UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHILDREN'S HEALTH DEFENSE, A California Nonprofit corporation, et al.,	)	
Plaintiffs,	)	Case No.: 23-cv-4228-HB
v.	)	
THE CITY OF PHILADELPHIA, *et al.*,	)	
Defendants.	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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I.

INTRODUCTION

Plaintiffs oppose Defendants' baseless Motion to Dismiss (ECF No.16) (the "MTD") in its entirety. Critically, Defendants pointedly ignore a decidedly applicable recent decision by the U.S. District Court for the District of Columbia. *Booth v. Bowser*, 597 F. Supp. 3d 1 (D.D.C. 2022), despite Plaintiffs discussing this decision at length in the Complaint (ECF No. 1). Defendants' omission is telling because the *Booth* decision eviscerates Defendants' MTD. To argue, as Defendants unsuccessfully do, that the Philadelphia Minor Consent Regulations ("MCRs") are merely permissive is a red herring. These regulations are part of a broader scheme to coerce and then clandestinely vaccinate children as young as eleven in the absence of parental consent and their own informed consent. As clearly pled in the Complaint (ECF No. 1), these regulations violate federal and state law as well as the United States Constitution, putting Plaintiffs' children at risk. (*See, e.g.*, ECF No. 1, at ¶¶ 2, 81.) Particularly at this stage in the litigation, it is axiomatic that the Court must allow litigation to continue.

The *Booth* case is important here. In *Booth*, plaintiffs moved for a preliminary injunction seeking to enjoin a law similar to the regulations at issue here, allowing children as young as eleven to be vaccinated without parental consent. Defendants in *Booth* unsuccessfully moved to dismiss based on purported lack of standing and failure to state a claim. The *Booth* Court denied the defendants' motion in its entirety, holding that: (1) plaintiffs had standing; and, (2) not only did plaintiffs adequately plead their claims but they were entitled to a preliminary injunction because, among other things, they were likely to succeed on the merits of their claims.[1] This finding is particularly relevant with respect to the issue of whether the federal National Childhood Vaccine

[1] The D.C. Council subsequently voluntarily repealed D.C.'s Minors Consent Act. D.C. Law 24-312. *Consent for Vaccinations of Minors Amendment Act of 2022*, COUNCIL OF THE DISTRICT OF COLUMBIA, https://code.dccouncil.gov/us/dc/council/laws/24-312.

Injury Act, (the "NCVIA") 42 U.S.C. § 300aa *et seq.*[2] – requiring that a medical professional provide parents with critical information concerning the administered vaccine(s) prior to injection – preempts a conflicting state/local statute or regulation. As in *Booth,* Defendants' MCRs impair the uniform, nationwide application[3] of the NCVIA.

Rather than follow the District of Columbia's lead and repeal the MCRs, Defendants here refuse to acknowledge that children, particularly those as young as eleven, are simply incapable of making vaccination decisions on their own, especially when Defendants engage in manipulative tactics directly targeting children with false statements of safety and efficacy, calculated bullying, and peer pressure campaigns. Defendants have the audacity to say they are not actively interfering in compelling children to be vaccinated without parental knowledge and consent when they are blatantly manipulating children to the point of compelling children to make critical health decisions on their own and then, through the MCRs, providing the vehicle for children to obtain healthcare in secret. The MCRs are a critical part of Defendants' propaganda machine. Without the MCRs, children cannot receive these vaccines in the absence of parental consent.

Finally, contrary to Defendants' claims that "the Regulations do not violate Pennsylvania law" (ECF No. 16, at 9), the City's MCRs clearly conflict with Pennsylvania law. As demonstrated in Plaintiffs' complaint, several Pennsylvania statutes and even the Commonwealth's Department of Health official website[4] make clear that parental informed consent to vaccination (and other medical care) generally is required by the Commonwealth. Medical care in the absence of parental consent is the exception, not the rule, in Pennsylvania. The risks of allowing young children to

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[2] *Id.* at 29, stating "Plaintiffs have shown that the NCVIA likely preempts the MCA." Likewise, the Minor Consent Regulations are inconsistent with, directly conflict with, and therefore are fully pre-empted by the NCVIA.

[3] *Booth v. Bowser*, 597 F. Supp. 3d at 20.

[4] "All Pennsylvanians ages 6 months and older are eligible to receive a COVID-19 vaccine. **Those aged 6 months to 18 years require a parental consent.**" *COVID-19 Vaccines*, PENNSYLVANIA DEPARTMENT OF HEALTH, https://www.health.pa.gov/topics/disease/coronavirus/Vaccine/pages/vaccine.aspx (emphasis added).

obtain medical treatment clandestinely and in the absence of parental consent are significant and potentially life altering.

II.

PLAINTIFFS PLEAD STANDING AND COGNIZABLE CLAIMS SUFFICIENT TO OVERCOME DEFENDANTS' MTD

A. All Plaintiffs Have Sufficiently Pled Facts to Demonstrate That They Have Standing

Article III, Section 2 of the United States Constitution requires that Courts only address actual cases or controversies and not issue advisory opinions. Here, as shown below, both the individual Plaintiffs and CHD, an associational/representational Plaintiff, have sufficiently alleged their respective standing requirements. At the motion to dismiss stage, Plaintiffs enjoy a highly favorable standard of review, allegations are construed "in the light most favorable to the plaintiff," and all reasonable inferences are drawn from them. *Connelly v. Lane Constr. Corp.*, 809 F.3d 780, 790 (3d Cir. 2016).

