APPENDIX

APPENDIX

TABLE OF CONTENTS

APPENDIX A

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 22-2701 and 22-2702

[Filed February 5, 2024]

GEORGE FALCONE,
Appellant in No. 22-2701

v.

NEIL DICKSTEIN, Personally and in his capacity as the Superintendent of Freehold Public Schools; MICHELLE LAMBERT, Personally and in her capacity as the President of the Freehold Board of Education; MICHAEL S. AMOROSO, Personally and in his capacity as the Vice President of the freehold board of education; JENNIFER PATTEN, Personally and in her capacity as a member of the freehold board of education; DEBRA COSTANZA, Personally and in her capacity as a member of the freehold board of education; ELENA O'SULLIVAN, Personally and in her capacity as a member of the freehold board of education; MARY COZZOLINO, Personally and in her capacity as a member of the freehold board of education; MEG THOMANN, Personally and in her capacity as a member of the freehold board of education; NEIL

GARGIULO, Personally and in his capacity as a member of the freehold board of education; KERRY VENDITTOLI, Personally and as a member of the freehold board of education; FREEHOLD BOARD OF EDUCATION; FREEHOLD TOWNSHIP POLICE DEPARTMENT; MYROSLAV ALFELDI, Personally and in his capacity as a freehold township police officer; JOHN DOES 1-25, Said names being fictitious

GWYNETH K. MURRAY-NOLAN,
Appellant in No. 22-2702

v.

SCOTT RUBIN; KURT PETSCHOW; LISA CARBONE; TERRY DARLING; BRETT DRYER; WILLIAM HULSE; NICOLE SHERRIN KESSLER; MARIA LOIKITH; PATRICK LYNCH; KRISTEN MALLON; CRANFORD BOARD OF EDUCATION; JENNIFER OSBOURNE; SCIARRILLO CORNELL MERLINO MCKEEVER AND OSBOURNE LLC; JOHN DOES 1-25; ABC DEFENDANTS 1-25; ANTHONY SCIARRILLO; CRANFORD POLICE DEPARTMENT; NADIA JONES; ROBERT CHAMRA; DENNIS MCCAFFERY; LESLI RICE; ANTHONY GIANNICO

App. 3

Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action Nos. 3-22-cv-00921
and 2-22-cv-00801)
District Judges: Hon. Peter G. Sheridan and Hon.
Evelyn Padin

Argued on September 27, 2023

Before: KRAUSE, ROTH and AMBRO, Circuit Judges

(Opinion filed: February 5, 2024)

Ronald A. Berutti **(Argued)**
Murray-Nolan Berutti
136 Central Avenue
2nd Floor
Clark, NJ 07066

Counsel for Appellants

Ruby Kumar-Thompson **(Argued)**
Cleary Giacobbe Alfieri & Jacobs
169 Ramapo Valley Road
Upper Level 105
Oakland, NJ 07436

Eric L. Harrison **(Argued)**
Methfessel & Werbel
2025 Lincoln Highway
Suite 200
Edison, NJ 08818

Eileen M. Ficaro **(Argued)**
Gregory S. Hyman
Brandon L. Wolff
Kaufman Dolowich & Voluck
1650 Market Street
One Liberty Place, Suite 4800
Philadelphia, PA 19103

John F. Gillick **(Argued)**
Rainone Coughlin Minchello
555 U.S. Highway 1 South
Suite 440
Iselin, NJ 08830

Counsel for Appellees

OPINION OF THE COURT

AMBRO, *Circuit Judge*

In the wake of the COVID-19 pandemic, federal, state, and local governments scrambled to implement policies to control the spread of the disease. These measures—which included mandates to wear face masks in public indoor spaces such as schools, businesses, and restaurants—spawned skepticism and debate. Some objectors voiced their discontent online, some turned to their elected representatives, and some asked the courts to intervene. Others took less trodden paths.

The plaintiffs in the consolidated cases before us, two New Jersey parents, chose to express their opposition through multiple means. One was to attend school board meetings while refusing to wear a mask in what they believed was a symbolic protest against

masking requirements in schools. Their conduct led not to debate or policy changes but to a summons and an arrest.

The plaintiffs sued. The summons or arrest, they claimed, were retaliation for exercising their First Amendment rights. The District Court in both cases dismissed the complaints, though on different grounds.

For the reasons that follow, we reverse and remand the Court's order against George Falcone and affirm the Court's order against Gwyneth Murray-Nolan. A question shadowing suits such as these is whether there is a First Amendment right to refuse to wear a protective mask as required by valid health and safety orders put in place during a recognized public health emergency. Like all courts to address this issue, we conclude there is not.

I. Background

On March 9, 2020, New Jersey Governor Phil Murphy declared a state of emergency in response to the quickly spreading coronavirus known as COVID-19. N.J. Exec. Order No. 103; Falcone App. 61-68. As we now know, it primarily spreads through airborne particles that accumulate in enclosed spaces, respiratory droplets produced when a person coughs, sneezes, or talks, and occasionally through contact with objects contaminated with the virus. *How COVID-19 Spreads*, CDC (Aug. 11, 2022), https://perma.cc/EPP9-AUWT. Individuals infected with COVID-19 can spread the disease while asymptomatic or pre-symptomatic, making the virus difficult to control. Over the course of the ensuing months, Governor Murphy issued a series

of Executive Orders to monitor and curb its spread. One of them mandated that New Jersey schools "maintain a policy regarding mandatory use of face masks by staff, students, and visitors in the indoor portion of the school district premises," except, for example, when an individual qualifies for and obtains a medical exemption. N.J. Exec. Order No. 251 (Aug. 6, 2021). The mandate was aimed at resuming in-person teaching and other activities while reducing transmission of the virus and protecting unvaccinated individuals. Falcone App. 83. In preparation for the 2021-2022 school year, New Jersey School Districts—including the Freehold Township and Cranford Township School Districts—implemented mandatory indoor masking policies consistent with the Executive Order.

COVID-19 has since become endemic (that is, regularly recurring in particular areas or communities), and the statewide school mask mandate has been terminated. *See* N.J. Exec. Order No. 292 (Mar. 2, 2022). But litigation related to masking policies has not. In the cases before us, the plaintiffs separately brought suit against various groups of defendants claiming they were unlawfully retaliated against for protesting policies adopted by their local Boards of Education related to mandatory masking in schools. The cases stem from similar sets of facts and involve related issues of law, so we have consolidated them for review.

On appeal from the dismissal of a complaint, we take the factual allegations as true.

A. George Falcone

Falcone brought suit under 42 U.S.C § 1983 and the New Jersey Civil Rights Act ("NJCRA"), N.J. Stat. Ann. § 10:6-2(c), against the Superintendent of Freehold Public Schools, various members of the Freehold Township Board of Education ("BOE" or "Board"), as well as the Freehold Township Police Department and one of its officers, Myroslav Alfeldi ("Police Defendants").[1] Falcone opposed the mandatory masking policy adopted by the Freehold BOE and voiced that opposition at Board meetings and via social media. Falcone App. 16. He "sought to drum up popular support for serving notice on the Board" that it was "liable for harming children with the mask mandate." *Id.* Some or all of the defendants allegedly knew of Falcone's vocal opposition and activities.

On February 8, 2022, the Freehold BOE held an indoor public meeting on School District premises. Joined by around fifteen other maskless individuals, Falcone entered the building without a mask "with the well[-]known intent to engage in protected political speech and activity regarding unmasking." *Id.* They were advised to wear a mask or else the meeting would not begin. In an "overt and obvious political protest against the Board's masking policies," Falcone responded that he would not put on a mask. *Id.* at 17. Some members of the BOE then called the Freehold Township Police Department for backup. When Officer Alfeldi arrived and insisted that Falcone wear a mask,

---

[1] All Defendants in Falcone's lawsuit collectively are referred to as the "Freehold Defendants."

he responded "that he was engaged in constitutionally protected activities, including his remaining unmasked, and that he would not put on a mask unless defendant Alfeldi advised that he would be arrested for not doing so." *Id.* Officer Alfeldi assured Falcone that he would not be arrested, so he remained maskless. Moments before the Board convened, Falcone "served what he believed were legal papers on each Board member." *Id.* He then spoke at the podium for public citizen speakers—still maskless—and was approached by a second police officer who again directed him to wear a mask. Falcone responded by pointing out that the officer himself was unmasked.

Following the meeting, Officer Alfeldi allegedly issued a summons and complaint charging Falcone with defiant trespass in violation of N.J. Stat. Ann. § 2C:18-3b(1), a misdemeanor. He was the only person among all maskless attendees to receive a summons, which he alleges was "clearly" in retaliation for his "protected political and symbolic speech, and organization thereof." Falcone App. 18. Two weeks later, the Board held another meeting. But when Falcone and several others attended it (again maskless) to "protest . . . defendants' actions and policies," the Board and Superintendent canceled the meeting. *Id.* at 19.

Falcone's lawsuit followed.[2] He alleged the Freehold Defendants unlawfully retaliated against him for exercising his First Amendment rights and deprived him of substantive due process.[3] They did so by (1) issuing, or conspiring to cause issuance of, a summons for trespass "in retaliation for hi[s] organizing and leading a constitutionally protected political and symbolic protest against the Board's masking policies," Falcone App. 19; Dist. Ct. Dkt. 13 at 20, and (2) canceling the second BOE meeting "with the purpose of depriving the plaintiff of his rights to speak," Falcone App. 20; Dist. Ct. Dkt. 13 at 20. He requested compensatory and punitive damages as well as injunctive relief. Falcone App. 20-21.

The Freehold Defendants moved to dismiss. They argued, among other things, that Falcone lacked standing to sue and that he failed to state a First Amendment retaliation claim because his refusal to wear a mask was not constitutionally protected conduct. *See* Dist. Ct. Dkt. 6 at 10-14, 18-19.

The District Court dismissed the amended complaint on the ground that Falcone had no standing to sue. It found his alleged injuries—the receipt of a summons and the Board's meeting cancellation—were

---

[2] He filed his initial complaint on February 22, 2022, after he received the summons. He amended it on March 17, 2022, to add allegations pertaining to the BOE's cancellation of the second meeting.

[3] Falcone initially also sued under 42 U.S.C. § 1985 for conspiracy to violate his civil rights. He affirmatively abandoned that claim on appeal. *See* Appellant Br. 15 n.1.

not "traceable" to the BOE or Police Defendants but instead to Governor Murphy's Executive Order that the Board had to obey. Falcone App. 7-9. It followed, in the District Court's view, that Falcone's alleged injuries also were not "redressable" by injunctive relief because "an injunction directed at Defendants would not enjoin the Governor from implementing or enforcing a mask mandate." *Id.* at 9. Having found that Falcone lacked standing, the Court did not address the Freehold Defendants' remaining arguments. He appeals to us.

B. Gwyneth Murray-Nolan

Murray-Nolan is an "advocate for parental choice in masking children at school." Murray-Nolan App. 79. Her opposition to the Cranford Township BOE's masking requirement was also well known: she had testified before the State Assembly and Senate, posted on social media about "the harm to her own children, and to children generally, from masking in school," and voiced her concerns at Board meetings on at least six occasions. *Id.* at 84-85. In September 2021, Murray-Nolan filed a Harassment, Intimidation and Bullying Complaint against the Superintendent of Cranford Public Schools, a Cranford school principal, and a school nurse claiming that Murray-Nolan's children were "the subject of an alleged retaliatory incident . . . related to the masks that they were wearing." *Id.* at 85.

Fast forward to January 24, 2022, when the Board held a public meeting on School premises. Murray-Nolan entered the building maskless "in a sign of silent protest against the Cranford School [Board's] masking policy, related Executive Orders, as well as the [Board's] lack of action related to unmasking children

in schools," particularly "those with special needs." *Id.* at 79. By not wearing a mask, she was "showing solidarity with all such children" and "protesting the BOE's violation of their civil rights." *Id.* at 81. She sat in the front row, maskless, listening to virtual student presentations for about twenty minutes, when the BOE's legal counsel—Defendant Jennifer Osbourne—stated "that everyone in the room must be masked." *Id.* at 79-80. Murray-Nolan refused to take a mask that was offered to her, so Osbourne, after consulting with Superintendent Rubin, announced she would "contact law enforcement on anyone in attendance at the meeting who remained unmasked." *Id.* at 80. Murray-Nolan did not relent, so the Board, Osbourne, and Superintendent Rubin convened for a private meeting. During the ten-minute break, "almost all" attendees allegedly "removed their masks in solidarity with" Murray-Nolan. *Id.* The Board then canceled the meeting; hence the public comment portion never took place.

The next day, the Board posted a statement on the Cranford Public Schools' Facebook page explaining why the meeting ended abruptly: "a member of the public" refused to wear a mask in violation of the BOE's masking policy. *Id.* at 81, 105-06. It noted that individuals who disagreed with this policy could attend Board meetings virtually and explained "the individual" was so informed and offered a mask but refused both times. *Id.* at 105. "Rather than contacting the police, the Board chose to end the meeting so it could be in compliance with the [Governor's] executive order." *Id.* The statement concluded by emphasizing

that attendees would be expected to comply with the masking policy going forward. *Id.*

A few days later, Murray-Nolan spoke to the Chief of the Cranford Police to voice her concerns about the BOE's "threat to call the police," and the Chief allegedly insinuated that "no parent would be arrested for refusing to wear a mask at a BOE meeting." *Id.* at 83.

In anticipation of the Board's February 14, 2022, meeting, the Superintendent circulated an email explaining that any individuals wishing to attend the meeting in person would have to comply with the masking policy unless they qualified for a medical exemption. *Id.* at 83, 108-09. The email also referred to the Board's policy permitting it to "request[] assistance from law enforcement officers in the removal of a disorderly person when that person prevents or disrupts a meeting," and it asked that "residents [who] object to executive orders . . . focus [their] efforts on those individuals who either created the orders or who have the power to [e]ffect change[.]" *Id.* at 108-09. Believing that the email targeted her, Murray-Nolan posted in a Facebook group a "statement in response" explaining the origin and nature of her opposition to the BOE's masking requirement and asserting that "filing a lawsuit against the state and the Governor was the only recourse for [her] kids." *Id.* at 113.

Rather than suing them, Murray-Nolan filed her initial complaint and an order to show cause against Superintendent Scott Rubin, various members of the Cranford BOE, and attorney Osbourne. She did so just before the February 14 meeting and served copies on

them via email an hour before it began. When Murray-Nolan arrived at the School—again maskless—she was advised by an employee of the Board that "he was 'told' to call the police on [her] if she entered the building unmasked." Murray-Nolan App. 87. She countered that "not wearing a mask was politically protected free speech" and proceeded to enter. *Id.* at 88. She handed a courtesy copy of her complaint to the Board's secretary and sat down, still maskless. In the hallway, one of the Board's legal counsel, Defendant Anthony Sciarrillo, met with members of the Cranford Police to "alert them that he sought to have [Murray-Nolan] arrested if she did not place a mask on her face, to which the [Police Department] and the officers agreed." *Id.* at 89. Sciarrillo entered the meeting room, sat next to Murray-Nolan, and instructed her to put on a mask. *Id.* She responded by serving him a copy of the complaint. When Sciarrillo repeated his request, Murray-Nolan restated that "not wearing a mask was politically protected speech under the First Amendment." *Id.* at 89-90. Sciarrillo then signaled to the back of the room and toward the entrance of the conference room, where three police officers were watching. Shortly thereafter, they arrested her for defiant trespass under N.J. Stat. Ann. § 2C:18-3b, the same violation that led to Falcone's summons.

Murray-Nolan amended her initial complaint, thereby suing three groups of defendants under 42 U.S.C. § 1983 and the NJCRA[4]: Superintendent Rubin

---

[4] Murray-Nolan also alleged that the Cranford Defendants conspired to deprive her of her civil rights in violation of 42 U.S.C. § 1985 and failed to prevent such a conspiracy in violation of

and various members of the Cranford BOE (together, the "BOE Defendants"), the Board's two legal counsel ("Attorney Defendants"), and the Cranford Police Department and several police officers ("Police Defendants").[5] As relevant here, Murray-Nolan alleged the Cranford Defendants retaliated against her for exercising her First Amendment rights when they canceled the first Board meeting, published "threats" via email and social media, and arrested her following her maskless attendance at the second meeting. Murray-Nolan App. 94-95; Dist. Ct. Dkt. 13 at 15-16.[6] She sought compensatory and punitive damages as well as injunctive relief.

The Cranford Defendants moved to dismiss, arguing, among other things, that Murray-Nolan lacked standing to sue and that her First Amendment retaliation claim failed because she did not allege any "constitutionally protected conduct." Dist. Ct. Dkt. 12

---

§ 1986. Murray-Nolan App. 98, 100. The District Court dismissed both counts. Her claims under § 1983 and the NJCRA are the only ones at issue in this appeal. *See* Reply Br. 10.

[5] All defendants in Murray-Nolan's lawsuit collectively are referred to as the "Cranford Defendants."

[6] Murray-Nolan's complaint did not specifically identify a First Amendment retaliation claim. It alleged only that the Cranford Defendants "intentionally, recklessly, and/or negligently interfered with and have deprived and/or damaged the Plaintiff by violating her rights, privileges, and/or immunities." *See* Murray-Nolan App. 94-95. Murray-Nolan specified that she was pressing a First Amendment retaliation claim in her opposition to the Cranford Defendants' separate motions to dismiss. *See* Dist. Ct. Dkt. 13 at 15; Dkt. 30 at 20.

at 10-20; Dkt. 21 at 10-17, 21-26; Dkt. 27 at 9-15. The Attorney Defendants also contended they were not "state actors" for purposes of § 1983. Dkt. 21 at 17-20. And the Police Defendants asserted the retaliatory arrest claim failed because they had probable cause to arrest her and, in any event, they were entitled to qualified immunity. Dkt. 27 at 19-22.

The District Court rejected the Cranford Defendants' standing arguments but agreed Murray-Nolan failed to state a claim for First Amendment retaliation. Murray-Nolan App. 16-19, 22-26 (citing *Rumsfeld v. F. for Acad. & Inst. Rts., Inc.* ("*FAIR*"), 547 U.S. 47, 66 (2006), and *Texas v. Johnson*, 491 U.S. 397, 404 (1989)). Her alleged "right to appear at [the Board meetings] without a mask" was not "inherently expressive" conduct, it reasoned, but rather was expressive only "because she told Defendants that it was, and sued to prove it." *Id.* at 16-19, 22-26. The Court also found the Attorney Defendants were not "state actors," *id.* at 26-27, and Murray-Nolan's retaliatory arrest claim failed against the Police Defendants for the additional reason that they had probable cause to arrest her for willfully refusing to wear a mask, *id.* at 27-29. She also appeals.

II. Jurisdiction and Standard of Review

The District Court in both cases had jurisdiction under 28 U.S.C. §§ 1331 and 1367, and we have jurisdiction under 28 U.S.C. § 1291. When reviewing a dismissal for lack of standing or failure to state a claim, we give it a fresh look. *See Free Speech Coal., Inc. v. Att'y Gen.*, 677 F.3d 519, 530 (3d Cir. 2012); *Chavarriaga v. N.J. Dep't of Corr.*, 806 F.3d 210, 218

(3d Cir. 2015). We accept the plaintiffs' well pled factual allegations as true and draw all reasonable inferences in their favor. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). But we disregard unsupported conclusions or legal conclusions couched as factual allegations. *See Morrow v. Balaski*, 719 F.3d 160, 165 (3d Cir. 2013).

III. Discussion

Though we consolidated the cases for review, the issues before us are distinct. We first address the District Court's order dismissing Falcone's suit for lack of standing. The parties ask us to do more, but we begin and end our inquiry there. We then turn to the District Court's order dismissing Murray-Nolan's suit for failure to state a claim.

A. Falcone - Standing

Falcone challenges the District Court's finding that he lacks standing to sue and is not entitled to injunctive relief. Our standing inquiry is separate from any assessment of his claims' merits. *See Cottrell v. Alcon Lab'ys*, 874 F.3d 154, 162 (3d Cir. 2017). All we ask is whether Falcone plausibly alleges he was injured under his theory of the underlying legal claims. So, while we necessarily reference the "nature and source of the claims" he asserts, *id.* (quoting *Warth v. Seldin*, 422 U.S. 490, 500 (1975)), we must not "confuse weakness on the merits with absence of Article III standing," *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n, LLC*, 576 U.S. 787, 800 (2015) (quoting *Davis v. United States*, 564 U.S. 229, 249 n.10 (2011)). Instead, we assume he would succeed, even if

ultimate recovery is "uncertain or even unlikely." *Mission Prod. Holdings, Inc. v. Tempnology*, *LLC*, 139 S. Ct. 1652, 1660 (2019).

To satisfy the familiar requirements for Article III standing, Falcone (1) must have suffered injury in fact (2) that is fairly traceable to the challenged conduct and (3) redressable by a favorable judicial decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

As for injury, Falcone must show that he suffered "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Id.* (internal quotation marks omitted). In the context of a motion to dismiss, the "[i]njury-in-fact element is not Mount Everest," and Falcone need only allege "some specific, identifiable trifle of injury." *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 278 (3d Cir. 2014) (quoting *Danvers Motor Co., Inc. v. Ford Motor Co.*, 432 F.3d 286, 294 (3d Cir. 2005)).

The Police Defendants no longer argue that Falcone failed to establish this requirement. Oral Argument at 22:45-55 (conceding that he has shown injury in fact). Wisely so. Falcone contends he was injured on receiving a criminal summons after exercising his First Amendment right to protest at a Board meeting. The District Court ruled, and we agree, that receipt of a summons can be a tangible injury for standing purposes. *Cf. Smith v. Campbell*, 782 F.3d 93, 99 n.4 (2d Cir. 2015) (assuming that issuance of traffic ticket can constitute injury).

Falcone also claims he was injured when the Board canceled the second meeting to prevent him from exercising his constitutional rights. At oral argument, counsel for the BOE Defendants appeared to suggest that the meeting cancellation cannot cause an individualized injury because others were likewise prevented from speaking. Oral Argument at 44:31-42. Of course, canceling or rescheduling a meeting in the normal course does not inflict an Article III injury, but Falcone alleges that the meeting was canceled specifically for the purpose of preventing him from speaking in that forum. Conduct undertaken to curtail someone's First Amendment rights does not become less injurious or non-retaliatory just because it has collateral consequences for other people. We are also unconvinced by the BOE counsel's contention that Falcone was not injured by the meeting cancellation because he might have an opportunity to speak at a later meeting. Oral Argument at 47:00-51. That argument may fare well as a response to the merits of Falcone's substantive due process violation claim, but it does not help Defendants' standing challenge. "[A]lleged First Amendment free speech violations are concrete and particular injuries for purposes of Article III standing." *Henry v. Att'y Gen., Alabama*, 45 F.4th 1272, 1288 (11th Cir. 2022). That the Board did not indefinitely prevent Falcone from speaking is of no moment. *Cf. Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." (citation omitted)). So far, we agree with the District Court.

Next, we consider whether Falcone's alleged injuries are "fairly traceable" to the Freehold Defendants' conduct. The District Court held that they are not because "the mask mandate emanated from the Governor's Executive Order and the BOE was obligated to comply with it." Falcone App. 7-9. Falcone contends the Court erred in so holding because it misconstrued his complaint as a challenge to the mask mandate. Appellant Br. 9-11. We agree. Falcone does not claim he was injured from "having to wear a mask" and he does not—at least in this suit—challenge the constitutionality of the mask mandate or the permissibility of the Board's masking policy. Instead, he alleges the Freehold Defendants retaliated against him for his views by issuing a criminal summons and canceling the second Board meeting to prevent him from speaking. They cannot hide behind the Governor's Executive Order when it is their specific actions that allegedly harmed Falcone.

We disagree with the BOE Defendants that the issuance of the summons is not traceable to them. Oral Argument at 40:54-41:16. Falcone claims the Board "conspired" or "cooperated" with the police to issue the summons. Falcone App. 19; Appellant Br. 17. Although that claim may not survive a Rule 12(b)(6) motion to dismiss, it suffices for purposes of our standing inquiry. We agree with the Police Defendants, however, that the cancellation of the Board meeting is not traceable to them, as Falcone does not allege they had any part in it. *See* Police Defs. Br. 13.

Third, we consider whether Falcone has established that his injury can be redressed by a favorable court

decision. The remedy he seeks need not be complete or relieve every injury alleged to satisfy Article III standing. *See Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 801 (2021) ("[T]he ability to effectuate a partial remedy satisfies the redressability requirement." (quotation marks and citation omitted)). Falcone requested both monetary damages and injunctive relief, seeking to prevent the defendants from (1) threatening arrest, summons, or complaint to people attending in-person Board meetings and exercising their "constitutional rights," (2) threatening, intimidating, or coercing him or any other person "in an attempt to chill the[ir] First Amendment rights," and (3) taking further retaliatory action against him. *See* Falcone App. 20-21.

The District Court correctly held that Falcone is not entitled to injunctive relief, and he conceded as much at oral argument. Our basis, however, parts from that of the Court. It denied this relief because "an injunction directed at Defendants would not enjoin the Governor from implementing or enforcing a mask mandate." Falcone App. 9. As noted, Falcone is not challenging the mask requirement or requesting an injunction barring its enforcement. For the sake of completeness, the relief he sought is improper, first, because all his injunctive requests are impermissibly overbroad "obey-the-law" orders, which are unenforceable for lack of specificity. *See, e.g.*, *Belitskus v. Pizzingrilli*, 343 F.3d 632, 650 (3d Cir. 2003). Second, Falcone has alleged no facts on the Freehold Defendants' intent to engage in the challenged conduct again. Without showing a likelihood or immediate threat of future harm, a plaintiff cannot obtain standing for prospective relief. *Brown v. Fauver*,

819 F.2d 395, 400 (3d Cir. 1987) (citing *City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983)).

As Falcone observes, however, he also seeks money damages for his past injuries. Falcone App. 20-21; Reply Br. 6. That his alleged injuries are difficult to quantify is irrelevant. In a § 1983 case, where the plaintiff's rights were violated but the violation did not result in any injury calling for compensatory damages, a request even for "nominal damages satisfies the redressability element of standing." *Uzuegbunam*, 141 S. Ct. at 801-02. Falcone's monetary damages claim suffices to establish redressability, and it survives.

Falcone has shown all three elements of standing by alleging he received a criminal summons and was deprived of his right to speak in retaliation for exercising his First Amendment rights. The District Court erred in dismissing his claims for lack of standing. Accordingly, we reverse and remand for it to consider the Freehold Defendants' Rule 12(b)(6) arguments in the first instance. *See Shorter v. United States*, 12 F.4th 366, 375 n.9 (3d Cir. 2021) ("[I]n the absence of exceptional circumstances, we decline to consider an issue not passed upon below."). This is not to say, of course, that Falcone's claims are likely to survive. On remand, the District Court may wish to consider, for example, if Falcone has forfeited any theory that the "constitutionally protected conduct" undergirding his First Amendment retaliation claim is something other than his refusal to wear a mask. Arguably he did, as he repeatedly claimed that "not wearing a mask is politically protected freedom of speech" and that he was "retaliated against for actions which were akin to pure speech." Dist. Ct. Dkt. 9 at 10; Dkt. 13 at 8.

B. Murray Nolan - First Amendment Retaliation

Murray-Nolan's amended complaint survived the Cranford and BOE Defendants' attack for lack of standing, and correctly so.[7] But the District Court dismissed her First Amendment retaliation claim under § 1983 and the NJCRA for failing to allege constitutionally protected conduct, a component of such a claim.

To prevail, Murray-Nolan must establish that (1) she engaged in conduct protected by a right in the Constitution, (2) the Cranford Defendants "engaged in retaliatory action sufficient to deter a person of ordinary firmness from exercising [her] constitutional rights," and (3) a "causal link" existed between the protected activity and the retaliatory action. *Palardy v. Township of Millburn*, 906 F.3d 76, 80-81 (3d Cir. 2018)

---

[7] The BOE Defendants challenge the District Court's standing analysis, claiming Murray-Nolan's injuries are (1) not traceable to them but instead to the Governor, and (2) not redressable by an injunction. We disagree with the first argument for the reasons just stated. We agree with the BOE Defendants (as did the District Court) that Murray-Nolan is not entitled to injunctive relief though, as explained, she is entitled to monetary damages and so has standing to sue.

We decline to consider Murray-Nolan's argument raised in her reply brief that the District Court erred in holding she was not entitled to injunctive relief because she never raised it in her opening brief. *See Garza v. Citigroup Inc.*, 881 F.3d 277, 284-85 (3d Cir. 2018). But we understand from our exchange with counsel during oral argument that Murray-Nolan concedes she is not entitled to the relief she requested. Oral Argument at 1:26:15-27:41.

