Levana Lomma
xxxx Makaloa Street
Kapa'a, Hi. 96746
Phone: 808-xxx-xxxx
E-mail: levana@forourrights.org
In Propria Persona

United States District Court
District of Hawaii

Levana Lomma

Plaintiff,

v.

CLARE E. CONNORS, in her individual and official capacity as Attorney General of the State of Hawai'i,
DAVID Y. IGE, in his individual and official capacity as Governor of the State of Hawai'i,
DEREK S.K. KAWAKAMI, in his individual and official capacity as Mayor of the County of Kaua'i,

Defendants

CASE NO. Civil 20-00456-JAO-RT

Amended Complaint for Declaratory and Emergency Injunctive Relief

Plaintiff complains as follows:

Introduction

1. This is a constitutional challenge to the Fourteenth Supplementary Proclamation[1] issued by the governor of Hawaii, David Ige, on October 13, 2020, stating:

> *"All persons must wear face coverings in compliance with county orders, rules and directives approved by me pursuant to Section I."*

2. The Fourteenth Supplemental Proclamation violates the plaintiff's First Amendment right of free speech under the United States Constitution by literally *abridging* the plaintiff's ability to speak audibly and clearly while wearing a face mask, thereby resulting in a form of censorship by infringing upon the ability for plaintiff to effectively communicate with others, and at the same time acts to obstruct plaintiff's God-given right to freely breathe LIFE-giving oxygen, which is a fundamental right, not enumerated, and so protected under the Ninth Amendment of the United States Constitution.

3. The government, including Attorney General Connors, Governor Ige, and Mayor Kawakami may violate plaintiff's constitutional rights if the government can do two things: 1) The government shows a compelling public interest in issuing the rule that outweighs violating plaintiff's rights, and 2) the law addresses the compelling public interest in the most specific and effective way possible so as to be least intrusive on plaintiff's rights. This is referred to as a strict scrutiny standard of review, and the court must apply this to any law, order, or rule that infringes upon the most fundamental of all human rights. The First Amendment right to free

[1] https://governor.hawaii.gov/wp-content/uploads/2020/10/2010095-ATG_Fourteenth-Proclamation-for-COVID-19-distribution-signed.pdf

speech falls into the category of rights that require the highest level of protection, and therefore a law like the Fourteenth Supplemental Proclamation, which infringes on plaintiff's right to free speech, must pass strict scrutiny. Additionally, precedence must be set which would require the same review standards for a Ninth Amendment violation considering the right to LIFE (oxygen) itself is by far the most fundamental of all human rights.

4. The federal government has not issued face mask requirements in any jurisdiction, only state and local governments have done so. However, many health experts and scientists who act as advisors within the federal government are purposely skewing scientific data to make it appear Covid-19 is a public health emergency and to imply that requiring face masks is the best way to address this public health emergency, thereby giving the appearance that face mask orders pass both prongs of the strict scrutiny test. This is a fallacy.

5. The most reliable scientific data to date shows all state and county face mask orders, including the Fourteenth Supplemental Proclamation, fail both prongs of the strict scrutiny test because 1) as of October, 2020, there is no county, or city in the State of Hawai'i that has shown Covid-19 qualifies as a public health emergency (or even an imminent public health emergency) within its jurisdiction, at least not an emergency that is worse than the flu in terms of estimated number of deaths, and 2) face mask requirements like those being issued by the Governor and all county Mayors under the Fourteenth Supplemental Proclamation have proven to have little to no effect on the spread of *ANY* virus, and 3) to date there is no conclusive scientific proof that perfectly healthy individuals are capable of spreading an infectious disease just by breathing. Additionally, mounting scientific data shows prolonged face mask use cuts down on oxygen intake which can lead to cognitive impairment and may cause long term health problems, a

concern that is particularly applicable to employees who are required to wear face masks 40 hours a week. The risk of harm involved in mandating mask wearing must not be excluded in the standard of review.

The "Curve" Never Happened

6. At the outset of the national call to lockdown the country we were told it was a necessary but temporary measure meant to lessen the strain on our healthcare system. As it turns out the dreaded curve never happened. The extra emergency supplies and makeshift hospitals across the country were simply not needed and all of them have since been dismantled. This leads to the question, if there is still a need for an emergency order, why would we remove this additional capacity? Another critical point to be made regarding the curve is the fact that multiple times, it was clearly stated that COVID-19 could not be stopped, and that all we could hope for was to lessen the impact. CDC and State "experts" said that we could flatten the curve but that the disease would continue to run through the population and that we simply would have to learn to live with it. Given this fact, it must be asked: if the curve has been flattened enough to take down temporary hospitals and we have no alternative but to live with it, then why is there still a need for an emergency? How could we possibly argue that the continuation of this emergency be considered anything but arbitrary and capricious – let alone act as justification for the limitation of fundamental rights subject to strict scrutiny?

Experts have known Covid-19 is not a pandemic since February, 2020

7. While lay people, politicians, and judges have been left helpless and at the mercy of

health experts claiming “we just don’t know enough” during the first lockdown phase of Covid-19 disease, we are too far along now and have learned more than enough about the Covid-19 disease to allow the same set of health experts to hoodwink us into a second round of unjustified rights violations. Based on preliminary data out of China, as early as February, 2020, public health officials Anthony Fauci and Robert Redfield, heads of the National Institutes of Allergies and Infectious Diseases (NIAID) and the Centers for Disease Control and Prevention (CDC), respectively, and current members of the Presidential Task Force on Coronavirus, acknowledged that Covid-19 was probably not as deadly of a virus as first thought and may end up being close to the seasonal flu in number of deaths and number of people infected (scientists use these two numbers -- number of deaths and number of people infected -- to calculate something called the “mortality rate” or “case fatality rate” of a virus, which is the single most important number in determining whether a virus qualifies as a public health emergency).

8. On February 28, 2020, Fauci and Redfield wrote in an editorial in the New England Journal of Medicine:

> “The case fatality rate (of Covid-19) may be considerably less than 1%. This suggests that the overall clinical consequences of Covid-19 may ultimately be more akin to those of a severe seasonal influenza (which has a case fatality rate of approximately 0.1%) or a pandemic influenza (similar to those in 1957 and 1968) rather than a disease similar to SARS or MERS, which have had case fatality rates of 9 to 10% and 36%, respectively.” (“Covid-19 — Navigating the Uncharted,” N Engl J Med 2020; 382:1268-1269 DOI: 10.1056/NEJMe2002387)

9. Neither Fauci nor Redfield have retracted nor modified this prediction about Covid-19 in any official manner since February, 2020, and most scientific data since the publication of this article have verified that Covid-19 is akin to the seasonal flu in mortality rate.

10. That the general consensus in the scientific community from early data out of China is that Covid-19 was not nearly as deadly as originally thought was confirmed by Deborah Birx, another member of the Presidential Task Force on Coronavirus, who said in response to a reporter's question on March 31, 2020, asking why there was no general lockdown ordered to stop the spread of Covid-19 in the United States:

> "I was overseas when this happened, in Africa, and I think when you looked at the China data originally and you said, 'Oh, well, there's 20 million people in Wuhan and 80 million people in Hubei and they come up with a number of 50,000 (deaths), you start thinking of this more like SARS than you do this kind of global pandemic. I mean I'll just be frank. When I looked at it I was like, 'Oh, well, this is not, you know, as close as those quarters are…' so I think the medical community interpreted the Chinese data as this was serious but smaller than anyone expected. And so what was modeled was not a lockdown." (From "March 31, 2020 | Members of the Coronavirus Task Force Hold a Press Briefing" at https://www.youtube.com/watch?v=e9v8ZZd1P0M, time marker 3:50:22)

Four ways experts and scientists may mislead the public on deadliness of Covid-19

11. There are four main ways health officials and scientists who should know better may mislead the public into believing Covid-19 is a public health emergency:

i) Reporting a false or misleading number of deaths caused by Covid-19

ii) Reporting a false or misleading number of people infected by Covid-19

iii) Focusing on number of deaths alone or number of people infected alone without pointing out that it is the combination of these two numbers that produces the most relevant number in determining whether Covid-19 is a public health emergency, i.e., the mortality rate

iv) Blocking death statistics from being publicly available at the county level, increasing the likelihood for inaccurate & fraudulent data being reported at the state or national level for the most important statistics required to determine a public health emergency.