B. The Individual Plaintiffs Have Pled Sufficient Facts to Demonstrate Standing

To establish standing and show a "personal stake in the case," a plaintiff must allege "(i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." *Grasso v. Katz*, 2023 WL 4615299 (3d Cir. 2023) (internal quotes omitted).

Plaintiffs' complaint sufficiently alleges all three elements: (1) an injury in fact – the risk of potentially imminent vaccination as well as harm to parental rights; (2) a connection between the injuries and Defendants' conduct – children cannot be vaccinated without parental consent if the MCRs are declared unenforceable; and (3) a likelihood that a decision in Plaintiffs' favor will redress their injuries – risk of surreptitious vaccination is eliminated or significantly reduced if the MCRs are declared unenforceable. In *Booth*, the sole federal case closely mirroring this case, the court found that plaintiffs had standing. *See, e.g.*, *Booth v. Bowser*, 597 F. Supp. 3d at 15, 16.

There is no doubt that as to each of Plaintiffs' three claims redressable injury related to Defendants' conduct with respect to the MCRs has been alleged.

The *Booth* court addressed the standing issue with respect to pre-emption standing and explained that:

> "Courts have recognized a conflict between state and federal law as a concrete injury that can create standing. *See, e.g., State Farm Bank, F.S.B. v. Dist. of Colum.*, 640 F. Supp. 2d 17, 21 (D.D.C. 2009). Booth argues that because the MCA preempts the NCVIA, it deprives him of a VIS. See Booth Compl. ¶ 373-74. Still more, the MCA tries to conceal a child's vaccination status from his parents. Id. ¶ 374. The MCA thus "subverts the protections" of the NCVIA. Id. The District responds that *Booth* is wrong because there is no conflict between the MCA and the NCVIA. Booth Defs.' Mem. at 25. Without a conflict, there is no preemption. Without preemption, there is no injury. "But because the Court finds a conflict between the MCA and NCVIA, see infra Section IV.A.1, the Court determines that there is an injury."

Booth v. Bowser, 597 F. Supp. 3d at 14. That reasoning applies here as well.

As described in the Complaint and below, with respect to Plaintiffs' constitutional claims, the government's only legitimate role here is to protect the affected children's interest in the lawfully exercised authority of their parents. "The right to family association includes the right of *parents to make important medical decisions* for their children, and of children to have those decisions made by their parents *rather than the state*." *Wallis ex. rel. Wallis v. Spencer*, 202 F.3d 1126, 1141 (9th Cir. 1999) (italics added). Parents should be able to allow their children to enter the city limits with confidence, knowing that the lawful choices they have made on behalf of their children will not just be respected by the government, but that the government will protect their *children's interests* in the lawfully exercised authority of their parents. The MCRs do just the opposite, depriving both children and their parents of constitutional and statutory rights. This, in and of itself, is a past, current, and ongoing injury.

Likewise, the individual Plaintiffs satisfy standing since their children are at imminent risk of falling victim to the city's policies since each of them lives in or has strong, close ties to Philadelphia.

Plaintiffs clearly pled that "[t]he plain language of the General Minor Consent Regulation and other information has caused Plaintiff-Parents to fear that their children may be pressured into submitting to vaccination without their parental knowledge or consent." (ECF No. 1, at ¶ 121.) Additionally, the Complaint sets forth the information demonstrating that Plaintiffs live in or near Philadelphia creating easy access for their children to imminently fall prey to Philadelphia's efforts to coerce them to be vaccinated behind their parents' backs.[5]

The court in *Booth* recognized that even though the Booth's child had not submitted to vaccination, the District created: "[a] pressure-cooker environment," enticing and psychologically manipulating minor children to defy their parents and take vaccinations against their parents' wills. Thus, the court rejected the D.C. defendants' argument that plaintiffs' alleged injuries "depends on 'pure speculation' that their child will receive the vaccine" or that alleged injuries depend on the independent actions of third parties. *See Booth*, 597 F. Supp. 3d at 13.

That same pressure-cooker environment also is evident in Philadelphia. The mere fact that Plaintiffs' children can and do travel to Philadelphia puts them in imminent danger of falling prey to Defendants' propaganda machine with the means to obtain vaccines without parental consent. Because the express purpose of Defendants' MCRs is to vaccinate children without parents' knowledge or consent, some of Plaintiffs' children may already secretly have been vaccinated.

[5] Comfort Geoffrey is a resident of Philadelphia with two children, aged 13 and 11 years old. Plaintiff Leonard Roberts is a resident of Philadelphia whose minor daughter is enrolled in public school in Philadelphia. Plaintiff Maria Parrillo is a resident of Philadelphia, Pennsylvania her daughter is home schooled. Plaintiff Jennifer Morrissey is a resident of nearby Merion Station, Pennsylvania, located approximately five-and-one-half miles outside of Philadelphia, whose daughter is 14 years old. Plaintiff Denise Sadjian is a resident of New Hope, Pennsylvania, in Bucks County, located approximately forty miles outside of Philadelphia. Her children frequently visit Philadelphia, where their father resides. Plaintiff Maria Huber's two minor children reside with her and attend private school right outside the City of Philadelphia. (*See* ECF No. 1, at ¶¶ 25-32.)

For example, local news outlets promoted the story of a minor who traveled to Philadelphia to be vaccinated against his mother's wishes.[6]

It is true that the City passed its first MCR over fifteen years ago. However, this program gained new traction when Defendants began to engage in tormenting, bullying, and bribing to coerce children to vaccinate (for COVID-19 in particular), driving a wedge between parents and children. Defendants' own conduct brought the MCRs to the fore. Now is the time for the Court to stop Defendants cold.

