

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

MICHIGAN OPPOSING MANDATORY VACCINES,  
a Michigan non-profit corporation, and JOEL DORFMAN,

Plaintiffs,

Case No. 16-  
Hon.

-CZ

v.

MICHIGAN DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, DIRECTOR NICK LYON, and  
STATE OF MICHIGAN ATTORNEY GENERAL  
BILL SCHUETTE,

Defendants.

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**COMPLAINT AND JURY DEMAND**

There is no other pending or resolved civil action arising out of  
the same transaction or occurrence as alleged in this Complaint.

Plaintiffs, Michigan Opposing Mandatory Vaccines, a Michigan non-profit corporation,  
and Joel Dorfman, by their attorneys, OGNE, ALBERTS & STUART, P.C., submit the  
following Complaint against Defendants Michigan Department of Health and Human Services,  
Director Nick Lyon, and State of Michigan Attorney General Bill Schuette, and state as follows:

**GENERAL ALLEGATIONS**

1. Plaintiff Michigan Opposing Mandatory Vaccines (hereinafter "MOMV") is a  
private Michigan association and non-profit corporation whose principal place of business is in  
Oakland County, Michigan.

2. Plaintiff Joel Dorfman is a resident of Bloomfield Hills, Oakland County, Michigan.

3. Defendant Michigan Department of Health and Human Services (hereinafter "DHHS") is a State of Michigan agency whose Director is Nick Lyon.

4. Because this is an action against a State of Michigan governmental entity, Attorney General Bill Schuette is added as a party to this action.

5. This action arises out of administrative rules and regulations enacted by Defendant DHHS effective January 1, 2015 governing vaccine requirements, exemptions from vaccine requirements, and exclusion of students and other individuals from schools, preschools, daycare centers, child group programs, places of employment and other facilities. Those new Administrative Rules are set forth at Michigan Administrative Code 325.175(3), 325.175(4), and 325.176(12).

6. These new Administrative Rules were not properly promulgated in accordance with the Administrative Procedures Act and other governing law.

7. These new Administrative Rules are invalid, because they were improperly promulgated, because they exceed the authority granted to DHHS by the Michigan Legislature, because they are arbitrary and capricious, because they are unconstitutional and because they are otherwise unlawful.

8. Plaintiff MOMV and Plaintiff Dorfman submitted a Formal Request For Declaratory Ruling to Defendant DHHS on November 30, 2015. (Exhibit A). Plaintiff Joel Dorfman certified that request for declaratory ruling. (*Id.*)

9. Plaintiff Joel Dorfman also has had his own individual rights violated by the new Administrative Rules by being forced to comply with Rule 325.176(12) in order to exercise his

rights to exempt his child from Michigan's mandatory vaccine requirements in connection with attendance at a private school. Specifically, Plaintiff Dorfman was required to attend the "education" on vaccines administered by the Oakland County Health Department, to use the new State of Michigan required form for exercising vaccine waivers and exemptions based on his religious and other beliefs, to sign that improper and illegal form, and by otherwise having to comply with the new Administrative Rule 325.176(12).

10. In addition, Plaintiff Dorfman is also personally subject to the new requirements and regulations in Rules 175(3) and 175(4) now and in the future, because his children attending Michigan schools are subject to the new unlawful provisions of those Rules concerning exclusion and over-reaching powers to the local health departments, the State of Michigan DHHS and/or the schools themselves.

11. This action for declaratory and other relief is authorized by the Michigan Administrative Procedures Act, MCL 24.201, *et. seq.* and other governing law.

12. On or about January 13, 2016 Defendant DHHS denied Plaintiffs' request for declaratory ruling and other relief. Defendant DHHS and its Director Nick Lyon claimed that Rule 325.176(12) was "properly promulgated." (Exhibit B). Defendant DHHS and Defendant Lyon refused to address whether Rules 325.175(3) and (4) were also properly promulgated. (*Id.*) Finally, Defendant DHHS and Defendant Lyon refused to rule on the validity of any of these new rules based on their belief that it was not within DHHS' "purview to rule as to the validity of a promulgated administrative rule." (*Id.*)

13. Jurisdiction and venue are proper in Oakland County Circuit Court pursuant to the Administrative Procedures Act, and the Court has jurisdiction to enter declaratory relief and other relief requested herein.

COUNT I

DECLARATORY JUDGMENT AS TO VALIDITY AND  
APPLICABILITY OF THE NEW RULES

14. Plaintiffs adopt and incorporate by reference those pertinent portions of Paragraphs 1-13 of their Complaint as though set forth herein in full.