12. In this constitutional challenge plaintiff outlines a standard approach lay people, politicians, and judges can use to evaluate Covid-19 research data that addresses these four main

areas of confusion, relying on current scientific consensus. For instance, it is scientific consensus that:

> i) The most accurate way to estimate the number of deaths due to a new epidemic like Covid-19 is to calculate the number of "excess deaths" during a particular time frame and specifically not rely on notoriously inaccurate death certificates.
>
> ii) The most accurate way to estimate the number of people infected by a virus like Covid-19 is through antibody test results and specifically not through RT-PCR test results.
>
> iii) The most accurate way to measure the deadliness of a virus like Covid-19 is to calculate the mortality rate of the virus using the most accurate data available from excess deaths and antibody testing.
>
> iv) The most accurate way to obtain excess death data is to have full transparency at the county level, including the county health official listing the total number of deaths *from all causes* reported from each hospital or city coroner within the county for public scrutiny.

13. As of June, 2020, excess death data at the national level published by the CDC indicate the number of excess deaths for the U.S. for the year 2020 will be around 50,000, or about one-fourth the 200,000 deaths currently estimated for Covid-19 for 2020[2] based on inaccurate death certificate data. Also as of October, 2020, the most accurate antibody test results indicate that in 2020 about 10% of the population in the U.S., or 35 million people, will have been infected with Covid-19. Using these two estimates for number of deaths and number of infections (keeping in mind that the number of deaths caused by Covid-19 will likely be more accurate when excess deaths are recorded and made available to the public at the county level rather than at the national level), the national mortality rate for Covid-19 is about 0.1%, or the equivalent of the seasonal flu.

[2] https://www.cdc.gov/nchs/nvss/vsrr/covid19/excess_deaths.htm

14. There are over 3,100 counties in the United States. In much the same way the electoral college was set up by the Framers of the Constitution to help expose and deter election fraud by preventing fraudulent excess votes in one or two counties from determining the president by popular vote, demanding that accurate death counts and infection numbers be reported and made transparent at the county level rather than at the state or national level helps prevent one or two counties from across the country from inaccurately categorizing Covid-19 as a "national pandemic." For example, New York City has a population of 8.4 million or 2.4 percent of the population of the United States, yet New York City claims a whopping 23,000 deaths due to Covid-19, or 15% of all Covid-19 deaths in the United States. If it turns out after evaluating New York City excess death data (and tossing out the highly inaccurate death certificate data) that the number of deaths from New York City due to Covid-19 is less than half of that, it will have meant that highly inaccurate or fraudulent data from one city alone determined whether Covid-19 is considered a public health emergency across the entire country. For this reason plaintiff asserts all public health emergency declarations must be done on a county by county level. Governor Ige's Fourteenth Supplemental Proclamation blanket order for the entire state of Hawai'i therefore has no justification unless and until state health officials can show data in every county of Hawai'i results in mortality rates significantly above mortality rates for the seasonal flu. It is highly unlikely, given even relatively inaccurate death numbers and infection numbers publicly available at the national level at the CDC for Hawai'i, that even a single county in Hawaii can show Covid-19 constitutes a public health emergency.

Four main ways experts and scientists may mislead the public on efficacy of face masks

15. Even if Covid-19 were to qualify as a public health emergency in a few of the 3,100 counties in the United States, there are four main ways health officials and scientists who should know better may mislead the public on arguments concerning face mask efficacy in these counties as a means to slow the spread of the disease:

i) not clearly distinguishing mask use for preventing the inhalation of Covid-19 versus mask use for preventing the exhalation of Covid-19

ii) assuming that everything (droplets and aerosols) exhaled from the mouth of a person infected with Covid-19 contains live virus particles capable of causing disease in others and also focusing on scientific studies that track the behavior of Covid-19 in aerosols and droplets being "exhaled" from machines rather than studies tracking the behavior of Covid-19 in aerosols and droplets being exhaled directly from real live infected patients

iii) focusing on the small effect masks might have on cutting potential airborne spread of Covid-19 alone while ignoring the large effect masks probably have on increasing contact or surface spread

iv) ignoring well-known downsides to wearing masks, such as substantial evidence showing that face masks cut down on oxygen intake for the wearers, and increase carbon dioxide intake which can increase viral load, while also creating a breeding ground for bacteria, potentially causing a myriad of short term and long term health problems.

16. Relying on broad scientific consensus is once again the best approach in order to make the face mask data, arguments, and decisions more manageable and fact-based. For example, it is scientific consensus that:

i) With the exception of top level N95 masks reserved exclusively for health care professionals, all other types of masks do little to prevent the mask wearer from inhaling Covid-19 aerosols. All face mask arguments should therefore be limited to how well masks work at preventing people from exhaling Covid-19 particles into the air, the main purpose of face mask requirements by government officials, according to government officials.

ii) The best way to study the exhaled droplets and aerosols of infected people is to collect samples of droplets and aerosols directly from infected people, not samples of droplets and aerosols created from a machine. In this way the most definitive experiment to date concerning mask efficacy was published in April, 2020, and studied droplets and

aerosols exhaled from real coronavirus patients with and without masks [Leung, N.H.L., Chu, D.K.W., Shiu, E.Y.C. *et al.* Respiratory virus shedding in exhaled breath and efficacy of face masks. *Nat Med* 26, 676–680 (2020). https://doi.org/10.1038/s41591-020-0843-2]. Facts and data from this study alone should be determinative in arguments concerning the efficacy of face masks until this data is refuted by further studies. This includes data showing droplets and aerosols from people infected with coronaviruses contained no virus particles unless the person coughed, suggesting that simply breathing or talking is not enough for infected individuals to spread Covid-19 through the air.

iii) The best way to slow the spread of any respiratory virus like influenza (the seasonal flu), rhinoviruses (the common cold), and coronaviruses like Covid-19, is to consider both methods of transmission (airborne transmission through the air and surface transmission through touch), not just airborne transmission. Face mask arguments tend to focus solely on airborne transmission of Covid-19 while ignoring the possible effect mass public face mask use has on increased transmission of Covid-19 through contact with contaminated surfaces, including an infected mask wearer touching his/her own contaminated mask after coughing into the mask or leaking nose mucous into the mask, then spreading the contamination to a myriad of public surfaces like shopping cart handles, pin pads, door knobs, door handles in the refrigerated foods section of the local grocery store, etc.

iv) The best way to protect the public from health risks is to not ignore the most obvious health risk when making a decision about face masks, namely that face masks decrease the amount of oxygen intake for the wearer. Standards for safety concerning the use of face masks and respirators in the workplace have been established and regulated by the Occupational Safety and Health Administration (OSHA) for many years. OSHA has determined that anything under 19.5% for oxygen level places the mask wearer in danger of tachypnea (increased breathing rates), tachycardia (accelerated heartbeat), and impaired attention, thinking, and coordination even while at rest, which could lead to injury.[3] The data on oxygen deprivation by masks is much more definitive than any data showing masks prevent airborne transmission of Covid-19, at least not in a way that can just as easily be achieved by coughing into the crook of an elbow.

17. Using this method of scientific consensus to ferret out what is the best data available concerning the efficacy of face masks, then balancing the pros and cons of masks using the most reliable data available, it is clear the best approach to slowing the spread of Covid-19 with minimal health risk to the public is to instruct the public to:

[3] https://www.osha.gov/laws-regs/standardinterpretations/2007-04-02-0

i) avoid wearing masks so as not to decrease oxygen intake and so as to not accidentally contaminate public surfaces like doorknobs and shopping cart handles after touching a mask contaminated with virus particles.

ii) never cough into a mask and always cough into the crook of the elbow because that is the least likely place you will touch with your hands and contaminate your hands with virus particles.

This method also happens to be the best way to avoid infringing on plaintiff's First Amendment right to free speech and her fundamental right to breathe LIFE-giving oxygen, and is the method any jurisdiction must follow in order to meet the second prong of the strict scrutiny standard of review.

18. Plaintiff asks the court to declare the Fourteenth Supplemental Proclamation unconstitutional and issue an injunction barring defendants Clare E. Connors, David Y. Ige, and Derek S.K. Kawakami from enforcing this rule because the Fourteenth Supplemental Proclamation fails both prongs of the strict scrutiny standard of review and because there is a much better way to slow the spread of Covid-19 without impinging on the plaintiff's right to free speech, namely, banning use of masks by the general public and instructing the public to cough into the crooks of their elbows. Plaintiff is requesting an emergency injunctive order because there is a high likelihood that the Fourteenth Supplemental Proclamation is actually causing more harm than good.