Defendants are targeting vulnerable and gullible children, many of whom also are significantly economically and academically challenged, luring them into party-like atmospheres (free backpacks, funnel cakes, DJ's, catchy rap lyrics), and basketball clinics (vax-it-ball)[7] after vaccination in a city park. Defendants and their agents made pie-in-the-sky promises of living a normal life again after being vaccinated, feeding children false promises of experimental vaccines being safe and effective to the extent that they will be fully protected against COVID-19 and will protect others – claims that have been proven false. School based health clinics[8] abound and are a growing trend, creating new opportunities to influence children away from parents. Defendants and their agents also are indoctrinating other children to go door to door and participate in events to promote vaccination to their peers ("providing the facts so you can get the vax").[9] These Philly Teen Vaxx Ambassadors are inculcated to "lead teen-to-teen conversations to educate and

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[6] Nina Feldman/WHYY, *This 16-year-old wanted to get the COVID vaccine. He had to hide it from his parents*, WITF.ORG (Feb. 17, 2022) https://www.witf.org/2022/02/17/this-16-year-old-wanted-to-get-the-covid-vaccine-he-had-to-hide-it-from-his-parents/.

[7] Beccah Hendrickson, *'Vaxx-It-Ball' clinic helps vaccinate more than 100 teenagers in Overbook*, 6ABC.COM (July 17, 2021) https://6abc.com/covid-19-vaccines-vax-it-ball-event-overbrook-basketball-clinic/10894063/.

[8] *School Based Health Suites*, GREATER PHILADELPHIA HEALTH ACTION, INC., https://gphainc.org/school-based-health-suites/.

[9] CBS Mornings, *Meet the group of Philadelphia teens fighting to stop COVID vaccine misinformation*, CBSNEWS.COM (Aug. 10, 2021) https://www.cbsnews.com/news/teen-vaccine-ambassadors-covid-vaccine/.

empower their peers" about vaccines.[10]

According to the U.S. Centers for Disease Control and Prevention, Philly Teen Vaxx is a coalition "working to increase vaccine confidence and rates among youth. The partnership between the Children's Hospital of Philadelphia and the School District of Philadelphia, trained forty-five Philly teens to serve as vaccine ambassadors. The teens organize vaccination events with the school district and engage in peer-to-peer conversations in person and online." [12] This is thinly veiled bullying and propaganda and this program can be repurposed for any vaccine.

The veil is lifted in the video "It's Your Turn! Take Your Covid-19 Shot Today!" In this video, Philly Teen Vaxx ambassadors are seen physically pushing an unwilling teen in a blonde wig and calling her an idiot.[13] The next scene shows her being dragged into a chair to be vaccinated. This video is indicative of the base level of the "information" being conveyed by teens to teens and the level of verbal manipulation and physical violence encouraged by the City.

Defendants' strategies are far afield from medical professionals engaging in intelligent conversations with patients regarding risks and benefits of a medical intervention to confirm informed consent in a coercion-free environment by trained medical professionals.

It should be noted that although Defendants' push to vaccinate children from COVID-19 may have temporarily waned, Defendants have only days ago conveniently turned their attention to a different mission – measles. They estimate that although "93 percent of Philadelphia children

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[10] Video: *Teen Vaxx Ambassadors*, THE SCHOOL DISTRICT OF PHILADELPHIA (Jan. 29, 2022) https://www.youtube.com/watch?v=OhdLfrAv01Y; Video: CBS This Morning, *Philly teens campaign to get kids under 17 years old vaccinated*, CBSNEWS.COM (Aug. 10, 2021) https://www.cbsnews.com/video/philly-teens-campaign-to-get-kids-under-17-years-old-vaccinated/.

[12] *12 COVID-19 Vaccination Strategies for Your Community*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Nov. 29, 2022) https://www.cdc.gov/vaccines/covid-19/vaccinate-with-confidence/community.html; *see also Teen Vaxx Ambassadors, supra,* https://www.youtube.com/watch?v=OhdLfrAv01Y.

[13] Video: *It's Your Turn*! *Take Your Covid-19 Shot Today*! STEVE THE LEGACY (June 20, 2021) https://www.youtube.com/watch?v=MO_nbHG6Zhs.

are vaccinated against measles, it remains a dangerous virus. The Health Department strongly encourages everyone who is unvaccinated to seek out a vaccine."[14] The question is how strongly will Defendants "encourage" children to get vaccinated and what tactics will be directed at the estimated 7% of children who remain unvaccinated against measles. If the MCRs are allowed to continue, parents again continue to be at risk of exclusion from this decision-making process and their legitimate reasons for not vaccinating, including medical, religious, or philosophical grounds, ignored.

Defendants do not even try to disguise the fact that the MCRs allow children to be vaccinated without parental consent or knowledge but mistakenly rely on the false construct that children – particularly those manipulated by Defendants' actions – are "capable of providing informed consent." (*See* Exhibit 1 to the Complaint, ECF No. 6-1, at 10.) True informed consent is impossible since information statements (or fact sheets for COVID-19 vaccines for eleven year olds) are not written for children's comprehension. Here, the inability of children to exercise informed consent is further compounded by the challenges faced by many public school students in Philadelphia, a district in which many students are unable to read or comprehend at grade level. (ECF No. 1, at ¶ 74.)