15. The Administrative Procedures Act, MCL 24. 201, *et. seq.*, provides that the Oakland County Circuit Court in this matter has jurisdiction to issue declaratory relief concerning “the validity or applicability of a rule, including the failure of an agency to accurately assess the impact of the rule on businesses, including small businesses, in its regulatory impact statement” if the court finds that the rule or its threatened application interferes with or impairs or imminently threatens to impair the legal rights or privileges of the plaintiff.

16. Rules 175(3), 175(4), and/or 176(12) all interfere with or impair, or immediately threaten to interfere with or impair, the legal rights and privileges of Plaintiffs MOMV and Dorfman.

17. Plaintiffs MOMV and Dorfman have requested Defendant DHHS to issue a declaratory ruling on Rules 175(3), 175(4) and 176(12).

18. Defendant DHHS denied Plaintiffs’ request for a declaratory ruling and refused to address other requests made by Plaintiffs herein.

19. Plaintiffs have exhausted their administrative procedures and remedies and have otherwise fully complied with all requirements of Michigan law.

20. Rule 176(12) is invalid because it was improperly promulgated and/or DHHS failed to comply with deadlines and other rule-making requirements.

21. Rule 176(12) is invalid due to inaccuracies and false information contained in the Regulatory Impact Statement, including the failure of Defendant DHHS to accurately assess and

accurately disclose the impact of the rule on businesses, including small businesses, in its Regulatory Impact Statement and numerous other reasons including but not limited to the following:

- (a) It imposes an unfunded mandate in direct violation of Michigan law;
- (b) The Regulatory Impact Statement falsely stated that the new rule does not conflict with other laws, rules and legal requirements when, in fact, the new rule specifically conflicts with Michigan statutes governing vaccine waiver exemptions based on religious and other beliefs of parents of children attending public and private schools;
- (c) The new rule grossly exceeds the scope of legislative delegation of rule-making authority and seeks to change the statute by involving local health departments in the vaccine waiver/exemption process;
- (d) The new rule directly conflicts with the Michigan Public Health Code, other Michigan statutes, and/or other federal statutes and regulations by involving DHHS and local health departments in the processing of vaccination waivers/exemptions, including the authority to audit waivers, to receive the waivers in the first place, to maintain records concerning waivers and other health information, to disclose records and other health information to outside entities, including but not limited to health departments, and/or to obtain, maintain and process this information without parental permission. The new rule directly conflicts with FERPA, HIPPA, and other state and federal laws and regulations. Moreover, the Regulatory Impact Statement submitted by Defendant DHHS falsely states that no such conflicts exist;
- (e) The new rule improperly exceeds DHHS' statutory, regulatory and Constitutional authority by making DHHS and local public health departments propaganda agents with authority to inquire into and evaluate the "sincerity" of religious beliefs and other beliefs of Michigan parents and other citizens;
- (f) The new rule exceeds the statutory, regulatory and Constitutional authority of DHHS and local health departments by requiring them to provide "education" concerning the alleged benefits of vaccines without providing any "education" or other information whatsoever concerning possible risks of vaccines. In doing so, the new rule also improperly infringes upon the doctor/patient relationship, the code of medical ethics, and the doctrine of informed consent;

- (g) The Regulatory Impact Statement falsely states that the new rule does not eliminate any authority provided in the Public Health Code to sign a vaccine waiver;
- (h) The new rule and the Regulatory Impact Statement falsely minimize and otherwise falsely state the fiscal impact of the new rule on state and local government agencies, schools, group programs, and other public and private businesses and individuals. Actual experience in implementing this new rule has shown that the fiscal impacts have been substantial, and Defendant DHHS was fully aware of these costs and impacts, including monetary, hiring additional staff, devoting additional time, additional capital and other resources to implementing the new rules, and otherwise impacting everyone concerned. Defendant DHHS intentionally and/or recklessly misrepresented the fiscal impact of these new rules in its Regulatory Impact Statement;
- (i) The Rule imposes unfunded mandates on local health departments, the state health department, schools and child group programs, businesses, small businesses, and/or individuals;
- (j) The Rule fails to address and provide reasonable alternatives to the new rules and regulations;
- (k) The Rule imposes arbitrary and capricious standards to achieve the alleged goals;
- (l) The Rule provides no rational means within which to achieve the stated goals;
- (m) The Rule ignores scientific reality and fact by imposing requirements that do not and cannot rationally and/or reasonably obtain the stated goals; and
- (n) Other deficiencies rendering Rule 176(12) improperly promulgated and invalid.