Jurisdiction and Venue

19. The court has federal subject matter jurisdiction over this action because it is a constitutional challenge to a state law that violates the First Amendment to the United States Constitution, an action which is allowed under Ex Parte Young 209 U.S. 123 (1908).

20. The District of Hawai'i is the proper venue for this action because the violation of plaintiff's First Amendment right to free speech by the Fourteenth Supplemental Proclamation occurred when plaintiff was forced to wear a face mask on October 2, 2020, at the Kauai Athletic Club at 5611 Kawaihau Road, Kapa'a, Hi. 96746, which is within the jurisdiction of this court.

Standing

21. The three requirements of standing (injury, causation, and redressability) have been met because plaintiff's right to free speech has been violated (injury), and plaintiff will most likely be injured again for as long as the Fourteenth Supplemental Proclamation remains in effect in Hawai'i (imminent injury). The injury was caused by Governor Ige's executive order, the Fourteenth Supplemental Proclamation, as well as Mayor Derek Kawakami's Emergency Rule #6,[4] requiring plaintiff to wear a mask while utilizing the Kauai Athletic Club in Kapa'a, Hi. (causation). Kauai Athletic Club does not require members to wear masks unless there is a local or state order requiring masks while exercising at Kauai Athletic Club. But for the Fourteenth Supplemental Proclamation, Kauai Athletic Club never would have required plaintiff to wear a face mask. The court can resolve this issue by striking down the Fourteenth Supplemental Proclamation as unconstitutional and issuing an injunction barring the Defendants from enforcing the law (redressability).

Parties

[4] https://www.kauai.gov/Portals/0/Civil_Defense/EmergencyProclamations/Mayor%27s%20Emergency%20Rule%20%236%20Re-Instated%20AMENDMENT%201_20200724.pdf

22. Plaintiff Levana Lomma, is a lifelong resident of the state of Hawaii, currently residing in Kapa'a, in the County of Kaua'i. Plaintiff is a recently unemployed hair stylist and mother of three children who have all been gravely affected by restrictive Covid-19 mitigation tactics that have stripped them of their usual routine and led to emotional distress. Plaintiff is the Founder and Secretary of a non-profit civil rights organization on Kauai called For Our Rights and has dedicated her time to studying constitutional law to help preserve the rights of the people of Hawai'i in the midst of what is being called a "state of emergency" but instead appears to be a methodical destruction of the world economy and humanity at large.

23. Defendant Clare E. Connors is the attorney general of Hawai'i and is responsible for enforcing all the laws of Hawai'i, including the Fourteenth Supplemental Proclamation.

24. Defendant David Y. Ige is the Governor of the State of Hawai'i and is responsible for issuing the Fourteenth Supplemental Proclamation, which gives each county Mayor the power to create and issue their own mask rule with his approval.

25. Defendant Derek S.K. Kawakami is the Mayor of the County of Kaua'i where Plaintiff resides and is responsible for issuing Emergency Rule #6, in accordance with the Fourteenth Supplementary Proclamation, which resulted in Plaintiff being forced to wear a mask at the Kauai Athletic Club on October 2, 2020.

Legal Context

26. The Supreme Court of the United States has adopted three standards of review concerning constitutional challenges to federal or state laws whenever a claim is made that a federal or state law violates a constitutional right of a citizen. From least protective of plaintiff's

rights to most protective of plaintiff's rights, these three standards of review are: Rational basis, intermediate, and strict scrutiny, respectively. A rational basis standard means the law must be rationally related to a legitimate government interest, intermediate standard of review means a law must address an important government interest and must do so by means that are substantially related to that interest, and strict scrutiny requires that the law furthers a compelling governmental interest and must be narrowly tailored to achieve that interest. Once a court determines that a strict scrutiny standard of review must be applied to the law, it is presumed that the law or policy is unconstitutional, and the government then has the burden of proving that its challenged law is constitutional.

27. The more fundamental the right that is being violated by the government, the higher the standard of review and the greater the chance the law will be struck down as unconstitutional. Typically, if a right is explicitly stated in the Constitution, such as in the Bill of Rights, a violation of that right by the government will draw the highest, strict scrutiny standard of review. The right to freedom of speech, the basis of this constitutional challenge, as well as the right to freely obtain LIFE-giving oxygen, is specifically stated in the United States Constitution under the First Amendment and Ninth Amendment, respectively, and therefore draws a strict scrutiny standard of review.

28. As mentioned the strict scrutiny standard of review for any law requires a two-pronged test: 1) The law must address a compelling governmental interest, and 2) the law must be narrowly tailored to achieve that interest. The court may strike down a law if it fails either prong of this test. However, under strict scrutiny a law may also be struck down if it can be shown there is a less invasive way to achieve the same compelling government interest. For

instance, if the compelling government interest for requiring face masks in public is to decrease spread of Covid-19 and a better way to achieve that goal, calling on all the most reliable scientific data as well as relying on basic logic and understanding of human behavior -- all while simultaneously protecting plaintiff's right to breathe freely and her right to free speech -- is to instruct anybody coughing in public to cough into the crook of their elbow and specifically *not* into a mask, then the court has full authority to strike down the Fourteenth Supplemental Proclamation as unconstitutional even if the Fourteenth Supplemental Proclamation passes both prongs of the strict scrutiny test.

29. Plaintiff claims the Fourteenth Supplemental Proclamation fails both prongs of the strict scrutiny test, and even if the Fourteenth Supplemental Proclamation were to pass the strict scrutiny standard of review, the Fourteenth Supplemental Proclamation would still be unconstitutional because there is a much better way to slow the spread of Covid-19 without requiring masks and violating plaintiff's personal rights. That the better way involves requiring people to *not* wear face masks and more specifically, *not* cough into a face mask but instead cough into the crook of their elbow, only adds to the urgency of striking down the Fourteenth Supplemental Proclamation as soon as possible.

30. The sad irony is that it is possible the Fourteenth Supplemental Proclamation might create a public health emergency where there otherwise would not be one without it. This not only underscores the urgency for injunctive relief barring the Fourteenth Supplemental Proclamation and preventing increased spread of Covid-19, but it reveals how arguments over standard of review are almost a moot point in this case because mask requirements like the Fourteenth Supplemental Proclamation probably do not even pass the lowest level of review for

a law - the rational basis standard of review. If face masks most likely increase the spread of Covid-19 as plaintiff asserts, there is no rational basis for Governor Ige and the State of Hawai'i to issue an order that does the opposite of what it set out to achieve, and the Fourteenth Supplemental Proclamation does not even pass the rational basis of review.

Facts

Requirements for a public health emergency in Hawaii

31. On October 13, 2020, Governor of Hawai'i, David Y. Ige, issued the Fourteenth Supplemental Proclamation requiring everybody in the state of Hawai'i to wear a face mask while in public, with a few exceptions. In issuing the Fourteenth Supplemental Proclamation Governor Ige invoked the Emergency Management Section of Hawai'i Revised Statute (HRS), HRS 127A, which grants broad powers to the governor of Hawai'i to issue orders to protect the public in cases of disaster. HRS 127A-2 defines disaster as:

> "any emergency, or imminent threat thereof, which results or may likely result in loss of life or property and requires, or may require, assistance from other counties or states or from the federal government."

Viruses are rarely both deadly and contagious

32. A virus that is highly contagious but is not very deadly, such as the flu, will not qualify as a public health disaster under HRS 127A-2.

33. A virus that is very deadly but is not very contagious, such as HIV-1, will not qualify as a public health disaster under HRS 127A-2.

34. Only a virus that is both deadly and contagious will qualify as a public health disaster under HRS 127A-2. Due to the nature of viruses (e.g., it is not beneficial for a virus to kill its host, so many viruses mutate quickly to be less deadly), it is very rare for a virus to be both

deadly and contagious.

35. The court is expected to base its decisions on facts, reason and logic, not hysteria. If the systematic, fact-based approach to reviewing Covid-19 data outlined here is used, the court will likely determine that Covid-19 is very similar to other coronaviruses that have been around for centuries, i.e., contagious but not very deadly - much like the flu.