The Complaint also correctly spells out that their minor children are too young to know or accurately recall details of their own health history[15] or understand the importance of this information, to fully understand and weigh the risks and benefits of vaccination,[16] and to offer true

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[14] *Health Department Update on Measles Outbreak – January 12*, CITY OF PHILADELPHIA, Press Releases (Jan. 12, 2024) https://www.phila.gov/2024-01-12-health-department-update-on-measles-outbreak-january-12/.

[15] ECF No. 1, at ¶ 96.

[16] For example, children cannot understand the risks (both short- and long- term) of multiple ingredients in vaccines including formaldehyde, mercury, aluminum and many more (*Vaccine Excipient Summary*, CDC.GOV (Nov. 1, 2021) https://www.cdc.gov/vaccines/pubs/pinkbook/downloads/appendices/b/excipient-table-2.pdf), and, additionally, the possible permanent, life-altering effects of the new mRNA technology.

informed consent, and in particular, consent free from coercion. (ECF No. 1, at ¶ 74.) "Parents are in the best position to make important vaccination decisions, and consider their child's unique biological makeup, familial medical history, their family's faith, and lifestyle." (ECF No. 1, at ¶ 10.) The vaccinator has unfettered discretion to determine a child's alleged informed consent with no guidelines of how to determine if a child can actually consent and with no proof required of how the vaccinator reached his or her determination. (ECF No. 1, at ¶ 125.) This entire scenario is preposterous.

Further, children cannot fully appreciate that, if they suffer a vaccine injury from a vaccine on the recommended childhood schedule, they cannot simply sue a vaccine manufacturer in a state or federal court and likewise that they cannot even file a petition on their own behalf for compensation under the Vaccine Injury Compensation Program (the "VICP"). (*See, e.g.*, ECF No. 1, at ¶¶ 12, 90.) Worst of all, children cannot appreciate the futility of trying to obtain any compensation under the Countermeasures Injury Compensation Program (the "CICP") for a COVID-19 vaccine injury (*see* ECF No. 1, at ¶ 16) which has currently paid out only eleven awards averaging less than $4,000 each out of the tens of thousands, hundreds of thousands, and by some estimates millions, of injuries caused by COVID-19 vaccination. The Defendants here know exactly what they are doing – and they are keeping children in the dark.

C. Deprivation of Constitutional Rights Establishes Standing

Plaintiffs pled that "[b]oth Minor Consent Regulations permit vaccination of children as young as eleven years old without parental knowledge, consent, or permission. Vaccinating minor children without knowledge or consent of their parents or legal guardians violates parental constitutional rights to direct their child's upbringing and disregards valid religious and philosophical exemptions obtained under Pennsylvania law." (ECF No. 1, at ¶ 8.)

Defendants argue that parental rights are violated only after compelled interference and that no injury can accrue until one of the Plaintiffs' children is *actually* vaccinated under the MCR. There are at least two problems with this position. First, the Defendants' fixation on whether the

Plaintiffs' children will actually be vaccinated overlooks the fact that the injury of a child actually receiving a vaccine over the parent's objection would be *in addition to* the injury that comes from depriving the Plaintiffs of their right to exempt their children from vaccines in the first place, as well as the injury that comes from Defendants' pressure campaign to inject children within the city limits. *Those* injuries have already occurred, are ongoing, and are sufficient to establish standing. Moreover, as a direct result of Defendants' regulations allowing for clandestine vaccination without prior or subsequent notice in violation of parental rights as guaranteed by the United States Constitution and as required under NCVIA, Plaintiffs have no way of knowing if their child has been vaccinated.

Plaintiffs, who have exercised lawful authority to protect their children, should be confident that when they make lawful choices on behalf of their minor children, the government will not only respect those choices but will also protect their *children's interests* in the lawfully exercised authority of their parents. It is well-established that "[t]he government's interest in the welfare of children embraces not only protecting children from physical abuse, but also protecting *children's interest* in the privacy and dignity of their homes and *in the lawfully exercised authority of their parents*." *Calabretta v Floyd,* 189 F.3d 808, 820 (9th Cir. 1999) (italics added).

The MCRs do the exact opposite. Instead of respecting the lawful wishes of parents, the Defendants have crafted a procedure to clandestinely bypass parents lawfully exercising their authority. Meanwhile, the City has ratcheted up the pressure on children whose parents have opted out of vaccines and even on children who do not know their vaccination status and thus even are susceptible to over-vaccination. The City has publicly and vocally encouraged children to be vaccinated as part of its program to do an end-run around parents. Defendants claim there is no coercion. (ECF No. 16, at 17.) As shown in the Complaint (ECF No. 1) and above, Defendants are wrong.

Meanwhile, the Plaintiffs' children are left to navigate competing forces – their parents, who have and claim their right to choose their child's medical care; and city officials and their

enlisted peers pressuring them to be vaccinated. As the Supreme Court recognized in *Lee v. Weisman*, 505 U.S. 577 (1992), the pressures exerted in this crucible are substantial and coercive. As in *Weisman*, the "undeniable fact" is that the City exerts pressure. *Id.* at 593. "This pressure, though subtle and indirect, can be *as real as any overt compulsion*. *Id.* (italics added). Adults may be able to distinguish between "coercion" and "encouragement," but "for the dissenter of high school age, who has a reasonable perception that she is being forced by the State to pray in a manner her conscience will not allow, the injury is no less real." *Id.*

Weisman's observations about the experiences of students in public schools capture exactly the pressures that Plaintiffs' children are faced with, have experienced, and will continue to experience as long as the MCRs remain in effect. This coercion, combined with the parents' ongoing loss of their constitutional and statutory right to exempt their children are themselves injuries that have occurred, are ongoing, and will only be exacerbated as the Defendants continue their efforts to have all school-age children vaccinated, and open school vaccine clinics to accomplish that goal. These are real injuries, they constitute violations of federal law, and are redressable by this Court.