(quotation marks and citation omitted).[8] Ordinarily, Murray-Nolan would need to demonstrate at the outset that all defendants are "state actors" because § 1983 authorizes suits for violation of federal rights only against persons or entities who acted "under color of law." *See* 42 U.S.C. § 1983; *Groman v. Township of Manalapan*, 47 F.3d 628, 638 (3d Cir. 1995). In limited circumstances, even private parties like the Attorney Defendants here may be treated as state actors. *See Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295 (2001). They dispute their status as such. Although it is not obvious to us that their actions meet that threshold, we assume for purposes of our analysis that they do.

The District Court, as noted, held that Murray-Nolan's First Amendment claim faltered by failing to show that her refusal to wear a mask was constitutionally protected conduct. She argues the Court erred because it "fail[ed] to analyze the retaliatory nature of her arrest" and to "recognize that the nature of [her] First Amendment protest was well known to all defendants." Appellant Br. 23. But of course the District Court was not required to address those issues after finding Murray-Nolan's conduct was not constitutionally protected.

---

[8] As noted, Murray-Nolan asserts a First Amendment retaliation claim under both § 1983 and the NJCRA, New Jersey's state-law analogue. N.J. Stat. Ann. § 10:6-2(c). Because the NJCRA is interpreted analogously to § 1983, our analysis applies equally to that statute. *See Perez v. Zagami, LLC*, 94 A.3d 869, 877 (N.J. 2014); *Filgueiras v. Newark Pub. Schs.*, 45 A.3d 986, 997 (N.J. Super. Ct. App. Div. 2012).

To be sure, the First Amendment protects not only "the spoken or written word." *Texas v. Johnson*, 491 U.S. 397, 404 (1989). It also applies to some conduct in some settings, as circumstances matter. *See United States v. O'Brien*, 391 U.S. 367, 376 (1968). The Supreme Court has limited First Amendment protections to what it has called "inherently expressive" conduct. *FAIR*, 547 U.S. at 66. To qualify, an action must satisfy two elements: the actor must "inten[d] to convey a particularized message," and there must be a high "likelihood" that "the message [will] be understood by those who view[] it." *Johnson*, 491 U.S. at 404 (quoting *Spence v. Washington*, 418 U.S. 405, 410-11 (1974)).[9] The first element does not pose a high bar, but the second is trickier. That is so because a viewer must be able to understand the message from the conduct alone. *See FAIR*, 547 U.S. at 66. If some "explanatory speech is necessary," the conduct does not warrant protection; otherwise, a party "could always transform conduct into 'speech' simply by talking about it." *Id.*

Hence context comes into play. *See Spence*, 418 U.S. at 410. It is what separates activity that is sufficiently expressive from similar activity that is not. For example, the burning of the American flag in *Johnson* was expressive because it occurred during a "political demonstration" against President Reagan's policies.

---

[9] Paradigms of protected conduct-based speech are the burning of the American flag as part of a political demonstration, *see id.* at 404-06, students' wearing of black armbands to protest American military involvement in Vietnam, *see Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 505 (1969), and sit-ins by black persons in "whites only" areas to protest racial segregation, *see Brown v. Louisiana*, 383 U.S. 131, 141-42 (1966).

491 U.S. at 405-06. Likewise, the taping of a peace sign to the American flag in *Spence* was expressive because it was "roughly simultaneous with and concededly triggered by the Cambodian incursion [during the Vietnam conflict] and the Kent State tragedy." 418 U.S. at 410. And in *Tinker*, students' wearing of black armbands to protest American military involvement was expressive because it "conveyed an unmistakable message about a contemporaneous issue of intense public concern—the Vietnam hostilities." *Id.* (citing *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 505 (1969)).

Against this backdrop, we consider whether the First Amendment protects Murray-Nolan's refusal to wear a COVID mask at a Board meeting when doing so was required by an Executive Order implemented by Board policy. The first element—the intent to convey a particularized message—is easily met here. Murray-Nolan alleged she refused to wear a mask to "silent[ly] protest" the Board and Superintendent's "lack of action related to unmasking children in schools, particularly those with medical conditions and special needs." Appellant Br. 6-7; Murray-Nolan App. 39, 79; *see also* Appellant Br. 8, 23. Her mask refusal, she explains, was a sign of "solidarity with all such children in protesting the Board's violation of their civil rights." Appellant Br. 8.

But Murray-Nolan cannot satisfy the second element because it is unlikely that a reasonable observer would understand her message simply from seeing her unmasked at the Board meeting. She claims that, "in the then-existing political climate[,] refusing

to wear a mask itself was an overt political statement." Appellant Br. 6. We have no doubt that, during the pandemic, some people refused to wear a mask to send a political message. But the problem for Murray-Nolan is that going maskless is not usually imbued with symbolic meaning. The Governor's Executive Order, for example, exempted individuals from the masking requirement for medical reasons. How would attendees know that Murray-Nolan was unmasked not because she was medically exempt but because she intended to express her dismay with the Board's inaction related to unmasking of school children? They wouldn't, unless they were aware of her vocal protests predating her maskless appearance at the meeting. She concedes as much by contending that Defendants "knew why [she] engaged in a long-standing silent protest" because of her "vocal protests through her speeches about their inaction." Appellant Br. 20. Furthermore, how would attendees know what "particularized message" Murray-Nolan sent by refusing to wear a mask? Was it general defiance of the government? Skepticism toward government health experts? Opposition to the Governor's mask mandate? Or, as she alleges, opposition to the Board's and Superintendent's "lack of action related to unmasking children in schools, particularly those with medical conditions and special needs"? Murray-Nolan App. 79. Again, her message was susceptible to multiple interpretations, and understanding it required additional "explanatory speech." *FAIR*, 547 U.S. at 66.

Unlike burning a flag, wearing a medical mask—or refusing to do so—is not the type of thing someone typically does as "a form of symbolism." *Spence*, 418

U.S. at 410. The American flag is inherently symbolic. *See Johnson*, 491 U.S. at 405. A medical mask is not. It is a safety device—"protective equipment" used "to protect the wearer from particles or from liquid contaminating the face." *N95 Respirators, Surgical Masks, Face Masks, and Barrier Face Coverings*, FDA (Mar. 10, 2023), https://perma.cc/E8FM-2M2K. To combat COVID-19, people wear it to curb the spread of an airborne disease. Skeptics are free to—and did—voice their opposition through multiple means, but disobeying a masking requirement is not one of them. One could not, for example, refuse to pay taxes to express the belief that "taxes are theft." Nor could one refuse to wear a motorcycle helmet as a symbolic protest against a state law requiring them. The binary choice envisioned by Murray-Nolan—either disobeying the Executive Order mandating the wearing of a protective mask or not speaking at all—is a false one. *See* Appellant Br. 30-31. We thus agree with the District Court that her refusal to wear a mask was not constitutionally protected.[10]

---

[10] Every court to address the issue has reached the same conclusion. *See, e.g.*, *Denis v. Ige*, 538 F. Supp. 3d 1063, 1079 (D. Haw. 2021) (Hawaii mask mandate did not infringe on First Amendment freedom of speech because it targeted "conduct" rather than "speech"; "wearing a mask in public . . . does not include a significant expressive element"); *Stewart v. Justice*, 502 F. Supp. 3d 1057, 1066 (S.D. W. Va. 2020) ("[A]lthough Plaintiffs feel that refusing to wear a face covering expresses 'nonconformity with unconstitutional and un-American laws,' that meaning is not 'overwhelmingly apparent.'" (citation omitted)); *Minn. Voters All. v. Walz*, 492 F. Supp. 3d 822, 837-38 (D. Minn. 2020) ("[T]he conduct [of not wearing a face mask] is not inherently expressive . . . . Absent explanation, the observer would not know whether the

person is exempt from [the Executive Order], or simply forgot to bring a face covering, or is trying to convey a political message."); *Antietam Battlefield KOA v. Hogan*, 461 F. Supp. 3d 214, 237 (D. Md. 2020) ("[E]specially in the context of COVID-19, wearing a face covering would be viewed as a means of preventing the spread of COVID-19, not as expressing any message."), *appeal dismissed*, No. 20-1579, 2020 WL 6787532 (4th Cir. July 6, 2020), *and aff'd in part, appeal dismissed in part*, No. 20-2311, 2022 WL 1449180 (4th Cir. May 9, 2022); *Zinman v. Nova Se. Univ., Inc.*, No. 21-CV-60723, 2021 WL 4025722, at *13 (S.D. Fla. Aug. 30, 2021) ("[N]either wearing or not wearing a mask is inherently expressive. In the context of COVID-19, wearing a mask does not evince an intent to send a message of subservience to authority – or any message at all."), *report and recommendation adopted sub nom. Zinman v. Nova Se. Univ.*, No. 21-CIV-60723, 2021 WL 4226028 (S.D. Fla. Sept. 15, 2021), *aff'd sub nom. Zinman v. Nova Se. Univ., Inc.*, No. 21-13476, 2023 WL 2669904 (11th Cir. Mar. 29, 2023); *Whitfield v. Cuyahoga Cnty. Pub. Libr. Found.*, No. 21 CV 0031, 2021 WL 1964360, at *3 (N.D. Ohio May 17, 2021) ("[W]earing a mask is not a symbolic or expressive gesture. It is a health and safety measure put into effect in many public establishments to prevent the spread of COVID-19 to employees and other patrons."); *Nowlin v. Pritzker*, No. 20-CV-1229, 2021 WL 669333, at *5 (C.D. Ill. Feb. 17, 2021) ("Plaintiffs challenge orders that regulate non-expressive conduct such as keeping certain distance[s], wearing masks, and limiting gathering sizes. These activities are not speech[,] and regulations that govern non-expressive conduct do not bring the First Amendment into play."), *aff'd as modified*, 34 F.4th 629 (7th Cir. 2022); *Reinoehl v. Whitmer*, No. 21-CV-61, 2022 WL 1110273, at *3 (W.D. Mich. Feb. 3, 2022) (rejecting claim that "refusal to comply with [Michigan's Face Mask Order] constitutes symbolic speech"), *report and recommendation adopted*, No. 21-CV-61, 2022 WL 855266 (W.D. Mich. Mar. 23, 2022), *aff'd*, No. 22-1343, 2023 WL 3046052 (6th Cir. Apr. 17, 2023), *cert. denied*, No. 23-89, 2023 WL 6378554 (U.S. Oct. 2, 2023); *see also Sehmel v. Shah*, 514 P.3d 1238, 1243-44 (Wash. Ct. App. 2022) ("[W]earing or not wearing a mask is not sufficiently expressive so as to implicate First Amendment

To the extent Murray-Nolan's First Amendment retaliation claim is based on a different theory—that she was punished for some other protected conduct—we deem that argument forfeited. To be sure, in addition to claiming that her conduct constituted protected speech, Murray-Nolan also alleged she was engaged in other types of speech—for example, her testimony about mask injuries before the State Assembly and Senate, "countless social media posts" related to "the harm to her own children, and to children generally, from masking in schools," and her filing of a complaint against the Board, Murray-Nolan App. 84, 87—but she never ties that speech to Defendants' allegedly retaliatory arrest. Rather, she alleged that, because of her other speech, Defendants understood the nature of her protest. *See, e.g.*, Murray-Nolan App. 84, 88, 90. The only form of "speech" she links to her arrest is her refusal to wear a mask. *See* Murray-Nolan App. 90 (alleging she was arrested under the guise of a "rule of the building" for "making a constitutionally protected political statement by not wearing a mask"); Murray-Nolan App. 91 (alleging Defendants had a "pre-planned" agreement "that the Plaintiff should be arrested if she did not comply with [Sciarrillo's] command to wear a mask").

Furthermore, in response to Defendants' motions to dismiss, Murray-Nolan squarely argued her "constitutionally protected activity" underlying her First Amendment retaliation claim was her "not

---

protections. . . . [T]here is a host of reasons why a person may not be wearing a mask.").

wearing a mask." *See* Dist. Ct. Dkt. 13 at 16, Dkt. 30 at 21; Dkt. 39 at 16. That is why the District Court dismissed her claim for failing to allege she was engaged in conduct accorded First Amendment protection.

On appeal, Murray-Nolan never argued the District Court somehow misread her allegation. Instead, she disagrees with its holding. For instance, she claims "not wearing a mask was politically protected free speech," especially "in the then-existing political climate," and contends "not wearing a mask in a public meeting" "touched upon" core First Amendment speech concerning "politics, nationalism, religion, or other matters of opinion." Appellant Br. 6, 13, 26 (citation omitted). She repeatedly refers to her "First Amendment protest" or "First Amendment rights to protest." *Id.* at 28. Murray-Nolan quibbles with the District Court's reasoning that her refusal to wear a mask was not "inherently expressive" by pointing to her "'overwhelmingly apparent' speech that had been ongoing in multiple forums for months," claiming that her masklessness "was overtly political and was intentional and was overwhelmingly apparent." *Id.* at 30. She also argues that being maskless at the meeting was the only way she could express her views—"being unmasked on a video screen from her home was o[f] no value to [her] protest and would have defeated it altogether." *Id.* at 31.

These arguments carry over in Murray-Nolan's reply brief. "[T]he Board," she argues, "made clear that they would retaliate against [her] for not wearing a mask." Reply Br. 4. She reiterates "she was engaged in

a constitutionally protected free speech protest," "had a right to be in the Board Room without a mask since she was engaged in a constitutionally protected protest," and "was arrested while admittedly . . . exercising constitutional rights." *Id.* at 13. The brunt of her argument thus rests on defending her position that her maskless protest was protected speech and claiming that Defendants were aware of the nature and purpose of that protest. *See* Appellant Br. 6-7, 20, 22.

We recognize Murray-Nolan also makes stray references to other forms of speech as she did in her amended complaint. *See* Appellant Br. 21-22, 27-28. But we are not convinced that she now presses a new theory of protected conduct. Indeed, our exchange with counsel for Falcone and Murray-Nolan during oral argument dispelled any doubt we might have had. When asked, "What is the constitutionally protected activity that you are telling us exists here?," counsel responded: "We have a right to come in unmasked, it's symbolic speech to protest the masking policies that were in place." Oral Argument at 8:30-43.

Even assuming Murray-Nolan now claims she was retaliated against for being a vocal critic of the Board and its policies, she forfeited that argument because she never raised it in the District Court. *See United States v. Dowdell*, 70 F.4th 134, 141 (3d Cir. 2023). Our forfeiture doctrine "protect[s] litigants from unfair surprise[,] promot[es] the finality of judgments[,] conserv[es] judicial resources[,] and prevent[s] district courts from being reversed on grounds that were never urged or argued before [them]." *Id.* (final alteration in original) (quoting *Webb v. City of Philadelphia*, 562

F.3d 256, 263 (3d Cir. 2009)). These interests are directly implicated here, where Defendants staked their defense, and the District Court ruled, on Murray-Nolan's announced theory that Defendants retaliated against her for refusing to wear a mask. Though we have discretion to reach forfeited issues, we see no "truly 'exceptional circumstances'" that would excuse forfeiture here. *Barna v. Bd. of Sch. Dirs. of the Panther Valley Sch. Dist.*, 877 F.3d 136, 146-47 (3d Cir. 2017) (citation omitted).

Because Murray-Nolan failed to allege that she was engaged in constitutionally protected conduct, the District Court properly dismissed her First Amendment retaliation claim under § 1983 and the NJCRA, and we affirm on that basis alone. But even if we assume she properly pled that her arrest resulted from engagement in other constitutionally protected speech—be that filing a lawsuit against the Board, "public writings," or "vocal" opposition to the Board's actions—her First Amendment retaliation claim still cannot succeed.

As noted, Murray-Nolan also must show that Defendants engaged in "retaliatory action" and "a causal link" exists between the protected conduct and the retaliatory action. *Palardy*, 906 F.3d at 80-81. She identifies two "retaliatory actions": her arrest and the

Board's cancellation of the January 24, 2022, meeting.[11] We address each in turn.

There is no dispute that an arrest constitutes conduct "sufficient to deter a person of ordinary firmness from exercising [her] constitutional rights." *Id.* (quoting *Thomas v. Independence Township*, 463 F.3d 285, 296 (3d Cir. 2006)). But the existence of probable cause "generally defeat[s] a First Amendment retaliatory arrest claim." *Nieves v. Bartlett*, 139 S. Ct. 1715, 1726 (2019). The District Court found, and we agree, that the Police Defendants had probable cause to arrest Murray-Nolan for defiant trespass under N.J. Stat. Ann. § 2C:18-3b. Murray-Nolan App. 28-29. That subsection makes it illegal to knowingly "enter[] or remain[] in any place as to which notice against trespass is given by . . . [a]ctual communication to the actor [or] [p]osting in a manner prescribed by law or reasonably likely to come to the attention of intruders." N.J. Stat. Ann. § 2C:18-3b. Murray-Nolan was repeatedly instructed to comply with the masking policy and informed that the Board would call in law enforcement if she entered the building maskless. The Board also published a statement on Facebook after the

---

[11] As we read her briefs, the only retaliatory action she identifies is her arrest. *See* Appellant Br. 32 ("[D]efendants took action which would deter a person of ordinary firmness from engaging in such protected conduct[.] . . . Permitting defendants to silence Ms. Murray-Nolan with an arrest is to permit the defeat of the First Amendment[.]"); *see also id.* at 36-38 (arguing "false arrest" claim against Police Defendants). At oral argument, however, counsel asserted that Murray-Nolan also claimed the Cranford Defendants retaliated against her by canceling the Board meeting, thereby preventing her from speaking. Oral Argument at 52:48-53:30.

January 24 meeting (which Murray-Nolan read) requesting compliance with the masking policy, and the Superintendent sent an email (which Murray-Nolan also read) explicitly referring to the Board's policy permitting it to "request[] . . . assistance from law enforcement officers in the removal of a disorderly person when that person prevents or disrupts a meeting." Murray-Nolan App. 105, 108-09. Prior to Murray-Nolan's arrest, furthermore, a police officer again reminded her that she "must wear a mask" and that refusing to do so violated a "rule of the building." Murray-Nolan App. 90.

Murray-Nolan knew she was violating a well-publicized masking policy and could not attend the Board meeting without a mask, but she did so anyway. The police thus had ample reason to arrest her for defiant trespass. *See Johnson v. Campbell*, 332 F.3d 199, 211 (3d Cir. 2003) (probable cause exists where "facts and circumstances within the officer's knowledge" are "sufficient to warrant a prudent person . . . in believing . . . that the suspect has committed, is committing, or is about to commit an offense" (quoting *Michigan v. DeFillippo*, 443 U.S. 31, 37 (1979)). Murray-Nolan's response, that the arresting officer allegedly agreed "she was engaged in a constitutionally protected free speech protest," Reply Br. 13, is unavailing because the officer's subjective beliefs are "simply 'irrelevant'" and provide "no basis for invalidating an arrest." *Nieves*, 139 S. Ct. at 1725 (quoting *Devenpeck v. Alford*, 543 U.S. 146, 153, 155 (2004)).

Ordinarily, our conclusion that probable cause existed would doom Murray-Nolan's retaliatory arrest claim. However, in *Nieves* the Supreme Court carved out a narrow exception to that general rule. *See id.* at 1727. A plaintiff need not establish the absence of probable cause "where officers have probable cause to make arrests, but typically exercise their discretion not to do so." *Id.* For this exception to apply, a plaintiff must present "objective evidence that [she] was arrested when otherwise similarly situated individuals not engaged in the same sort of protected speech had not been." *Id.* The Supreme Court provided the example of jaywalking, which "is endemic but rarely results in arrest." *Id.* Thus, "[i]f an individual who has been vocally complaining about police conduct is arrested for jaywalking," the claim should not be dismissed despite the existence of probable cause because, "[i]n such a case, . . . probable cause does little to prove or disprove the causal connection between animus and injury." *Id.*

In her reply brief, Murray-Nolan contends that *Nieves*'s narrow exception applies because "people similarly situated as [her] were not arrested for attending board meetings unmasked when they were not necessarily long-standing anti-mask protestors for children in schools." Reply Br. 15. That conclusory statement is not supported by any facts pled in her amended complaint. Murray-Nolan never alleged selective enforcement or any facts sufficient to demonstrate a "facial plausibility" that police commonly see violations of masking mandates and fail to make arrests. *Ashcroft*, 556 U.S. at 678. Nor did she advance this argument in the District Court.

If she asks us to infer an allegation of selective enforcement from her assertion that, at the first Board meeting, others allegedly "removed their masks in solidarity with [her]," Murray-Nolan App. 80, there is a temporal disconnect. Murray-Nolan was not then singled out among other maskless attendees. Rather, she was arrested after she tried to attend the *second* Board meeting without a mask (following multiple explicit warnings that doing so was prohibited). And she nowhere claims that anyone else defied the Board's instructions and attended the second meeting without a mask. All we can discern from her amended complaint is that one, and only one, individual—Murray-Nolan—repeatedly disregarded the masking mandate and was eventually arrested for doing so. She thus cannot find refuge in *Nieves*'s exception.

So we turn to her argument that the Cranford Defendants retaliated against her by canceling the January 24 meeting, where Murray-Nolan made her first maskless appearance. At the outset, we note that she has no retaliation claim against the Police Defendants because she does not allege they played any role in the Board's decision to cancel the meeting. Instead, she claims the Board and Attorney Defendants did so, thereby depriving her of a forum to exercise her right to speak.

We assume the meeting cancellation is "sufficient to deter a person of ordinary firmness from exercising [her] constitutional rights" and focus our analysis on the third prong of the analytical framework: whether Murray-Nolan has demonstrated the necessary causal link between the constitutionally protected conduct and

the retaliatory action. *Palardy*, 906 F.3d at 80-81. We have recognized that protected activity close in time to the alleged retaliatory action may indicate one caused the other. *See Thomas v. Town of Hammonton*, 351 F.3d 108, 114 (3d Cir. 2003) ("[A] suggestive temporal proximity between the protected activity and the alleged retaliatory action can be probative of causation.").

Murray-Nolan does not attempt to explain how her "other" protected conduct is linked to the Board's decision to cancel the January 24 meeting. That makes sense because, as noted, she consistently claimed the Cranford Defendants retaliated against her for refusing to wear a mask, not for engaging in constitutionally protected speech. In any event, there is no temporal proximity or any other causal link here, no matter which activity we consider.

It appears the cancellation of the January 24 meeting had nothing to do with Murray-Nolan's lawsuit against the Board and its attorneys, which she filed on February 14, 2022, roughly three weeks *after* the meeting was suspended. As for her "public writings" and other "vocal" criticism—*e.g.*, her testimony before the state legislature, her social media posts, and her prior speeches at Board meetings—the amended complaint is silent as to their timing. But even assuming these alleged protected activities occurred just before the January 24 meeting, there is an obvious break in the chain of causation: Murray-Nolan's refusal to wear a mask at that meeting. That act is not constitutionally protected conduct and thus provides a straightforward, non-retaliatory explanation

for the Board's decision to cancel the session. *See Lamont v. New Jersey*, 637 F.3d 177, 185 (3d Cir. 2011) ("A superseding cause breaks the chain of proximate causation."). Nothing in the record would allow Murray-Nolan to establish the constitutional causation necessary for her retaliation claim. We affirm the District Court's order on that alternative basis.

* * * * *

The plaintiffs allege they were punished in retaliation for refusing to wear a COVID-protective mask at Board of Education meetings. Falcone claims he received a criminal summons after exercising his First Amendment right to protest, maskless, at a Freehold Township Board meeting and also was deprived of an opportunity to speak when the Board canceled a subsequent meeting. His alleged injuries, at least in part, are directly traceable to the Freehold Defendants, who allegedly conspired to violate his First Amendment right to engage in political and symbolic speech. Because the District Court dismissed his complaint for lack of standing, and this was the only basis for its order, we reverse and remand for further proceedings consistent with this opinion.

Murray-Nolan contends she was arrested for exercising her right to engage in a maskless, symbolic protest at a Cranford Township Board meeting. Though she had standing to sue the Cranford and BOE Defendants, her First Amendment retaliation claim cannot survive their motions to dismiss. Amid valid government-mandated health and safety measures, refusing to wear a face mask is not expressive conduct protected by the First Amendment. Murray-Nolan's

retaliation claim also fails because the police had probable cause to arrest her, and she does not link her constitutionally protected speech activities (*e.g.*, her social media posts) to any of the Cranford Defendants' allegedly retaliatory actions. We thus affirm the District Court's dismissal of her amended complaint.

APPENDIX B

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 22-801 (EP) (AME)

[Filed September 8, 2022]

GWYNETH K. MURRAY-NOLAN,
Plaintiff,

v.

SCOTT RUBIN, et al.,
Defendants.

OPINION

Evelyn Padin, U.S.D.J.

OPINION

Plaintiff Gwyneth K. Murray-Nolan alleges that Defendants violated her First Amendment rights by retaliating against her chosen protest of COVID-related masking requirements: not wearing a mask at a school board meeting. DE 10 (the "Amended Complaint"). Defendants fall into three general categories: (1) those associated with Cranford Public Schools or the Cranford Board of Education (the "Board Defendants"); (2) the Board's law firm and attorneys

(the "Attorney Defendants"); and (3) the Cranford Police Department and its employees who arrested Plaintiff during a February 14, 2022 Board meeting (the "Police Defendants").[1] All Defendants move, pursuant to Federal Rule 12(b)(1) and (6), to dismiss the Amended Complaint. Plaintiff opposes.[2] For the reasons below, this Court grants the motions and dismisses the entire Amended Complaint with prejudice.

I. BACKGROUND[3]

A. The COVID-19 Executive Orders

This dispute arises from the COVID-19 pandemic, confirmed to have hospitalized at least 130,711 and killed 31,378 New Jerseyans.[4] *New Jersey Covid-19 Data Dashboard,* https://covid19.nj.gov/forms/datadashboard (last accessed August 24, 2022). On March 9, 2020, New Jersey Governor Phil Murphy

---

[1] Plaintiff also sued Lesli Rice, President of the Cranford High School Parent Teacher Association. Am. Compl. ¶ 28. Plaintiff later stipulated to dismiss those allegations. DEs 18, 38. Accordingly, the Court omits any allegations pertaining to Rice.

[2] Only the Attorney and Police Defendants replied. DEs 36, 42.

[3] As required on motions to dismiss, this Court accepts the Amended Complaint's well-pled factual allegations as true and draws all reasonable inferences in Plaintiff's favor. *Phila. Taxi Ass'n v. Uber Techs., Inc.*, 886 F.3d 332, 338 (3d Cir. 2018). The Court notes that the Amended Complaint frequently intermingles facts with legal conclusions; only the well-pled facts are included here.

[4] Add to that number 3,102 "probable" COVID-19 deaths.

issued Executive Order ("EO") 103, which declared a Public Health Emergency and state of emergency. As the pandemic persisted, Governor Murphy issued a series of successive EOs, including EO 251, which became effective August 9, 2021. *See* EO 251, DE 21-3 at 10 (listing all prior EOs). EO 251 mandated, as relevant here, that "[a]ll public, private, and parochial preschool programs and elementary and secondary schools, including chapter and renaissance schools . . . must maintain a policy regarding mandatory use of face masks by staff, students, and visitors in the *indoor portion of the school district premises*," with certain exceptions including health, age, and safety. *Id.* 13-14 (emphasis added).

On January 11, 2022, Governor Murphy issued EO 280, which declared a new Public Health Emergency due to a surge in COVID-19 cases, and extended EO 251 via EO 281. *Id.* 16, 25). EO 252's masking policy remained in effect until March 7, 2022, when EO 292 rescinded EO 251. Thus, EO 251, which required masking in the "indoor portion of the school district premises," remained in effect between August 9, 2021 and March 7, 2022. The relevant events took place during that time period.

B. The Parties

1. Plaintiff

Plaintiff, a Cranford resident, is a licensed New Jersey attorney with two minor children enrolled in Cranford Public Schools. Am. Compl. ¶¶ 8, 38. Plaintiff is "well-known to the Board [as] an advocate for

parental choice in masking children at school[.]" *Id.* ¶¶ 49, 58-59.

2. The Board Defendants

Scott Rubin is the Superintendent of Cranford Public Schools. *Id.* ¶ 9. Kurt Petschow, Jr. is the President of the Cranford Board of Education ("Board"), which is also a Defendant. *Id.* ¶¶ 10, 19. Lisa Carbone is the Board Vice President. *Id.* ¶ 11. Terry Darling, Brett Dryer, William Hulse, Nicole Shenin Kessler, Maria Loikith, Patrick Lynch, and Kristen Mallon are Board members. *Id.* ¶¶ 12-19. Dennis McCaffery, who is not a Defendant, is a Board employee and principal of the Lincoln School in Cranford. *Id.* 127.

3. The Attorney Defendants

Sciarrillo, Cornell, Merlino, McKeever, and Osbourne, LLC (the "Law Firm") is legal counsel to Board President Rubin and the Board. *Id.* ¶ 21. Jennifer Osbourne, Esq. and Anthony Sciarrillo are named partners in the firm. *Id.* ¶¶ 20, 22.