How a lay person can tell if a virus is deadly or contagious

36. Any lay person, politician, or judge can evaluate if a virus is deadly or contagious by requesting only two numbers from health officials: 1) The number of people who have died from the virus, and 2) the number of people who have been infected with the virus. Scientists divide the number of deaths by the number of infections, then multiply the resulting number by 100 to get a number called the mortality rate, which is reported at a %. The higher the mortality rate, the more deadly a virus. Relatively innocuous viruses like the flu and Covid-19 have a mortality rate of 0.1% to 1%. Intermediate viruses have a mortality rate in the 1% to 10% range, and the most deadly viruses have mortality rates that are greater than 10%.

37. It may sound ominous for a state health official to say 150 people in Hawai'i will die from Covid-19 in 2020 (the current most accurate estimate) until the state health official is then forced to admit that 150,000 people in Hawai'i will be infected with Covid-19 in 2020 (the current most accurate estimate), putting Covid-19 on par with the flu in number of deaths caused and number of people infected, i.e., both the flu and Covid-19 have a mortality rate of close to 0.1% and both will have infected about 150,000 in Hawai'i in 2020, meaning that while both the flu and Covid-19 are contagious viruses, neither is a particularly deadly virus.

38. Most hysteria over Covid-19 comes from health officials (who should know better) purposely skewing data for the number of people who have died from Covid-19 or for the number of people infected by Covid-19. They skew the numbers to inflate the number of people who have died or deflate the number of people infected so the end result is a relatively high mortality rate (in the range of 1% to 5%) that inaccurately suggests Covid-19 is more deadly than the flu. Another more recent phenomenon is reporting positive test results from the antibody test (or blood test) as a bad thing. Positive test results from antibody tests are a good thing! Because it means the person with a positive antibody test has already had Covid-19, has fully recovered, and is most likely immune from either catching Covid-19 or spreading it. In fact, these people are being asked to give their special blood to help others suffering from Covid-19.[5] The slew of state-wide mask orders and reclosing of economies for a second lockdown because of so many positive antibody tests are possibly the worst misinformed decisions by governors, politicians and judges ever made in public health history.

How to obtain accurate death numbers - counting excess deaths

39. Most inaccuracies in reports of the number of deaths due to Covid-19 come from death certificates that incorrectly list Covid-19 as the primary cause of death. Everybody has heard of the story of the person hit by a bus who subsequently tested positive for Covid-19 and was listed and counted as a Covid-19 death. It's important to note that on September 30, 2020, the CDC updated their website and reported that 94% of those who were counted as a Covid-19 related death had an average of 2.6 comorbidities, including causes like intentional and

[5] "Trump urges people who have recovered from covid-19 to donate blood plasma," https://www.washingtonpost.com/health/2020/07/30/trump-urges-people-who-have-recovered-covid-19-donate-plasma/, July 30, 2020

unintentional injury, poisoning and other adverse events, and that only 6% of the roughly 160,000 deaths reported at that time could be attributed only to Covid-19.[6]

For years scientists have anticipated these types of inaccuracies on death certificates and instead relied on something called "excess deaths" to get a more accurate picture of the number of deaths caused by various disasters, including epidemics. This is best explained by the CDC on its website showing weekly excess death numbers for the United States, stating:

> "Counts of deaths from all causes of death, including COVID-19, are presented. As some deaths due to COVID-19 may be assigned to other causes of deaths (for example, if COVID-19 was not diagnosed or not mentioned on the death certificate), tracking all-cause mortality can provide information about whether an excess number of deaths is observed, even when COVID-19 mortality may be undercounted. Additionally, deaths from all causes *excluding COVID-19* were also estimated. Comparing these two sets of estimates — excess deaths with and without COVID-19 — can provide insight about how many excess deaths are identified as due to COVID-19, and how many excess deaths are reported as due to other causes of death. These deaths could represent misclassified COVID-19 deaths, or potentially could be indirectly related to the COVID-19 pandemic (e.g., deaths from other causes occurring in the context of health care shortages or overburdened health care systems)." (From "Excess Deaths Associated with COVID-19" at https://www.cdc.gov/nchs/nvss/vsrr/covid19/excess_deaths.htm)

40. Calculations for excess deaths can be very complicated or very simple, but the underlying theory of calculating excess deaths is the same, once again best explained by the CDC as follows:

> "Estimates of excess deaths can provide information about the burden of mortality potentially related to the COVID-19 pandemic, including deaths that are directly or indirectly attributed to COVID-19. Excess deaths are typically defined as the difference between the observed numbers of deaths in specific time periods and expected numbers of deaths in the same time periods. This visualization provides weekly estimates of excess deaths by the jurisdiction in which the death occurred. Weekly counts of deaths are compared with historical trends to determine whether the number of deaths is significantly higher than expected." (From "Excess Deaths Associated with COVID-19" at https://www.cdc.gov/nchs/nvss/vsrr/covid19/excess_deaths.htm)

---

[6] https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/index.htm?fbclid=IwAR2-muRM3tB3uBdbTrmKwH1NdaBx6PpZo2kxotNwkUXlnbZXCwSRP2OmqsI

41. While the CDC uses a somewhat complicated calculation for excess deaths, plaintiff prefers the simplest version because any lay person, politician, or judge can understand it: Total number of deaths expected from all causes for the year 2020 in a particular jurisdiction is estimated from averaging the total number of deaths from the previous five years, i.e., 2015, 2016, 2017, 2018, and 2019. This expected number of deaths is compared to the actual number of deaths in the jurisdiction. If there are more deaths than expected in 2020, these deaths are termed "excess deaths" and, depending on where the excess deaths came from, may be attributed either to the Covid-19 epidemic or to a larger than expected number of people dying from cancer or heart attacks because of poor access to medical facilities due to the shut down.

42. While total death numbers at the county level are typically accumulated and reported at the end of the year, given the importance of these numbers in allowing politicians to make the most informed decisions about public health issues surrounding Covid-19, these numbers must be made publicly available immediately for public scrutiny.

43. Data on excess deaths in the U.S. as reported by the CDC on July 21, 2020, was showing extreme overreporting of deaths due to Covid-19 for April and May, 2020, as was evidenced by large drops in total deaths in the U.S. that were far below expected total death numbers being reported from June to mid-July, 2020 (Figure 1). By July 23, 2020, however, the same graph had been "updated" by the CDC so that the data that was showing well below average death counts in the U.S. for June and July, 2020, had disappeared and the new graph appeared as though there was a possible "second spike" of Covid-19 deaths showing up in the data instead (Figure 2).

Figure 1. Weekly number of deaths as reported by the CDC from a select number of causes (not from all causes as erroneously claimed at the top of the graph), as of July 21, 2020, from "Excess

Deaths Associated with COVID-19" available at https://www.cdc.gov/nchs/nvss/vsrr/covid19/excess_deaths.htm.