As pled, Defendants' MCRs violate federal and Pennsylvania Commonwealth law, and the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution, since the MCRs deprive the Plaintiffs of their constitutional rights to direct the care and upbringing of their children. Plaintiffs further allege that Defendants' Minor Consent Regulations violate Article II, Section 1 of the Pennsylvania Constitution in addition to conflicting with Pennsylvania law. (*See* ECF No. 1, at ¶¶ 21, 60.)

With an underlying, unspoken, and even sinister motivation, Defendants appear to forget what Commonwealth (since the Regulations are contrary to Pennsylvania law) and even what country they are living in by promoting a fallacy that parents are powerless even with the United States Constitution in hand. Defendants ask this Court to condone the MCRs and to ignore their blatant violations of Pennsylvania and federal law – including the U.S. and Pennsylvania

Constitutions – so they can continue to take advantage and even take away a child's innocence, by abrogating parental rights at a most essential level.

D. CHD Satisfies the Requirements for Pleading Associational Standing

The Complaint also satisfies associational standing with respect to Plaintiff Children's Health Defense ("CHD"). Organizations can also satisfy injury-in-fact for standing under organizational standing. An organization suffers an injury in fact if a defendant's actions "perceptibly impaired" the organization's activities and consequently drain the organization's resources. *See* Havens *Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). Alternatively, an association may assert claims on behalf of its members, but only where the record shows that the organization's individual members themselves have standing to bring those claims. *Pa. Prison Soc'y v. Cortes*, 508 F.3d 156, 163 (3d Cir. 2005). CHD satisfies both these requirements.

CHD is a representative of its members, including its members in Pennsylvania and, in particular, those who have ties to the City of Philadelphia. *Hunt v. Washington State Apple Advertising Com'n*, 432 U.S. 333, 341 (1977). As pled, CHD alleges that, as a result of the pandemic, CHD has diverted resources to focus on educating its members and taking legal and advocacy measures to address activities of state and local governments, including the City of Philadelphia, regarding laws and regulatory measures responding to the pandemic. CHD has closely followed government coordination with special interests, including pharmaceutical manufacturers, to maximize the number of children receiving Covid-19 vaccines, and to monitor the merits and bases for imposition of pandemic response measures. (*See* ECF No. 1, at ¶ 25.)

III.

PLAINTIFFS MORE THAN SUFFICENTLY PLEAD CLAIMS UPON WHICH RELIEF CAN BE GRANTED

Defendants also urge the Court to dismiss the complaint pursuant to Rule 12(b)(6), alleging that Plaintiffs do not state a claim upon which relief can be granted. While the previous arguments

as to standing rebut much of this claim, the following further demonstrates the complaint is more than is sufficiently pled.

A. Plaintiffs Meet the Requirements of a Well-Pled Complaint

"Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations, quotations, and quotation marks omitted).

In reviewing a motion to dismiss, the court "must accept as true all of the factual allegations contained in the complaint." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 508, n.1 (2002). Second, at this early stage of the pleadings the Complaint and the facts alleged therein need only be "plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Rule 12(b)(6) does not countenance . . . dismissals based on a judge's disbelief of a complaint's factual allegations," and thus a well-pled complaint "may proceed even if it appears 'that a recovery is very remote and unlikely.'" *Twombly*, 550 U.S. at 556, *quoting Neitzke v. Williams*, 490 U.S. 319, 327 (1989) and *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). Without question, Plaintiffs' detailed Complaint is well-pled.

B. Plaintiffs Have Sufficiently Pled that the NCVIA Preempts the MCRs

Plaintiffs' First Cause of Action (ECF. No. 1, at ¶¶ 115-122) is adequately pled. Article VI, Clause 2 of the U.S. Constitution states that the laws of the United States shall be the supreme law of the land.

> Intent to preempt is found in three interrelated ways. First, Congress may expressly preempt state law by so stating. … Second, courts will imply preemption where Congress has occupied the field by extensive regulation. … Preemption will also be found in a third situation: where there is an actual conflict between state and federal law. The presence of an actual conflict, though most often referring to situations where it would be physically impossible to comply with both laws, may also be found where the state law stands as an obstacle to the accomplishment of and execution of the full purposes and objectives of Congress.

Pennsylvania Medical Soc. v. Marconis, 755 F. Supp. 1305, 1308 (3d Cir. 1991) citations and quotation marks omitted.

The NCVIA expresses Congress's intent to occupy the field of law as to the administration of childhood vaccinations with laws of uniform applicability. The MCRs conflict with and subvert the clear commands of the NCVIA. Congress has mandated that before a vaccine is administered to a child, the parent or legal representative must receive a detailed Vaccine Information Statement (VIS) and further requires that detailed information about each vaccine –including date of administration, the manufacturer and lot number, and the name and address of the health care provider administering the vaccine—is recorded in the child's permanent, available health record. Defendants simply fail to recognize that the VIS requirements in Federal Law are not a mere suggestion. These requirements are law, and the Defendants cannot simply rewrite, dismiss, or ignore federal law. The *Booth* court emphasized the importance of the very language that the Defendants ask the Court to ignore here:

> Congress's reference to "the legal representatives of any child" and then to "any other individual" conveys that when the person receiving the vaccination is a child, the VIS must be given to the legal representative. 42 U.S.C. § 300aa-26(d). If Congress did not mean for the legal representative to receive a VIS when his child receives a vaccine, then the phrase "the legal representatives of any child" would be superfluous. All Congress would have needed to say is that a healthcare provider should give a VIS "to any individual to whom such provider intends to administer such vaccine." But it did not do that. And courts shun statutory interpretations that result in surplusage.