22. Rule 325.176(12) is also invalid and unconstitutional because it directly conflicts with Michigan statutes and the Michigan and United States Constitutions, including but not limited to the following:

- (a) The rule requires a specific form for exercising a vaccine waiver/exemption; whereas, the statute merely requires any written statement from the parents stating that they have a religious or other objection;

- (b) The required form conflicts with existing statutes by requiring the parent to “indicate” or otherwise specify their exemption; whereas, the statute simply requires the parent to state that he has a religious or other objection to the vaccine requirements;
- (c) The new form conflicts with existing statutes by requiring parents to agree with the language on the form without any ability to alter or supplement the language on the form in any way, thereby compelling parents to engage in speech to which they do not agree in violation of statutes and their First Amendment Constitutional rights to free speech;
- (d) The new form conflicts with existing statutes by requiring parents to report and disclose information beyond the statutory requirements of the name of the child, his date of birth, and that the immunization is in conflict with the parents’ religious or other beliefs. Specifically, the new form requires parents to provide additional information and disclosures not authorized by existing law, including a checklist of immunizations for which they are seeking exemptions, the school of the child, the parents’ names, the parents’ address and telephone number, and a certification that the parents have been informed of certain alleged benefits of vaccinations and risks of not vaccinating. The new form also improperly states as a condition of acceptance the local health department and its policies must be complied with. This leads to arbitrary and capricious enforcement amongst different health departments in the State of Michigan in direct conflict with existing Michigan statutes that do not involve the local health department in the vaccination waiver process at all;
- (e) The new form conflicts with existing law by containing an implicit threat, which itself is inconsistent with Michigan law, that an unvaccinated student is subject to exclusion from school based on his or her vaccination status alone. This is both illegal and unconstitutional and certainly in direct conflict with the statutory authority granted to DHHS and/or school officials in the enabling legislation;
- (f) The new form conflicts with existing law and statutory authority by stating that all unvaccinated students are more susceptible to certain diseases when they are not;
- (g) The new form mandated by the new rule improperly requires a parent to check a box for each individual vaccine to which he objects; whereas, the statute allows a parent to object to all vaccines in general if he so believes, pursuant to his religious and other principles;
- (h) The new form mandated by the new rule improperly and unlawfully violates existing Michigan statutes that allow Michigan citizens to opt out of MCIR and the State’s vaccination tracking system altogether. For

parents who have decided to opt out of the system, the new rule requires them to have to still disclose vaccine records to the State in direct violation of existing Michigan law. The Regulatory Impact Statement falsely states that there are no conflicts of the new rule with existing state law;

- (i) The new rule unconstitutionally infringes upon the rights of parents and others to exercise their personal and religious beliefs concerning vaccines by involving local health departments in their improper role of “assuring the sincerity of fully informed parents’ beliefs” and/or minimizing so-called “exemptions of convenience.” (Regulatory Impact Statement, p. 7; Exhibit C). These are clearly improper and unconstitutional government functions. It is not the government’s place to even evaluate, let alone assure the sincerity of anyone’s religious or other beliefs. It is not the government’s role to “educate” anyone on religious issues;
- (j) The new form conflicts with existing law by requiring the parent to specify a “reason”; whereas, the statute merely requires a parent to state that the requirements of the mandatory vaccine law cannot be met due to religious or other reasons;
- (k) The new rule and/or form mandated by the new rule conflicts with the Constitutional rights of parents and children in Michigan to receive a public education; and
- (l) Other inconsistencies between the new form and new regulations and the provisions of Michigan’s Public Health Code.

WHEREFORE, Plaintiffs respectfully request the Court grant their request for relief against Defendant DHHS and enter a judgment declaring Rule 325.176(12) invalid, together with all other relief the Court determines proper and just.

## COUNT II

### RULE 325.175(3) WAS IMPROPERLY PROMULGATED AND IS INVALID

23. Plaintiffs adopt and incorporate by reference those pertinent portions of Paragraphs 1-22 of their Complaint as though set forth herein in full.

24. Defendant DHHS enacted changes and new rules set forth at Michigan Administrative Code 325.175(3) that vastly exceed its powers and authority granted by the



Legislature in the Michigan Public Health Code and under other Michigan laws. Specifically, Rule 175(3) grants new powers to DHHS, local health departments, school officials and others to exclude children from schools and employees from workplaces if they believe that any individual is “reasonably suspected” of having a “communicable disease.” This is a vast expansion of the powers granted by DHHS and local health departments by the Michigan Public Health Code, which allows these powers only in emergency situations and where there is a “designated condition” involved.