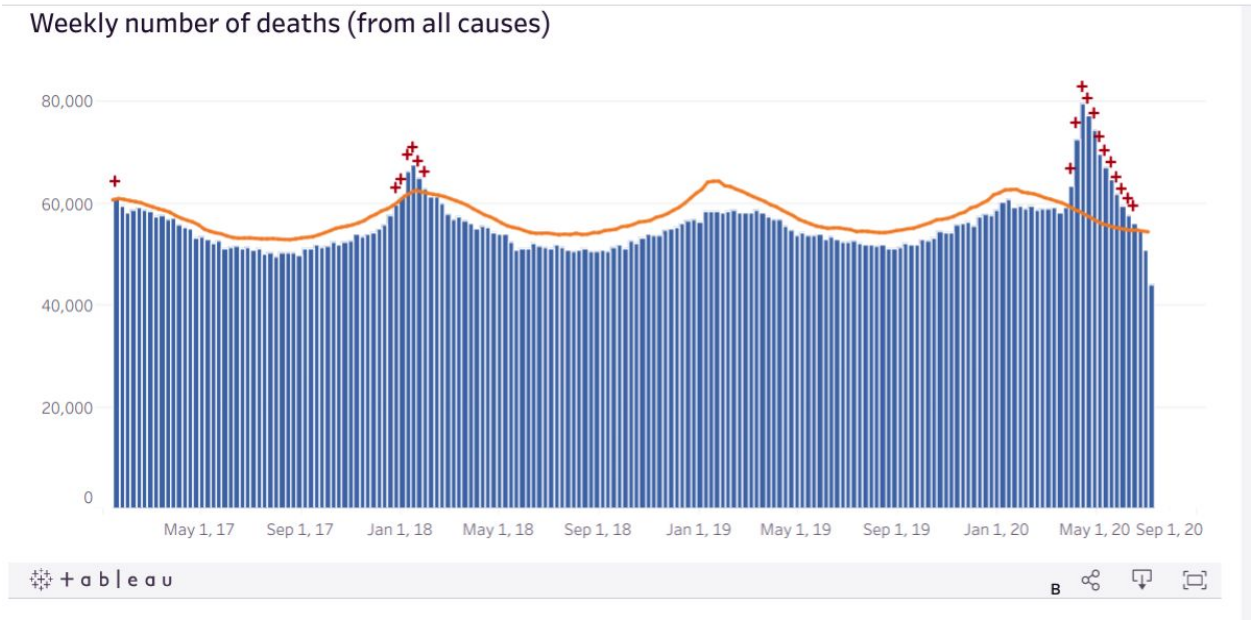
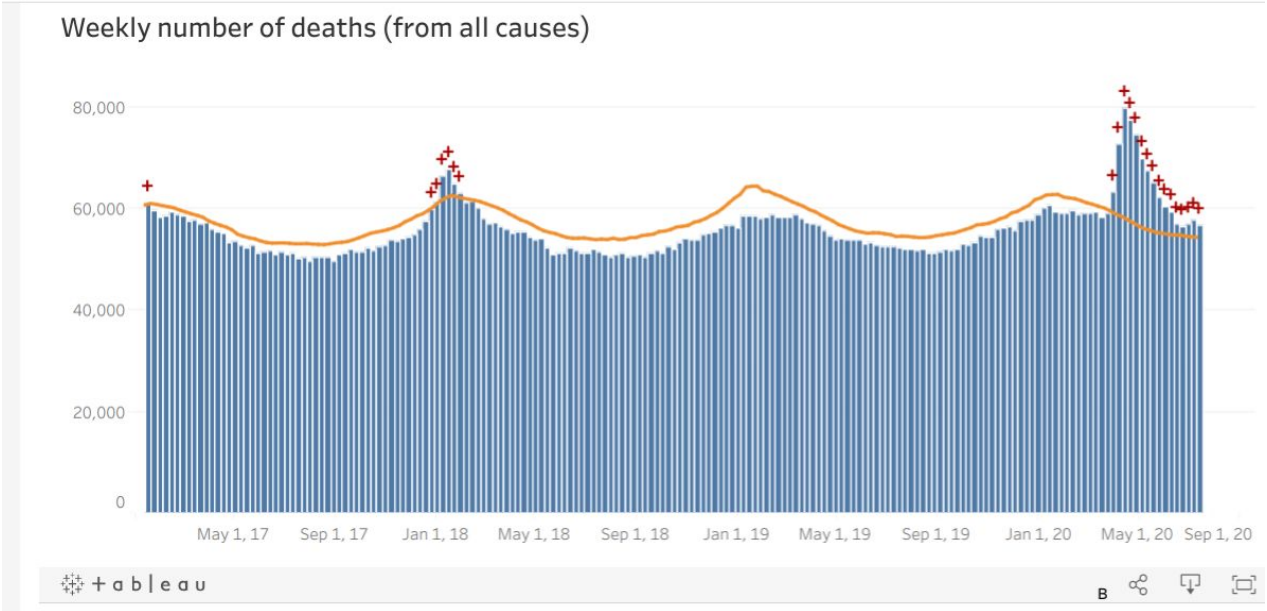


Figure 2. Weekly number of deaths as reported by the CDC from a select number of causes (not from all causes as erroneously claimed at the top of the graph), as of July 23, 2020, from "Excess Deaths Associated with COVID-19" available at https://www.cdc.gov/nchs/nvss/vsrr/covid19/excess_deaths.htm.



44. The CDC may claim that there is a large time gap between a death and the death being reported to the CDC so that the most recent bars measuring excess deaths for 2020 on the CDC excess death charts are usually under-reported, but the graphs shown here purportedly take this into account, according to the CDC, and have included a weighting factor that makes up for this time gap problem. This highlights another problem with CDC data: CDC calculations are so complicated and have so many unknown fudge factors that it is nearly impossible to judge how accurate their various models and predictions really are. For instance, the graphs from the CDC website reported here do not even use total deaths from all causes as required for the most accurate excess death numbers but instead use only the total number of deaths from a select number of related causes like flu or cold. These are not true "excess death" numbers because these charts would not expose outright fraud outlined above where a person dying of a bus accident is listed as a Covid-19 death. Deaths caused by accidents are conveniently missing from the CDC data.

45. Looking at the data from the CDC for totals beginning in 1999 up to 2018[7] as well as 2019[8] it appears that an underestimate for expected deaths for the year 2020 in the United States may be at fault for what seems to be a rise above the expected national average due to Covid-19. The CDC reports the total deaths increased in large amounts from 2009 to 2016 and then suddenly stopped increasing in 2018 and 2019. While that is possible, it is worth noting as a potential error or fraudulent representation of the data. The most obvious falsification or error in the CDC's method, though, is in its estimation of expected deaths in 2020 by averaging the total

[7] https://wonder.cdc.gov/controller/saved/D76/D91F606

[8] https://gis.cdc.gov/grasp/fluview/mortality.html [Numbers for 2019 were determined by adding column "K" from rows 171 to 222 which are data for weeks 1-52 of 2019]

deaths from 2017, 2018, and 2019. Using the CDC's numbers provided the average total deaths for the years 2017, 2018, and 2019 is 2,832,835. This means that the CDC expected 2,832,835 deaths in 2020; *and it means that the CDC expected the total deaths to actually decrease in 2020 compared to previous years*. The CDC's method actually results in a lower number of expected deaths in 2020 than the CDC reports for both 2018 and 2019. The total deaths in the U.S. have reportedly not decreased compared to a previous year since 2009. In fact, according to the CDC's data referenced above, the deaths significantly increased several years up until 2017, 2018, and 2019 when the CDC reports that total deaths suddenly remain almost the same.

46. All this underscores plaintiff's repeated requests that all Covid-19 related data, including death numbers and test results, be made available to the public immediately at the county level showing detailed death counts from each hospital or city coroner. Data that is available in this manner for public scrutiny allows inaccuracies and possible fraud to be exposed and corrected right at the source. This type of transparency should be required before any public health emergencies can be declared or extended at either the county or the state level, especially now that we have been dealing with the Covid-19 disease for over eight months and know a lot more about it.

How to obtain an accurate number of people infected -- antibody testing

47. The most accurate way to obtain the number of people infected by a virus like Covid-19 is with antibody testing. Antibody tests are sometimes called serum or serology tests because the test uses a blood sample, usually a pinprick on the finger. This is in contrast to RT-PCR tests that use a swab in the nose or throat to collect a sample. Unlike a positive RT-PCR

test, which supposedly indicates the person tested is currently infected with the virus, a positive antibody test means the person tested has already had the virus in the past and has recovered, many times without even realizing he/she had the disease.

48. At the start of an outbreak antibody tests can be relatively inaccurate, but they very rarely give an overestimate of the number of people infected. Even early, inaccurate antibody tests are therefore useful because they give a ballpark lower estimate of the number of people infected by a virus in a given jurisdiction.

49. As more people contract Covid-19 and recover from mild to no symptoms without even realizing they had contracted the disease, and as antibody tests become more accurate, subsequent antibody testing typically shows an increase in the percent of the population thought to have already been infected with Covid-19. As an example: early, inaccurate antibody testing by Stanford University scientists in March and April of 2020 in Santa Clara County, CA, estimated that about 3% of the population in that county, or about 60,000 people, had already been infected with Covid-19.[9] A month later in April and May, 2020, a slightly more accurate antibody test on a population that had probably been slightly more infected by Covid-19 by that time estimated about 5% of the population, or 500,000 people, in Los Angeles County, CA, had been infected with Covid-19 and had already recovered.[10] By June and July of 2020, CDC antibody testing revealed as high as 7% of the population had already been infected by Covid-19 in New York, New Jersey, and Connecticut.[11] Recent estimates from CDC scientists working

[9] "COVID-19 Antibody Seroprevalence in Santa Clara County, California" at https://www.medrxiv.org/content/10.1101/2020.04.14.20062463v2

[10] "Seroprevalence of SARS-CoV-2–Specific Antibodies Among Adults in Los Angeles County, California, on April 10-11, 2020", *JAMA*. 2020;323(23):2425-2427. doi:10.1001/jama.2020.8279 available at https://jamanetwork.com/journals/jama/fullarticle/2766367

[11] "Seroprevalence of Antibodies to SARS-CoV-2 in 10 Sites in the United States,

with ongoing antibody testing put the number of people infected by Covid-19 at as much as 10% to 15% of the population, or ten times higher than results obtained from RT-PCR tests alone.[12]

As of October 13, 2020, Covid-19 was not a public health emergency in any county in Hawai'i

50. As of October 13, 2020, the date the Fourteenth Supplemental Proclamation was issued by Governor David Ige to address a purported public health emergency, the best data publicly available on Covid-19 showed that about 150 people will die from Covid-19 in the state of Hawaii in 2020 (¼ of the current number of deaths expected based on inaccurate death certificates) and about 150,000 people will have been infected by Covid-19 during this same time period assuming about 10% of the population will have contracted Covid-19,[13] numbers that are very similar to the flu, resulting in a mortality rate of 0.1% for Covid-19 in Hawai'i, as predicted by top U.S. health officials in February, 2020.