Booth v. Bowser, 597 F. Supp. 3d at 18.

Defendants also incorrectly argue that because the NCVIA does not define "child," somehow Congress did not intend to occupy the field in the areas covered by the NCVIA and thus that the MCRs are permissible. This argument fails because "child" should be defined by its ordinary meaning, which promotes the uniform application of the federal law requiring that the parent of any child receive a VIS remains and the MCRs clearly conflict with that federal law. *Id.* at 20. Moreover, as the Court in *Booth* recognized, state law (or here a local regulation) should not

be used to manipulate the meaning of a federal statute beyond credulity. *Id.* at 22.[17] Arguing that an eleven-year-old is not a child does just that.

In *Booth*, the Court found that the Defendants' interpretation, as is the case here, "would impair the uniform application of the NCVIA. *Jerome v. United States*, 318 U.S. 101, 104, 63 S. Ct. 483, 87 L. Ed. 640 (1943) ('[T]he application of federal legislation is nationwide and . . . at times [a] federal program would be impaired if state law were to control.'); *see also* [*Miss. Choctaw Indian Band v.*] *Holyfield*, 490 U.S. [30,] 43 [(1989)] (instructing courts to assess whether Congress intended a federal law to have 'uniform nationwide application')." *Booth*, 597 F. Supp. 3d at 20.

NCVIA was intended to occupy the field of vaccine injury. "House Committee Report No. 99-908 contains an "authoritative" account of Congress' intent in drafting the pre-emption clause of the National Childhood Vaccine Injury Act of 1986 (NCVIA or Act). *See Garcia v. United States*, 469 U.S. 70, 76, 105 S. Ct. 479, 83 L. Ed. 2d 472 (1984) ("[T]he authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill")." *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 244 (2011).

In direct conflict with the NCVIA, the General Minor Consent Regulation prevent a parent from receiving federally mandated Vaccine Injury Statements at the time the child is vaccinated (and before the vaccine is administered). By depriving parents of any knowledge that their child may be at increased risk of serious harm or death, the General Minor Consent Regulation subverts Congress's intent to protect children. The General Minor Consent Regulation thus usurps the responsibility and authority of federal health agencies to which Congress assigned the development and publication of Vaccine Information Statements and violates the Supremacy

[17] While not conceding Defendants' argument that state law should apply, even if it did, the MCRs conflict with Pennsylvania laws establishing that children under 18 cannot consent to medical procedures absent very limited exceptions, as discussed *infra*. Defendants would have the Court believe that they have the power to manipulate Pennsylvania and Federal law. They do not.

Clause of Article VI and the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution.

Contrary to the assertions in Defendants' memorandum, the MCRs eviscerate Plaintiffs' federally protected right to receive critical information regarding vaccines before their child receives an injection to not only inform them of risks regarding each vaccine but also to advise them of their right to file a claim and seek compensation in the VICP under the NCVIA, 42 U.S.C. § 300aa-1 *et seq.*, in the event of injury by childhood vaccines or under the CICP for COVID-19 vaccines under section 319 of the Public Health Service Act.

"Thus, MCR sharply conflicts with the federal NCVIA and also with Pennsylvania law, which generally require a parent's or adult guardian's written informed consent before a medical professional is allowed to perform medical-surgical procedures on a child, including, but not limited to, surgery with anesthesia; radiation or chemotherapy; administration of an experimental medication; or use an experimental device." (*See* ECF No. 1, at ¶¶ 60, 83.)

As alleged in the Complaint, "By giving license to surreptitiously vaccinating children, the General Minor Consent Regulation erects barriers making it difficult if not impossible for parents like Plaintiffs to vindicate their legal rights." *See* (ECF No. 1, at ¶ 120.)

"NCVIA The National Childhood Vaccine Injury Act of 1986 requires a health care provider administering a vaccine to a child to provide the child's parent or other legal representatives a copy of information "presented in understandable terms [that] shall include – (1) a concise description of the benefits of the vaccine; (2) a concise description of the risks associated with the vaccine; (3) a statement of the availability of the [VICP]; and, (4) such other relevant information as may be determined by the Secretary." 42 U.S.C. § 300aa-26(c)-(d). A VIS is particularized to each vaccine. For eleven-year-old children, for whom only EUA COVID-19 vaccines are authorized, **there is no VIS**." (ECF No. 1, at ¶ 13; Exs. 5 and 6 (ECF No. 6).)

"It is critical that parents are informed before their child receives a vaccine so they can be on alert for any symptoms or adverse reactions following vaccine administration, but also due to

the short window of time in which to seek compensation in the VICP or the CICP for any injuries. The Minor Consent Regulations impermissibly make an end run around federally guaranteed parental rights to be informed before vaccination and take away the very remedy that Congress provided in the VICP and the CICP." (ECF No. 1, at ¶ 14.)

"As part of the NCVIA's comprehensive regulatory scheme, Congress has mandated that "each health care provider who administers a vaccine set forth in the Vaccine Injury Table shall provide to the legal representatives of any child or to any other individual to whom such provider intends to administer such vaccine a copy of the information materials developed" by the Secretary. 42 U.S.C. § 300a-26(d)." (ECF No. 1, at ¶ 41.)