4. The Police Defendants

Defendant Cranford Police Department ("Cranford PD") was involved in Plaintiff's arrest on February 14, 2022. *Id.* ¶ 23. Anthony Giannico and Robert Chamra are Cranford PD officers. *Id.* ¶¶ 24, 26. Nadia Jones is a Cranford PD Sergeant. *Id.* ¶ 25.

C. History Between Plaintiff and the Board

Plaintiff "has been an advocate of unmasking children in schools since her two minor children

suffered physical, mental, emotional, and/or educational mask injuries since they started wearing masks in school in or about September 2020." *Id.* ¶ 58. Plaintiff has testified about this issue before the New Jersey State Assembly and Senate. *Id.* ¶ 59. Before the events at issue, Plaintiff also spoke about the masking issue at Board meetings on at least six occasions. *Id.* Plaintiff herself "has a medical background with lung issues, making masking difficult, uncomfortable to breathe, and medical comprising" due to a "near-death" respiratory incident in spring 2019. *Id.* ¶ 61.

In September 2021, Plaintiff filed a Harassment, Intimidation, and Bullying (HIB) Complaint against Rubin, a Cranford school principal, and a Cranford school nurse after Plaintiff's children were subjected to retaliation on the first day of school related to their masks.[5] *Id.* ¶ 60. The confidential HIB Complaint, which Plaintiff insinuates was released by one or more Board Defendants, "became a source of public gossip and knowledge." *Id.*

D. The January Meeting

On January 24, 2022, the Board held a public meeting at the Board of Education Room in the basement of the Lincoln School, which houses classrooms, Board offices, conference rooms, and other offices. *Id.* ¶¶ 31-32. Plaintiff entered the Lincoln School unmasked to silently protest the "Cranford Schools masking policy, related Executive Orders, [and the Board's and Rubin's] lack of action related to

[5] Plaintiff does not specify the nature of the retaliation against her children.

unmasking children in schools, particularly those with medical conditions and special needs." *Id.* ¶ 33. "More specifically, . . . Plaintiff was protesting the Board's total lack of action in failing to challenge [New Jersey Governor Murphy's] Executive Orders related to masking children[.]" *Id.* ¶ 44.

The meeting began at 7:30 p.m. with about 20 minutes of presentations to the BOE. *Id.* ¶¶ 35-37. Plaintiff sat silently in the front row. *Id.* ¶ 38. Immediately before the public comment portion of the meeting, Defendant Osborne "interrupted and disrupted the meeting multiple times to state that everyone in the room must be masked." *Id.* ¶ 39. When Plaintiff refused a mask offered to her, Osbourne, after consulting with co-Defendant Rubin, "threatened to contact law enforcement on anyone in attendance at the meeting who remained unmasked, based on a purportedly effective Executive Order related to masking on school premises[.]" *Id.* ¶ 40.

When Plaintiff continued her silent protest, the Board, Rubin, and Osbourne excused themselves to meet in private session for ten minutes. *Id.* ¶ 41. During that ten-minute period, "almost all" others at the meeting "removed their masks in solidarity with the Plaintiff." *Id.* ¶ 42.

The Board reconvened in public session only to immediately cancel the remainder of the January meeting. *Id.* ¶ 43. The cancellation was designed to prevent the public comment from taking place because the Board knew that comments would have been focused on "protesting the [Board] and Rubin's

continued masking policies, quarantine policies, and close contact policies[.]" *Id.*

E. Between Meetings

On January 25, 2022, the Board Defendants posted on the Cranford Public Schools' Facebook page a "Statement as to why no Board business was conducted at [the January Meeting.]" *Id.* ¶ 46, DE 10 at 34-35 (Compl. Exh. A, the "Board Facebook Post"). The Board Facebook Post invoked Governor Murphy's Executive Order 281 and referred, without naming Plaintiff, to an "individual" who violated the Executive Order by refusing to participate in the January Meeting virtually or with a mask. *Id.* According to Plaintiff, the Board Facebook Post "was implicitly referring to the Plaintiff in a manner which was intended to, and was in fact, widely understood to refer to her" and was intended to chill Plaintiff's rights, intimidate her, and damage her reputation. Am. Compl. ¶ 46.

On January 27, 2022, Plaintiff spoke with Cranford Police Chief Ryan Greco. *Id.* ¶ 50. Plaintiff confirmed that police had not been called to the January Meeting. *Id.* ¶ 51. Plaintiff informed Chief Greco of her protest's purpose. *Id.* ¶ 53. Chief Greco "implicit[ly] insinuate[ed] . . . that no parent would be arrested for refusing to wear a mask at a BOE meeting." *Id.* ¶ 53.

On February 10, 2022, Rubin emailed a "Statement on 2.14.22 Board Meeting." *Id.* ¶ 54, DE 10 at 37 (Compl. Exh. B, the "February Email"). The February Email, noting "the Governor's recent announcement," stated that universal masking would no longer be required beginning March 7, 2022. *Id.* The February

Email also attached Board Policy 0167 and "threatened that 'law enforcement officers' would be called for the 'removal of' any person when that person 'prevents or disrupts a meeting with an act that obstructs or interferes with a meeting[.]'" *Id.* ¶ 55. The February Email stated that the "Board has a process for those who qualify for a mask exception." *Id.* ¶ 62. The process requires "written documentation from a medical professional" provided to Board Secretary Robert Carfagno by noon on the Monday before a Board meeting, *i.e.,* by noon on Monday, February 14, 2022 for that evening's meeting. *Id.* The February Email further provided that anyone not wearing a mask or with an approved exception would be asked to wear a mask or leave. *Id.*

The February Email also stated that "only those wearing a mask were 'great role models for our children and other communities,'" implying that Plaintiff was not a "great role model for our children." *Id.* ¶ 56. Plaintiff was "clearly identifiable as the target of the email[.]" *Id.* ¶ 57.

"In an effort to mitigate the reputational damages suffered by" the Board Facebook Post and February Email, Plaintiff posted to a Cranford Families Facebook page about her children's negative experiences with masking in schools. *Id.* ¶ 65, DE 10 at 41 (Am. Compl., Exh. C, "Plaintiff's Facebook Post"). One child, who has autism and therefore "needs to see faces to understand, comprehend, and communicate," was unable to do so. *Id.* Plaintiff's other child developed sores from licking the inside of his mask, resulting in a ten percent loss in body weight in four days because

he could not eat without pain. *Id.* "No doctor would write a medical exemption" for either child, though Plaintiff declined, for fear of Facebook's censorship, to state the reason. *Id.*

F. The February Meeting

On February 14, 2022, Plaintiff filed this action, accompanied by a Motion for an Order to Show Cause with Temporary Restraints. DEs 1, 2 (the "OSC"). Plaintiff emailed the OSC to the Board Defendants at 6:30 p.m. that day, shortly before the February Meeting. Am. Compl. ¶ 69; DE 10 at 46.

Plaintiff arrived at the February Meeting, unmasked, at about 7:25 p.m. Am. Compl. ¶ 69. Defendant McCaffrey, who knew Plaintiff, advised her that he was "'told' to call the police" if Plaintiff entered unmasked.[6] *Id.* ¶¶ 69-70. Plaintiff informed McCaffery that she had filed this action, but McCaffery continued to threaten to call the police. *Id.* ¶ 71. Undeterred, Plaintiff continued into the building. *Id.* McCaffrey called the police. *Id.* ¶ 73.

When Plaintiff arrived at the Board's conference room, the Board was in executive session behind closed doors. *Id.* ¶ 75. When the doors opened at 7:35 p.m., Plaintiff handed Board Secretary Robert Carfago a courtesy copy of the OSC. *Id.* ¶ 76. Plaintiff entered the room and sat in the front row, still maskless. *Id.*

---

[6] The entire interaction is apparently on video, though no party attaches it. *Id.* at ¶¶ 70, 84. Because the Court accepts Plaintiff's well-pled factual allegations, the video is not germane to the Court's resolution of the motions.

Defendant Sciarrillo, a Board Attorney, met the Police Defendants in the hallway to "alert them that he sought to have Plaintiff arrested if she did not place a mask on her face." *Id.* ¶ 77. Sciarrillo sat next to Plaintiff and instructed her to don a mask. *Id.* ¶ 78. Plaintiff instead served him with the OSC. *Id.* ¶ 79. Sciarrillo flung away the papers and again demanded that Plaintiff wear a mask. *Id.*

When Plaintiff again refused, Sciarrillo gestured to the Police Defendants to arrest Plaintiff. *Id.* ¶ 80. Over Plaintiff's objection that she was exercising her constitutional rights, Sergeant Jones arrested Plaintiff for trespassing in violation of N.J.S.A. 2C:18-3B, a disorderly persons offense. *Id.* ¶ 82.

Plaintiff was processed at Cranford PD Headquarters for one hour and ten minutes. *Id.* ¶ 90. During that time, Plaintiff was handcuffed to a metal bench, "bruising . . . both wrists." *Id.* Plaintiff advised officers that she had a medical procedure scheduled the next morning which required her to drink Gatorade. *Id* at ¶ 91. Plaintiff was not given the opportunity to do so, placing her "in great discomfort and at risk of dehydration[.]" *Id.* Defendants' actions caused Plaintiff "embarrassment, humiliation, . . . fear of physical violence, anxiety, nightmares, emotional distress, and/or damage to her personal and professional reputation." *Id.* ¶ 93.[7]

---

[7] Though this has the initial appearance of an excessive force claim, Plaintiff does not explicitly assert one.

G. The Complaint

The Amended Complaint alleges six causes of action, four of which remain.[8] First, Plaintiff alleges a civil rights claim against all Defendants pursuant to 42 U.S.C. § 1983 (Count One). *Id.* ¶¶ 98-107. Second, Plaintiff alleges that Defendants violated the New Jersey Civil Rights Act, N.J.S.A. 10:6-2c (Count Two). *Id.* ¶¶ 108-09. Third, Plaintiff alleges a conspiracy between Defendants to conspire to violate her civil rights (Count Three). *Id.* ¶¶ 110-113, citing 42 U.S.C. § 1985. Fourth, Plaintiff alleges that Defendants failed to prevent said conspiracies (Count Four). *Id.* ¶¶ 114-116, citing 42 U.S.C. § 1986.

For each, Plaintiff seeks compensatory and punitive damages. Plaintiff also seeks injunctive relief enjoining and restraining Defendants from:

1. Threatening the arrest of any parent or citizen attending an in-person Board of Education meeting, or otherwise arresting any such person including, but not limited to, the Plaintiff, who is exercising his or her United States or New Jersey civil rights, as aforesaid, while not being disruptive or disorderly;

2. Any and all attempts of deprivation of freedom of speech of any parent, taxpayer, or citizen in attendance at a Board of Education meeting by further cancellation or "walk out"

---

[8] Plaintiff dismissed the Fifth and Sixth claims, which were against Defendant Rice only.

of any scheduled Board of Education meeting;

3. All attempts at restriction of freedom of speech at any Board of Education meeting, which conduct is not disorderly or disruptive, absent engaging in narrowly tailored restrictions for issues which involve substantial public interest;

4. Further threats, intimidation, or coercion against the Plaintiff and any other parents/citizens, via email, social media posts, or by any other means, which may have the effect of chilling the First Amendment rights of the Plaintiff and other parents/citizens;

5. Taking further retaliatory action against the Plaintiff and/or her children through the dates of their graduation from the District of Cranford school system; and

6. Violating N.J.S.A. 10:4-6, *el seq*. [the "NJCRA"].

On February 17, 2022, Judge Wigenton denied Plaintiff's OSC. Judge Wigenton held that the motion failed to provide a written certification setting forth: (1) efforts to give Defendants notice; (2) the reasons notice should not be required; and (3) details regarding the alleged violation of Plaintiff's rights. Am. Compl. ¶ 68; DE 3. The Board (DE 12), Attorney (DE 21), and Police (DE 27) Defendants each subsequently moved to dismiss the Amended Complaint.

II. LEGAL STANDARD

In reviewing a motion to dismiss for failure to state a claim upon which relief can be granted, pursuant to Federal Rule of Civil Procedure 12(b)(6), "courts accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (cleaned up). While Federal Rule of Civil Procedure 8(a)(6) does not require that a complaint contain detailed factual allegations, "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). Thus, to survive a Rule 12(b)(6) motion to dismiss, a complaint must contain sufficient factual allegations to raise a plaintiff's right to relief above the speculative level, so that a claim "is plausible on its face." *Id.* 570; *Phillips v. Cty. of Allegheny*, 515 F.3d 224, 231 (3d Cir. 2008).[9] "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the

---

[9] In analyzing a Fed.R.Civ.P. 12(b)(1) motion, courts apply the same legal standards as applicable to a motion filed pursuant to Fed.R.Civ.P. 12(b)(6). *In re Franklin Mut. Funds Fee Litig.*, 388 F.Supp.2d 451, 459-60 (D.N.J. 2005) (holding that when a defendant files a Fed.R.Civ.P. 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, the standard of review for a "facial attack" is similar to the standard governing a Fed.R.Civ.P. 12(b)(6) motion to dismiss).

misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

The plausibility of claims challenged at the motion-to-dismiss stage is analyzed through a three-step process. *See Connelly v. Lane Constr. Corp.*, 809 F.3d 780, 787 (3d Cir. 2016). The first step is the articulation of the elements of the claim. *See id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 675 (2009)). The second step involves reviewing the complaint to disregard any "'formulaic recitation[s] of the elements of a . . . claim' or other legal conclusion," *id.* at 789 (alteration in original) (quoting *Iqbal,* 556 U.S. at 681), as well as allegations that are "so threadbare or speculative that they fail to cross the line between the conclusory and the factual," *id.* at 790 (citation omitted). The third step evaluates the plausibility of the remaining allegations – after assuming their veracity, construing them in the light most favorable to the plaintiff, and drawing all reasonable inferences in the plaintiff's favor. *See id.* at 787, 790; *see also Iqbal*, 556 U.S. at 679; *Fowler v. UPMC Shadyside*, 578 F.3d 203, 211 (3d Cir. 2009).

III. ANALYSIS

A. Article III Standing

All Defendants seek to dismiss on standing grounds. DE 21-1 ("Law Defs.' Br.") at 19, *et seq.*; DE 12-2 ("Board Defs.' Br.") at 10, *et seq.*; DE 27 ("Police Defs. Br.'") at 20, *et seq.*). Article III of the United States Constitution extends the judicial power of the United States to "cases" and "controversies." "The issue of standing is jurisdictional," and thus generally a

threshold issue. *St. Thomas-St. John Hotel & Tourism Ass'n, Inc. v. Government of the U.S. Virgin Islands*, 218 F.3d 232, 240 (3d Cir. 2000). "The party invoking federal jurisdiction bears the burden of establishing standing." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014).

To have standing, plaintiffs must have a "personal stake in the outcome of the controversy." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Thus, "[t]o establish constitutional standing, 'a plaintiff must show (1) an injury in fact that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.'" *Freedom from Religion Found. Inc. v. New Kensington Arnold Sch. Dist.*, 832 F.3d 469, 476 (3d Cir. 2016) (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000)). "[A]llegations of *possible* future injury" are not sufficient. *Id* (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)) (emphasis in original).

1. Particularized injury

The Board and Police Defendants argue that Plaintiff does not have standing because her claims are too general. Police Defs.' Br. 21; Board Defs.' Br. 17. The Court disagrees.

Federal courts are not venues to seek simply "to have the Government act in accordance with law." *Allen v. Wright*, 468 U.S. 737, 754 (1984), *abrogated on other grounds by Lexmark Int'l, Inc. v. Static Control*

Components, Inc., 572 U.S. 118, 126-27 (2014). Thus, when the alleged injury is undifferentiated and common to all members of the public, courts routinely dismiss such cases as "generalized grievances" that cannot support standing. *United States v. Richardson*, 418 U.S. 166, 173-75 (1974). In the context of mask mandates, individuals attacking the mandates generally lack standing because their claims are not differentiated from those of every other individual subject to the same mandate. *Parker v. Wolf*, 506 F. Supp. 3d 271, 287-88 (M.D. Pa. 2020) ("Plaintiff's alleged injuries suffered as a result of wearing a mask are *identical* to every other citizen in the Commonwealth"), *aff'd sub nom. Parker v. Governor of Pennsylvania*, No. 20-3518, 2021 WL 5492803 (3d Cir. Nov. 23, 2021).

But contrary to the Police and Board Defendants' arguments, Plaintiff is not, or at least not *solely*, challenging any mask mandate. Rather, Plaintiff alleges that Defendants retaliated against *her* for her views by canceling the January Meeting, threatening (and acting on those threats) to arrest her at the February Meeting, and publishing the confidential HIB Complaint. DE 13 at 19-20. Those allegations are sufficiently particularized to find standing. *See Baldeo v. City of Paterson*, No. CV185359, 2019 WL 277600, at *12-13 (denying motion to dismiss where plaintiff alleged denial of First Amendment rights as a reporter and private citizen to attend and speak at a council meeting where he intended to disclose information related to an elected official's use of taxpayer money). Accordingly, Plaintiff's claims are sufficiently particularized to enjoy Article III standing.

2. Redressability and Mootness

All Defendants argue, in substance, that any alleged harm is not redressable by Plaintiff's requested relief. Board Defs.' Br. 17; Police Defs.' Br. 22; Att'y Defs.' Br. 19. Plaintiff disputes Defendants' characterization of her protest. She explains that her protest was aimed not at Governor Murphy's executive orders, but instead at the "Superintendent and Board['s] . . . inaction in helping children in the District, most particularly children with special needs and medical conditions adversely affected by the Board's masking policy, such as her own two children." *See, e.g.*, DE 39 at 20. Even accepting Plaintiff's characterization of her protest, her requested injunction would not redress her stated harm.

First, the requested injunction is wildly expansive, requesting that the Court enjoin all retaliation and First Amendment violations against all Cranford parents and citizens. Federal Rule of Civil Procedure 65(d)(1)(C) requires that injunctions "describe in reasonable detail...the act or acts restrained or required." "Injunctions that 'merely instruct the enjoined party not to violate'" the law "generally are overbroad, increasing 'the likelihood of unwarranted contempt proceedings for acts unlike or unrelated to those originally judged unlawful.'" *Lineback v. Spurlino Materials, LLC*, 546 F.3d 491, 504 (7th Cir. 2008) (quoting *Int'l Rectifier Corp. v. IXYS Corp.*, 383 F.3d 1312, 1316 (Fed. Cir. 2004)). Broad, "obey-the-law" injunctions do not give a restrained party fair notice of what conduct will risk contempt. *Louis W. Epstein Family Partnership v. Kmart Corp.*, 13 F.3d 762 (3d

Cir. 1994); *Worsham v. TSS Consulting Grp., LLC*, No. 618CV1692, 2019 WL 7482221, at *3 (M.D. Fla. Sept. 18, 2019) (discussing disfavored ""Obey-the-law" injunctions). Even the single request for injunctive relief pertaining just to Plaintiff, a request to enjoin "further retaliatory action" through the date of her children's graduation, is still so broad as to be unenforceable.

But suppose that the requested injunction could be narrowed to a permissible scope. Even still, it would not be "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). This is because "Plaintiff has neither sufficiently alleged an intent to engage in the proscribed conduct, nor adequately alleged . . . a credible threat of future enforcement by Defendant." *Schiavo v. Carney*, 548 F. Supp. 3d 437, 442-43 (D. Del. 2021), *aff'd*, No. 21-2368, 2021 WL 6550638 (3d Cir. Nov. 18, 2021).

Plaintiff would have difficulty making such an allegation, because her requests for injunctive relief, as Defendants argue, are now moot. *Zinman v. Nova Se. Univ., Inc.*, No. 21-CV-60723, 2021 WL 4025722, at *10 (S.D. Fla. Aug. 30, 2021), *report and recommendation adopted sub nom. Zinman v. Nova Se. Univ.*, No. 21-CIV-60723-RAR, 2021 WL 4226028 (S.D. Fla. Sept. 15, 2021) (dismissing requests for injunctive and declaratory relief relating to local COVID-19 mandates where Florida Governor's executive order eliminated and superseded all such mandates).

As Plaintiff herself implicitly acknowledges, the Executive Orders' (and thus the Board's) masking policy have been rescinded. DE 30 at 20 (discussing "bringing masking back"). Plaintiff argues that the masking policy could return "depending on the CALI score of school districts." DE 30 at 20. However, the document cited by Plaintiff, a PDF file entitled "K-12 School COVID-19 Screening Testing Program Overview," relates (as the name implies) to a COVID testing regime, not a masking policy. *See* https://www.nj.gov/health/cd/documents/topics/NCOV/K12_school_testing_packet.pdf (accessed August 22, 2022). But even if the document did plan for a potential return to masking, a speculative plan is not a policy. To the Court's knowledge, there has been no return to any mandatory masking policy in New Jersey schools. Accordingly, this Court will dismiss Plaintiff's injunctive relief claims for lack of standing.

Plaintiff is correct, however, that at least some component of her alleged harm remains redressable by her economic damages claim. DE 30 at 20. Where a plaintiff seeks compensatory damages for alleged civil rights violations, an order awarding monetary damages, however nominal, may redress the injury. *See Amnesty Int'l, USA v. Battle*, 559 F.3d 1170, 1177 (11th Cir. 2009) (permitting § 1983 claim to proceed even though plaintiff had not alleged compensatory damages that flowed from constitutional violation); *Maxineau v. City of New York*, 2013 WL 3093912, at *11 (E.D.N.Y. 2013) ("Because [the plaintiff] alleges constitutional violations, a successful outcome in litigation would entitled him to, at the very least, nominal damages.

This is sufficient availability of redress for the purposes of Article III standing.").

Accordingly, while the claims for injunctive relief are dismissed for lack of standing, the economic damages claim would survive. For the reasons below, however, the substantive civil rights claims fail to state a claim.

B. Failure to State a Claim

1. Plaintiff fails to state a § 1983 claim

a. Plaintiff's conduct was not inherently expressive, and therefore not protected by the First Amendment

All Defendants argue that Plaintiff's Count One fails to state a claim under Section 1983. Att'y Defs.' Br. 30; Board Defs.' Br. 20; Police Defs.' Br. 23. Plaintiff responds that Defendants violated Plaintiff's First and Fourteenth Amendment rights by retaliating against her for expressive conduct: not wearing a mask where one was required. DE 13 at 21; DE 30 at 25; DE 39 at 31. Specifically, Defendants retaliated by shutting down the January Meeting before the public comment period, releasing the private HIB complaints, attempting to bar Plaintiff from the February Meeting, threatening Plaintiff with arrest, and then arresting her. *Id.*; Am. Compl.¶¶ 98-107.

The First Amendment proclaims: "Congress shall make no law . . . abridging the freedom of speech." "[T]he protection granted by the First Amendment is not limited to verbal utterances but extends as well to

expressive conduct." *Troster v. Pennsylvania State Dep't of Corr.*, 65 F.3d 1086, 1089 (3d Cir. 1995).

When a constitutional right like the one enshrined in the First Amendment is infringed by state officials, Section 1983 of the Civil Rights Act of 1871 provides a remedy:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. Section 1983 allows a party who has been deprived of rights, privileges, or immunities secured by the Constitution to seek damages and injunctive relief. See id.

A prima facie case under § 1983 requires a plaintiff to demonstrate that: (1) a person deprived her of a federal right; and (2) the person who deprived her of that right acted under color of state law. *Groman v. Twp. of Manalapan*, 47 F.3d 628, 633 (3d Cir. 1995) (citing *Gomez v. Toledo*, 446 U.S. 635, 640 (1980)). The first step "in evaluating a section 1983 claim is to identify the exact contours of the underlying right said to have been violated and to determine whether the plaintiff has alleged a deprivation of a constitutional

right at all." *Nicini v. Morra*, 212 F.3d 798, 806 (3d Cir. 2000).

It is important to note, at the outset of this analysis, what Plaintiff does *not* argue: the validity of the Executive Orders or any Board policy. Rather, Plaintiff insists that "there was no legislative enactment in issue" and that "the [Board] Defendants have not even identified the actual Executive Order on which they putatively relied in taking their actions to violate Ms. Murray-Nolan's rights, but instead have identified two other Executive Orders that are irrelevant to the Amended Complaint." DE 13 at 22.

This is an enigmatic argument. First, it comes in response to Defendants' explicit citations to (and attachment of) the specific Executive Orders at issue. Second, Plaintiff's denial is contradicted even by her own pleadings. The Board's January Facebook Post, attached to the Amended Complaint, cited the Executive Orders relied upon, which covered the relevant time period. DE 10 at 34. And the Public Meeting Notice, also attached to the Amended Complaint, informed Cranford residents that the February Meeting would be the last to require masking pursuant to the Executive Orders. *Id.* 39.

But even if this Court *had* considered the constitutionality of the Executive Orders, the Executive Orders would have been held constitutional for essentially the same reasons explained by Judge McNulty in *Stepien v. Murphy*, 574 F. Supp. 3d 229, 246–47 (D.N.J. 2021). Applying intermediate scrutiny to the Executive Orders, which are content-neutral, "they are best analyzed as a regulation of the time,

place, and manner of New Jerseyans' speech while inside school buildings." Intermediate scrutiny is easily met because there are substantial and related underlying governmental interests (continuation of in-person proceedings while preventing of the spread of COVID),[10] because the mask mandate is narrowly tailored, and because there remain ample alternative avenues for communication. *Id.* (citing *McCullen v. Coakley*, 573 U.S. 464, 477 (2014) (articulating a three-part test for content-neutral regulation)).

Instead of challenging the government policies themselves, Plaintiff focuses on her right to appear at the January and February Meetings without a mask, which she characterizes as expressive conduct protected by the First Amendment. Plaintiff alleges that Defendants retaliated against her for exercising her right.

Indeed, retaliation for the exercise of constitutionally protected rights "is itself a violation of rights secured by the Constitution actionable under section 1983." *White v. Napoleon*, 897 F.2d 103, 111-12 (3d Cir. 1990): *see also Allah v. Seiverling*, 229 F.3d 220, 224-25 (3d Cir.2000) ("Government actions, which standing alone do not violate the Constitution, may nonetheless be constitutional torts if motivated in substantial part by a desire to punish an individual for exercise of a constitutional right."). But to plead a First Amendment retaliation claim, a plaintiff must allege: "(1) constitutionally protected conduct, (2) retaliatory

---

[10] Importantly, Plaintiff does not dispute the efficacy of mask wearing itself as a means to slow the spread of COVID-19.

action sufficient to deter a person of ordinary firmness from exercising his constitutional rights, and (3) a causal link between the constitutionally protected conduct and the retaliatory action." *Mirabella v. Villard,* 853 F.3d 641, 649 (3d Cir. 2017).[11]

Plaintiff's conduct is the disputed issue. Plaintiff characterizes her decision not to wear a mask and sit silently at the January and February Meetings as a silent, nondisruptive protest. Sitting without a mask to protest a mask mandate, in Plaintiff's estimation, is protected expressive conduct. But because this conduct is not *inherently* expressive, even in the broader context of a Board meeting requiring a mask mandate, it does not enjoy First Amendment protections.

Whether a plaintiff's conduct is constitutionally protected is a matter of law. *See Connick v. Myers*, 461 U.S. 138, 148, n.7 (1983). Of course, "[it] is possible to find some kernel of expression in almost every activity a person undertakes—for example, walking down the street or meeting one's friends at a shopping mall—but such a kernel is not sufficient to bring the activity within the protection of the First Amendment." *City of Dallas v. Stanglin*, 490 U.S. 19, 25 (1989). However, "a recurring jurisprudential concern 'is that the Free Speech Clause may be invoked by anyone who violates a law, claiming to protest against it.'" *Troster v. Pennsylvania State Dep't of Corr.*, 65 F.3d 1086, 1093-94 (3d Cir. 1995) (quoting Tiersma, *Nonverbal Communication*, 1993 Wis. L. Rev. at 1585). "Virtually every law restricts conduct, and virtually any

---

[11] Defendants do not challenge the second or third element here.

prohibited conduct can be performed for an expressive purpose—*if only expressive of the fact that the actor disagrees with the prohibition.*" *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 576 (1991) (Scalia, J., concurring) (emphasis added).

One cannot, for example, run a red light as a social protest. *Cox*, 379 U.S. 536, 554 (1965); *State of Washington v. Adams*, 3 Wash. App. 849, 479 P.2d 148 (1971) (rejecting contention that use of a set net in violation of regulatory salmon fishing statute was "symbolic speech" protected by First Amendment where defendant's only purpose was to demonstrate the irrationality of the statute prohibiting the net's use). Thus, courts reject "the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea." *United States v. O'Brien*, 391 U.S. 367, 376 (1968). That is, the Supreme Court has extended First Amendment "only to conduct that is inherently expressive." *Rumsfeld v. F. for Acad. & Institutional Rts., Inc. ("FAIR")*, 547 U.S. 47, 66 (1006).