25. The new amendment to Rule 175(3) is invalid because it is not authorized by statute, clearly exceeds statutory authority, and imposes new powers on DHHS, local health departments, school officials and others that are not authorized by law.

26. The amendment to Rule 175(3) is invalid because it was improperly promulgated and/or DHHS failed to comply with deadlines and other rule-making requirements.

27. The amendments to Rule 175(3) are invalid due to inaccuracies and false information contained in the Regulatory Impact Statement, including the failure of Defendant DHHS to accurately assess and accurately disclose the impact of the new rule and amendment on businesses, including small businesses, in its Regulatory Impact Statement, and numerous other reasons, including but not limited to the following:

- (a) It imposes an unfunded mandate in direct violation of Michigan law;
- (b) The Regulatory Impact Statement falsely stated that the new rule does not conflict with other laws, rules and legal requirements when, in fact, the new rule specifically conflicts with Michigan statutes governing the powers of the state and local health departments, school officials and others to exclude students and employees and to otherwise institute quarantine and other disease control measures;
- (c) The new rule grossly exceeds the scope of legislative delegation of rule-making authority and seeks to change existing statutory law;

- (d) The new rule unconstitutionally infringes upon the rights of parents, students, employees and other citizens. These rights include the right to parent children, to determine health care decisions for individuals and children, to receive a public education, to engage in gainful employment, to live according to their deeply held religious beliefs, to due process, and to equal protection under the law. The new rule violates all of these Constitutional protections;
- (e) The new rule is also unconstitutional because it is unduly vague, ambiguous, overbroad, and grants unfettered discretion to DHHS, local health departments, school officials and others;
- (f) The new rule and the Regulatory Impact Statement falsely minimize and otherwise falsely state the fiscal impact of the new rule and amendments on state and local government agencies, schools, group programs, employers, and other public and private businesses and individuals;
- (g) The new rule and amendment fail to address and provide reasonable alternatives;
- (h) The new rule and amendment impose arbitrary and capricious standards to achieve the alleged goals;
- (i) The new rule and amendment unlawfully allow DHHS and local health departments to exclude individuals on mere suspicion of any communicable disease, in contravention of stricter statutory parameters;
- (j) The new rule and amendment provide no rational means by which to achieve their stated goals;
- (k) The new rule and amendment ignore scientific reality and fact by imposing requirements that do not and cannot rationally and/or reasonably obtain the stated goals; and
- (l) Other deficiencies rendering Rule 175(3) improperly promulgated and invalid.

28. The new rule and amendment at Rule 175(3) are further unconstitutional, because it grossly exceeds the police powers of the state.

29. The new rule is unconstitutional because it is unduly vague, arbitrary and capricious, and grants unfettered discretion to the state and local health departments to exclude

people from schools, their employment, public and private businesses, and other areas without any rational basis.

30. The new rule is unconstitutional because it violates parents' 14<sup>th</sup> Amendment rights and substantive due process rights to raise and parent their children and to make health care decisions for their children as they see fit.

31. The new rule and amendment are unconstitutional because they unlawfully infringe on the free exercise of religious beliefs by Michigan citizens, including religious objections to vaccine requirements.

WHEREFORE, Plaintiffs respectfully request the Court grant their request for relief against Defendant DHHS and enter a judgment declaring Rule 325.175(3) invalid, together with all other relief the Court determines proper and just.

### **COUNT III**

#### **RULE 325.175(4) WAS IMPROPERLY PROMULGATED AND IS INVALID**

32. Plaintiffs adopt and incorporate by reference those pertinent portions of Paragraphs 1-31 of their Complaint as though set forth herein in full.

33. Rule 175(4), as amended by DHHS, greatly expands the power of DHHS, local health departments, school officials and others to exclude students from schools and other group programs and employees from places of employment and other places.

34. Rule 175(4) is invalid because it was improperly promulgated and/or DHHS failed to comply with deadlines and other rule-making requirements.