As set forth in the Complaint, "[a]s part of this comprehensive regulatory scheme, Congress has mandated that the Secretary's informational materials 'shall be provided prior to the administration of such vaccine' to a child's parent. 42 U.S.C. § 300a-26(d)." (ECF No. 1, at ¶ 56.)

In sum, Plaintiffs clearly have alleged facts sufficient with respect to the first cause of action, defeating the motion to dismiss on these grounds.

C. Plaintiffs have Adequately Pled Violations of Constitutionally Protected Parental Rights

Plaintiffs' second cause of action, violations of 28 U.S.C. § 2201 and 42 U.S.C. § 1983 and the Fifth and Fourteenth Amendments of the U.S. Constitution (ECF No. 1, at ¶¶ 123-127) is sufficiently pled. In asserting this cause of action, Plaintiffs cite long-standing precedent from the United States Supreme Court and this Circuit clearly establish that parents have a fundamental right to direct the upbringing of their children. (*See* ECF No. 1, at ¶¶ 99-105.) The Complaint is replete with facts supporting that Plaintiffs seek here to protect to protect their parental rights – indeed, that they brought this lawsuit is sufficient enough to support their claim that Defendants have violated the Fifth and Fourteenth Amendments of the U.S. Constitution.

In seeking to dismiss this claim, Defendants rely heavily on *Anspach v. Philadelphia*, 503 F.3d 256 (3d Cir. 2007), for the proposition that a violation of parental rights can be found only "in cases where the government 'compelled interference in the parent-child relationship.'" (ECF No. 16, at 17.) However, in reaching its decision *Anspach*, the Third Circuit relied heavily on the fact that the child at issue requested reproductive care of her own volition. *See Anspach v. Philadelphia*, 503 F.3d at 266. The Court noted that a public health clinic was "a facility that, unlike a public school, does not require attendance or exercise authority over its visitors." *Id*. at 271. The *Anspach* court distinguished cases that are more closely analogous to the instant matter, such as *Lee v. Weisman*, 505 U.S. 577, in which the Supreme Court held that "circumstances endemic to a high school graduation" created a sense of compulsion, which "coerced those attending to join in the prayer whether or not doing so violated their personal religious beliefs." *Anspach*, 503 F.3d at 264. In *Anspach*, without coercion a child sought certain reproductive healthcare and the only purported coercion even alleged was that the medical provider gave the child water and told her to swallow the medication the child had voluntarily sought. *Id.* at 264-65. Clearly demonstrating that *Anspach* is inapposite, the *Anspach* court there noted that "[n]either the Center nor any of its services related to minors [were] *advertised*, and minors [were] not *sought out* or *encouraged* to attend the Center . . . ." *Id*. at 262 (internal citation omitted). Here, as alleged in the Complaint, there is a pervasive environment of coercion. Defendants contend that is no violation here because the MCRs are permissive, not prescriptive. (ECF No. 16, at 18, n.10.) This is incorrect. The conduct of the Defendants in coercing children renders the Minor Consent Regulations invasive.

The *Anspach* decision also conflicts with the Third Circuit's expansive protection of parental rights. Indeed, "the Third Circuit Court of Appeals recognized that parental rights are entitled to protection outside the school setting from misguided attempts to impose moral views by government officials." *Tatel v. Mt. Lebanon Sch. Dist*., 637 F. Supp. 3d 295, 316-317 (W.D. Pa. 2022), clarified on Denial of Reconsideration by *Tatel v. Mt. Lebanon School District*, 2023

WL 3740822 (W.D. Pa., May 31, 2023) ("*Tatel-2*"). Moreover, in its expansive protection of parental rights, even in a school setting, the Third Circuit further "recognizes that a public school's actions may conflict with parents' fundamental constitutional rights and when conflicts occur on matters of the greatest importance, the parents' rights prevail unless the public school can demonstrate a compelling interest for its actions." *Tatel-2*, 2023 WL 3740822, at *1.

Contrary to Defendants' assertions, nothing in *Anspach v. Philadelphia,* 503 F.3d 256, militates a finding that Plaintiffs have failed to state a claim here. In particular, here Plaintiffs have adduced evidence in their complaint that Defendants have created a scheme whereby they compel and manipulate children to receive vaccines and attempt to do an end run around parental rights. This is sufficient at the motion to dismiss stage.

Contrary to Defendants' blatant maneuvers to cut parents out of children's health care decisions with no justification, parents must be involved in such critical and potentially life-altering decisions, as supported by the United States Constitution and case law interpreting it. (ECF No. 1, at ¶ 126.)

Vaccinating child or even lying in wait to do so in a clandestine manner inflicts more than a "*de minimis"* inconvenience. *Kaemmerling v. Lappin*, 553 F.3d 669, 678 (D.C. Cir. 2008). Indeed, it is the entire reason these parents object to being taken out of the ability to make important heath decisions for their child. Whether or not they choose to claim an exemption for any given vaccine is irrelevant, it is for parents alone to decide.

Importantly, Defendants' promotion of vaccination absent parental consent in the MCRs do not hinge on any finding of parental unfitness whereby the government could potentially argue that it needs to step in to protect a child. On the contrary, the MCRs permit authorized vaccine providers to administer vaccines to minor children without any consideration of the parents whatsoever. Instead, as discussed above, the provider makes a nebulous and undefined "assessment" of whether a minor child can provide informed consent. In that regard, as the court

in *Wallis ex rel. Wallis*, explained, the role of the government is to protect – not usurp – parental rights. 202 F.3d at 1141.