Deciding whether conduct possesses "sufficient communicative elements" to implicate the First Amendment require examining "whether an intent to convey a particularized message was present, and whether the likelihood was great that the message would be understood by those who viewed it." *Texas v. Johnson*, 491 U.S. 397, 404 (1989). However, in some situations, the context of the expression may be considered because "the context may give meaning to the symbol." *Id.* 405 (citing *Spence* (display of flag with peace sign "roughly simultaneous with and concededly

triggered by the Cambodian incursion and the Kent State tragedy.")).

Inherently expressive conduct should be "overwhelmingly apparent." *FAIR*, 547 U.S. at 66 (citing *Johnson*, 491 U.S. at 406). For example, in *FAIR,* law schools challenged as compelled speech a regulation denying federal funding to institutions that do not treat campus military recruiting as they would any other prospective employer. 547 U.S. at 55. As relevant here, the Court held that the purpose of the law schools' prior practice of requiring military interviews to be held away from the law schools was not "overwhelmingly apparent" because there could have been numerous reasons for doing so other than disapproval: for example, the law school's interview rooms were full, or the recruiters' personal preferences. *Id.* 66. The Court rejected the law schools' argument that they previously "expressed" their disagreement by treating military recruiters differently from other recruiters, holding that "these actions were expressive only because the law schools accompanied their conduct with speech explaining it." *Id.*

Plaintiff's argument here is essentially the same: that her conduct was expressive because she told Defendants that it was, and sued to prove it. DE 39 at 23 (arguing that Police Defendants arrested her after she told them she was engaged in a protest and had filed the OSC). But "the fact that such explanatory speech is necessary is strong evidence that the conduct at issue here is not so inherently expressive that it warrants protection under *O'Brien*." *Fair*, 547 U.S. at 66. "If combining speech and conduct were enough to

create expressive conduct, a regulated party could always transform conduct into 'speech' simply by talking about it." *Id.* Phrased another way: if conduct is inherently expressive, it should not require much to explain why.

Plaintiff does not cite any authority to the contrary. Indeed, not a single court to examine mask wearing has deemed the act of mask wearing itself, to say nothing of *not* wearing one, expressive conduct. As one district court found, someone observing Plaintiff sitting quietly and not wearing a mask would, absent any explanation, "have no idea why [she] is not wearing a face covering." *Minnesota Voters All. v. Walz*, 492 F. Supp. 3d 822, 837-38 (D. Minn. 2020), *appeal dismissed*, No. 20-3072, 2020 WL 9211131 (8th Cir. Nov. 9, 2020). Plaintiff might be exempt from the mask requirement, or could have forgotten her mask, or, as Plaintiff has explained, "trying to convey a political message." *Id.*; *see also Zinman v. Nova Se. Univ., Inc.*, No. 21-CV-60723, 2021 WL 4025722, at *13 (S.D. Fla. Aug. 30, 2021), *report and recommendation adopted sub nom. Zinman v. Nova Se. Univ.*, No. 21-CIV-60723, 2021 WL 4226028 (S.D. Fla. Sept. 15, 2021) (rejecting argument that refusal to wear a mask is inherently expressive of his disapproval of mask mandates); *Antietam Battlefield KOA v. Hogan*, 461 F. Supp. 3d 214, 237 (D. Md. 2020), *appeal dismissed*, No. 20-1579, 2020 WL 6787532 (4th Cir. July 6, 2020), and *aff'd in part, appeal dismissed in part*, No. 20-2311, 2022 WL 1449180 (4th Cir. May 9, 2022) ("while wearing a face covering might be to several of the plaintiffs a sign of capture on the battlefield, and subservience to the captor, that meaning is not '"overwhelmingly

apparent.'"); *L.T. v. Zucker*, No. 121CV1034, 2021 WL 4775215, at *5 (N.D.N.Y. Oct. 13, 2021).

Accordingly, because Plaintiff's conduct was not protected by the First Amendment, Plaintiff fails to state a claim for § 1983 retaliation.

b. The Attorney Defendants are not "state actors" pursuant to § 1983

The section above discussed one requirement for a § 1983 claim: a violation of a federal right. But there is a second: the right must have been violated by a person acting under color of state law (a "state actor"). The Attorney Defendants argue that they are not "state actors," and therefore that there is another basis to dismiss the Amended Complaint against them. This Court agrees.

A plaintiff suing private individuals must identify "some action that is 'fairly attributable' to the state." *Angelico v. Lehigh Valley Hosp., Inc.*, 184 F.3d 268, 277 (3d Cir. 1999) (quoting *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982). More specifically, a plaintiff must show (1) that the Attorney Defendants' acts were "the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or by a person for whom the State is responsible" and (2) "that the Attorney Defendants" may fairly be said to be state actors. *Id.* "A person may be found to be a state actor when (1) he is a state official, (2) he has acted together with or has obtained significant aid from state officials, or (3) his conduct is, by its nature, chargeable to the state." *Id.*

Here, the Amended Complaint alleges that the Attorney Defendants "recommended [early] termination" of the January Meeting and later threatened to, and actually did, have Plaintiff arrested. ¶¶ 100, 101, 105. Plaintiff alleges, in other words, that the Attorney Defendants counseled their client incorrectly.

However, attorneys performing their traditional functions—that is, counseling clients—will not be considered state actors solely because of their position as officers of the court. *See, e.g., Polk County v. Dodson*, 454 U.S. 312, 318 (1981) ("[A] lawyer representing a client is not, by virtue of being an officer of the court, a state actor 'under color of state law' within the meaning of § 1983."); *Barnard v. Young*, 720 F.2d 1188, 1189 (10th Cir.1983) ("[P]rivate attorneys, by virtue of being officers of the court, do not act under color of state law within the meaning of section 1983."). Nor do attorneys become state actors merely because they represent state or local governments. *Horen v. Bd. of Educ. of Toledo City Sch. Dist.*, 594 F. Supp. 2d 833, 841 (N.D. Ohio 2009).

Plaintiff's few citations are inapposite. *Flagg Bros. v. Brooks*, 436 U.S. 149, 160 (1978), involves a proposed private sale of goods permitted by the New York Uniform Commercial Code, which the Supreme Court held *not* to be state action. DE 30 at 23. It is difficult to understand how that case assists Plaintiff.

Likewise, Plaintiff cites *In re Supreme Ct. Advisory Comm. on Pro. Ethics Opinion No. 697*, 188 N.J. 549, 556 (2006), apparently to argue that the Attorney Defendants had a conflict with the Board Defendants

because Plaintiff sued both. DE 30 at 23. But that case is an advisory opinion discussing conflicts of interest in representing and appearing before a municipal body, which is not at issue here. If Plaintiff is using it to argue that the Attorney Defendants' actions were outside their scope of representation, that argument would only serve to defeat Plaintiff's state actor claim. *Dyer v. Maryland State Bd. of Educ.*, 187 F. Supp. 3d 599, 616 (D. Md. 2016), *aff'd*, 685 F. App'x 261 (4th Cir. 2017) (if attorney's actions "were *ultra vires* and inconsistent with her governmental client's directives, that fact (though not dispositive) would tend to weigh against a finding that she was clothed with the authority of state law").

Accordingly, because the School Defendants are not state actors, this provides an independent basis to dismiss the § 1983 claims against the Attorney Defendants.

c. The Police Defendants had probable cause to arrest Plaintiff

The Police Defendants also argue, correctly, that Plaintiff fails to state a § 1983 claim against them because they had probable cause to arrest Plaintiff. Indeed, "if probable cause existed to arrest Plaintiff for criminal conduct, Plaintiff may not maintain his claim that he was instead arrested for protected speech." *Williams v. Vanderud*, No. CV 16-1245, 2017 WL 4274265, at *12 (D.N.J. Sept. 26, 2017) (citing *Pulice v. Enciso*, 39 F. App'x 692, 696 (3d Cir. 2002) (affirming summary judgment against plaintiff's First Amendment claim of retaliatory arrest where plaintiff was not arrested for expressing her views but for

violating the law), *Mesa v. Prejean*, 543 F.3d 264, 273 (5th Cir. 2008) (where probable cause exists, "any argument that the arrestee's speech as opposed to her criminal conduct was the motivation for her arrest must fail").

Here, the Police Defendants arrested Plaintiff for her willful refusal to wear a mask where one was required by Executive Order and local policy. Plaintiff does not substantively dispute this contention, instead restating the First Amendment argument rejected above. DE 39 at 21, *et seq*. But, as the Police Defendants argue in reply, Plaintiff was warned prior to the February Meeting of the masking policy, was warned again at the door, and warned yet again that she would be arrested for trespassing before officers actually arrested her. DE 42 at 8-9. Whether or not Plaintiff's protest was ultimately found to fall within the First Amendment's protections (it did not), the fact remains that the Police Defendants had probable cause to arrest Plaintiff. This conclusion provides another basis to dismiss the Amended Complaint against the Police Defendants.

2. Plaintiff fails to state an NJCRA claim

Defendants also seek to dismiss Plaintiff's NJCRA claims (Count Two). Like § 1983, the NJCRA allows a party who has been deprived of any rights under either the Federal or State Constitutions by a person acting under color of law to bring a civil action for damages and injunctive relief. *Coles v. Carlini*, 162 F. Supp. 3d 380, 404-05 (D.N.J. 2015). The NJCRA was modeled after 42 U.S.C. § 1983 and "[c]ourts have repeatedly construed the NJCRA in terms nearly identical to its

federal counterpart: Section 1983." *Chapman v. New Jersey*, No. 08-4130, 2009 WL 2634888, at *3 (D.N.J. Aug. 25, 2009). Courts in this district have previously recognized that "the New Jersey Civil Rights Act is interpreted analogously to 42 U.S.C. § 1983." *Coles*, 162 F. Supp. 3d at 404-05 (collecting cases). Thus, for the same reasons the Court dismissed Plaintiff's § 1983 claims, Plaintiff's NJCRA claims are also dismissed.

3. Plaintiff fails to state a § 1985 claim

Defendants next seek to dismiss Plaintiff's § 1985 conspiracy claims (Count Three). Att'y Defs.' Br. 39; Board Defs.' Br. 25; Police Defs. Br. 26. The Attorney Defendants add an argument: that attorneys cannot "conspire" with their clients for § 1985 purposes.

a. Section 1985 claims against all Defendants

Section 1985(3) permits an action to be brought by one injured by a conspiracy formed "for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws." 42 U.S.C. § 1985(3). A plaintiff must allege: "(1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is injured in his person or property or deprived of any right or privilege of a citizen of the United States." *Farber v. City of Paterson*, 440 F.3d 131, 134 (3d Cir.

2006) (citing *Griffin v. Breckenridge*, 403 U.S. 88, 102-03 (1971).

Despite its application to private conspiracies, § 1985(3) was not intended to provide a federal remedy for "all tortious, conspiratorial interferences with the rights of others," or to be a "general federal tort law." *Id.* 101-02. The *Griffin* Court emphasized that § 1985(3) requires the "intent to deprive of *equal* protection, or *equal* privileges and immunities." Thus, owing to that language and the fact that § 1985(3) was part of the Ku Klux Klan Act of 1871 passed "to give the federal government a weapon against the wave of anarchic and violent civil resistance to Reconstruction that marred the post-Civil War South," a claimant must allege "some racial, *or perhaps otherwise class-based*, invidiously discriminatory animus behind the conspirators' action" to state a claim. *Farber*, 440 F.3d at 135, citing *Griffin*, 403 U.S. at 102 (emphasis added). *Griffin*, in other words, implied that there may be some "*otherwise class-based*" discrimination beyond race, but did not further define any class.

In opposition, Plaintiff interprets more recent Supreme Court precedent to have "removed" "race and economic class discrimination" as the "sole bases" for § 1985 claims. DE 30 at 29-32, (citing *United Bhd. of Carpenters & Joiners of Am., Loc. 610, AFL-CIO v. Scott*, 463 U.S. 825 (1983)). But *Scott* did not broaden the reach of § 1985, and certainly not to Plaintiff's desired scope. Rather, the Supreme Court held that "it is a close question whether § 1985(3) was intended to reach any class-based animus other than animus against Negroes and those who championed their

cause, most notably Republicans" but found "no convincing support . . . for the proposition that the provision was intended to reach conspiracies motivated by bias towards others on account of their *economic* views, status, or activities." *Id.* 836-37 (emphasis in original).

A subsequent case cited by Plaintiff, *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 269 (1993), only bolsters the conclusion that Plaintiff cannot claim to be a class based on her masking views. In *Bray*, Justice Scalia wrote for the Court that "[w]hatever may be the precise meaning of a 'class' for purposes of *Griffin*'s speculative extension of § 1985(3) beyond race, the term unquestionably connotes something more than a group of individuals who share a desire to engage in conduct that the § 1985(3) defendant disfavors." 506 U.S. at 269 (1993) (citing *Scott*, 463 U.S. at 850 (Blackmun, J., dissenting) ("the class must exist independently of the defendants' actions; that is, it cannot be defined simply as the group of victims of the tortious action.")). Plaintiff herself recognizes that "the issue of whether discrimination against the 'unmasked' constitutes 'invidious' discrimination admittedly is one of first impression." DE 30 at 32.

In the absence of any support, this Court declines to broaden § 1985's reach to include Plaintiff's allegations. Accordingly, this claim must also be dismissed.

b. Section 1985 claims against Attorney Defendants

The Attorney Defendants also add that they cannot, as Board attorneys acting within the scope of attorney-client representation, be held liable for conspiracy. They are correct.

This situation implicates the intracorporate conspiracy doctrine, which posits that there cannot be any conspiracy between a corporation and its officer, who is part of the corporation because a corporation cannot conspire with itself. The same rule exists for attorneys. *Heffernan v. Hunter*, 189 F.3d 405, 413 (3d Cir. 1999) (holding that frivolous lawsuit and dissemination of defamatory information may "violate the canons of ethics, but so long as it is within the scope of representation, it does not eliminate the exemption from a conspiracy charge under section 1985"). To state a § 1985 claim in this context, a plaintiff must allege that the attorney is acting in a personal, as opposed to official, capacity." *Gen. Refractories Co. v. Fireman's Fund Ins. Co.*, 337 F.3d 297, 313 (3d Cir. 2003); *see also Farese v. Scherer*, 342 F.3d 1223, 1232 (11th Cir. 2003) ("as long as an attorney's conduct falls within the scope of the representation of his client, such conduct is immune from an allegation of a § 1985 conspiracy") (citing *Heffernan*, 189 F.3d 405).

That has not been alleged here. In opposition, Plaintiff discusses the applicability of § 1985 to private

versus state actors, which is irrelevant to this issue.[12] DE 30 at 29. Accordingly, this provides an independent basis to dismiss Plaintiff's § 1985 claim.

4. Plaintiff fails to state a § 1986 claim

Defendants next seek to dismiss Plaintiff's § 1986 conspiracy claims (Count Four). 42 U.S.C. § 1986 provides that:

> Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case. . . .

Section 1986 constitutes an "additional safeguard" for those rights protected under 42 U.S.C. § 1985. *Clark v. Clabaugh*, 20 F.3d 1290, 1295 (3d Cir. 1994). Consequently, because § 1986 violations "by definition depend on a preexisting violation of § 1985," *Rogin v. Bensalem Twp.*, 616 F.2d 680, 696 (3d Cir. 1980),

---

[12] This appears in every version of Plaintiff's opposition, which are all similar. It appears to relate, however, only to the Attorney Defendants, the only group of Defendants whose role as state actors are at issue.

Plaintiff's failure to state a § 1985 claim dooms her § 1986 claim.

IV. CONCLUSION

For the reasons above, the motions to dismiss are GRANTED and the Amended Complaint is dismissed in its entirety. Because Plaintiff has already had one opportunity to amend and because any further amendment would likely be futile, the dismissal will be WITH PREJUDICE. An appropriate order follows.

Dated: September 8, 2022 /s/ Evelyn Padin
Evelyn Padin, U.S.D.J.

APPENDIX C

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 22-801 (EP) (AME)

[Filed September 8, 2022]

GWYNETH K. MURRAY-NOLAN,
Plaintiff,

v.

SCOTT RUBIN, et al.,
Defendants.

ORDER

All Defendants having moved to dismiss, and the Court having considered Plaintiff's opposition papers (DEs 13, 30, 39), Defendants' replies (DEs 14, 36, 42), and all other relevant items on the docket, and the Court having determined that oral argument is not necessary,

IT IS, on this 8th day of September, 2022, for the reasons set forth in the accompanying Opinion,

ORDERED that the motion of Defendants Rubin, Petschow, Jr., Carbone, Darling, Dryer, Hulse, Sherrin Kessler, Loikith, Lynch, Mallon, and the Cranford

Board of Education (DE 12) is GRANTED; and it is further

ORDERED that the motion of Defendants Sciarrillo, Osborne, and Sciarillo, Cornell, Merlino, McKeever, and Osbourne, LLC (DE 21) is GRANTED; and it is further

ORDERED that the motion of Defendants Robert Chamra, Cranford Police Department, Anthony Giannico, and Nadia Jones (DE 27) is GRANTED; and it is further

ORDERED that the Complaint will be DISMISSED WITH PREJUDICE, and the Clerk of Court shall CLOSE this matter.

/s/ Evelyn Padin
Evelyn Padin, U.S.D.J

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 2:22-cv-00801-SDW-AME

[Filed February 28, 2022]

GWYNETH K. MURRAY-NOLAN,
Plaintiff,

v.

SCOTT RUBIN, personally and in his capacity as the Superintendent of Cranford Public Schools, KURT PETSCHOW, JR., personally and in his capacity as the President of the Cranford Board of Education, LISA CARBONE, personally and in her capacity as the Vice President of the Cranford Board of Education, TERRY DARLING, personally and in his capacity as a member of the Cranford Board of Education, BRETT DRYER, personally and in his capacity as a member of the Cranford Board of Education, WILLIAM HULSE, personally and in his capacity as a member of the Cranford Board of Education, NICOLE SHERRIN KESSLER, personally and in her capacity as a member of the Cranford Board of Education, MARIA LOIKITH, personally

and in her capacity as a member of the)
Cranford Board)of Education, PATRICK)
LYNCH, personally and in his capacity)
as a member of the Cranford Board of)
Education, KRISTEN MALLON,)
personally and in her capacity as a)
member of the Cranford Board of)
Education, CRANFORD BOARD)
OF EDUCATION, JENNIFER)
OSBOURNE, Esq., personally and in her)
capacity as legal counsel to the Cranford)
Board of Education and Superintendent Scott)
Rubin, SCIARRILLO CORNELL,)
MERLINO, MCKEEVER &)
OSBOURNE, LLC in its capacity as legal)
counsel to the Cranford Board of Education)
and Superintendent Scott Rubin, ANTHONY)
SCIARRILLO personally and in his capacity)
as legal counsel to the Board of Education and)
Superintendent Scott Rubin, CRANFORD)
POLICE DEPARTMENT, ANTHONY)
GIANNICO, personally and in his capacity)
as a state actor, NADIA JONES, personally)
and in her capacity as a state actor, ROBERT)
CHAMRA, personally and in his capacity as a)
state actor, DENNIS McCAFFERY, personally)
and in his capacity as a state actor, LESLIE)
RICE, JOHN DOES 1-25, and ABC)
DEFENDANTS 1-25, said names being)
fictitious, who are similarly situated and like)
minded actors and entities as the above named)
defendants,)
Defendants.)
_____)

AMENDED VERIFIED COMPLAINT AND JURY DEMAND

Gwyneth K. Murray-Nolan, the Plaintiff herein, residing at 307 Casino Avenue, Township of Cranford, County of Union, State of New Jersey, by and through her attorneys, Murray-Nolan Berutti LLC, with knowledge as to her own acts, and upon information and belief as to all others, hereby complains of the Defendants as follows:

PREAMBLE

1. This matter is brought by the Plaintiff, Gwyneth K. Murray-Nolan, against the Superintendent of the Cranford School District, the Cranford Board of Education and its law firm, the Cranford Police Department, and certain individuals including Board of Education members, attorneys, and police personnel, all arising out of the wrongful efforts to chill the Plaintiff's constitutionally protected protest against the Superintendent and Board of Education's failure and refusal to take action to protect her own children, and those of others in the School District, with respect to compulsory masking in schools. Defendants' actions were motivated by evil motive or intent, and/or involved reckless or callous indifference to the plaintiff's federal and state protected constitutional rights, and those of others.

2. Defendants acted in a manner to interfere with the Plaintiff's civil rights, then acted to chill her civil rights and to attempt to disgrace her with public comments and writings, and subsequently had her arrested without probable cause at a Cranford Board of

Education meeting for exercising her civil rights. Such discrimination was based in whole or in part on politically motivated invidiously discriminatory animus harbored by Defendants toward the Plaintiff and others related to their political speech, position, and belief that children should not be compelled to wear masks in school, which political speech, position, and beliefs are protected against private as well as official encroachment, which discriminatory animus deprived the plaintiff of the equal protection of the laws and the privileges and immunities of citizenship.

3. This lawsuit is brought pursuant to 42 USC §§ 1983, 1985, and 1986, and the New Jersey Civil Rights Act, N.J.S.A. 10:6-2c, e, and f against the defendants, all of whom acted both individually, and in their capacity as state actors who were acting under color of law, and seeks, among other relief and without limitation, to vindicate the Plaintiff's inviolable and protected rights under the United States Constitution, Amendments 1, 4, and 14, and the New Jersey Constitution, Article I, Sections 6 and 7 (together, individually, and in any combination, sometimes referred to herein as "rights as aforesaid").

4. The Plaintiff also brings this suit against defendant Lesli Rice, a private citizen who is the Cranford High School Parent Teacher Association President, who libeled the plaintiff in a social media publication arising from the facts herein which, among other things, included false statements of fact about the plaintiff in her profession, thus constituting libel *per se.*

JURISDICTION AND VENUE

5. This action is brought pursuant to 42 USC § 1983 such that jurisdiction exists pursuant to 28 USC Section 1331.

6. Supplemental jurisdiction exists pursuant to 28 USC § 1367.

7. Venue of this matter is proper pursuant to 28 USC § 1391(b)(1), as the Plaintiff resides in this District.

THE PARTIES

8. The Plaintiff is a resident of the Township of Cranford, a taxpayer in the town of Cranford, and has two minor children enrolled in the Cranford Public Schools.

9. SCOTT RUBIN is an individual and the Superintendent of Cranford Public Schools and held such position on January 24, 2022 and February 14, 2022, and his term will not expire before the end of the 2022 school year.

10. KURT PETSCHOW, JR. is an individual and the President of the Cranford Board of Education, and held such position on January 24, 2022 and February 14, 2022, and his term will not expire before the end of the 2022 school year.

11. LISA CARBONE is an individual and the Vice President of the Cranford Board of Education, and held such position on January 24, 2022 and February 14, 2022, and her term will not expire before the end of the 2022 school year.

12. TERRY DARLING is and individual a member of the Cranford Board of Education, and held such position on January 24, 2022 and February 14, 2022, and his term will not expire before the end of the 2022 school year.

13. BRETT DRYER is an individual and is a member of the Cranford Board of Education, and held such position on January 24, 2022 and February 14, 2022, and his term will not expire before the end of the 2022 school year.

14. WILLIAM HULSE is an individual and is a member of the Cranford Board of Education, and held such position on January 24, 2022 and February 14, 2022, and his term will not expire before the end of the 2022 school year.

15. NICOLE SHERRIN KESSLER is an individual and is a member of the Cranford Board of Education, and held such position on January 24, 2022 and February 14, 2022, and her term will not expire before the end of the 2022 school year.

16. MARIA LOIKITH is an individual and is a member of the Cranford Board of Education, and held such position on January 24, 2022 and February 14, 2022, and her term will not expire before the end of the 2022 school year.

17. PATRICK LYNCH is an individual and is a member of the Cranford Board of Education, and held such position on January 24, 2022 and February 14, 2022, and his term will not expire before the end of the 2022 school year.

18. KRISTEN MALLON is an individual and is a member of the Cranford Board of Education, and held such position on January 24, 2022 and February 14, 2022, and her term will not expire before the end of the 2022 school year.

19. CRANFORD BOARD OF EDUCATION is a municipal government entity, funded by the taxpayers of the Town of Cranford, with offices located at 132 Thomas Street, Cranford, New Jersey, 07016.

20. JENNIFER OSBOURNE, ESQ., is an individual and a New Jersey licensed attorney who provides legal counsel to the Cranford Board of Education and Superintendent Scott Rubin, paid for by the taxpayers of the Town of Cranford, and she held such position on January 24, 2022 and February 14, 2022, and her contract will not expire before the end of the 2022 school year. All acts of Osbourne which are alleged herein were undertaken by her individually, under the authority and with the knowledge of the BOE Defendants and Rubin, as a state actor, and on behalf of and with the authority of defendant Sciarrillo, Cornell, Merlino, Mckeever & Osbourne, LLC.

21. SCIARRILLO, CORNELL, MERLINO, MCKEEVER, AND OSBOURNE, LLC, ("SCMMO") is the law firm of Anthony Sciarrillo and Jennifer Osbourne, Esq., and is contracted legal counsel to Scott Rubin and the Cranford Board of Education, paid for by the taxpayers of the Town of Cranford, and held such position on January 24, 2022 and February 14, 2022, and its contract will not expire before the end of the 2022 school year.

22. ANTHONY SCIARRILLO is an individual and a New Jersey licensed attorney who provides legal counsel to the Cranford Board of Education and Superintendent Scott Rubin, paid for by the taxpayers of the Town of Cranford, and he held such position on January 24, 2022 and February 14, 2022, and thereafter, and his contract will not expire before the end of the 2022 school year. All acts of Siarillo which are alleged herein were undertaken by him individually, under the authority and with the knowledge of the BOE Defendants and Rubin, as a state actor, and on behalf of and with the authority of SCMMO.

23. CRANFORD POLICE DEPARTMENT is a municipal public entity, paid for by the taxpayers of the Town of Cranford.

24. ANTHONY GIANNICO is an individual and an officer of the Cranford Police Department who participated in the arrest of the Plaintiff without probable cause on February 14, 2022, and otherwise in violation of her constitutional and other rights.

25. NADIA JONES is an individual and a sergeant of the Cranford Police Department who participated in the arrest of the Plaintiff without probable cause on February 14, 2022, and otherwise in violation of her constitutional and other rights.

26. ROBERT CHAMRA, is an individual and an officer of the Cranford Police Department who participated in the arrest of the plaintiff without probable cause on February 14, 2022, and otherwise in violation of her constitutional and other rights.

27. DENNIS McCAFFERY is an individual and an employee of the Cranford Board of Education, holding the position of Principal of the Lincoln School on February 14, 2022, whose term will not expire before the end of the 2022 school year.

28. LESLI RICE is an individual who resides at 78 Centennial Avenue, Cranford, New Jersey, and is the President of the Cranford High School Parent Teacher Association.

29. JOHN DOES 1-25, said names being fictitious, are similarly situated and likeminded actors as the above-named individual defendants and/or in their official capacities.

30. ABC DEFENDANTS 1-25, said names being fictitious, are entities which are similarly situated and likeminded actors as the above-named entity defendants.

THE FACTS PERTINENT TO ALL COUNTS

31. The Cranford Board of Education held a public meeting, located at the Board of Education Board Room, Lincoln School building basement, 132 Thomas Street, Cranford, New Jersey, on January 24, 2022 (sometimes herein, the "January Meeting"), and again on February 14, 2022 (sometimes herein, the "February Meeting").

32. The Lincoln School building is a mixed use building, housing some classrooms, as well as the Board of Education offices, conference rooms, and various non-school use offices and conference rooms, and it constitutes a public forum at all such times it is

used as a space where Board of Education meetings are held, and is a "Place of Public Accommodation" as defined in N.J.S.A. 10:1-5

33. On January 24, 2022, the Plaintiff entered the Lincoln School building unmasked to attend the Board of Education meeting, in a sign of silent protest against the Cranford Schools masking policy, related Executive Orders, as well as the Board of Education ("BOE", collectively referring to all board members) and Superintendent Scott Rubin's ("Rubin") lack of action related to unmasking children in schools, particularly those with medical conditions and special needs.

34. School was not in session, and no students or teachers were in the building at the time of the BOE meeting for purposes of engaging in school activity; rather, the activity being conducted was public business which was open to all members of the public.

35. The BOE meeting start time was 7:30 pm, and Rubin, the BOE, and the BOE's attorneys, including Osbourne, were all state actors at such time.

36. Approximately 20 minutes of the BOE meeting was conducted starting at 7:30 p.m., including various reports given to the BOE virtually via Zoom or a similar platform from student liaisons at various schools across town.

