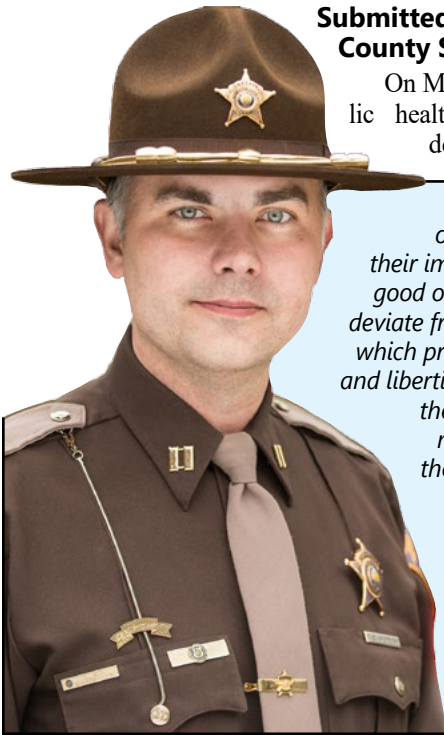


Sheriff calls mask rule unconstitutional

Department will not enforce Governor Holcomb's mask mandate



Submitted by Hamilton County Sheriff's Dept.

On March 6, 2020, a public health emergency was declared for the State

"Regardless of any opinion of masks or their impact on COVID 19 good or bad, we must not deviate from the documents which protect our freedoms and liberties. We must guard them at all costs. The men and women of the Hamilton County Sheriff's Office will not be enforcing the mask mandate and will consider it null and void."

– Hamilton Co. Sheriff Dennis Quakenbush

of Indiana and has been extended four times. On July 22, 2020, the Governor announced he was going to sign an executive order making it a criminal offense not to wear a mask at certain times and locations, for anyone 8 years and older, punishable by up to \$1,000 in fines and up to 180 days in jail.

Regardless of any opinion of masks or their impact on COVID 19 good or bad, we must not deviate from the documents which protect our freedoms and liberties. We must guard them at all costs. The men and women of the Hamilton County Sheriff's Office will not be enforcing the mask mandate and will consider it null and void.

As your elected Sheriff of Hamilton County, Indiana, my primary concern and responsibility is to protect the constitutional rights of the citizens. I took an oath to uphold the constitution of the United States and the State of Indiana. I will always do

this to the best of my ability.

The announced order has not been introduced as a bill in the General Assembly and our legislators are not in session. The General Assembly could be called into session by the Governor if the "public welfare shall require it," but this critical step has not taken place.

Indiana's Attorney General has issued an opinion in which he believes this to be unconstitutional. I strongly concur with this opinion.

Here are some pertinent excerpts from the Indiana Constitution:

Article III, Section 1 – The powers of the Government are divided into three separate departments; the Legislative, the Executive including the Administrative, and the Judicial: and **no person, charged with official duties under one of these departments, shall exercise any of the functions of another**, except as in this Constitution expressly provided.

Article IV, Section 1 – The Legislative authority of the State shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives. The style of every law shall be: "Be it enacted by the General Assembly of the State of Indiana"; and **no law shall be enacted, except by bill.**

Article IV, Section 9 – The sessions of the General Assembly shall be held at the capitol of the State, commencing on the Tuesday next after the second Monday in January of each year in which the General Assembly meets unless a different day or place shall have been appointed by law. **But if, in the opinion of the Governor, the public welfare shall require it, he may, at any time by proclamation, call a special session.** The length and frequency of the sessions of the General Assembly shall be fixed by law.

State lawmakers speak out on governor's mask mandate

The REPORTER

On Wednesday, Governor Eric Holcomb announced the pending implementation of a statewide mask mandate to help prevent the spread of coronavirus. Holcomb's mandate would come without legislative approval. Violation of the order, a Class B Misdemeanor, could result in a \$1,000 fine and up to 180 days in jail.

On Thursday, the Reporter contacted state lawmakers representing Hamilton County and asked their thoughts on the governor's mandate:

"The call for the statewide mask mandate was a surprise to me and our caucus, and we are working with the governor on the



specific language of the Executive Order," said House Speaker Todd Huston (R-Fishers). "We all share the same goals of flattening the curve, keeping the economy open, and ensuring our students and teachers are back in school safely. To continue moving our state ahead, we all have to do our part to ensure we aren't forced to reverse course."