35. Rule 175(4) is invalid because it exceeds the grant of statutory authority to DHHS and local health departments.

36. Rule 175(4) is invalid due to inaccuracies and false information contained in the Regulatory Impact Statement, including the failure of Defendant DHHS to accurately assess and/or accurately disclose the impact of the Rule on businesses, including small businesses, in its Regulatory Impact Statement and numerous other reasons, including but not limited to the following:

- (a) It imposes an unfunded mandate in direct violation of Michigan law;
- (b) The Regulatory Impact Statement falsely states that the new rule does not conflict with other laws, rules and legal requirements when, in fact, the new rule specifically conflicts with Michigan statutes governing the powers of Defendant DHHS and local health departments in responding to medical emergencies;
- (c) The new rule grossly exceeds the scope of legislative delegation of rule-making authority;
- (d) The new rule unconstitutionally infringes upon the rights of parents and others to exercise their personal and religious beliefs concerning vaccines by involving local health departments in their improper role of excluding students from schools based on their vaccination status alone;
- (e) The new rule and the Regulatory Impact Statement falsely minimize and otherwise falsely state the fiscal impact of the new rule on state and local government agencies, schools, group programs, employers, and other public and private businesses and individuals;
- (f) The new rule fails to address and provide reasonable alternatives to the new powers and authority given to Defendant DHHS and local health departments;
- (g) The new rule imposes arbitrary and capricious standards to achieve the alleged goals;
- (h) The new rule provides no rational means within which to achieve its stated goals;
- (i) The new rule ignores scientific reality and facts by imposing requirements that do not and cannot rationally and/or reasonably obtain the stated goals; and

- (j) The new rule violates the Constitution, including the due process rights of individuals being excluded from the schools, places of employment, and other public and private facilities.

37. Rule 325.175(4) is also invalid because it directly conflicts with Michigan statutes, as well as the Michigan and United States Constitutions, governing the powers of Defendant DHHS and local health departments, including but not limited to the following:

- (a) Granting powers to Defendant DHHS, local health departments, school officials and others to exclude, quarantine or otherwise isolate persons in the absence of an emergency or epidemic, including statutory requirements that an emergency order be issued first and that the exclusion must be necessary to control the spread of any alleged epidemic;
- (b) The new rule conflicts with existing statutes by allowing Defendant DHHS, local health departments, school officials and others to exclude from attendance healthy individuals where there is an occurrence of any communicable disease, even diseases that do not have an accompanying vaccine or diseases that pose no risk to the public health;
- (c) Directly conflicting with MCLA 333.2453, which limits the authority of an agency to exercise such powers to situations where there is an epidemic and where exclusion is necessary to protect the public health;
- (d) Granting excessive powers and authority to Defendant DHHS, local health departments, school officials and others to exclude individuals where no public health emergency has been declared and/or where no actual epidemic has been established for any given locale;
- (e) Granting excessive authority to Defendant DHHS, local health departments, school officials and others even where there is no “imminent danger” existing and where other less intrusive means are available under existing and other statutes and laws;
- (f) Allowing Defendant DHHS and/or local health departments to exclude individuals who are not carriers of a disease and therefore not subject to exclusion under the statutes and existing laws;
- (g) Allowing agency authority to exclude individuals, even in the absence of a “serious” communicable disease or infection, which is inconsistent with the existing statutes and other laws;

- (h) Allowing the agency and local health departments to exclude individuals on mere suspicion of any communicable disease, in contravention of stricter statutory parameters;
- (g) Exceeding the agency's legal, police and other regulatory powers and authorities;
- (h) Violating the Constitutional rights of citizens to substantive and procedural due process under the law;
- (i) Violating the Constitutional rights of citizens to a public education;
- (j) Violating the Constitutional rights of citizens to equal protection under the laws;
- (k) Granting unconstitutionally vague and overly broad powers and authorities and unfettered discretion to violate the rights of citizens;
- (l) By placing an undue financial burden on schools, businesses, and other individuals and organizations in Michigan in tracking and investigating vaccination status of students and other health care information where no significant health concern exists, in contravention to existing law that require emergency or other proper situations for exercising Defendant DHHS' and local health departments' powers and authorities; and
- (m) Other inconsistencies between the new law and the provisions of Michigan's Public Health Code and the Constitution.

WHEREFORE, Plaintiffs respectfully request the Court grant their request for relief against Defendant DHHS and enter a judgment declaring Rule 325.175(4) invalid, together with all other relief the Court determines proper and just.

OGNE, ALBERTS & STUART, P.C.

By: /s/ Michael A. Ross  
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Dated:

**DEMAND FOR TRIAL BY JURY**

NOW COME Plaintiffs, Michigan Opposing Mandatory Vaccines, a Michigan non-profit corporation, and Joel Dorfman, by and through their attorneys, OGNE, ALBERTS & STUART, P.C., and pursuant to MCR 2.508(B) hereby request a trial by jury of the issues of this cause of action.

OGNE, ALBERTS & STUART, P.C.

By: /s/ Michael A. Ross

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