37. A Cranford High School student who was present in his capacity as BOE liaison, was present in-person at the January Meeting, also made a presentation to the BOE and Rubin.

38. During the entirety of such presentations, the Plaintiff sat in a front row seat at the January 24, 2022 in silence, along with approximately 20 other parents/ citizens, listening to the student presentations. The Plaintiff, who is well-known to the Board as an licensed New Jersey attorney and an advocate for parental choice in masking children at school, caused no obstruction, interference or disruption to the BOE meeting.

39. Immediately prior to the start of the Public Comment portion of the January 24, 2022, Defendant Jennifer Osbourne (hereinafter "Osbourne"), who, without any motion from any member of the BOE, interrupted and disrupted the meeting multiple times to state that everyone in the room must be masked.

40. Thereafter, when the plaintiff silently refused to take a mask that was offered to her, Osbourne further disrupted the meeting to initiate a consultation with Rubin, after which Osbourne threatened to contact law enforcement on anyone in attendance at the meeting who remained unmasked, based on a purportedly effective Executive Order related to masking on school premises, which defendants knew or should reasonably have known was the subject of the plaintiff's silent protest at that time.

41. When the Plaintiff continued to sit silently without obstruction, interference or disruption, while exercising her constitutionally protected right to engage in silent protest, the BOE, Rubin, and Osbourne excused themselves from the public meeting space during which, upon information and belief, they met in private session in violation of N.J.S.A. 10:4-6 *et*

seq. (the New Jersey "Sunshine Law"), including, but not limited to, N.J.S.A. 10:4-7 and N.J.S.A. 10:4-12, and conspired to violate the plaintiff's civil rights and those of other attendees, from which they reconvened after approximately ten minutes.

42. During the ten minute "break" that the BOE, Rubin, and Osbourne took, almost all parents and/or citizens in attendance at the meeting removed their masks in solidarity with the Plaintiff, and made comments to the effect that "if Gwyneth is going to be arrested, they will have to arrest all of us."

43. When the BOE, Rubin, and Osborne reconvened after engaging in their conspiracy against the Plaintiff, they did so only to cancel the remainder of the meeting and leave so that public comment portion of the meeting could not take place, a violation of N.J.S.A. 10:4-12, which generally would have resulted in the Plaintiff and other parents and/or citizens in attendance protesting the BOE and Rubin's continued mask policies, quarantine policies, and close contact policies in the Cranford School District, as had been an ongoing theme of BOE meetings for months prior, and which specifically would have provided the Plaintiff an opportunity to verbally express the basis of her masking protest to the BOE in a constitutionally protected public forum. Termination of the meeting violated the Sunshine Law, as well as the protected United States and New Jersey constitutional rights of the Plaintiff and others.

44. More specifically, the Plaintiff was protesting the Board's total lack of action in failing to challenge the Governor's Executive Orders related to masking

children, which policies are documented to have significant adverse effects on the Plaintiff's children and on many other children, particularly those with special needs, such that by not wearing a mask at the January 24, 2022 BOE meeting, the Plaintiff was showing solidarity with all such children in protesting the BOE's violation of their civil rights.

45. By the BOE, Rubin, and Osbourne "walking out" and leaving the BOE meeting, after first conspiring to do so, they deprived the Plaintiff of her First Amendment right to freedom of speech, her First Amendment right to freedom of assembly, and her First Amendment right to politically protected speech.

46. On January 25, 2022, on the Cranford Public Schools FaceBook page, which is linked from the BOE website, the BOE Defendants posted a "Statement as to why no Board business was conducted at the Cranford Board of Education Meeting on January 24, 2022," a true copy of which is attached hereto, as **Exhibit A**. Such publication by the BOE Defendants was implicitly referring to the Plaintiff in a manner which was intended to, and was in fact, widely understood to refer to her, and was a clear attempt to chill the rights of the Plaintiff as aforesaid, as well as to intimidate the Plaintiff, and to damage her reputation in the community, by failing to provide a fair, accurate, and thorough account of what transpired at the January 24, 2022 BOE meeting, and by failing to include any mention of the BOE Defendants' violations of law and/or the Plaintiff's protected rights as aforesaid by their actions.

47. The Defendants' Cranford Board of Education/ Cranford Public Schools FaceBook page post of January 25, 2022 failed to note the threat of police action by the Defendants, acting under the color of law, to the Plaintiff, who was silent and without obstruction, interference or disruption, for the entirety of the first 20 minutes of the meeting.

48. The Defendants' Cranford Board of Education/Cranford Public Schools Facebook publication of January 25, 2022 also failed to state that 20 minutes of Board business was conducted while the Plaintiff was in attendance at the meeting, maskless and without incident, in silent protest, before Osbourne disrupted the meeting.

49. Upon information and belief, the BOE's failure and deliberate refusal to candidly address the full truth in its subject Facebook publication was in whole or in part because it did not want the community to know that Rubin, the BOE, Osbourne, and SCMMO were unconcerned for the alleged public health and safety with respect to its attempted and alleged mask mandate enforcement, but rather that they only sought such enforcement at the commencement of the public comment period because they or some of them wanted to suppress what they plainly understood was the Plaintiff's constitutionally protected speech and conduct, in violation of her rights as aforesaid.

50. On or about Thursday, January 27, 2022, the Plaintiff called the Cranford Police Department and asked to speak to Police Chief Ryan Greco. The Plaintiff left a message with her cell phone number and

Police Chief Greco called the Plaintiff back later that day.

51. In the telephone conversation with Chief Greco, the Plaintiff inquired as to whether or not the Cranford Police had been called to the BOE meeting on Monday, January 24, 2022. Chief Greco told the Plaintiff that the police were not called.

52. With such confirmation, Chief Greco substantiated that the BOE Defendants, Rubin, Osbourne, and SCMMO had made their threat to call the police at the January 24, 2022 BOE meeting strictly as a way to attempt to intimidate the Plaintiff and to cause her to forego her rights as aforesaid.

53. Chief Greco and the Plaintiff had a friendly and respectful conversation in which the Plaintiff advised Chief Greco of how much she loved the Cranford Police, and how helpful various officers had been on several occasions, in particular helping the Plaintiff's (now deceased) brain damaged father, who the Plaintiff cared for while he resided on Heming Avenue in Cranford. The Plaintiff also essentially noted that she was refusing to wear a mask at the BOE meeting as a protest related to the compulsory masking of children in school, and was concerned that the BOE made a threat to call the police, and sought confirmation of what the police would do if actually called to a BOE meeting to arrest a parent. The implicit insinuation by Chief Greco, if not his actual statement during the conversation with the Plaintiff, was that no parent would be arrested for refusing to wear a mask at a BOE meeting.

54. On February 10, 2022, under the banner of "Office of the Superintendent", defendant Rubin published an email blast to all Cranford Parents and Guardians, titled "Statement on 2.14.22 Board Meeting," a true copy of which is attached hereto as **Exhibit B**, which outlined an anticipatory plan to again violate the Plaintiff's rights as aforesaid, as well as all those of parents, citizens, and taxpayers generally who intended to be in attendance at the February 14, 2022 BOE Meeting.

55. The February 10, 2022 email and attachment with the Board Policy from Rubin threatened that "law enforcement officers" would be called for the "removal of' any person when that person "prevents or disrupts a meeting with an act that obstructs or interferes with a meeting", in a clear attempt to chill the Plaintiff's rights as aforesaid, and those of all parents, citizens, and taxpayers, who intended to be in attendance at the February Meeting, and all BOE meetings thereafter.

56. The February 10, 2022 email from Rubin was also implicitly intended to draw attention and cause harm to the Plaintiff and her reputation, stating that only those wearing a mask were "great role models for our children and other communities," clearly meaning that the Plaintiff's exercise of her civil rights at the January 24, 2022 BOE was not acting as a "great role model for our children."

57. The Plaintiff was clearly identifiable as the target of the email and as such, was immediately contacted by multiple people in the Cranford community who actually identified the Plaintiff as the obvious target of the Rubin email.

58. It is well documented public knowledge that the Plaintiff has been an advocate of unmasking children in schools since her two minor children suffered physical, mental, emotional and/or educational mask injuries since they started wearing masks in school in or about September 2020.

59. The Plaintiff has testified about the mask injuries to her children before members of the New Jersey State Assembly and the New Jersey Senate, and has also made countless social media posts in community forums and websites, known to Defendants or some of them, related to the harm to her own children, and to children generally, from masking in school. The Plaintiff has spoken at Cranford BOE meetings on at least six occasions about the policies of the Cranford BOE and Rubin in keeping children forcibly masked in school, including those with disabilities and medical injuries, and failing to advocate for them. It is well known to Rubin, the BOE Defendants, Osbourne, Sciarillo, and SMMCO that the Plaintiff is a licensed New Jersey attorney and as such that she has attempted to educate the BOE on the many differenced between law and policy, mandates and the various issues related to advocating for children during these tremulous times.

60. In addition, in September 2021, the Plaintiff filed a Harassment, Intimidation and Bullying Complaint ("HIB") against Rubin, a Cranford school principal, and a Cranford school nurse, after her two minor children were the subject of an alleged retaliatory incident on the first day of school related to the masks that they were wearing. Thereafter, the HIB

Complaint, which is confidential per law, became a source of public gossip and knowledge, including numerous social media posts by third parties who were asserting facts which could only have been known by those with access to the confidential HIB filing, such that the BOE Defendants, one, some or all of them, violated the privacy rights of the Plaintiff and her minor children, which was guaranteed by law.

61. Further, it is also well known to Rubin and to the BOE that the Plaintiff has a medical background with lung issues, making masking difficult, uncomfortable to breath, and medically compromising, arising from a near death incident in the spring of 2019, as a result of a surgical procedure, which led to 12 days in the ICU and 10 weeks out of work due to sepsis, double pneumonia, and organ failure due to Acute Respiratory Distress Syndrome.

62. Rubin's February 10, 2022 email also noted that the "Board has a process for those who qualify for a mask exception". See **Exhibit B.** Under the Board of Education's "process for a mask exemption, members of the public at large, seeking to attend an open public BOE meeting," require, "written documentation from a medical professional must be provided to Robert J. Carfagno, Board Secretary, prior to the scheduled Board meeting and no later than the Monday at 12:00 P.M. For example, for the February 14, 2022 Board meeting, written documentation from a medical professional must be provided by Monday, February 14, 2022 by 12:00 P.M. Any individual in attendance at a Board meeting who is not wearing a face mask or who does not meet one of the exceptions outlined in the

executive orders will be asked to wear a face mask or leave the meeting. The Board reserves the right *to interpret the exceptions* listed in the executive orders in order to maximize protections." (emphasis added). See **Exhibit B.**

63. The Plaintiff maintains that the BOE has no legal right to make any determination as to her medical status, nor any legal right to review the Plaintiff's medical records, and believes that the BOE's reservation to "interpret" the exceptions to their own personal agenda and standards would lead to a denial of any mask exemption by the BOE regardless. Such BOE policy amounts to practicing medicine without a license, is a violation of constitutionally and statutorily protected medical privacy, and adds an illegal condition to all citizens' rights to attend public meetings, in violation, without limitation, of the Sunshine Law.

64. The actions of the Defendants are clearly retaliatory in nature for the Plaintiff's filing of the HIB, and outspoken and Constitutionally protected position in multiple public forums and in BOE meetings, about unmasking children in schools, and in regard to the lack of any position by the Cranford BOE and Rubin to help the children in Cranford schools related to masking damages, injuries, and deficits, and were designed to chill her rights to engage in constitutionally protected speech.

65. In an effort to mitigate the reputational damages suffered by the BOE Defendants' January 25, 2022 post and February 10, 2022 email, the Plaintiff posted to the Cranford NJ Area-Families FaceBook page about her two children and their experience with

masking in schools, a true copy of which is attached hereto as **Exhibit C.**

66. After posting to the Cranford NJ Area Families Facebook page, a comment to the post was published by defendant Lesli Rice (hereinafter "Rice"), a true copy of which is attached hereto as **Exhibit D.**

67. The written comment published by Rice actually or implicitly concerned and/or identified the Plaintiff, and falsely stated facts about the Plaintiff, including falsehoods about her professional history, which was damaging to the Plaintiff in her profession and is libelous *per se.*

68. In order to protect herself from further damages, the Plaintiff filed an Order to Show Cause, Verified Complaint, supporting Declarations, and a Brief in this matter on February 14, 2022, and was served via email on all original Defendants in this matter at 6:32 pm, and to a corrected email address for one of the Defendants at 6:36 pm, approximately one hour prior to the start of the February 14, 2022 BOE meeting. A true copy of such email service is attached hereto as **Exhibit E.**

69. The Plaintiff arrived unmasked at approximately 7:25 p.m. on February 14, 2022 at the Lincoln School building to attend the scheduled BOE meeting, and entered the building at 132 Thomas Street, Cranford. Defendant Dennis Mccaffery (hereinafter "McCaffery") was seated at a desk at the 132 Thomas Street entrance to the building. Mccaffery advised the Plaintiff that he was "told" to call the police on the Plaintiff if she entered the building unmasked.

70. McCaffrey knew the Plaintiff, having coached her minor son in baseball camp during the summer of 2021, at which time he had a friendly relationship with the Plaintiff. For the same reasons, the Plaintiff also knew immediately who McCaffrey was upon entry to the Lincoln School building, even though McCaffrey acted as if he did not recognize the Plaintiff and refused to provide his name. The entire conversation between the Plaintiff and McCaffrey is on video recording, which video recording is incorporated herein by reference.

71. The Plaintiff attempted to explain to McCaffery that she had already filed a civil suit to protect her constitutional rights and that not wearing a mask was politically protected free speech; however, the Plaintiff was interrupted by McCaffery, who advised the Plaintiff that he would call the police because "he was told to do so," as she attempted to speak. The Plaintiff continued to walk into the building, asking McCaffrey to do "the right thing".

72. McCaffrey's assertion that he would do as he was "told" by calling the police confirms that Defendants, or some of them, had conspired prior to the February 12, 2022 BOE meeting to violate the Plaintiff's civil rights as aforesaid, since she was a known target of such purported instruction to McCafferty.

73. Upon information and belief, Defendant McCaffery then called the Cranford Police Department in order to have the Plaintiff arrested, in violation of the Plaintiff's civil and constitutional rights.

74. Not wearing a mask is constitutionally protected conduct under the circumstances, particularly since it was openly political in nature and the Plaintiff openly stated that by not wearing her mask, she was engaging in a constitutionally protected protest which already was the subject of a filed lawsuit which had been served on Rubin, the BOE, defendant Anthony Sciarrillo, and SCMMO, and which may also have been known to CPD and its officers.

75. The BOE was in "executive session" behind closed doors when the Plaintiff arrived at the BOE conference room, located down the hall from the entrance to the building. The Plaintiff waited outside the door with several other parents and citizens to be permitted entry into the BOE conference room.

76. At approximately 7:35 p.m., the conference room doors opened and several BOE members exited the BOE conference room. When BOE Secretary Robert F. Carfago exited the BOE conference room, the Plaintiff handed him a courtesy copy of the filed Order to Show Cause, Complaint, Declarations and Brief for the within case, prior to the start of the meeting to ensure he had a copy of the same. The Plaintiff thereafter entered the BOE meeting room and sat maskless in the front row, in keeping with her constitutional and civil rights as aforesaid.

77. The BOE meeting had not yet started, and not all BOE members were in their seats. A few were in the hallway, including defendant Sciarrillo. Upon information and belief, Sciarrillo met Defendants Cranford Police Anthony Giannico, Nadia Jones, and Robert Chamra in the hallway outside the BOE

conference room to alert them that he sought to have the Plaintiff arrested if she did not place a mask on her face, to which the CPD and the officers agreed, all in violation of the Plaintiff's rights as aforesaid.

78. As the Plaintiff sat in silence in her seat in the BOE conference room, causing no disruption, obstruction, or interference, and prior to the start of the meeting, Sciarrillo sat in the empty seat to the Plaintiff's right. Sciarrillo instructed the Plaintiff to put on a mask, in a threatening and intimidating manner.

79. The Plaintiff handed Sciarrillo a courtesy copy of the filed Order to Show Cause, Complaint, Declarations and Brief for the within case in order to ensure that he could have the copy prior to the start of the meeting. As the Plaintiff handed Sciarrillo the paperwork, she said, "Tony, I have this for you". Sciarrillo took the papers and flung them away, and then said to the Plaintiff in a threatening and menacing manner, "You call me 'Mr. Sciarrillo'!" Sciarrillo then threatened the Plaintiff again with a command to "Put on a mask now!" The Plaintiff calmly advised Sciarrillo that he was violating her civil rights as aforesaid, and that not wearing a mask was politically protected speech under the First Amendment of the United States Constitution, and Article One of the New Jersey Constitution.

80. Prior to Sciarrillo standing up, he held up three fingers in an "ok" sign towards the back of the room, in a clear gesture towards the entrance to the BOE conference room where the three Cranford Police Department officers were watching, unknown to the

Plaintiff. At that point, defendants Giannico, Jones, and Charma (collectively the two officers and one Sergeant will be referenced herein as "CPD"), all state actors, entered the room.

81. After a brief discussion with the CPD in the BOE conference room, and before the meeting even commenced, the Plaintiff was asked by the CPD to walk outside to the hallway. Prior to the Plaintiff being escorted out of the BOE conference room, Defendant Jones concurred with the Plaintiff that she had a constitutional right to be in the BOE conference room without a mask, yet advised the Plaintiff that she must leave because the Defendants did not weather there. In the hallway, outside the BOE conference room, Defendant Jones, was further informed by the Plaintiff that she was exercising constitutionally protected rights, yet thereafter arrested the Plaintiff for trespassing, pursuant to N.J.S.A. 2C:18-3B, a disorderly person's offense, without probable cause. The Plaintiff was handcuffed, walked outside, and placed in the back of a police car, all in violation of her rights as aforesaid.

82. Prior to arresting the Plaintiff, Defendant Jones was again informed that the Plaintiff was making a constitutionally protected political statement by not wearing a mask, but advised the Plaintiff that it was a "rule of the building" that the Plaintiff must wear a mask and that "they don't want you here without a mask." The CPD Defendants thus arrested the Plaintiff in violation of what they admitted were her constitutional rights in order to enforce a purported "rule of the building".

83. The CPD officers all swore or affirmed an oath prior to becoming officers and, in the case of Defendant Jones, a Sergeant, of the police force which includes the following, which they admittedly violated by arresting the Plaintiff: "I . . . do solemnly swear (or affirm) that I will faithfully, impartially and justly perform all the duties of the office of __ to the best of my ability, and that I will support the Constitution of the United States and the Constitution of the State of New Jersey, and that I will bear true faith and allegiance to the same and to the Governments established in the United States and in this State, under the authority of the people."

84. There are at least two video recordings of most or all of the entire encounter which leading to the Plaintiff's arrest, from the time that Sciarrillo is sitting next to the Plaintiff all the way through to the time that Plaintiff is put into the CPD vehicle. The videos includes the verbal exchange with the CPD and the Plaintiff, demonstrating the entire arrest. Such videos are incorporated herein by reference, and are made a part hereof.

85. Sciarillo's actions plainly had been pre-authorized in conspiracy with the BOE, McCafferty, and Rubin, or some of them, none of whom has dissented from such actions or the subsequent arrest of the Plaintiff.

86. Upon information and belief, Sciarillo had expressed his legal opinion and advice to the BOE, McCafferty, and Rubin that the Plaintiff should be arrested if she did not comply with his command to wear a mask, which was a pre-planned act approved by

the BOE, McCafferty, and/or Rubin, and/or CPD, none of whom has dissented from such conduct, all in violation of the Plaintiff's rights as aforesaid.

87. At the time Sciarillo made any such recommendation or otherwise acted of his own volition, and/or pursuant to BOE and/or Rubin's instructions, he was obligated to withdraw himself and SCMMO as counsel to Rubin and the BOE, since his law partner, Osbourne, and SCMMO, both had been served by the Plaintiff with her lawsuit papers, thus causing Sciarillo and SCMMO to be intentionally, knowingly, recklessly and/or negligently acting and advising the BOE Defendants, McCafferty, and/or Rubin under a conflict of interest, in violation of the New Jersey Rules of Professional Conduct.

88. Rather than flinging the papers across the room once they were handed to him by the Plaintiff in the BOE conference room, Sciarillo should have immediately withdrawn as counsel to Rubin the BOE Defendants, and/or McCafferty, since his personal and professional interests potentially and/or actually conflicted with those of his clients.

89. By his conflicted actions, and his improper advice to have the Plaintiff arrested for exercising her constitutionally protected rights as aforesaid, "Mr. Sciarillo" placed his interests, and those of Osbourne and SCMMO, ahead of his clients' interests, thereby causing them, and the taxpayers of Cranford, damage.

90. Following her arrest, the Plaintiff was taken to Cranford Police Dept headquarters at 8 Springfield Street, Cranford, for processing, which lasted for

approximately one hour and ten minutes. During the totality of processing, the Plaintiff was handcuffed to a metal bench in a metal cage in the processing room, causing bruising to both wrists of the Plaintiff from being handcuffed, all in violation of her rights as aforesaid.

91. At the time of the Plaintiff's arrest, the CPD was made aware at the time of the Plaintiff's arrest, and thereafter, that the Plaintiff had a medical procedure taking place the following morning, and was specifically advised that the Plaintiff had to drink the Gatorade on her person prior to her arrest as part of her preparation for such procedure. No one from the CPD asked the Plaintiff about the medical procedure or asked about accommodating the Plaintiff for such medical procedure at the time of the Plaintiff's arrest, or anytime thereafter, during which time the Plaintiff was in great discomfort and at risk of dehydration, while also being deprived of the medically necessary ability to prepare herself for her medical procedure, in violation of her rights as aforesaid.

92. There exist numerous photographs of the Plaintiff's bruised wrists from being handcuffed during her arrest and processing which were taken right after release from CPD headquarters through several days thereafter, which are incorporated herein by reference and are made a part hereof.

93. The acts of Defendants as aforesaid all caused the Plaintiff embarrassment, humiliation, reasonable fear of physical violence, anxiety, nightmares, emotional distress, and/or damage to her personal and professional reputation, as had been

specifically intended by the Defendants, or some of them, all in violation of her rights as aforesaid.

94. As of the January 24, 2022 BOE meeting, a multitude of jurisdictions in New Jersey had mask free and mask choice Board of Education meetings, including on school property since they reasonably recognized and/or understood that there was no Executive Order in place pertaining specifically to masking at public Board of Education meetings, thus evidencing the unreasonable and/or illegal conduct of Defendants herein, in violation of the Plaintiff's right as aforesaid.

95. Similarly, any such restriction requiring the Plaintiff to wear a mask at a Board meeting was irrational and/or was not based on peer reviewed scientific evidence, was merely enforcing a symbolic "protection", as opposed to constituting a compelling governmental interest that was narrowly tailored to permit the Plaintiff to engage in her constitutionally protected political protest.

96. It is clear that the arrest of the Plaintiff, as well as the prior Osbourne, SMMCO, Rubin/BOE Defendants "'walk out" of the January 24, 2022 BOE meeting, caused the Plaintiff to suffer reputational damage in the community, as can be seen from numerous posts on Cranford community FaceBook pages. A true copy of examples of such posts after the Plaintiff's arrest are attached as **Exhibit F.**

97. Following the Plaintiff's arrest, many comments were published on the Cranford Police Department Facebook page which criticized the CPD's

actions in arresting the Plaintiff. Contrarily, only one comment was made in support of the CPD's actions, which was published by Defendant Carbone, who wrote, "I could go on and on about this team but for now I'll just say thank you for all you do! You are part of the fabric of our school community." A true copy of the posts to the Cranford Police Department webpage of February 15-16, 2022, including the post of Defendant Carbone, is attached hereto as **Exhibit G.**

COUNT ONE - VIOLATION OF 42 U.S.C. § 1983

98. The Plaintiff repeats and reasserts each and every allegation above as if fully set forth herein at length.

99. At all pertinent times, all Defendants were individuals and/or state actors who were acting under color of law, and have deprived and/or damaged the Plaintiff by violating her rights, privileges, and/or immunities as aforesaid, which are protected by the United States and New Jersey Constitutions.

100. By exiting the January 24, 2022 Meeting, threatening to call the police on the Plaintiff, and terminating the meeting prior to public comment, the BOE Defendants, Osbourne, SMMCO, and Rubin intentionally, recklessly, and/or negligently interfered with and have deprived and/or damaged the Plaintiff by violating her rights, privileges, and/or immunities as aforesaid, which are protected by the United States and New Jersey Constitutions.

101. By disrupting and then exiting the January Meeting, threatening to call the police on the Plaintiff, and recommended termination of meeting prior to

public comment, the Defendants Osbourne and SCMMO intentionally, recklessly, and/or negligently interfered with, and have deprived and/or damaged the Plaintiff by violating her rights, privileges, and/or immunities as aforesaid, which are protected by the United States and New Jersey Constitutions.

102. By publishing social media comments and emailing a letter an policy which were implicitly or actually directed at the Plaintiff following the January Meeting, but before the February Meeting, as set forth above, the BOE Defendants and/or Rubin, intentionally, recklessly, and/or negligently interfered with and have deprived and/or damaged the Plaintiff by violating her rights, privileges, and/or immunities as aforesaid, which are protected by the United States and New Jersey Constitutions.

103. By attempting to bar the Plaintiff from entering the building for the February 14, 2022 BOE meeting and conspiring with some or all other Defendants, Defendant McCaffery intentionally, recklessly, and/or negligently interfered with and have deprived and/or damaged the Plaintiff by violating her rights, privileges, and/or immunities as aforesaid, which are protected by the United States and New Jersey Constitutions.

104. By conspiring to have the Plaintiff arrested and then actually having the Plaintiff arrested prior to the commencement of the February Meeting, the BOE and Rubin intentionally, recklessly, and/or negligently interfered with and have deprived and/or damaged the Plaintiff by violating her rights, privileges, and/or

immunities as aforesaid, which are protected by the United States and New Jersey Constitutions.

105. By conspiring to have the Plaintiff arrested and then actually having the Plaintiff arrested prior to the commencement of the February Meeting, Sciarrillo and SCMMO intentionally, recklessly, and/or negligently interfered with and have deprived and/or damaged the Plaintiff by violating her rights, privileges, and/or immunities as aforesaid, which are protected by the United States and New Jersey Constitutions.

106. By conspiring to have the Plaintiff arrested and then actually having the Plaintiff arrested prior to the commencement of the February Meeting, the Cranford Police Department, Giannico, Jones, and Chamra intentionally, recklessly, and/or negligently interfered with and have deprived and/or damaged the Plaintiff by violating her rights, privileges, and/or immunities as aforesaid, which are protected by the United States and New Jersey Constitutions.

107. By their actions, the Plaintiff has suffered physical harm, humiliation, embarrassment, loss of personal and professional reputation, and emotional distress, and reasonable fear of ongoing retaliation and harassment of herself, her children, and other similarly situated residents by some or all defendants.

WHEREFORE, the Plaintiff demands judgment against all Defendants other than Rice as follows:

A. Compensatory damages;

B. Punitive damages;

C. Awarding permanent injunctive relief including, but not limited to:

(i) enjoining and restraining the Defendants from threatening the arrest of any parent or citizen attending an in-person Board of Education meeting, or otherwise arresting any such person including, but not limited to, the Plaintiff, who is exercising his or her United States or New Jersey civil rights, as aforesaid, while not being disruptive or disorderly;

(ii) enjoining and restraining the Defendants from any and all attempts of deprivation of freedom of speech of any parent, taxpayer, or citizen in attendance at a Board of Education meeting by further cancellation or "walk out" of any scheduled Board of Education meeting;

(iii) enjoining and restraining the Defendants from all attempts at restriction of freedom of speech at any Board of Education meeting, which conduct is not disorderly or disruptive, absent engaging in narrowly tailored restrictions for issues which involve substantial public interest;

(iv) enjoining and restraining the Defendants from further threats, intimidation, or coercion against the Plaintiff and any other parents/citizens, via email, social media posts, or by any other means, which may have the effect of chilling the First Amendment rights of the Plaintiff and other parents/citizens;

(v) enjoining and restraining the Defendants from taking further retaliatory action against the

Plaintiff and/or her children through the dates of their graduation from the District of Cranford school system;

D. Awarding the Plaintiff attorneys' fees and costs of suit;

E. Awarding interest as allowed by law;

F. Awarding such other and further relief as this Court deems equitable and just.

COUNT TWO - NEW JERSEY CIVIL RIGHTS ACT, N.J.S.A. 10:6-2c

108. The Plaintiff repeats and reasserts each and every allegation above as if fully set forth herein at length.

109. By their acts as aforesaid, all Defendants other than Rice intentionally, recklessly, and/or negligently interfered with and/or deprived the Plaintiff of her civil rights as aforesaid, which are protected by the United States and New Jersey Constitutions and New Jersey statute including, but not limited to, N.J.S.A. 10:4-6.