"I was comfortable with the state department of

health strongly encouraging Hoosiers to wear masks to slow the spread of the virus and protect our most vulnerable population," said State Rep. Jerry Torr (R-Carmel). "Personally, I wear a mask in public when I cannot socially distance, but I do not believe a statewide mandate is the appropriate step at this point, especially if there is a penalty involved. The

language of the proposed executive order has not even been made public and I would like to review it before commenting further."

"The pandemic must be taken seriously in order to continue safely reopening our economy and getting people back to work," said State Rep. Chuck Goodrich (R-Noblesville). "However, I question the enforceability

See State Lawmakers . . . Page 2

AG Hill: Holcomb lacks authority to criminalize mask mandate violations

The REPORTER

Indiana Attorney General Curtis Hill late Wednesday night issued an advisory opinion directing that Governor Eric Holcomb should call a special legislative session to consider a statewide mask mandate rather than issuing an executive order to that effect.

"Scientists tell us that wearing face masks is an effective means of helping prevent the spread of the novel coronavirus that causes COVID-19," Hill said. "The wisdom of wearing masks – or of laws requiring such measures – is not the issue here. Rather, the issue is whether we are following the proper and constitutional processes for enacting laws and whether we are respecting the distinct roles of each branch of state government."

Executive orders have an important and legitimate function during times of emergency, Hill added.

"But by this point in the pandemic – more than four

months since the emergency declaration – it's time to show some deference to the branch of government actually charged by our state constitution with the responsibility for enacting laws," Hill said.

The governor announced Wednesday afternoon that he would sign an executive order requiring masks to be worn statewide during specific times and in specific places starting July 27 and that failure to follow the order would be a Class B misdemeanor offense. The Office of the Attorney General received several inquiries from legislators and constituents regarding the proposed order.

Before a certain conduct is determined to be subject to criminal penalty, it should receive considerable debate by the legislative body that represents the people of the state, Hill said.

The attorney general's full advisory opinion on the governor's mask mandate is available on Page 4.



Hill

New COVID-19 cases growing faster than during shutdown

Local officials weigh in on governor's mask mandate

By JEFF JELLISON
Reporter Publisher

Hamilton County experienced its highest single-day reported positive cases of COVID-19 on March 31 with 51 people testing positive. Including March 31, and the three days prior, the state health department reported a four-day total of 109 positive tests.

Two weeks later, the Hamilton County Commissioners closed the Judicial Center and historic Courthouse. Just prior to the closure, the state reported a total of 87 new positive cases for the three-day period of April 6-8.

Carmel closed its city buildings on March 24 following a four-day total of 20 new cases in the county.

Fishers Mayor Scott Fadness issued an executive order Monday, March

16 declaring a local disaster emergency in the city.

Now, local mayors and county officials are seeing an even larger spike in COVID-19 cases, with 127 new cases reported through Wednesday of this week, outpacing the previous highest three-day total in the county since the beginning of the pandemic.

Most government buildings reopened in early June. With the recent and unprecedented number of new cases, will Hamilton County residents see a second shutdown? Not likely, according to some government officials.

"The most important thing we are facing right now is our ability to promote health and wellbeing, while driving businesses forward," said Commissioner Mark Heirbrandt. "Collectively,



Heirbrandt



Cook



Jensen



Photo provided

In an effort to limit the spread of COVID-19, county government purchased fogging machines to help clean and sanitize the Judicial Center and other county government buildings. The machines are also used in courtrooms between proceedings. Pictured is Hamilton County Facilities team member Heath Pearson fogging the county's 911 center.

See Cases . . . Page 3

County Health Department seeking data on mask usage

The REPORTER

The Hamilton County Health Department is trying to gauge how many residents are wearing masks to guard against COVID-19.

"Our number of positive cases are climbing, especially among people between the ages of 20-39," said Christian Walker, Emergency Coordinator for the Hamilton County Health Department. "We suspect it is because they are not wearing masks or social distancing when necessary, but we can't be sure. Answers to this survey will help us better educate our community about the importance of wearing a mask."

Residents are asked to complete the survey, which you can access at [this link](#). It should take no longer than five minutes to complete. The survey will close at noon on Wednesday, July 29.



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Understanding the context

Taking a look at the proposed penalties for violation of the mask mandate, versus penalties for other criminal misdemeanors

The REPORTER

Governor Holcomb announced Wednesday that his mask mandate, which should take effect Monday, will carry the penalty for a Class B Misdemeanor.