51. The government may argue that these numbers are inaccurate, but it is not up to the plaintiff to establish the mortality rate of Covid-19 in Hawai'i. Once it has been shown that the Fourteenth Supplemental Proclamation must pass the strict scrutiny standard of review for violating plaintiff's First Amendment right to free speech and her fundamental right to breathe LIFE-giving oxygen, the burden of proof shifts to the government to establish the most accurate

---

March 23-May 12, 2020," *JAMA Intern Med.* Published online July 21, 2020. doi:10.1001/jamainternmed.2020.4130

[12] "CDC Antibody Study: Number Infected by COVID-19 in State 6 Times Higher Than Reported" avaliable at https://hartfordhealthcare.org/about-us/news-press/news-detail?articleid=26868&publicId=395

[13] https://www.cdc.gov/coronavirus/2019-ncov/covid-data/pdf/Consolidated-Forecasts-Incident-Cumulative-Deaths-2020-09-28.pdf

mortality rate possible for Covid-19 in every county in Hawai'i and to establish that the mortality rate in *every county in Hawai'i justifies the claim of a public health emergency*, thereby meeting the first prong of the strict scrutiny standard of review that requires a compelling government interest in violating plaintiff's civil liberties. Simply repeating talking points coming from health officials thousands of miles away in Washington, D.C., that Covid-19 is a public health emergency is too vague to pass strict scrutiny.

52. Without providing the court and the public readily available data showing evidence to the contrary that mortality rates for Covid-19 in Hawai'i are most likely akin to the seasonal flu, no city, county, state or public official in Hawai'i can declare a public health emergency under HRS 127A-2. With no public health emergency, there is no compelling government interest to require citizens like plaintiff to wear face masks in public under the Fourteenth Supplemental Proclamation, and the Fourteenth Supplemental Proclamation fails the first prong of the strict scrutiny standard of review.

Masks are more likely to increase spread of Covid-19 through increases in public contact with contaminated surfaces

53. As with death counts and number of people infected, plenty of Covid-19 experts promote misleading data on mask efficacy. Approaching all arguments concerning face mask efficacy in the following manner should help lay people, politicians, and judges address the issue with fact-based decision making rather than the hysteria that has been all too common.

Eliminate all research papers arguing face masks prevent the mask wearer from becoming infected with Covid-19

54. Face mask orders are not meant to protect the face mask wearer from becoming

infected with Covid-19 but are instead meant to prevent the face mask wearer from spreading the disease. There is broad scientific consensus on this point. However, that this is still a big area of confusion in the general population, as well as among politicians and judges, is yet another argument against broad, sweeping face mask orders because such orders may give the public a false sense of security that masks protect them from contracting Covid-19. A study published by the CDC on September 11, 2020 reports that 70% of those in the study who tested positive for Covid-19 always wore a face mask, while 74% who tested positive never covered their face. This study reveals that the wearing of a face mask creates no significant reduction in transmission of SARS-CoV-2.[14] Face mask orders may also mislead the public into believing the primary mode of spread for Covid-19 is through the air when this is far from being established scientifically, despite current claims from the CDC otherwise.[15]

55. Birx expressed concerns over masks creating a false sense of security several times when this issue was raised by a reporter during a press briefing on April 2, 2020, before the CDC had yet to issue its recommendation on face masks for the general public:

> Reporter: "Groups are differing in guidance (on masks). The W.H.O. and even the surgeon general have talked about various studies that show that masks, maybe in addition to not even being helpful in protecting people, may actually increase the rates of illness because people touch the masks and then they touch themselves. Can you talk a little about the evolution (of the CDC guidance for masks) on this?"
>
> Birx: "Let me just say one thing (about masks): The most important thing is social distancing and washing your hands. We don't want people to get an artificial sense of protection because they are behind a mask. Because if they are touching things, remember your eyes are not in the mask, so if you're touching things and then touching your eyes, you're exposing yourself in the same way. So we don't want people to feel like, 'Oh, I'm wearing a mask. I'm protected, and I'm protecting others. You may be

[14] https://www.cdc.gov/mmwr/volumes/69/wr/mm6936a5.htm?s_cid=mm6936a5_w

[15] "CDC updates COVID-19 transmission webpage to clarify information about types of spread" https://www.cdc.gov/media/releases/2020/s0522-cdc-updates-covid-transmission.html

> protecting others, but don't get a false sense of security that that mask is protecting you exclusively from getting infected because there are other ways that you can get infected because the number of asymptomatic and mild cases that are out there. And so this worries us, and it's why the debate is continuing about the mask. Because we don't want, when we're trying to send a signal that every single person in the country needs to stay six feet away from everybody, that needs to be washing their hands constantly and know where their hands are, to send a signal that a mask is equivalent to those pieces. So when the advisory comes out it will be an additive piece, if it comes out, rather than saying this is a substitute for. And we want to make sure everybody understands it is not a substitute for the presidential guidelines that have already gone out. And to be absolutely clear about that." ("April 2, 2020 | Members of the Coronavirus Task Force Hold a Press Briefing", at https://www.youtube.com/watch?v=aZLttfUwSk8 , starting at time marker 3:09:11)

56. All arguments and research papers trying to establish that masks help to prevent the wearer from contracting Covid-19 should be eliminated from the conversation as there is strong scientific consensus that this is not the case, especially for the masks being used by the general public that are not top level masks like N95 masks used by medical professionals. Also, the common argument heard from most lay people, politicians, and judges that "masks can't hurt" is completely refuted by Birx, who revealed the true reason why the mask recommendation was delayed for so long by the CDC: Issuing a recommendation for masks may cause greater spread of Covid-19. This contradicts later claims by Fauci that the recommendation for masks by the CDC took so long to come out because the CDC did not want a run on N95 masks that were in short supply at the time.[16] This explanation does not pan out given a majority of the population was well aware the mask recommendation from the CDC would refer to things like bandanas and low quality masks that some people were already using at the time. Even reporters were well aware as early as March, 2020, that the real reason the CDC was delaying mask

[16] "Fauci: why the public wasn't told to wear masks when the coronavirus pandemic began. The infectious disease expert also discussed why they are necessary" from https://thehill.com/changing-america/well-being/prevention-cures/502890-fauci-why-the-public-wasnt-told-to-wear-masks, June 16, 2020

recommendations may be the possibility that Covid-19 was spreading predominantly through surface contacts and not through airborne transmission, an issue that has yet to be resolved:

> Reporter: "On the masks, maybe for the doctors, is the reason why there is no CDC recommendation for the public to wear masks is because they meant to say reserve the masks for the medical workers or is it because the virus is not primarily transmitted through the air?" ("March 31, 2020 | Members of the Coronavirus Task Force Hold a Press Briefing," https://www.youtube.com/watch?v=e9v8ZZd1P0M, at time marker 3:40:42) (This question was not answered).

57. It is important to note that all the worst fears Birx discussed about miscommunications with the public regarding masks have come to fruition as politicians have rushed to hand down sweeping mask orders without educating the public to be more cognizant of everything they are touching while wearing a mask and especially to avoid touching their own masks. It does not take a massive double-blind study to observe in any Walmart store across the country that these very important directives are being completely ignored by the general public (or more accurately, were never received by the public in the first place), including plenty of examples of Walmart employees who touch their masks and then proceed to touch almost everything in the store, from restocking shelves to bagging groceries at checkout.