WHEREFORE, the Plaintiff demands judgment against all Defendants other than Rice as follows:

A. Compensatory damages;

B. Punitive damages;

C. Awarding permanent injunctive relief including, but not limited to:

(i) enjoining and restraining the Defendants from threatening the arrest of any parent or citizen attending an in-person Board of Education meeting, or otherwise arresting any such person including, but not limited to, the Plaintiff, who is exercising his or her United States or New Jersey civil rights, as aforesaid, while not being disruptive or disorderly;

(ii) enjoining and restraining the Defendants from any and all attempts of deprivation of freedom of speech of any parent, taxpayer, or citizen in attendance at a Board of Education meeting by further cancellation or "walk out" of any scheduled Board of Education meeting;

(iii) enjoining and restraining the Defendants from all attempts at restriction of freedom of speech at any Board of Education meeting, which conduct is not disorderly or disruptive, absent engaging in narrowly tailored restrictions for issues which involve substantial public interest;

(iv) enjoining and restraining the Defendants from further threats, intimidation, or coercion against the Plaintiff and any other parents/citizens, via email, social media posts, or by any other means, which may have the effect of chilling the First Amendment rights of the Plaintiff and other parents/citizens;

(v) enjoining and restraining the Defendants from taking further retaliatory action against the Plaintiff and/or her children through the dates of

their graduation from the District of Cranford school system;

(vi) enjoining and restraining the Defendants from violating N.J.S.A. 10:4-6 *et seq*.

D. Awarding the Plaintiff attorneys' fees and costs of suit;

E. Awarding interest as allowed by law;

F. Awarding such other and further relief as this Court deems equitable and just.

COUNT THREE - CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS, 42 U.S.C. § 1985

110. The Plaintiff repeats and reasserts each and every allegation above as if fully set forth herein at length.

111 By their actions as aforesaid, the Defendants other than Rice conspired at various times and in various combination to deprive the Plaintiff of the equal protection and/or the privileges and immunities of the laws by singling her out for exercising her rights as aforesaid, which are protected by the United States and New Jersey Constitutions, and which conspiracies were motivated by invidious discriminatory animus to the Plaintiff's political speech and beliefs related to compulsory masking of children in school.

112. By their actions as aforesaid, the Defendants other than Rice conspired at various times and in various combinations to injure the Plaintiff in her person and/or property, and deprived the Plaintiff of

her rights and privileges as a citizen of the United States, and which conspiracies were motivated by invidious discriminatory animus to the Plaintiff's political speech and beliefs related to compulsory masking of children in school.

113. By their actions, the Plaintiff has suffered physical harm, humiliation, embarrassment, loss of personal and professional reputation, and emotional distress, and reasonable fear of ongoing retaliation and harassment of herself, her children, and other similarly situated residents by some or all defendants.

WHEREFORE, the Plaintiff demands judgment against all defendants other than Rice as follows:

A. Compensatory damages;

B. Punitive damages;

C. Awarding permanent injunctive relief including, but not limited to:

(i) enjoining and restraining the Defendants from threatening the arrest of any parent or citizen attending an in-person Board of Education meeting, or otherwise arresting any such person including, but not limited to, the Plaintiff, who is exercising his or her United States or New Jersey civil rights, as aforesaid, while not being disruptive or disorderly;

(ii) enjoining and restraining the Defendants from any and all attempts of deprivation of freedom of speech of any parent, taxpayer, or citizen in attendance at a Board of Education meeting by

further cancellation or "walk out" of any scheduled Board of Education meeting;

(iii) enjoining and restraining the Defendants from all attempts at restriction of freedom of speech at any Board of Education meeting, which conduct is not disorderly or disruptive, absent engaging in narrowly tailored restrictions for issues which involve substantial public interest;

(iv) enjoining and restraining the Defendants from further threats, intimidation, or coercion against the Plaintiff and any other parents/citizens, via email, social media posts, or by any other means, which may have the effect of chilling the First Amendment rights of the Plaintiff and other parents/citizens;

(v) enjoining and restraining the Defendants from taking further retaliatory action against the Plaintiff and/or her children through the dates of their graduation from the District of Cranford school system;

(vi) enjoining and restraining the Defendants from violating N.J.S.A. 10:4-6 *et seq*.

D. Awarding the Plaintiff attorneys' fees and costs of suit;

E. Awarding interest as allowed by law;

F. Awarding such other and further relief as this Court deems equitable and just.

COUNT FOUR - ACTION FOR NEGLECT TO PREVENT 42 U.S.C. § 1986

114. The Plaintiff repeats and reasserts each and every allegation above as if fully set forth herein at length.

115. Each defendant, other than Rice, knew of the conspiracies against the Plaintiff and had the power to prevent or aid in preventing the commission of one or more such conspiracies, but neglected or refused to prevent such conspiracies to violate the Plaintiff's civil rights at one or more times, which violations thereafter occurred, and which conspiracies were motivated by invidious discriminatory animus to the Plaintiff's political speech and beliefs related to compulsory masking of children in school.

116. By each of their actions in neglecting to prevent such conspiracy or conspiracies, the Plaintiff has suffered physical harm, humiliation, embarrassment, loss of personal and professional reputation, and emotional distress, and reasonable fear of ongoing retaliation and harassment of herself, her children, and other similarly situated residents by some or all defendants.

WHEREFORE, the Plaintiff demands judgment against all Defendants other than Rice as follows:

A. Compensatory damages;

B. Punitive damages;

D. Awarding the Plaintiff attorneys' fees and costs of suit;

E. Awarding interest as allowed by law;

F. Awarding such other and further relief as this Court deems equitable and just.

COUNT FIVE–DEFAMATION *PER SE* AS TO RICE

117. The Plaintiff repeats and reasserts each and every allegation above as if fully set forth herein at length.

118. Defendant Lesli Rice, (hereinafter "Rice") is, upon information and belief, the President of the Cranford High School Parent Teacher Association. As such, being in this trusted position, Rice has significant influence, actual or perceived, over the Cranford community at large and, in holding such position, is aware of such actual or perceived influence.

119. In response to a widely read post on the Cranford Families Facebook page as to the emotional, physical, psychological, and educational damages suffered by the Plaintiff's children by mask wearing in school, Rice published a false comment which actually did and/or clearly was capable of identifying the Plaintiff as the subject of such false comments, and a portion of which false comments directly pertained to the Plaintiff's professional conduct such that it was libelous *per se*.

120. A true and complete copy of such libelous publication is attached hereto as **Exhibit D**, and is incorporated herein by reference.

121. The subject publication by Rice is inherently inflammatory and defamatory on its face.

122. In making such publication while in a position of public influence, Rice's false and libelous defamation of the Plaintiff was grossly irresponsible and reckless.

123. The remainder of the statements made by Rice are also false and defamatory.

124. The Plaintiff has suffered reputational and/or other damages as a result of Rice's libelous publication.

WHEREFORE, the Plaintiff demands judgment against all defendants other than Rice as follows:

A. Compensatory damages;

B. Punitive damages;

D. Awarding the Plaintiff attorneys' fees and costs of suit;

E. Awarding interest as allowed by law;

F. Awarding such other and further relief as this Court deems equitable and just.

COUNT SIX–FALSE LIGHT

125. The Plaintiff repeats and reasserts each and every allegation above as if fully set forth herein at length.

126. Defendant Rice publicly made false statements about the Plaintiff which were widely read by members of the public.

127. Rice's false statements as aforesaid were offensive and false, and have caused damage to the Plaintiff's personal and professional reputation.

WHEREFORE, the Plaintiff demands judgment against all defendants other than Rice as follows:

A. Compensatory damages;

B. Punitive damages;

D. Awarding the Plaintiff attorneys' fees and costs of suit;

E. Awarding interest as allowed by law;

F. Awarding such other and further relief as this Court deems equitable and just.

JURY DEMAND

The plaintiff demands trial by jury of twelve persons as to all counts so triable.

MURRAY-NOLAN BERUTTI LLC

By: /s/ Ronald A. Berutti
Ronald A. Berutti

Dated: February 28, 2022

VERIFICATION

Gwyneth K. Murray-Nolan, of full age, declares the following under penalties of perjury:

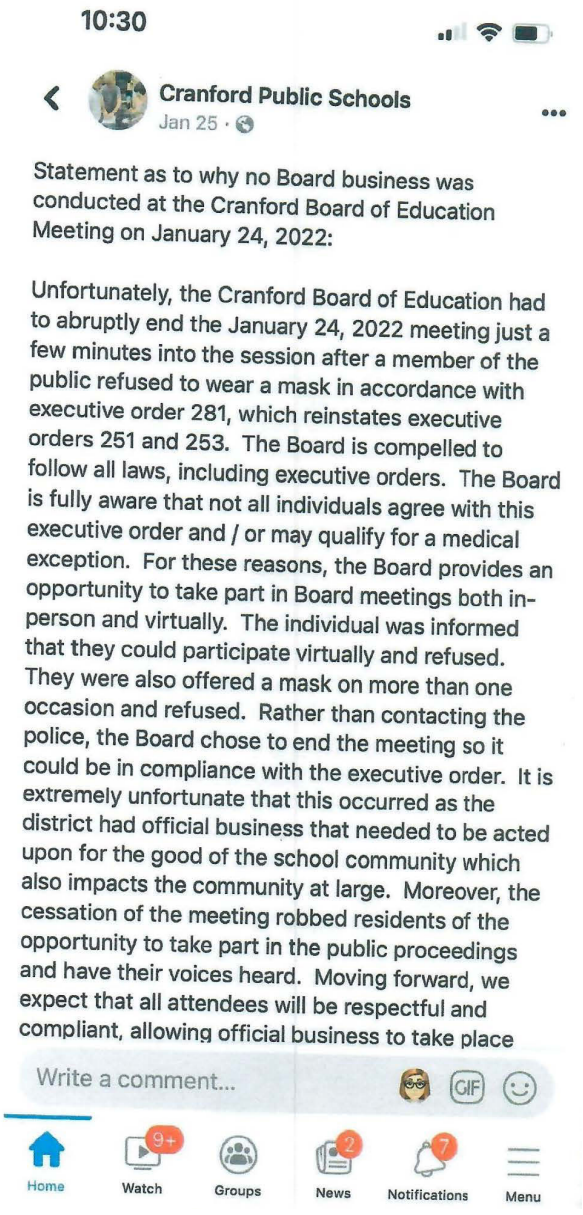
1. I am the plaintiff herein and am fully familiar with the facts and circumstances herein;

2. 43I have reviewed the Complaint and know its contents to be true, except as to the matters stated on information and belief which I believe to be true.

/s/ Gwyneth K. Murray-Nolan
Gwyneth K. Murray-Nolan

Dated: February 28, 2022

EXHIBIT A


10:30
Cranford Public Schools
Jan 25 ·
Statement as to why no Board business was conducted at the Cranford Board of Education Meeting on January 24, 2022:
Unfortunately, the Cranford Board of Education had to abruptly end the January 24, 2022 meeting just a few minutes into the session after a member of the public refused to wear a mask in accordance with executive order 281, which reinstates executive orders 251 and 253. The Board is compelled to follow all laws, including executive orders. The Board is fully aware that not all individuals agree with this executive order and / or may qualify for a medical exception. For these reasons, the Board provides an opportunity to take part in Board meetings both in-person and virtually. The individual was informed that they could participate virtually and refused. They were also offered a mask on more than one occasion and refused. Rather than contacting the police, the Board chose to end the meeting so it could be in compliance with the executive order. It is extremely unfortunate that this occurred as the district had official business that needed to be acted upon for the good of the school community which also impacts the community at large. Moreover, the cessation of the meeting robbed residents of the opportunity to take part in the public proceedings and have their voices heard. Moving forward, we expect that all attendees will be respectful and compliant, allowing official business to take place
Write a comment...
GIF
Home
Watch
9+
Groups
News
2
Notifications
7
Menu

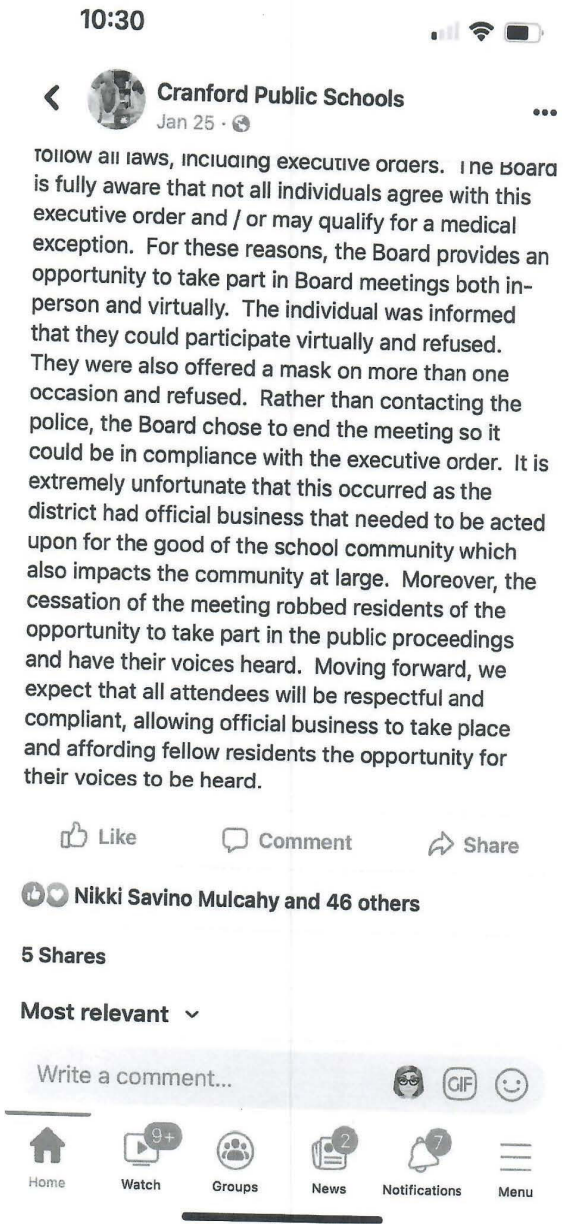
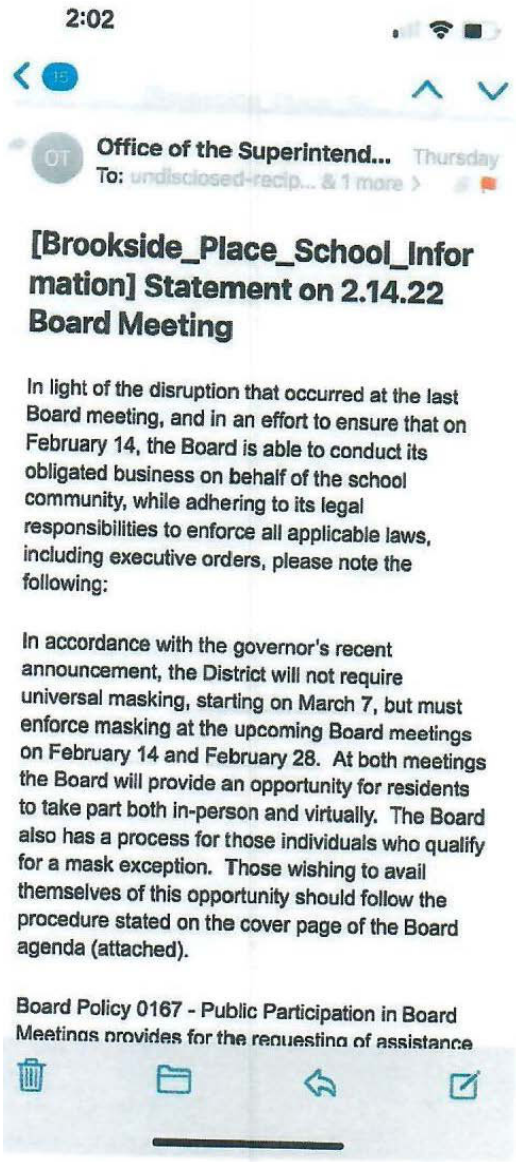

10:30
Cranford Public Schools
Jan 25 ·
follow all laws, including executive orders. The Board is fully aware that not all individuals agree with this executive order and / or may qualify for a medical exception. For these reasons, the Board provides an opportunity to take part in Board meetings both in-person and virtually. The individual was informed that they could participate virtually and refused. They were also offered a mask on more than one occasion and refused. Rather than contacting the police, the Board chose to end the meeting so it could be in compliance with the executive order. It is extremely unfortunate that this occurred as the district had official business that needed to be acted upon for the good of the school community which also impacts the community at large. Moreover, the cessation of the meeting robbed residents of the opportunity to take part in the public proceedings and have their voices heard. Moving forward, we expect that all attendees will be respectful and compliant, allowing official business to take place and affording fellow residents the opportunity for their voices to be heard.
Like
Comment
Share
Nikki Savino Mulcahy and 46 others
5 Shares
Most relevant
Write a comment...
GIF
Home
Watch
9+
Groups
News
2
Notifications
7
Menu

EXHIBIT B



2:02

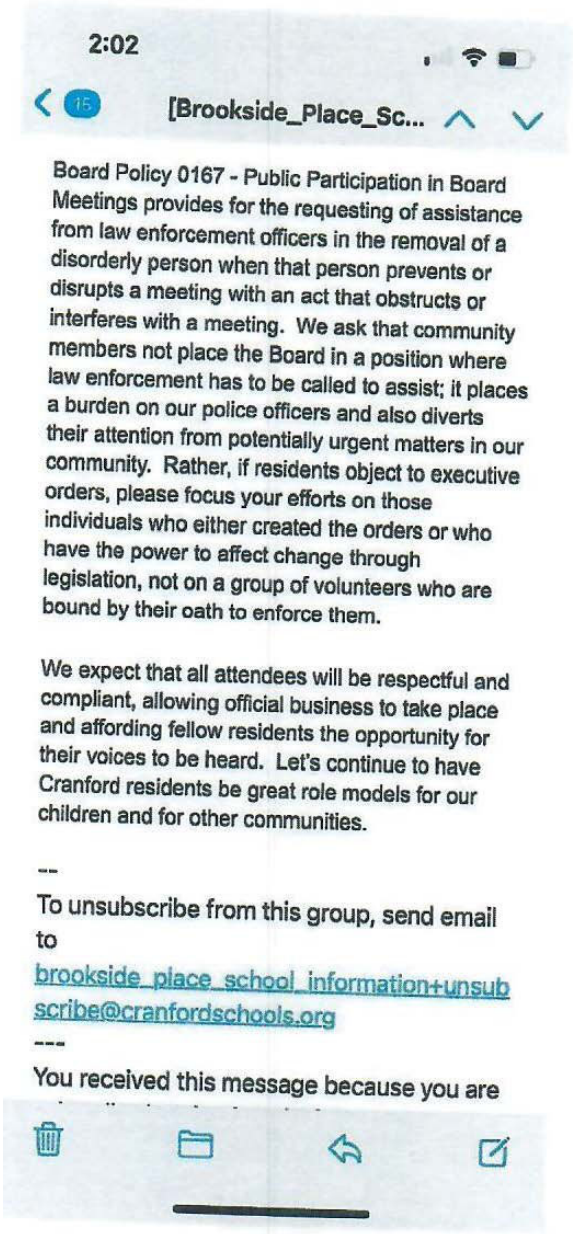
Office of the Superintend... Thursday
To: undisclosed-recip... & 1 more

[Brookside_Place_School_Information] Statement on 2.14.22 Board Meeting

In light of the disruption that occurred at the last Board meeting, and in an effort to ensure that on February 14, the Board is able to conduct its obligated business on behalf of the school community, while adhering to its legal responsibilities to enforce all applicable laws, including executive orders, please note the following:

In accordance with the governor's recent announcement, the District will not require universal masking, starting on March 7, but must enforce masking at the upcoming Board meetings on February 14 and February 28. At both meetings the Board will provide an opportunity for residents to take part both in-person and virtually. The Board also has a process for those individuals who qualify for a mask exception. Those wishing to avail themselves of this opportunity should follow the procedure stated on the cover page of the Board agenda (attached).

Board Policy 0167 - Public Participation in Board Meetings provides for the requesting of assistance


2:02
15
[Brookside_Place_Sc...
Board Policy 0167 - Public Participation in Board Meetings provides for the requesting of assistance from law enforcement officers in the removal of a disorderly person when that person prevents or disrupts a meeting with an act that obstructs or interferes with a meeting. We ask that community members not place the Board in a position where law enforcement has to be called to assist; it places a burden on our police officers and also diverts their attention from potentially urgent matters in our community. Rather, if residents object to executive orders, please focus your efforts on those individuals who either created the orders or who have the power to affect change through legislation, not on a group of volunteers who are bound by their oath to enforce them.
We expect that all attendees will be respectful and compliant, allowing official business to take place and affording fellow residents the opportunity for their voices to be heard. Let's continue to have Cranford residents be great role models for our children and for other communities.
--
To unsubscribe from this group, send email to
brookside_place_school_information+unsubscribe@cranfordschools.org
---
You received this message because you are

CRANFORD BOARD OF EDUCATION
OPEN WORK SESSION MEETING
EXECUTIVE SESSION 6:30 P.M.
PUBLIC SESSION 7:30 P.M.
MONDAY, FEBRUARY 14, 2022
BOARD ROOM LINCOLN SCHOOL
AND VIA ZOOM VIDEOCONFERENCE

Public Meeting Notice

The Cranford Board of Education meeting for Monday, February 14, 2022 at 7:30 P.M. will be held in-person in the Board Room at Lincoln School. The Board is also providing viewing access to its meeting via Zoom as a video conference meeting at the following web address: **https://us06web.zoom.us/j/81247111454** The public will have an opportunity to make comment during the public comment portions of the meeting either in-person or via the Zoom meeting link.

Please be expressly advised that if a situation arises during the public meeting wherein the Board determines that it is no longer able to conduct Board business in-person for any reason, including but not limited to the actions of any individual in attendance at the in-person meeting, the Board reserves the right to contact local law enforcement authorities, and recess the meeting for 30 minutes and reconvene on an

entirely virtual platform at the Zoom meeting link referenced herein.

Board Agenda Disclaimer

On February 7, 2022, Governor Philip Murphy publicly announced that the universal school mask mandate presently in effect in New Jersey would be lifted effective March 7, 2022. Until that time, New Jersey executive orders providing that all school districts must maintain a policy regarding mandatory use of face masks by staff, students, and visitors in the indoor portion of the school district premises, except in certain circumstances where an exception applies, remain in effect. All individuals in attendance at Board of Education meetings must either wear a face mask or meet one of the listed exceptions in the executive orders. If an individual is unable to wear a face mask because doing so will inhibit the individual's health, that exemption must be supported by written documentation from a medical professional—self and parental attestations are not permitted. In the case of a listed medical exemption, written documentation from a medical professional must be provided to Robert J. Carfagno, Board Secretary, prior to the scheduled Board meeting and no later than the Monday at 12:00 P.M. immediately preceding the Board meeting. For example, for the February 14, 2022 Board meeting, written documentation from a medical professional must be provided by Monday, February 14, 2022 by 12:00 P.M. Any individual in attendance at a Board meeting who is not wearing a face mask or who does not meet one or the exceptions outlined in the executive orders will be asked to wear a face mask or leave the

meeting. The Board reserves the right to interpret the exceptions listed in the executive orders in order to maximize protections.

As expressly set forth in the Board's public meeting notice for the February 14, 2022 Board meeting, the meeting will be held in-person in the Board Room at Lincoln School and via Zoom as a video conference. The public will have an opportunity to make comment during the public comment portions of the meeting either in-person or via the Zoom meeting link. If a situation arises during the public meeting wherein the Board determines that it is no longer able to conduct Board business in-person for any reason, including but not limited to the actions of any individual in attendance at the in-person meeting, the Board reserves the right to contact local law enforcement authorities, and recess the meeting for 30 minutes and reconvene on an entirely virtual platform at the Zoom meeting link referenced herein.

CRANFORD BOARD OF EDUCATION
OPEN WORK SESSION MEETING
MONDAY, FEBRUARY 14, 2022
EXECUTIVE SESSION 6:30 P.M.
PUBLIC SESSION 7:30 P.M.
BOARD ROOM LINCOLN SCHOOL
AND VIA ZOOM VIDEOCONFERENCE

Preamble

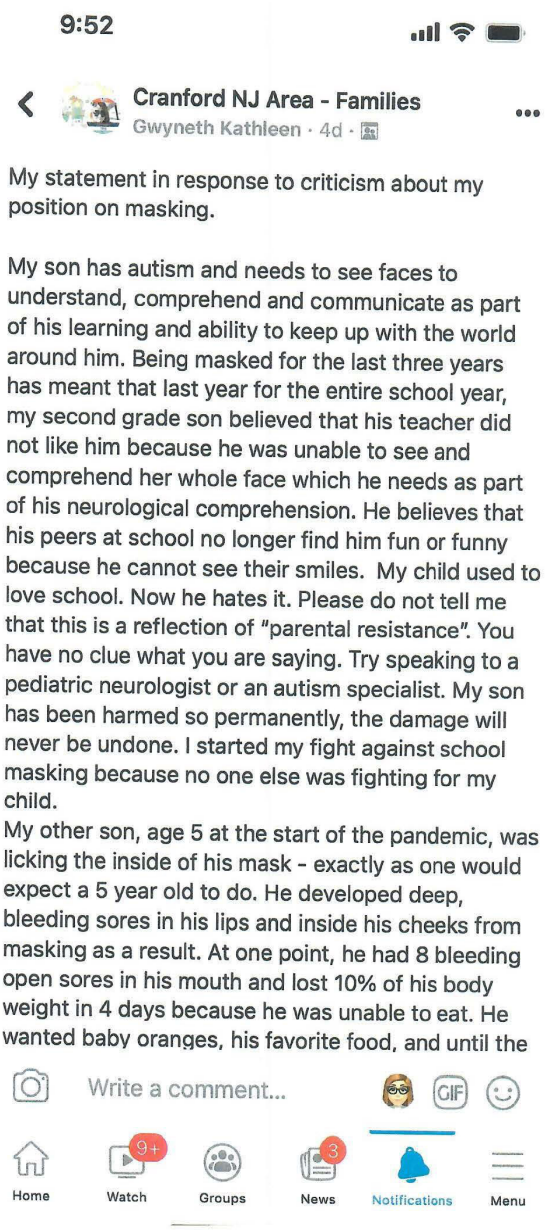
Adequate notice of this February 14, 2022 Open Work Session Meeting of the Cranford Board of Education was provided on January 10, 2022 by a meeting notice posted in the Board Room, Lincoln School, and

communicated to, the Star Ledger, The Westfield Leader, the Office of the Township Clerk, and all Board members. Action may be taken by the Board of Education at this meeting.

