



**Ottawa County**  
Corporation Counsel

**Douglas W. Van Essen**  
Corporation Counsel

---

12220 Fillmore Street, Room 331  
West Olive, Michigan 49460  
(616) 738-4861  
dvanessen@miottawa.org

August 23, 2021

Ms. Lisa Stefanovsky  
Heath Officer  
Ottawa County

**Re: Religious exception to Mask Mandates**

Dear Ms. Stefanovsky:

You have asked me to analyze whether there is a religious exception to the limited mask pandemic order that you, as Ottawa County Health Officer, issued on Friday, August 20, 2021. The order mandates that all children attending physical school and teachers serving them in in grades pre-K through 6 wear masks while indoors and extends until a vaccination for those children becomes available, plus 60 days for parents to obtain it or decide against it, or until Ottawa County drops to the “low” COVID transmission level from its current “high” status.

In my opinion, the answer to your question is, “No.” There is no religious exemption to your order.

Even assuming that there was a strongly held opinion that a parent’s religious principles ran afoul of the use of masks by their children in a local school setting, that principle is insufficient to overcome the public goals in the mask mandate. This is not just my opinion; it is the opinion of the United States federal courts where such a legal challenge would be heard. There are two legal standards by which the courts would review such a challenge: (1) the “Tiers of Scrutiny” Test and (2) the “Substantial Relation” test. As to the “Tiers of Scrutiny” Test, the federal courts have held that the mask mandate clears the hurdle:

These orders satisfy this standard. Governor Baker's orders for all residents to wear masks are rationally related to the interest in stemming the spread of COVID-19 because, as the parties stipulated in the joint finding, “[i]t has been proven that the wearing of masks can slow the transmission of the spread of the coronavirus.” Joint Finding ¶ 22. Delaney's challenge, therefore, fails the First Amendment test developed under the tiers of scrutiny approach.

*Delaney v Baker*, 511 F Supp 3d 55, 74 (DMass, 2021)

Likewise, the lower standard, rational basis or “Substantial Relation” Test, the COVID mask mandates clearly survive judicial review:

“Given the nature of the virus and the parties’ stipulation “that the wearing of masks can slow the transmission of the spread of the coronavirus,” Joint Finding ¶ 22, Governor Baker's orders requiring residents to wear masks have a “real [and] substantial relation to the protection of the public health ....” *See Jacobson*, 197 U.S. at 31, 25 S.Ct. 358.”

*Delaney v Baker*, 511 F Supp 3d 55, 74 (DMass, 2021).

No federal case has held to the contrary. Simple stated, there is no religious exception to the August 20, 2021 pandemic order.

Very Truly Yours,



Douglas W. Van Essen  
Ottawa County Corporation Counsel

Al Vanderberg, Ottawa County Administrator  
John Shay, Deputy County Administrator