Eliminate all research papers that do not collect exhaled aerosol and droplet samples directly from infected patients

58. The two biggest myths concerning airborne transmission of Covid-19 promulgated by scientists who should know better are: 1) That everything that comes from the mouth of a person infected with Covid-19 contains live Covid-19 virus particles capable of causing infections in others, and 2) live Covid-19 virus particles capable of causing infections in others can travel long distances through the air in the form of tiny, dried out dust particles.

59. When people breathe, talk, cough, or sneeze they expel droplets and aerosols through their mouths. Droplets are tiny spheres of water that fall directly to the ground within a few feet of the person expelling them, usually within a second or two after being expelled. Aerosols are much smaller droplets of water that are so small they don't actually fall to the ground right away and can float further than a few feet after being expelled. However, because of their small size, aerosols also dry out very quickly and turn into tiny dust particles of dried out virus or bacteria (if any present) and salts, also usually within a second of being expelled from the mouth.

60. In 1934 a researcher by the name of W.F. Wells was the first person to publish a paper that described disease spread through the air in terms of droplets versus aerosols (which he termed droplet nuclei).[17] Dr. Wells was also one of the first people to stress that just because some droplets or aerosols may contain some virus or bacteria particles, it does not mean the virus or bacteria is alive or capable of causing disease in others. This was particularly true in aerosols since all living things require water to live, and once something like a virus or a bacteria "dries out", it is a bit like an egg getting scrambled -- it is difficult, if not impossible, for the virus or bacteria to go back to the way it was just by adding water. According to Wells, a person with tuberculosis (TB) who coughs without covering his mouth expels droplets that may or may not contain live TB bacteria capable of causing disease in others, but these droplets fall to the floor within a few feet of the infected person in about a second. The infected person also expels aerosols that may or may not contain live TB bacteria capable of causing disease, but these aerosols dry out so fast, also in about a second, that it is questionable the dust particles that are left contain enough live TB bacteria to cause disease.

---

[17] "On Air-borne Infections: Study II. Droplets and Droplet Nuclei", W. F. Wells, *American Journal of Epidemiology*, Volume 20, Issue 3, November 1934, Pages 611–618, https://doi.org/10.1093/oxfordjournals.aje.a118097

61. In 1934 researchers used crude methods, like placing petri dishes full of culture around a person infected with TB, to detect if droplets or aerosols being expelled from an infected patient contained live TB particles capable of spreading disease. In agreement with Dr. Wells' theories on droplets and aerosols, results of these experiments showed only the petri dishes placed within a foot or two of the coughing TB patient showed any signs of live TB bacteria being exhaled by the patient, i.e., if the patient was expelling aerosols with live TB bacteria, there was no evidence the bacteria survived long enough to travel beyond just a foot or two from the patient. Wells did not rule out that aerosols containing enough live TB bacteria to cause disease could travel long distances from the coughing TB patient - he only conceded that if they were present, the current methods of detection were not sensitive enough to establish it.

62. Fast forward 85 years later to 2020, and even with much more advanced methods of detection there are still no definitive studies showing any virus particles (flu, cold, Covid-19) that are capable of traveling long distances from an infected person in the form of dried out aerosol dust particles and yet still remain alive and capable of causing disease. In fact the most definitive paper to date regarding the efficacy of masks in slowing the spread of various viruses including coronaviruses indicates a person infected with a coronavirus in particular must cough to produce droplets or aerosols that contain any form of the virus, dead or alive.[18] Coronavirus patients who did not cough during the 30 minute time frame of the experiment produced droplets and aerosols that had no detectable traces of coronavirus, rendering moot the entire argument about whether Covid-19 could travel long distances in the form of a dried out aerosol dust particle from an infected person who was just breathing and talking because there are no virus

[18] Leung, N.H.L., Chu, D.K.W., Shiu, E.Y.C. *et al.* Respiratory virus shedding in exhaled breath and efficacy of face masks. *Nat Med* 26, 676–680 (2020). https://doi.org/10.1038/s41591-020-0843-2

particles to test, dead or alive. These results also render moot any arguments for the efficacy of masks in slowing the spread of Covid-19 from infected people who are just breathing or talking, once again because there are no Covid-19 particles for the mask to stop in the first place. This is in agreement with reports from the World Health Organization that asymptomatic spread of Covid-19 (i.e., spread of Covid-19 from people who are not coughing) appears to be very rare:

> "From the data we have, it still seems to be rare that an asymptomatic person actually transmits onward to a secondary individual," Dr. Maria Van Kerkhove, head of WHO's emerging diseases and zoonosis unit, said at a news briefing from the United Nations agency's Geneva headquarters. "It's very rare." The virus is primarily spread via respiratory droplets when someone coughs or sneezes or if they touch a contaminated surface, scientists say. (From "Asymptomatic spread of coronavirus is 'very rare,' WHO says," available at https://www.cnbc.com/2020/06/08/asymptomatic-coronavirus-patients-arent-spreading-new-infections-who-says.html, June 8, 2020)

63. According to the most definitive study on the efficacy of masks in slowing the spread of Covid-19 (*cited above*), masks are useless in stopping the spread of Covid-19 in infected individuals who are only breathing or talking. Masks are only possibly effective at blocking the spread of Covid-19 droplets and aerosols when an infected person coughs, and even this is not definitive because the study never measured if the virus particles collected in these droplets or aerosols were even alive. In addition, this method of prevention of spread of Covid-19 (blocking aerosols and droplets of an infected person who is coughing from being spread long distances) is just as easily achieved by having the infected individual cough into the crook of their elbow. Given the high probability of increased spread of Covid-19 from people touching their contaminated masks, coughing into the crook of the elbow is in fact the preferred method of slowing the spread of Covid-19 over mask use.

Eliminate mask arguments that do not take into account increased risk of spread through surfaces

64. Substantial evidence has already been presented that the main reasons for the CDC and for health advisors like Birx to delay mask recommendations until as late as April, 2020, was concern over possible increased spread of Covid-19 through surfaces because of the high chance that many infected people handling their own contaminated masks could unknowingly spread the disease to large numbers of people by touching public surfaces. Birx expressed alarming concern over this form of surface spread of Covid-19 on several occasions during press briefings. In addition to what has already been presented, Birx made the following additional comments on the subject of surface spread:

> On March 23, 2020: "You have to assume that everyone you are interacting with could be positive, and that gets into the handwashing piece, and that gets into the other piece we talked about, is surfaces. I think until we really figure out respiratory transmission versus the surface transmission and this hard surface transmission, not fabric, will be really critical because that is a way the virus could spread on subways or metros, where people would be holding on to things that other people had recently held onto. So that's the real question." ("March 23, 2020 | Members of the Coronavirus Task Force Hold a Press Briefing," https://www.youtube.com/watch?v=yC_L2ae5l3Y, starting at time marker 2:15:40)
>
> On March 23, 2020: "So we're learning a lot about social distancing and respiratory diseases, and I think those are the discussions we have to have in the future, in what you were talking about in changing our whole behavioral patterns in what we touch and being cognizant of that. I remember when I was worried Saturday morning. I was trying to think, What all did I touch on Friday? Did I touch a doorknob? Did I do this? Did I do that? Did I not wash my hands? You go through this whole piece. Did I touch my face by accident? I think this awareness that we all now have that we didn't have before, where we would've pushed through that door or turned that doorknob because we were in such a hurry. Now I think all of us think twice, and all of you think twice." ("March 23, 2020 | Members of the Coronavirus Task Force Hold a Press Briefing," https://www.youtube.com/watch?v=yC_L2ae5l3Y, starting at time marker 2:40:56)
>
> On April 2, 2020: "It's every American that has to make these changes, and I know they are really hard. I know it's hard to remember. I mean, I have to say to myself every day because I'm around very important people to, like, never touch anything, and I'm just like paranoid now about touching things, and I'm sure you are, too." ("April 2, 2020 | Members of the Coronavirus Task Force Hold a Press Briefing,"

https://www.youtube.com/watch?v=aZLttfUwSk8, starting at time marker 3:49:10)

65. It is clear that as of April, 2020, a major concern for health advisors at the CDC and on the Coronavirus Task Force was surface spread of Covid-19. There has been no data since April, 2020, to suggest surface spread of Covid-19 should not continue to be a major concern at the CDC and may even be a primary method of transmission of the virus over airborne transmission. These valid concerns over surface spread have been mostly ignored in the hysteria over masks in attempting to prevent less well-documented, probably less substantial spread of Covid-19 through the air. None of these concerns about surface spread by Birx and the CDC have been relayed to the public whenever face mask orders have been mandated by local or state governments.