1. Opening Exercises
2. Flag Salute and Roll Call
3. Executive Session (6:30 P.M.)
4. Report from the Superintendent of Schools (Approximately 7:30 P.M.)
    - Harassment. Intimidation and Bullying (HIB) Self Assessment Data and Report on Harassment. Intimidation and Bullying (HIB) as prescribed by law – Lisa Burfeindt, Director of Guidance
    - English Language Learner Three-Year Program Plan 2021-2024 – Annamaria

* * *

EXHIBIT C


9:52
Cranford NJ Area - Families
Gwyneth Kathleen · 4d ·
My statement in response to criticism about my position on masking.
My son has autism and needs to see faces to understand, comprehend and communicate as part of his learning and ability to keep up with the world around him. Being masked for the last three years has meant that last year for the entire school year, my second grade son believed that his teacher did not like him because he was unable to see and comprehend her whole face which he needs as part of his neurological comprehension. He believes that his peers at school no longer find him fun or funny because he cannot see their smiles. My child used to love school. Now he hates it. Please do not tell me that this is a reflection of "parental resistance". You have no clue what you are saying. Try speaking to a pediatric neurologist or an autism specialist. My son has been harmed so permanently, the damage will never be undone. I started my fight against school masking because no one else was fighting for my child.
My other son, age 5 at the start of the pandemic, was licking the inside of his mask - exactly as one would expect a 5 year old to do. He developed deep, bleeding sores in his lips and inside his cheeks from masking as a result. At one point, he had 8 bleeding open sores in his mouth and lost 10% of his body weight in 4 days because he was unable to eat. He wanted baby oranges, his favorite food, and until the
Write a comment...
GIF
9+
3
Home
Watch
Groups
News
Notifications
Menu

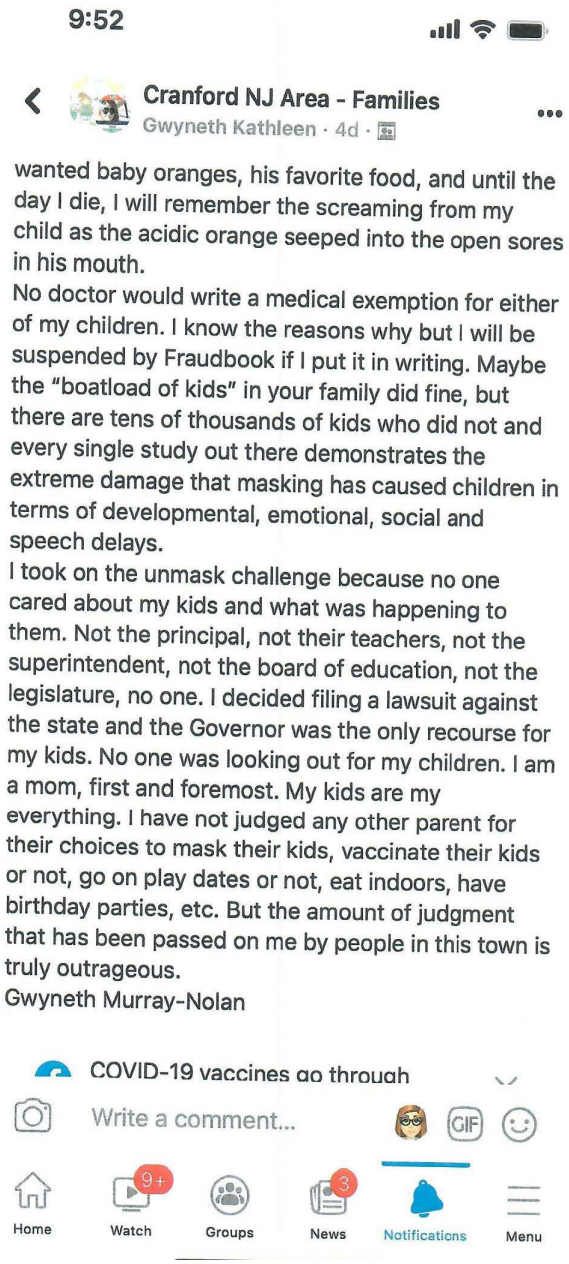

9:52
Cranford NJ Area - Families
Gwyneth Kathleen · 4d ·
wanted baby oranges, his favorite food, and until the day I die, I will remember the screaming from my child as the acidic orange seeped into the open sores in his mouth.
No doctor would write a medical exemption for either of my children. I know the reasons why but I will be suspended by Fraudbook if I put it in writing. Maybe the "boatload of kids" in your family did fine, but there are tens of thousands of kids who did not and every single study out there demonstrates the extreme damage that masking has caused children in terms of developmental, emotional, social and speech delays.
I took on the unmask challenge because no one cared about my kids and what was happening to them. Not the principal, not their teachers, not the superintendent, not the board of education, not the legislature, no one. I decided filing a lawsuit against the state and the Governor was the only recourse for my kids. No one was looking out for my children. I am a mom, first and foremost. My kids are my everything. I have not judged any other parent for their choices to mask their kids, vaccinate their kids or not, go on play dates or not, eat indoors, have birthday parties, etc. But the amount of judgment that has been passed on me by people in this town is truly outrageous.
Gwyneth Murray-Nolan
COVID-19 vaccines go through
Write a comment...
GIF
9+
3
Home
Watch
Groups
News
Notifications
Menu

EXHIBIT D

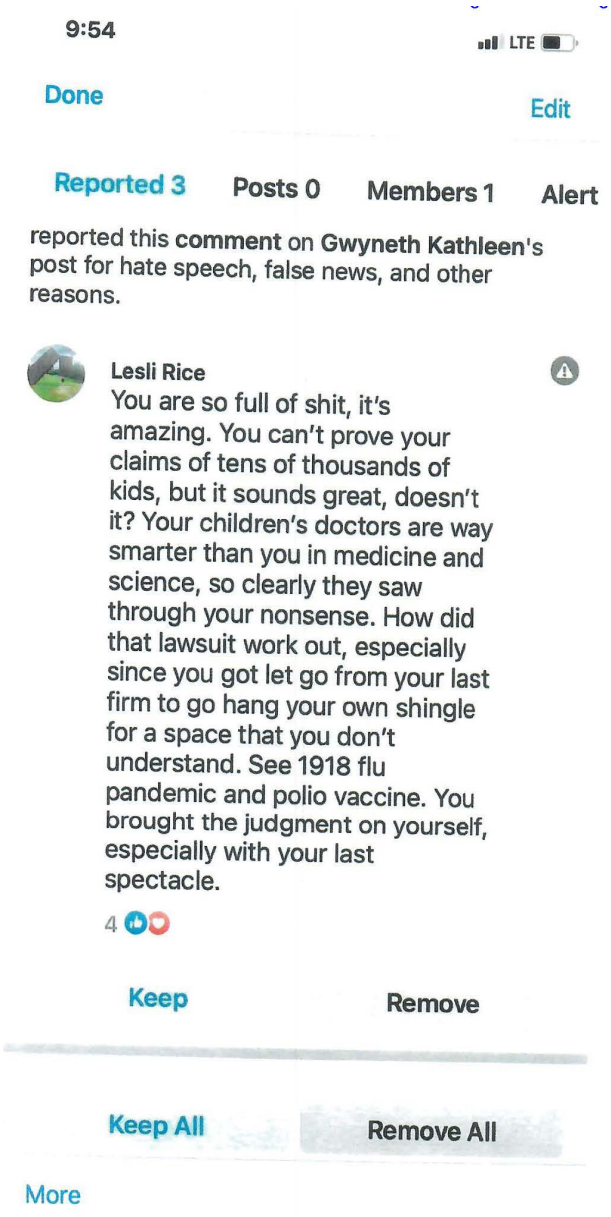

9:54
LTE
Done
Edit
Reported 3
Posts 0
Members 1
Alert
reported this comment on Gwyneth Kathleen's post for hate speech, false news, and other reasons.
Lesli Rice
You are so full of shit, it's amazing. You can't prove your claims of tens of thousands of kids, but it sounds great, doesn't it? Your children's doctors are way smarter than you in medicine and science, so clearly they saw through your nonsense. How did that lawsuit work out, especially since you got let go from your last firm to go hang your own shingle for a space that you don't understand. See 1918 flu pandemic and polio vaccine. You brought the judgment on yourself, especially with your last spectacle.
4
Keep
Remove
Keep All
Remove All
More

EXHIBIT E

Mon Feb 14 2022 18:39:59 GMT-0500 (Eastern Standard Time)

Subject: Murray-Nolan v. Rubin et als.
From: ron@murray-nolanberutti.com
Date: 2/14/2022 6:32 PM
To: josborne@sciarillolaw.com, Petschow@cranfordschools.org, Carbone.lisa@cranfordschools.org, Dreyer@crandordschools.org, hulse@cranfordschools.org, sherrin.kesslesr@crandordschools.org, loikith@cranfordschools.org, lynch@cranfordschools.org, mallon@cranfordschools.org, edlawgroup@sciarrillolaw.com, rubin@cranfordschools.org
Cc: shiu@cranfordschools.org, carfagno@cranfordschools.org, jessica@murray-nolanberutti.com
Matter:
-Type or Select Matter/Lead-

Ladies and Gentlemen,

Please be advised that this firm represents Gwyneth Murray-Nolan with respect to a Complaint and application for a Temporary Restraining Order which have been filed this evening. We wanted to ensure that you received same prior to this evening's Board meeting so that you may be guided accordingly.

Please have your attorneys contact me in order to discuss service and other related issues. As a courtesy, I have copied individuals who are not named in the lawsuit, but who administratively may have responsibilities associated with our filing.

Thank you.

Ronald A. Berutti
MURRAY-NOLAN BERUTTI LLC
100 E. Hanover Avenue
Suite 401
Cedar Knolls, NJ 07927
(908) 588-2111

NewYork:
8707 Colonial Road
Brooklyn, NY 11208
(212) 575-8500
(Please respond to NJ Office)

-----Original message-----

From: "Jessica Mazurkiewicz" [jessica@murray-nolanberutti.com]
Sent: Monday, Feb 14 2022 6:22 PM
To: ron@murray-nolanberutti.com
Subject: No Subject

FW: Murray-Nolan v. Rubin et als.

Mon Feb 14 2022 18:40:15 GMT-0500 (Eastern Standard Time)

Subject: FW: Murray-Nolan v. Rubin et als.
From: ron@murray-nolanberutti.com
Date: 2/14/2022 6:36 PM
To: dreyer@cranfordschools.org, josborne@sciarrillolaw.com
Cc: chiu@cranfordschools.org, jessica@murray-nolanberutti.com
Matter:
-Type or Select Matter/Lead-

Please see the below and the attached. I apologize, but I mistyped your email addresses the first time around.

----Original message-----
From: "Ron Berutti" [ron@murray-nolanberutti.com]
Sent: Monday, Feb 14 2022 6:32 PM
To:
josborne@sciarillolaw.com, Petschow@cranfordschools.org, Carbone.lisa@cranfordschools.org, Dreyer@cranfordschools.org, hulse@cranfordschools.org, sherrin.kesslesr@cranfordschools.org
Cc: shiu@cranfordschools.org, carfagno@cranfordschools.org, jessica@murray-nolanberutti.com
Subject: Murray-Nolan v. Rubin et als.

Ladies and Gentlemen,

Please be advised that this firm represents Gwyneth Murray-Nolan with respect to a Complaint and application for a Temporary Restraining Order which have been filed this evening. We wanted to ensure that you received same prior to this evening's Board meeting so that you may be guided accordingly.

Please have your attorneys contact me in order to discuss service and other related issues. As a courtesy, I have copied individuals who are not named in the lawsuit, but who administratively may have responsibilities associated with our filing.

Thank you.

Ronald A. Berutti
MURRAY-NOLAN BERUTTI LLC
100 E. Hanover Avenue
Suite 401

Cedar Knolls, NJ 07927
(908) 588-2111

NewYork:
8707 Colonial Road
Brooklyn, NY 11208
(212) 575-8500
(Please respond to NJ Office)

-----Original message-----
From: "Jessica Mazurkiewicz" [jessica@murray-nolanberutti.com]
Sent: Monday, Feb 14 2022 6:22 PM
To: ron@murray-nolanberutti.com
Subject: No Subject

Thank you,

Jessica A. Mazurkiewicz, Paralegal
MURRAY-NOLAN BERUTTI LLC
100 E. Hanover Avenue, Suite 401
Cedar Knolls, New Jersey 07927
Phone: 908-588-2111
Direct: 908-588-2608

New York Office:
8707 Colonial Road
Brooklyn, New York 11208
Phone: 212-575-8500
(Please reply to NJ address)

Out of the Office Re: FW: Murray-Nolan v. Rubin et als.

Mon Feb 14 2022 18:40:36 GMT-0500 (Eastern Standard Time)

Subject: Out of the Office Re: FW: Murray-Nolan v. Rubin et als.
From: chiu@cranfordschools.org
Date: 2/14/2022 6:36 PM
To: ron@murray-nolanberutti.com
Matter:
–Type or Select Matter/Lead-

I will be out of the office from February 12, 2022 through February 21, 2022. If your message is of an emergent nature and cannot wait until my return please contact Wendy Caprara at: caprara@cranfordschools.org

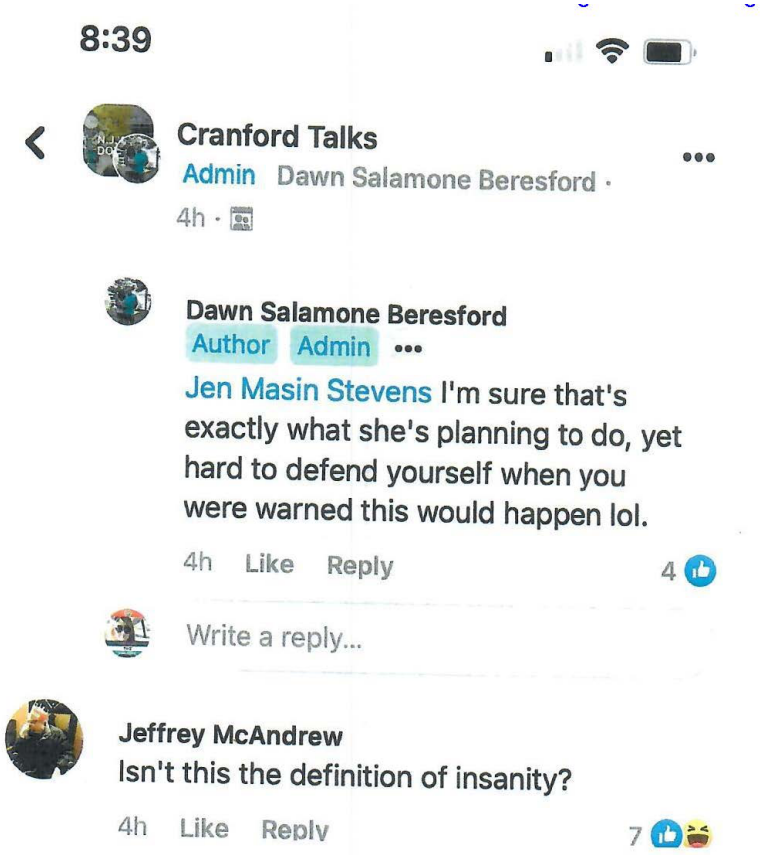
Thank you.

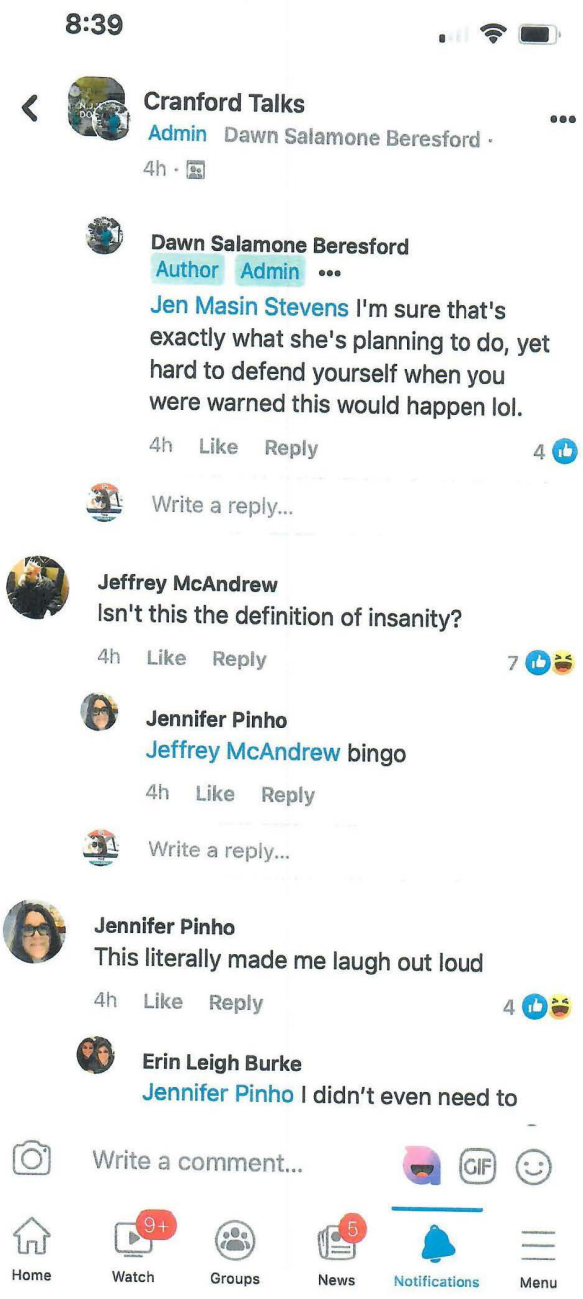
--
Diana Chiu
Executive Assistant

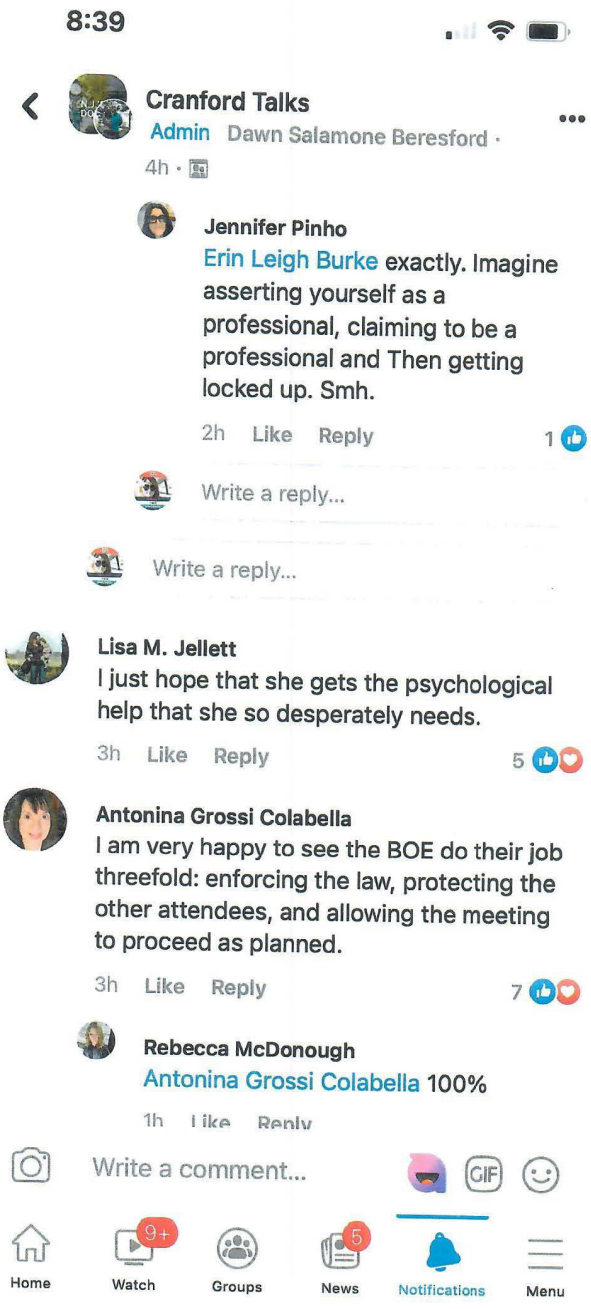
Office of the Superintendent of Schools
Cranford Public Schools
132 Thomas Street
Cranford, NJ 07016
Phone: 908-709- 8877 Fax: 908-272-7735

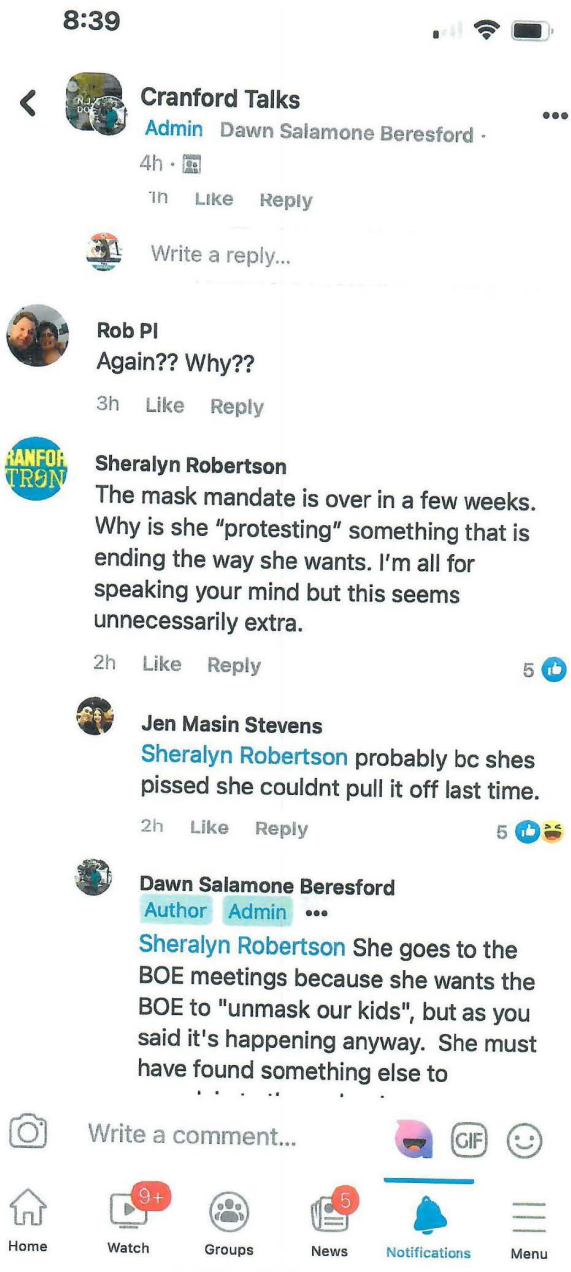
EXHIBIT F

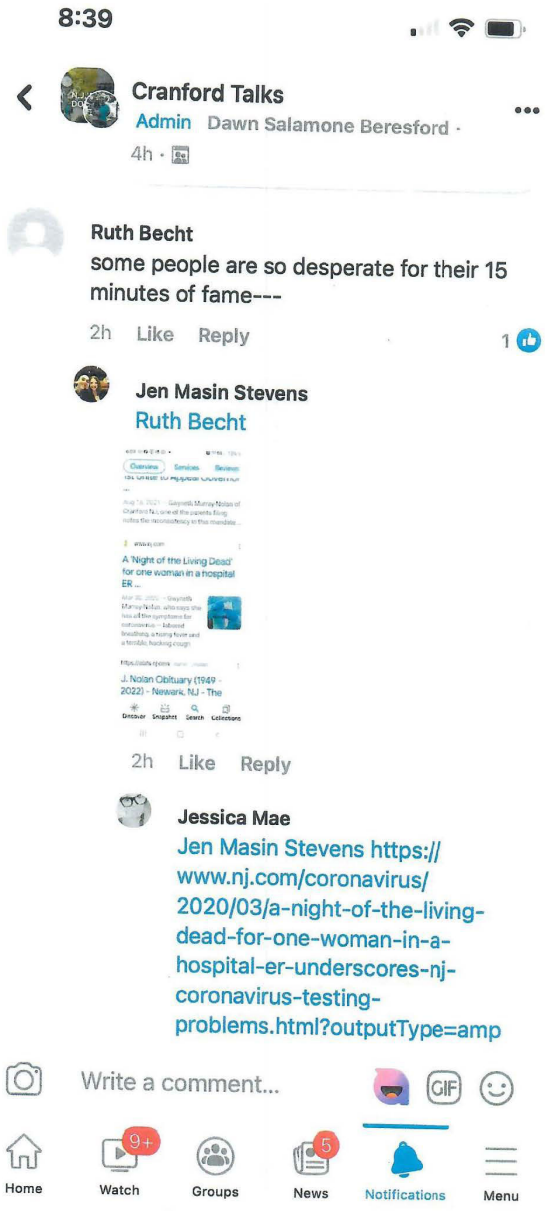

8:39
Cranford Talks
Admin Dawn Salamone Beresford ·
4h ·
Some people never learn🤣🤣
Welcome to Downtown CRANFORD
TAPINTO.NET
Cranford Police Make An Arrest on Board of Education Property
Like
Comment
Send
15
Jen Masin Stevens
Im sorry, but Im cracking up. Im sure shell find a way to turn this into a lawsuit.
4h Like Reply
4
Ginette Czachor Bracke
Jen Masin Stevens I said Jesus Christ will have nothing on her because she's
Write a comment...
GIF
Home
Watch
9+
Groups
News
5
Notifications
Menu

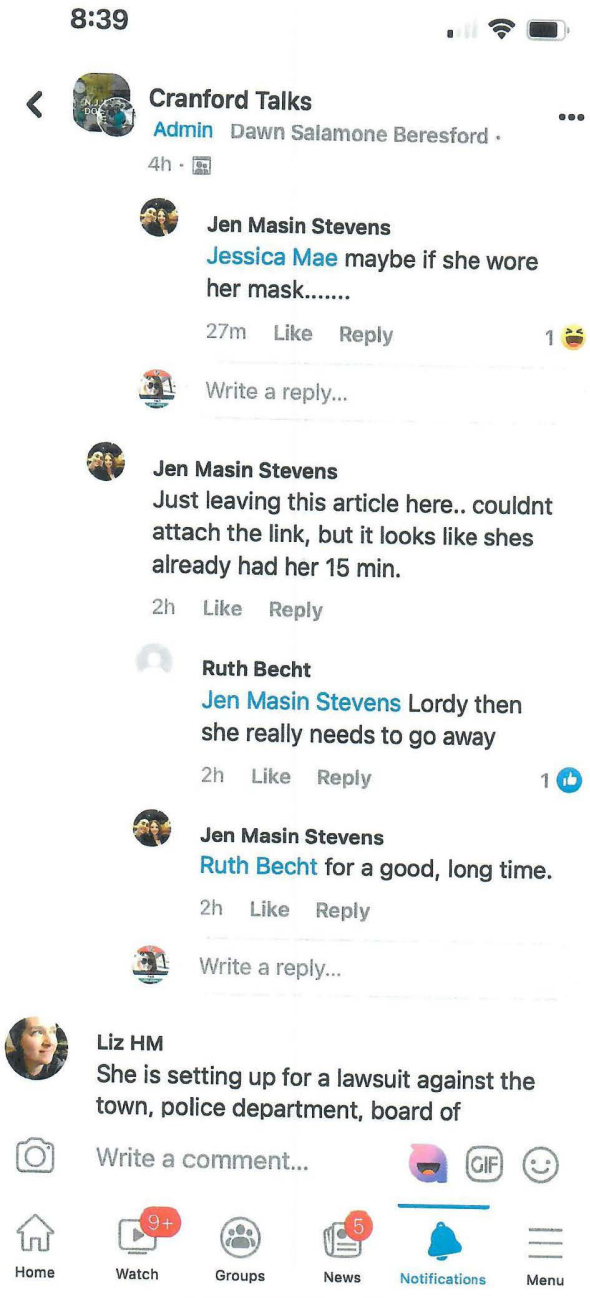

8:39
Cranford Talks
Admin Dawn Salamone Beresford ·
4h ·
Dawn Salamone Beresford
Author Admin
Jen Masin Stevens I'm sure that's exactly what she's planning to do, yet hard to defend yourself when you were warned this would happen lol.
4h Like Reply
4
Write a reply...
Jeffrey McAndrew
Isn't this the definition of insanity?
4h Like Reply
7

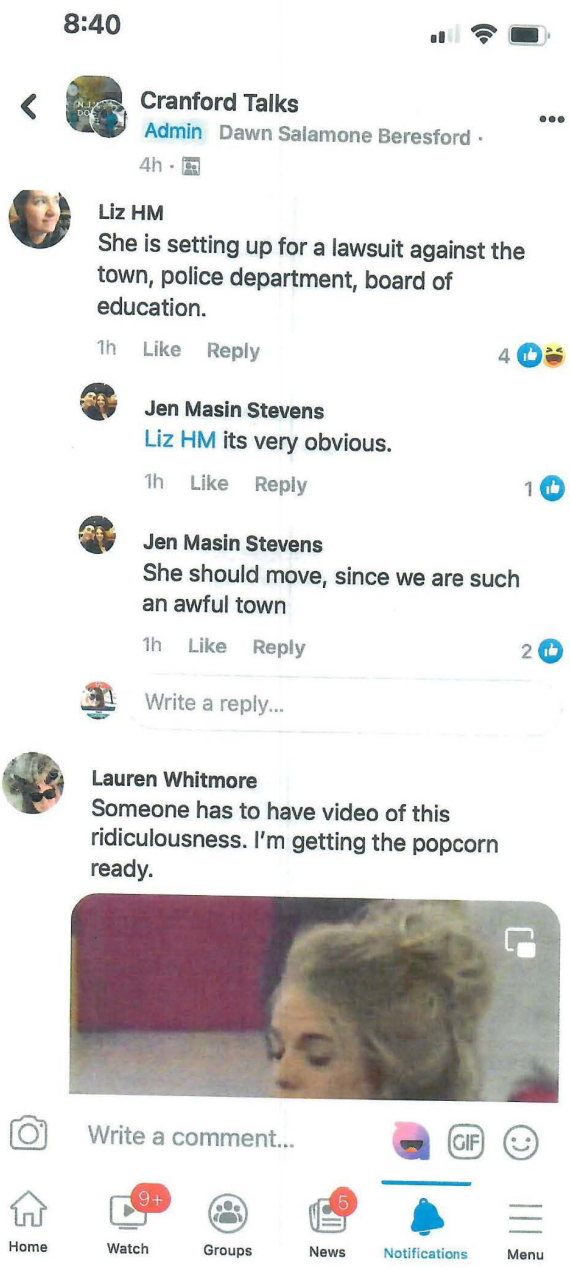

8:39
Cranford Talks
Admin Dawn Salamone Beresford ·
4h ·
Dawn Salamone Beresford
Author Admin •••
Jen Masin Stevens I'm sure that's exactly what she's planning to do, yet hard to defend yourself when you were warned this would happen lol.
4h Like Reply 4
Write a reply...
Jeffrey McAndrew
Isn't this the definition of insanity?
4h Like Reply 7
Jennifer Pinho
Jeffrey McAndrew bingo
4h Like Reply
Write a reply...
Jennifer Pinho
This literally made me laugh out loud
4h Like Reply 4
Erin Leigh Burke
Jennifer Pinho I didn't even need to
Write a comment...
GIF
Home
Watch
9+
Groups
News
5
Notifications
Menu


