin Defendants from enforcing the Mayor's Mask Order based on the declaratory judgment on the counts previously set forth herein, and for all relief just and proper in the premises.

**Verification**

I affirm, under the penalties for perjury, that the foregoing representations are true.

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