66. While there is no evidence that masks help to decrease spread of Covid-19 in a way that can not be achieved just as easily as by having infected people cough into the crooks of their elbows, there is substantial evidence that masks most likely increase surface spread of Covid-19 and that this should still be a major concern for the CDC as well as for any politicians issuing blanket face mask orders at the state and local level based solely on CDC recommendations. It seems that no one is making decisions based on clear science, but instead is adopting whatever the current narrative may be to promote increased fear.

Evidence of possible decrease in oxygen intake for mask wearers must be included to refute arguments that masks are "harmless"

67. One of the main arguments in favor of face mask orders in the supposed absence of data on how Covid-19 may be transmitted is that mandating masks has no downside. Blatant rights violations aside, this is certainly not the case when concerns over masks inadvertently

causing increased surface spread of Covid-19 are taken into account. Another possible downside is the effect masks may have on decreasing oxygen intake for the mask wearer, among other health risks studied concerning masks. Most of the studies in this area have been carried out on special N95 masks worn by health care professionals, but there is no reason to assume that other types of masks being mandated by the government for public use do not pose at least some risk in this area, a risk that should not be completely ignored in debates over face mask orders, as is currently happening. The State simply cannot claim it is declaring an emergency to save life and then take actions to harm it.

68. Plaintiff discloses that none of the publications listed below has been critically reviewed by plaintiff. The arguments presented here have been copied in large part from a face mask challenge filed in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida by the Florida Civil Rights Coalition. That lawsuit is available for public viewing at:
https://www.floridacivilrights.org/florida-civil-rights-coalition-files-civil-rights-action-seeking-declaratory-judgment-and-permanent-injunction-against-unconstitutional-palm-beach-county-mask-mandate/22.

- A recent study involving 158 healthcare workers aged 21 to 35 years of age found that 81% developed headaches from wearing a face mask. JJY et al. (2020) "Headaches Associated with Personal Protective Equipment A Cross Sectional Study Among Frontline Healthcare Workers *During COVID-19," Journal of Head and Face Pain, May 2020, Vol. 60 Issue 5; 864-877.* See: https://headachejournal.onlinelibrary.wiley.com/doi/full/10.1111/head.13811.

- Researchers examined the blood oxygen levels in 53 surgeons using an oximeter, measuring blood oxygenation before surgery as well as at the end of surgeries. It was discovered that surgical masks reduced the blood oxygen levels (pad) significantly. The longer the duration of wearing the mask, the greater the fall in blood oxygen levels.

Bader A et al. (2008) "Preliminary report on surgical mask induced deoxygenation during *major surgery," Neurocirugia 2008;19:12-126.*

- People with cancer who are forced to wear masks are at further risk from prolonged hypoxia as the cancer grows best in a microenvironment that is low in oxygen. Low oxygen also promotes inflammation which can promote the growth, invasion and spread of cancers. Blaylock RL. (2013) "Immunoexcitatory mechanisms in glioma proliferation, invasion and occasional metastasis," Surg Neurol Inter January 29, 2013; 4:15. See: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3589840/; see also Aggarwal BB. (2004) "Nuclear factor-kappaB: The enemy within," A Cell Press Journal September 1, 2004, Vol. 6, Issue 5; 203-208. See https://www.cell.com/cancer-cell/fulltext/S1535-6108(04)00244-2.

- Based on Australian respirator design standards, it is evident that speech could contribute to inspired CO2 exceeding the maximum allowable concentrations in inspired air." Smith, C. et al. (2013) "Carbon Dioxide rebreathing in respiratory protective *devices, influence speech and work rate in full face mask," Ergonomics. 2013; Vol. 56, Issue 5.* See https://www.tandfonline.com/doi/abs/10.1080/00140139.2013.777128.

- Wearing N95 masks results in hypooxygenemia and hypercapnia which reduce working efficiency and the ability to make correct decisions...dizziness, headache, and short of breath are commonly experienced by the medical staff wearing N95 masks. The ability to make correct decisions may be hampered, too. The purpose of the study was therefore to evaluate the physiological impact of N95 masks on medical staff." Clinical Trial NCT00173017 "The Physiological impact of N95 mask on medical staff" June 2005. See https://clinicaltrials.gov/ct2/show/NCT00173017.

- It can be concluded that N95 and surgical facemasks can induce significantly different temperatures and humidity in the microclimates of facemasks, which have profound influences on heart rate and thermal stress and subjective perception of discomfort." Y. Li, at el. (2005) "Effects of wearing N95 and surgical facemasks on heart rate, thermal stress and subjective sensations," Int Arch Occup Environ Health. 2005; 78(6): 501-509. Published online 2005 May. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7087880/.

- Wearing a facemask, may cause physiological changes to the Nasal Cavity and statistically significant heart rate and thermal stresses. Zhu, J. et al. (2014) "Effects of

long-duration wearing *of N95 respirator and surgical facemask: a pilot study," Lung Pulmonary and Respiratory* Research. November 22 2014; EISSN: 2376-0060. https://medcraveonline.com/JLPRR/effects-of long-duration-wearing-of-n95-respirator-and-surgical-facemask-a-pilot-study.html.

69. These studies can not be ignored when public health officials try to make the argument that there is no downside to widespread public face mask mandates, even when taking into consideration all the exceptions and exemptions typically listed along with the orders. Many businesses are refusing to allow access to their establishment to those who are not donning a face mask, even when they have a legitimate medical exemption. These business owners and employees are being coerced by their government to violate the Americans with Disabilities laws out of fear of forced closure or fines. In this respect, not only does the mask wearing pose a health risk to all wearers, it is leading to discrimination and division within communities.

70. Safety Specialists working for the Occupational Safety and Hazard Administration play an important role in protecting the health and safety of individuals in the workplace. One of the tasks of specifically trained specialists is to evaluate the safe use of personal protective equipment (PPE) by employees to ensure it is necessary and used properly. If an employee is exposed to a hazard and the possible need for PPE arises, that individual must undergo a physical examination and be properly fitted. Great care is taken to evaluate all aspects including the air quality of the environment before the individual is asked to work for an extended period of time while wearing PPE. These steps are taken to ensure the safety of the employee because the science has already existed for decades that overexposure to carbon dioxide and a reduction in oxygen intake can lead to cognitive impairment, headaches and other adverse effects which can lead to serious injury. How is it possible that all of these protocols are suddenly completely

disregarded and instead the workforce throughout the entire nation is being forced into complying with a medical intervention without any evaluation for their safety nor any guidance for safe practices? This is a serious concern not only for those working 40 hour work weeks, but also for the children being forced to erase their smiles and expression for hours on end in the classroom. Not only is the forced mask wearing interfering with communication through the inability to read facial expression and lip movement, our children are being deprived of LIFE-giving oxygen which is absolutely vital for their cognitive development and ability to learn and thrive.

Conclusion

Executive order Fourteenth Supplemental Proclamation requiring all citizens to wear a face mask while in public violates plaintiff's First Amendment right to free speech and her right to breathe LIFE-giving oxygen, protected under the Ninth Amendment, and fails both prongs of the strict scrutiny standard of review because government has not shown the Covid-19 disease qualifies as a public health emergency under HRS 127A-2 in any county in Hawaii and because face masks most likely only work to increase the spread of Covid-19 through surface spread. In addition, face masks may pose health risks to mask wearers by decreasing oxygen intake, and forcing excess carbon dioxide intake. A better way to slow the spread of Covid-19 that eliminates possible increases in contact spread, lowers health risks caused by decreased oxygen intake, and protects plaintiff's right to free speech and freely breathe LIFE-giving oxygen is to instruct citizens to cough into the crooks of their elbows rather than into masks.

Prayer for relief

WHEREFORE, plaintiff respectfully prays that the court:

1. Enter a declaration that the Fourteenth Supplemental Proclamation is unconstitutional and void
2. Enter a preliminary and permanent injunction barring defendants Clare E. Connors, David Y. Ige and Derek S.K. Kawakami from enforcing the Fourteenth Supplemental Proclamation against plaintiff
3. Enter a judgement for plaintiff
4. Award fees and costs associated with filing this complaint to plaintiff
5. Grant such further and other relief as the Court deems just and proper.

Verification

I, Levana Lomma, am the plaintiff in the above-entitled action. I have read the foregoing and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true. I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Kapa'a, Hawai'i.

DATED: 10/28/2020

Levana Lomma

Levana Lomma