8:39
Cranford Talks
Admin Dawn Salamone Beresford ·
4h ·
Jennifer Pinho
Erin Leigh Burke exactly. Imagine asserting yourself as a professional, claiming to be a professional and Then getting locked up. Smh.
2h Like Reply 1
Write a reply...
Write a reply...
Lisa M. Jellett
I just hope that she gets the psychological help that she so desperately needs.
3h Like Reply 5
Antonina Grossi Colabella
I am very happy to see the BOE do their job threefold: enforcing the law, protecting the other attendees, and allowing the meeting to proceed as planned.
3h Like Reply 7
Rebecca McDonough
Antonina Grossi Colabella 100%
1h Like Reply
Write a comment...
GIF
Home
Watch
Groups
News
Notifications
Menu

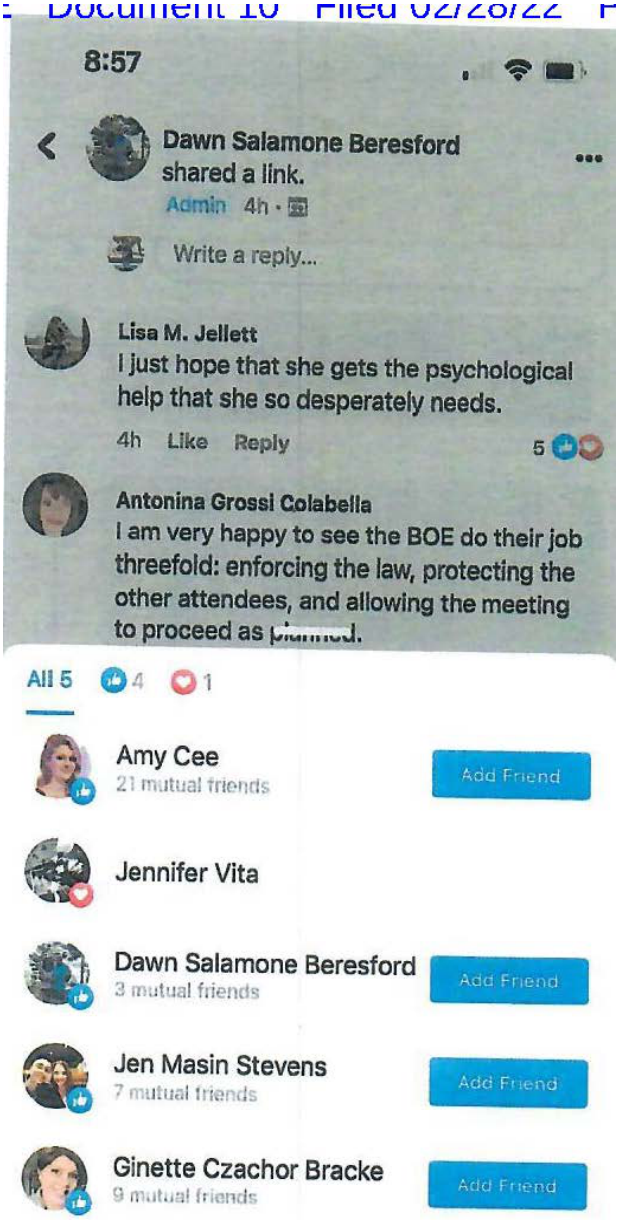

8:39
Cranford Talks
Admin Dawn Salamone Beresford ·
4h ·
1h Like Reply
Write a reply...
Rob PI
Again?? Why??
3h Like Reply
Sheralyn Robertson
The mask mandate is over in a few weeks. Why is she "protesting" something that is ending the way she wants. I'm all for speaking your mind but this seems unnecessarily extra.
2h Like Reply 5
Jen Masin Stevens
Sheralyn Robertson probably bc shes pissed she couldnt pull it off last time.
2h Like Reply 5
Dawn Salamone Beresford
Author Admin
Sheralyn Robertson She goes to the BOE meetings because she wants the BOE to "unmask our kids", but as you said it's happening anyway. She must have found something else to
Write a comment...
GIF
Home
Watch
Groups
News
Notifications
Menu


8:39
Cranford Talks
Admin Dawn Salamone Beresford ·
4h ·
Ruth Becht
some people are so desperate for their 15 minutes of fame---
2h Like Reply
1
Jen Masin Stevens
Ruth Becht
A 'Night of the Living Dead' for one woman in a hospital ER ...
J. Nolan Obituary (1949 - 2022) - Newark, NJ - The
2h Like Reply
Jessica Mae
Jen Masin Stevens https://www.nj.com/coronavirus/2020/03/a-night-of-the-living-dead-for-one-woman-in-a-hospital-er-underscores-nj-coronavirus-testing-problems.html?outputType=amp
Write a comment...
GIF
Home
Watch
Groups
News
Notifications
Menu


8:39
Cranford Talks
Admin Dawn Salamone Beresford ·
4h ·
Jen Masin Stevens
Jessica Mae maybe if she wore her mask.....
27m Like Reply 1
Write a reply...
Jen Masin Stevens
Just leaving this article here.. couldnt attach the link, but it looks like shes already had her 15 min.
2h Like Reply
Ruth Becht
Jen Masin Stevens Lordy then she really needs to go away
2h Like Reply 1
Jen Masin Stevens
Ruth Becht for a good, long time.
2h Like Reply
Write a reply...
Liz HM
She is setting up for a lawsuit against the town, police department, board of
Write a comment...
GIF
Home
Watch
9+
Groups
News
5
Notifications
Menu


8:40
Cranford Talks
Admin Dawn Salamone Beresford ·
4h ·
Liz HM
She is setting up for a lawsuit against the town, police department, board of education.
1h Like Reply
4
Jen Masin Stevens
Liz HM its very obvious.
1h Like Reply
1
Jen Masin Stevens
She should move, since we are such an awful town
1h Like Reply
2
Write a reply...
Lauren Whitmore
Someone has to have video of this ridiculousness. I'm getting the popcorn ready.
Write a comment...
GIF
Home
Watch
9+
Groups
News
5
Notifications
Menu


8:40
One Cranford
Galadriel Hasbrouck · 3h ·
Welcome to Downtown CRANFORD
TAPINTO.NET
Cranford Police Make An Arrest on Board of Education Property
Like
Comment
Send
2
John Kucsma
Nice! They didn't the 1st time. Glad they did this time.
57m Like Reply
Write a comment...
GIF
Home
Watch
Groups
News
Notifications
Menu


8:57
Dawn Salamone Beresford
shared a link.
Admin 4h
Write a reply...
Lisa M. Jellett
I just hope that she gets the psychological help that she so desperately needs.
4h Like Reply
5
Antonina Grossi Colabella
I am very happy to see the BOE do their job threefold: enforcing the law, protecting the other attendees, and allowing the meeting to proceed as
All 5
4
1
Amy Cee
21 mutual friends
Add Friend
Jennifer Vita
Dawn Salamone Beresford
3 mutual friends
Add Friend
Jen Masin Stevens
7 mutual friends
Add Friend
Ginette Czachor Bracke
9 mutual friends
Add Friend

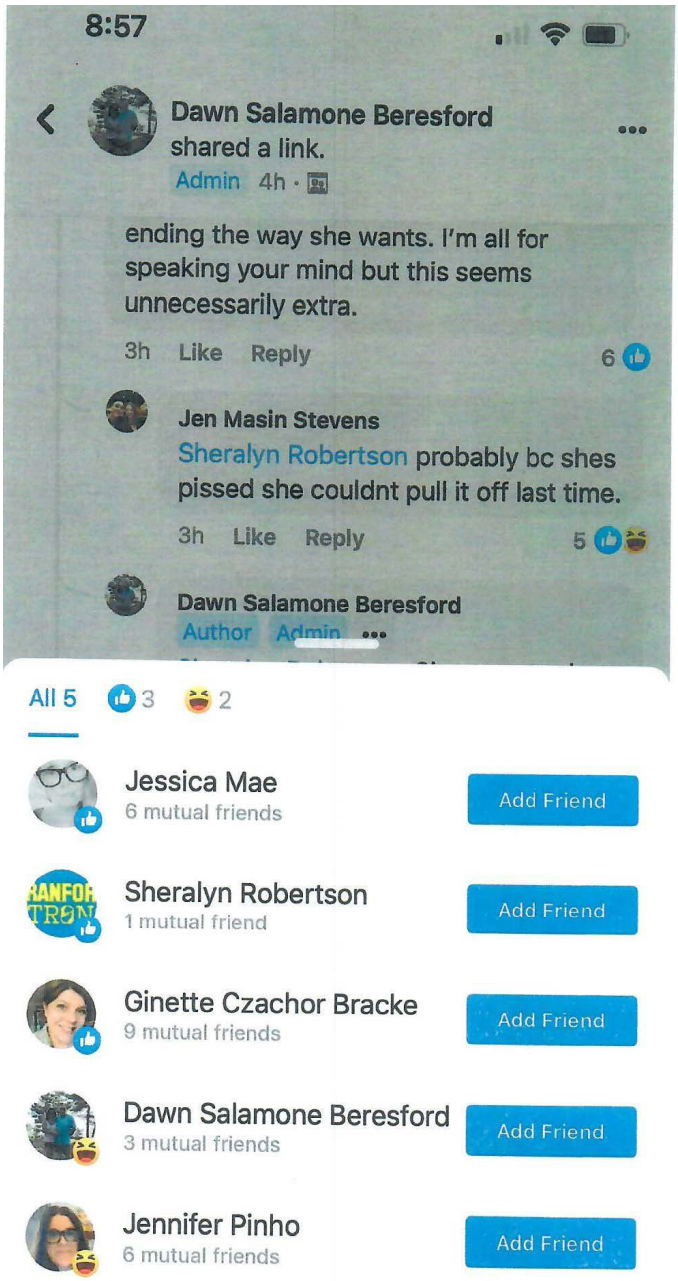
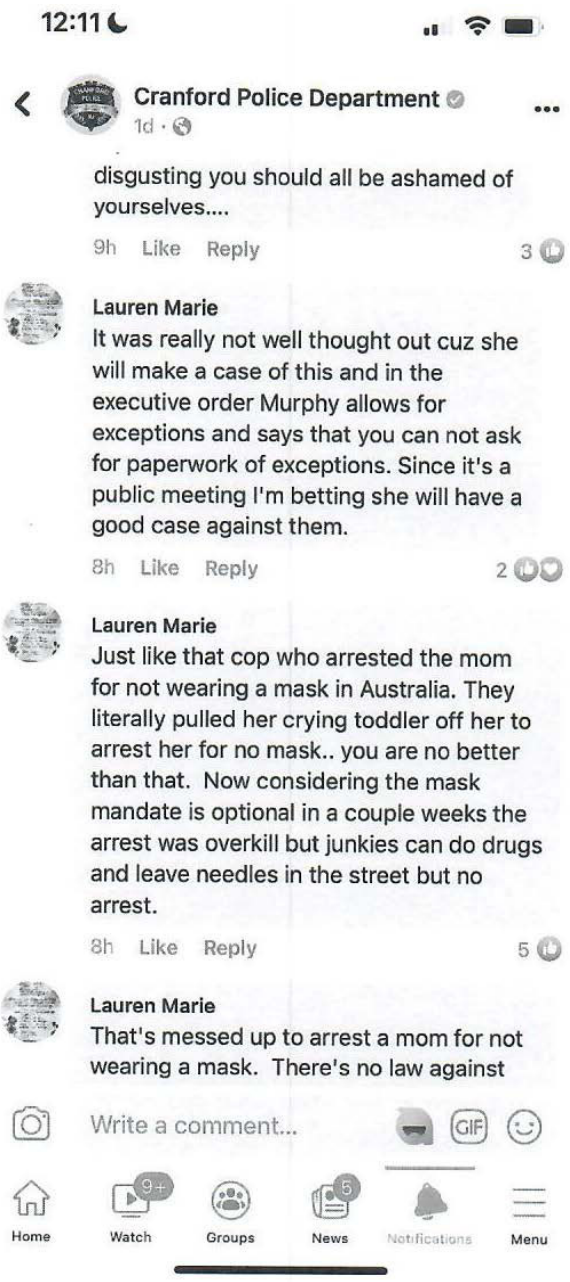

8:57
Dawn Salamone Beresford
shared a link.
Admin 4h ·
ending the way she wants. I'm all for speaking your mind but this seems unnecessarily extra.
3h Like Reply 6
Jen Masin Stevens
Sheralyn Robertson probably bc shes pissed she couldnt pull it off last time.
3h Like Reply 5
Dawn Salamone Beresford
Author Admin
All 5 3 2
Jessica Mae
6 mutual friends
Add Friend
Sheralyn Robertson
1 mutual friend
Add Friend
Ginette Czachor Bracke
9 mutual friends
Add Friend
Dawn Salamone Beresford
3 mutual friends
Add Friend
Jennifer Pinho
6 mutual friends
Add Friend

EXHIBIT G


7:54
Cranford Police Department
23h
T Elle Bradbe
the boy scout photos don't help. what that officer did to that mother at the board meeting was not right and she has national support. no doubt this will be a lawsuit.
20h Like Reply 8
Penni Cardona Monticello
Meanwhile your arresting their parents for practicing their constitutional right of not wearing a mask at BOE meetings! That's disgraceful!
21h Like Reply 8
Kristen Blair Guzman
Disgusting! Hold your head low for arresting a parent for standing up for her rights! you need to be fired!
21h Like Reply 5
Dana Zangari McGuire
Bunch of brown shirts! You should be ashamed and fired.
21h Like Reply 5
John Keating
https://www.tapinto.net/towns/cranford/sections/police-and-fire/articles/cranford-
Write a comment...
GIF
Home
Watch
Groups
News
Notifications
Menu


7:54
Cranford Police Department
23h ·
21h Like Reply 5
John Keating
https://www.tapinto.net/towns/cranford/sections/police-and-fire/articles/cranford-police-make-an-arrest-on-board-of-education-property?fbclid=IwAR2x01PbPwvKezM-OGx8w_ORYBWEPGuluoqh_QtM7tLjtN01dSywLfcEvRw
Cranford Police Make An Arrest on Board of Education Property
tapinto.net
18h Like Reply 2
Cynthia Cimillo-Brokenshire
What you did to that woman at last night's BOE was despicable. I don't wear a m#sk at my BOE meetings and the chief of police in my town said he would never arrest anyone not wearing one. You are a bunch of power hungry cowards.
21h Like Reply 10
Kristin Ashley
https://www.facebook.com/1366094088/videos/1066686493892074/
16h Like Reply 1
Write a comment...
GIF
Home
Watch
Groups
News
Notifications
Menu

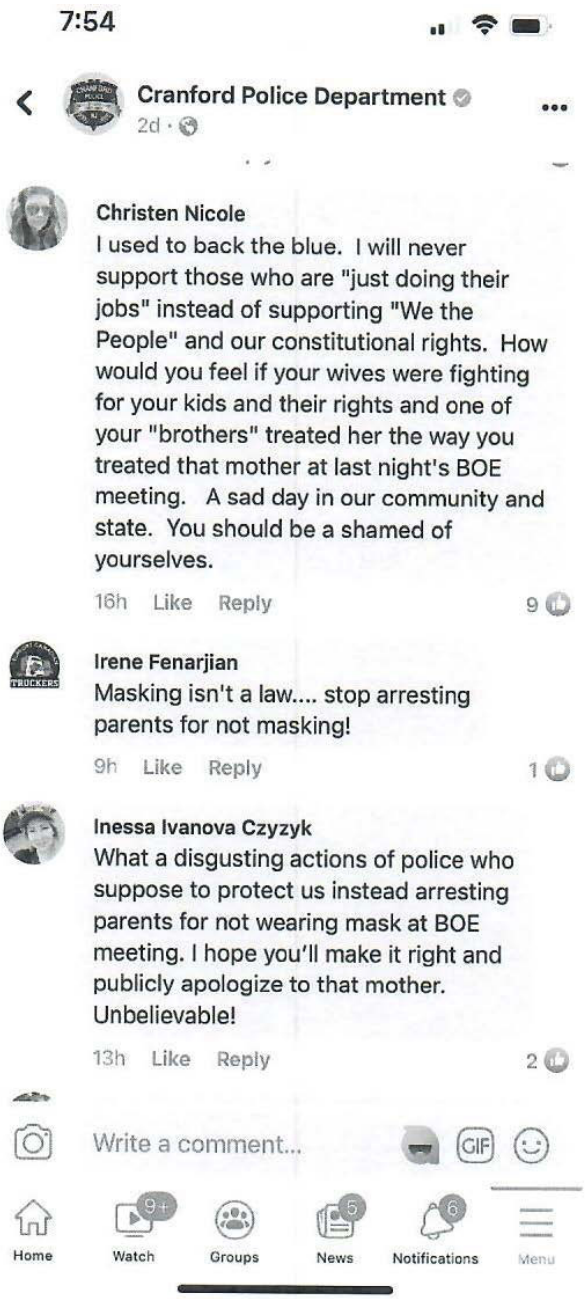

12:11
Cranford Police Department
1d ·
disgusting you should all be ashamed of yourselves....
9h Like Reply 3
Lauren Marie
It was really not well thought out cuz she will make a case of this and in the executive order Murphy allows for exceptions and says that you can not ask for paperwork of exceptions. Since it's a public meeting I'm betting she will have a good case against them.
8h Like Reply 2
Lauren Marie
Just like that cop who arrested the mom for not wearing a mask in Australia. They literally pulled her crying toddler off her to arrest her for no mask.. you are no better than that. Now considering the mask mandate is optional in a couple weeks the arrest was overkill but junkies can do drugs and leave needles in the street but no arrest.
8h Like Reply 5
Lauren Marie
That's messed up to arrest a mom for not wearing a mask. There's no law against
Write a comment...
GIF
Home
Watch
Groups
News
Notifications
Menu


7:55
Cranford Police Department
2d
Lauren Snyder
Shame on you for arresting a citizen who had a right to be at that meeting! Thought your job was to enforce laws not 'wants' the school has, when did this change??
14h Like Reply 4
Dennis Savarin
Thank you for a job well done
1d Like Reply 6
John Keating
Put this one up on your page and explain how you arrested this mother at a Board of Education meeting for not wearing a mask. Aren't you proud of it?
https://www.tapinto.net/towns/cranford/sections/police-and-fire/articles/cranford-police-make-an-arrest-on-board-of-education-property?fbclid=IwAR2x01PbPwvKezM-OGx8w_ORYBWEPGuluoqh_QtM7tLjtN01dSywLfcEvRw
Cranford Police Make An Arrest on Board of Education Property
tapinto.net
18h Like Reply 9
Write a comment...
GIF
Home
Watch
Groups
News
Notifications
Menu


7:55
Cranford Police Department
2d ·
Kerry D'Arrigo
Hope that mother sues! What your officers did was disgusting and shameful.
21h Like Reply 20
Bonnie Derrick
Police officers swore an oath to uphold the LAW! You should be ashamed of yourselves and stripped of your badge!
11h Like Reply 1
Lynn Marie
What you did that mother last night was disgusting you should all be ashamed of yourselves....
17h Like Reply 3
Kristen Blair Guzman
Disgusting! Hold your head low for arresting a parent for standing up for her rights! you need to be fired!
21h Like Reply 20
Lauren Marie
It was really not well thought out cuz she will make a case of this and in the executive order Murphy allows for exceptions and says that you can not ask
Write a comment...
GIF
Home
Watch
Groups
News
Notifications
Menu

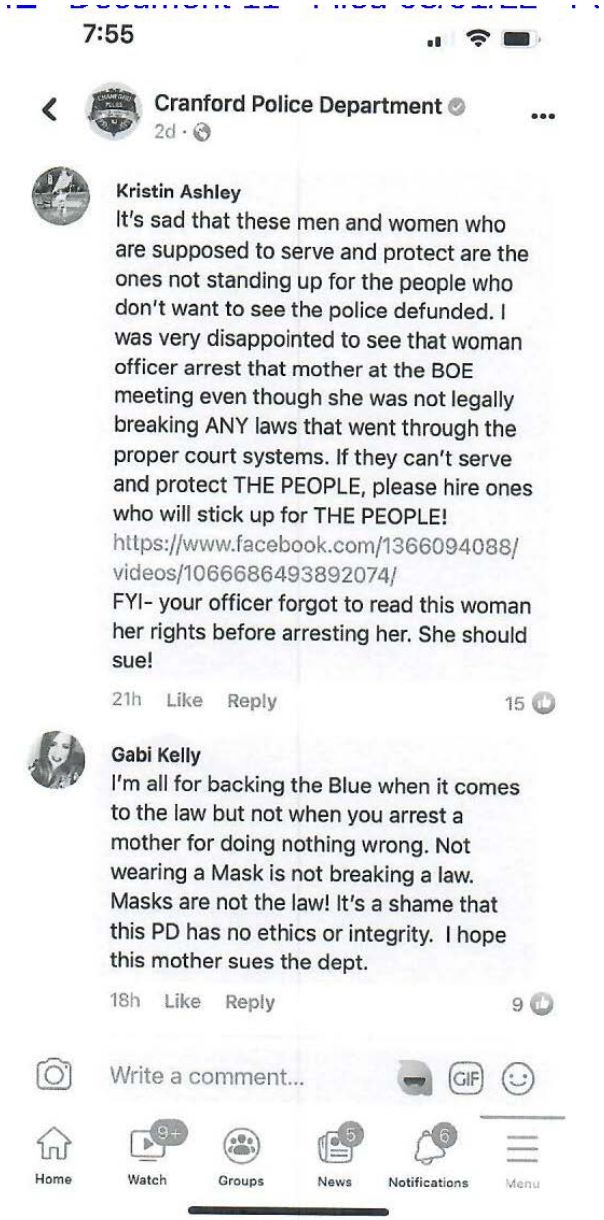

7:54
Cranford Police Department
2d ·
Lisa A. Cardella Carbone
I could go on and on about this team but for now I'll just say thank you for all you do! You are part of the fabric of our school community.
1d Like Reply 3
Anna Lazzos
Lisa A. Cardella Carbone Fabric arrested a mom who was standing up for her children
18h Like Reply 2
Write a reply...
Brad Young
A huge thanks to these officers for all they do for Cranford's kids!
2d Like Reply 5
Eileen Lacovara Strasser
Brad Young add arresting a mother to that great job they are doing
18h Like Reply 2
Bridget Jones
Brad Young brainwashed
Write a comment...
GIF
Home
Watch
Groups
News
Notifications
Menu


7:54
Cranford Police Department
2d ·
All comments
Kristen Canavatchel Sinclair
A huge thanks to these officers for arresting a mom standing up for her children! You handed her a constitutional case, nice work! Stop brown shirting for NJEA MEMBERS FOR CHANGE and ask the township to remove your services from the BOE meetings. You should not be put in this position. Let them hire private security. We want to support you.
21h Like Reply 30
Melissa Leah
Kristen Canavatchel Sinclair abuse of resources.
14h Like Reply 1
Write a reply...
Courtney Ann
Great job making an unlawful arrest last night. Your Sgt. actually agrees with the Mother and says she does have a constitutional right to be there and then still continues to arrest her. What an absolute clown show. The EO does not mandate masks in a PUBLIC open meeting.
Write a comment...
GIF
Home
Watch
Groups
News
Notifications
Menu


7:54
Cranford Police Department
2d
Christen Nicole
I used to back the blue. I will never support those who are "just doing their jobs" instead of supporting "We the People" and our constitutional rights. How would you feel if your wives were fighting for your kids and their rights and one of your "brothers" treated her the way you treated that mother at last night's BOE meeting. A sad day in our community and state. You should be a shamed of yourselves.
16h Like Reply 9
Irene Fenarjian
Masking isn't a law.... stop arresting parents for not masking!
9h Like Reply 1
Inessa Ivanova Czyzyk
What a disgusting actions of police who suppose to protect us instead arresting parents for not wearing mask at BOE meeting. I hope you'll make it right and publicly apologize to that mother. Unbelievable!
13h Like Reply 2
Write a comment...
GIF
Home
Watch
Groups
News
Notifications
Menu


7:54
Cranford Police Department
2d
Neely Buscemi
Without police officers who would make a criminal out of an innocent person?
20h Like Reply 16
Lidia Amado Galvez
You know no matter what the cops do nowadays it can never be right. How about you guys go after the people that called the cops and pushed for the woman to be arrested. I stand with the woman and her cause. Why blame the police, go after the people that made such a big stink about the last meeting that had to be canceled because she wasn't wearing a mask!!
12h Like Reply 1
Justin Lotano
You guys give good cops a bad name.
18h Like Reply 8
Melissa Leah
After watching the video of your department arresting a mother for not masking, I am disgusted . Go arrest the real criminals.
14h Like Reply 4
Write a comment...
GIF
Home
Watch
Groups
News
Notifications
Menu


7:55
Cranford Police Department
2d
Jennifer Gallagher
I wonder if you'd all arrest your own mothers if they were simply trying to stand up and protect you. I hope they're ashamed of what you all did to that mom who was just trying to protect her kids. How desperate and pathetic. Go stop some real crime and save kids that are in real danger. And get the hell out of our way.
21h Like Reply 22
Cindy Capodice
Greatful for having them on the CPD
20h Like Reply
Nikki Pierro
Shame on CPD arresting a mother & tax payer for standing up for her childrens rights & health!
20h Like Reply 18
Ama Nda
Shame on CPD for arresting a mom for not wearing a mask, it's not a law. Instead of arresting people who actually commit crimes you're out there arresting a mom trying to stand up to the abuse on the kids
Write a comment...
GIF
Home
Watch
Groups
News
Notifications
Menu


7:55
Cranford Police Department
2d ·
Kristin Ashley
It's sad that these men and women who are supposed to serve and protect are the ones not standing up for the people who don't want to see the police defunded. I was very disappointed to see that woman officer arrest that mother at the BOE meeting even though she was not legally breaking ANY laws that went through the proper court systems. If they can't serve and protect THE PEOPLE, please hire ones who will stick up for THE PEOPLE!
https://www.facebook.com/1366094088/videos/1066686493892074/
FYI- your officer forgot to read this woman her rights before arresting her. She should sue!
21h Like Reply 15
Gabi Kelly
I'm all for backing the Blue when it comes to the law but not when you arrest a mother for doing nothing wrong. Not wearing a Mask is not breaking a law. Masks are not the law! It's a shame that this PD has no ethics or integrity. I hope this mother sues the dept.
18h Like Reply 9
Write a comment...
GIF
Home
Watch
Groups
News
Notifications
Menu


7:55
Cranford Police Department
2d
Lauren Marie
Just like that cop who arrested the mom for not wearing a mask in Australia. They literally pulled her crying toddler off her to arrest her for no mask.. you are no better than that. Now considering the mask mandate is optional in a couple weeks the arrest was overkill but junkies can do drugs and leave needles in the street but no arrest.
16h Like Reply 5
Lauren Marie
That's messed up to arrest a mom for not wearing a mask. There's no law against not wearing a mask and read the executive order. There are exceptions.
16h Like Reply 5
Anna Lazzos
So proud of you for arresting the mom who was trying to protect her children
18h Like Reply 1
Cynthia Cimillo-Brokenshire
What you did to that woman at last night's BOE was despicable. I don't wear a m#sk at my BOE meetings and the chief of police in my town said he would never arrest
Write a comment...
GIF
Home
Watch
Groups
News
Notifications
Menu


7:55
Cranford Police Department
2d
Sheri Anne
So you only protect the requests of the board of Ed, but not the constitutional rights of the public.
Nobody is going to celebrate your horrific actions by breaking the actual law, arresting a mom for not breaking the law.
You're all cowards! Hope she sues you all!
20h Like Reply 5
Alexis Gavarone Kupprion
I guess no consequences for illegal arrests
21h Like Reply 16
Christine Livesay
Arresting a free woman for standing up for her and her children's God given rights.
What a disgrace. Im ashamed of humanity and certainly don't trust police, government and its agencies, pharmaceutical companies or the hospitals that are killing people with the incentivized Government protocols.
15m Like Reply
Christine Livesay
Yet they let children be abused with
Write a comment...
GIF
Home
Watch
Groups
News
Notifications
Menu