Plaintiffs' Complaint is replete with long-standing caselaw recognizing constitutional protection of parental rights in the upbringing of their children and eschewing state intervention in parental decision-making. *See, e.g.*, ECF No. 1, at ¶¶ 99-105, citing *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972); *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 639-640 (1974); *Parham v. J.R.*, 442 U.S. 584, 621 (1979). As the court in *Wallis ex. rel. Wallis v. Spencer*, 202 F.3d 1126, found:

> The right to family association includes the right of parents to make important medical decisions for their children, and of children to have those decisions made by their parents rather than the state. *See Parham v. J.R.*, 442 U.S. 584, 602, 61 L. Ed. 2d 101, 99 S. Ct. 2493 (1979) (holding that it is in the interest of both parents and children that parents have ultimate authority to make medical decisions for their children unless "neutral fact finder" determines, through due process hearing, that parent is not acting in child's best interests); *see also Calabretta v. Floyd*, 189 F.3d 808 (9th Cir. 1999) (holding that "the government's interest in the welfare of children embraces not only protecting children from physical abuse, but also protecting children's interest in the privacy and dignity of their homes and in the lawfully exercised authority of their parents.").

Id. at 1141. In short, Defendants actions here are in direct contradiction to a long line of cases protecting the rights of parents where there is no finding that a parent is not fit to make decisions for their child.

It is important to keep in mind that if a school-age child doesn't *actually succumb* to peer pressure, it doesn't mean the child hasn't felt coerced by that pressure since, as the *Weisman* court noted, "there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools." *Weisman*, 505 U.S. at 592. Adults are different than children. "[f]or the dissenter of *high school age*, who has a reasonable perception that she is being forced by the State to pray in a manner her conscience will not allow, *the injury is no less real*." *Id.* at 593 (italics added).

In sum, Plaintiffs pleadings are more than sufficient to survive a motion to dismiss and Defendants' motion with respect to this claim must be denied.

D. Plaintiffs Have Sufficiently Alleged Violations of Pennsylvania Law and the Non-Delegation Clause of the Pennsylvania Constitution

Finally, the third cause of action, non-delegation (ECF No. 1, at ¶¶ 128-132), is sufficiently pled. The Pennsylvania Constitution Article II, Section 1, vests the General Assembly with the legislative power of the Commonwealth of Pennsylvania and this power is delegated to the municipalities only by limited grant. It is only through massive verbal contortions that the City argues the purported legality of it vastly expanding the ability of children to receive vaccines absent parental consent. The MCRs are not consistent with the laws and policies of the Commonwealth and in fact directly contradict the well-established Pennsylvania laws that forbid children from consenting to their own medical treatment except in limited circumstances. (*See* ECF No. 1, at ¶ 60.) Defendants lack the authority to act here.

The Defendants claim that no Commonwealth law prohibits the vaccination of minors without parental consent. This is demonstrably false. Vaccination is a medical treatment, and under Pennsylvania law, individuals under eighteen generally may not receive medical treatment absent parental consent. Pursuant to 35 P.S. § 10101: "Any minor who is eighteen years of age or older, or has graduated from high school, or has married, or has been pregnant, may give effective consent to medical, dental and health services for himself or herself, and the consent of no other person shall be necessary." Additionally demonstrating that children cannot consent to their own medical care, 11 P.S. § 2513 allows a parent to authorize another adult to consent to medical treatment for a minor child when the parent is unable to consent. Emphasizing the gravity and necessity of informed consent for a minor's medical care by a parent or other adult, the authorization given by a parent to another adult must be written and "shall be signed by the parent, legal guardian or legal custodian in the presence of and along with the contemporaneous signatures of two witnesses who are at least 18 years of age." 11 P.S. § 2513(c)(1). Further, recognizing the

importance and necessity of an adult receiving a VIS prior to vaccination, "[t]he authorization may also include the right to act as the minor's legal representative for the purposes of receiving informational materials regarding vaccines under section 2126 of the Public Health Service Act (58 Stat. 682, 42 U.S.C. § 300aa-26)." 11 P.S. § 2513(a).

Additionally, the MCRs conflict with Pennsylvania law requiring parental consent for vaccinations by pharmacists because according to the Commonwealth law, pharmacists cannot vaccinate minors without parental permission.[19] Thus, to the extent that pharmacists in Philadelphia vaccinate minors in the absence of parental consent, those pharmacists further violate Commonwealth law. *See* ECF No. 1, at ¶ 15.

Simply put, the City, its Department of Public Health, and/or the Health Commissioner have not been delegated authority from the General Assembly to establish laws or regulations that contradict the laws of the Commonwealth. Looking at the statutory scheme as a whole, it is clear that Plaintiffs have pled violations of Pennsylvania law and the Non-Delegation clause of the Pennsylvania Constitution.

E. In the Event Defendants' MTD is Granted, Plaintiffs Request Leave to Amend

Roberts v. Mayor & Burgesses of the London Burough of Brent,[20] held: "If a complaint is dismissed for failure to state a claim, leave to amend should be granted unless the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." (quoting *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986)).

[19] 63 P.S. § 390-9.2(a)(5).

[20] 70 Fed. Appx. 615, 619 (3d Cir. 2003).

IV.

CONCLUSION

Defendants' Motion to Dismiss must be denied in its entirety.

Dated: January 19, 2024

Respectfully submitted,

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