

Pro Se 2 (Rev. 12/16) Complaint and Request for Injunction

# UNITED STATES DISTRICT COURT

for the

Eastern District of Pennsylvania

Division

Matthew Paul McCaffery (Parent)  
 Nicole Sallustio (Parent)  
 Elonna Mercer (minor)

Case No. \_\_\_\_\_

*(to be filled in by the Clerk's Office)*

*Plaintiff(s)*

*(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)*

-v-

Montgomery County Board of Health;  
 Montgomery County Board of Commissioners;  
 Montgomery County

*Defendant(s)*

*(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)*

## COMPLAINT AND REQUEST FOR INJUNCTION

### I. The Parties to This Complaint

#### A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Matthew Paul McCaffery; Nicole Sallustio; Elonna Mercer
Street Address	142 Henderson Ave
City and County	Conshohocken; Montgomery County
State and Zip Code	PA; 19428
Telephone Number	856-905-3178
E-mail Address	matthewmccaffery@comcast.net

**B. The Defendant(s)**

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (*if known*). Attach additional pages if needed.

## Defendant No. 1

Name	Montgomery County Board of Health
Job or Title ( <i>if known</i> )	
Street Address	1430 DeKalb Street; PO Box 311
City and County	Norristown, Montgomery County
State and Zip Code	PA; 19404
Telephone Number	610-278-5117
E-mail Address ( <i>if known</i> )	twilliams@montcopa.org

## Defendant No. 2

Name	Montgomery County Board of Commissioners
Job or Title ( <i>if known</i> )	
Street Address	425 Swede St, Norristown, PA 19401
City and County	Norristown; Montgomery County
State and Zip Code	PA; 19401
Telephone Number	(610) 278-3020
E-mail Address ( <i>if known</i> )	val@montcopa.org

## Defendant No. 3

Name	Montgomery County
Job or Title ( <i>if known</i> )	
Street Address	425 Swede St, Norristown, PA 19401
City and County	Norristown; Montgomery County
State and Zip Code	PA; 19401
Telephone Number	(610) 278-3020
E-mail Address ( <i>if known</i> )	val@montcopa.org

## Defendant No. 4

Name	
Job or Title ( <i>if known</i> )	
Street Address	
City and County	
State and Zip Code	
Telephone Number	

E-mail Address *(if known)* \_\_\_\_\_**II. Basis for Jurisdiction**

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? *(check all that apply)*

- Federal question                       Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

**A. If the Basis for Jurisdiction Is a Federal Question**

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

First amendment of the United States Constitution: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

**B. If the Basis for Jurisdiction Is Diversity of Citizenship**

## 1. The Plaintiff(s)

## a. If the plaintiff is an individual

The plaintiff, *(name)* N/A, is a citizen of the  
State of *(name)* N/A.

## b. If the plaintiff is a corporation

The plaintiff, *(name)* N/A, is incorporated  
under the laws of the State of *(name)* N/A,  
and has its principal place of business in the State of *(name)*  
N/A.

*(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)*

## 2. The Defendant(s)

## a. If the defendant is an individual

The defendant, *(name)* N/A, is a citizen of

the State of (name) N/A . Or is a citizen of  
(foreign nation) N/A .

b. If the defendant is a corporation

The defendant, (name) N/A , is incorporated under  
the laws of the State of (name) N/A , and has its  
principal place of business in the State of (name) N/A .  
Or is incorporated under the laws of (foreign nation) N/A ,  
and has its principal place of business in (name) N/A .

*(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)*

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because (explain):

N/A

**III. Statement of Claim**

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the injunction or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. Where did the events giving rise to your claim(s) occur?

Special meeting of the Montgomery County Board of Health (virtual meeting)

B. What date and approximate time did the events giving rise to your claim(s) occur?

Friday, November 13, 2020 at approximately 12:00 PM

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- C. What are the facts underlying your claim(s)? *(For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)*

The Montgomery County Board of Health passed via a virtual meeting open to the public, the "Montgomery County School Risk Reduction and Mitigation Order" on Friday, Novemeber 13, 2020; ordering all schools (private, religious and public schools) to stop in-person learning and conduct virtual "learning" from November 23, 2020 until December 6, 2020.

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#### **IV. Irreparable Injury**

Explain why monetary damages at a later time would not adequately compensate you for the injuries you sustained, are sustaining, or will sustain as a result of the events described above, or why such compensation could not be measured.

The "Montgomery County School Risk Reduction and Mitigation Order" will place my daughter at a disadvantage, from a religious education standpoint, versus her peers throughout the United States that are allowed to continue their religious education in-person.

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#### **V. Relief**

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

The order by the Montgomery County Board of Health has infringed on my family's first amendment right by prohibiting my family's choice to freely exercise the Catholic faith and peacefully assemble within Mother Teresa Regional Catholic School (405 Allendale Rd, King of Prussia, PA 19406) from November 23, 2020 until December 6, 2020.

I respectfully ask that the Montgomery County Board of Health order, (Montgomery County School Risk Reduction and Mitigation Order) be deemed unconstitutional.

**VI. Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

**A. For Parties Without an Attorney**

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 11/16/2020

Signature of Plaintiff

Printed Name of Plaintiff Matthew Paul McCaffery; Nikki Sallustio

**B. For Attorneys**

Date of signing: \_\_\_\_\_

Signature of Attorney \_\_\_\_\_

Printed Name of Attorney \_\_\_\_\_

Bar Number \_\_\_\_\_

Name of Law Firm \_\_\_\_\_

Street Address \_\_\_\_\_

State and Zip Code \_\_\_\_\_

Telephone Number \_\_\_\_\_

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E-mail Address \_\_\_\_\_