According to IC 35-50-3-3 Sec. 3., “a person who commits a Class B misdemeanor shall be imprisoned for a fixed term of not more than one hundred eighty (180) days; in addition, he may be fined not more than one thousand dollars (\$1,000).”

Thus, according to Gov. Holcomb, a person not wearing a mask where required should be as criminally liable as if that person had committed these other crimes: Possession of marijuana of less than 30 grams, Public Intoxication, Battery, Disorderly Conduct, Criminal Recklessness, Hazing, Criminal Mischief, Harassment, and Voyeurism.

By way of comparison, less serious Class C Misdemeanors, which are only punishable by imprisonment for up to 60 days and fines of up to \$500, include: Minor in possession of alcohol, Possession of paraphernalia, Operating While Intoxicated, Operating a Vehicle with a BAC of at least 0.08 but less than 0.15, Indecent Exposure, Public Nudity, Assault, Disorderly Conduct, and Loitering.

Questions about the governor’s mask mandate

What are the exceptions?

The order will have exceptions for medical purposes, disabilities, exercising, and eating and drinking.

Can I still go to the gym?

Yes, there is an exception for "strenuous activity" but many gyms might have their own policies. The rules are stricter in Marion County (where the number of cases are higher) and gyms can only be open at 25 percent capacity. That was decided by Indianapolis Mayor Joe Hogsett, not the governor.

Can I still go out to eat?

Yes, there is an exception for eating and drinking. Many restaurants are recommending mask usage for people picking up carryout orders, waiting in lines for food or waiting to be seated.

In Hamilton County, restaurants are allowed to open at 75 percent capacity but many have reduced their capacity further than that and some are only doing carryout or drive-thru. Some have reduced hours. All bar and restaurant employees are required to wear masks.

The rules are stricter in Marion County and bars and nightclubs that don’t serve food are asked to close until Aug. 12. Indianapolis restaurants will be at 50 percent capacity indoors. Restaurants must close between midnight and 5 a.m. That was an order from Indianapolis Mayor Joe Hogsett, not Gov. Holcomb.

How long will this last?

The mask mandate will last "as long as we need it to," Holcomb said. There's no set date.

What are the penalties?

Under the order, violators could be punished with a Class B misdemeanor and up to a \$1,000 fine. Gov. Holcomb emphasized it will be about education first and there will be no "mask police."

He said enforcement will not be strict and he said he believes Hoosiers will do the right thing.

"Please know that the mask police will not be patrolling Indiana streets," Holcomb said.

STATE LAWMAKERS

from Page 1

of the governor's mandate for Hoosiers to wear masks, and believe it should be a decision left up to local governments and businesses to make. I will continue working with the governor's office and state leaders to ensure we flatten the curve and keep Indiana from sliding backward."

"I choose to wear a mask in public to protect my fellow Hoosiers, especially after this pandemic has taken so many lives and hit our most vulnerable populations," said State Rep. Donna Schaibley (R-Carmel). "Regarding the recent mandate, there are passionate voices on both sides of this issue, but it's clear we all need to do more to slow the spread of this virus. I look forward to fully reviewing the details of the governor's executive order that have not yet been made public."

"I agree wearing a mask is an effective tool to slow the spread of COVID-19, and Hoosiers should wear one when they are out in public and unable to social distance," said State Rep. Tony Cook (R-Cicero). "We want to do everything we can to help Indiana bounce back, however, I wish the executive branch communicated and consulted with the legislature before implementing a statewide mandate, and I would rather not see it carry a penalty."

Tell us what you think!
Email your Letters to the Editor to
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I was born and raised right here in Noblesville. I grew up in a home without domestic violence or assault – it wasn’t something I saw, or even heard about. But when I was introduced to Prevail of Central Indiana, I was shocked by the number of individuals who are affected by domestic violence. In 2018 alone, Prevail helped more than 4,000 clients in Hamilton County. (Nearly 80 percent of clients are women and children.) Domestic violence and abuse are hard topics to discuss, so you don’t often hear about them. But at Tom Wood Volkswagen in Noblesville, we’re breaking the taboo and raising awareness for Prevail, an organization that helps families in Hamilton County.

– Mike Bragg, GM of Tom Wood Volkswagen in Noblesville

To help Hamilton County families affected by domestic violence and sexual abuse, you can donate the following items:

- Art supplies (for children to journal and express their emotions)
- Bottled water (8 oz. bottles, preferably)
- Individually packaged snacks
- Gas cards (many women have no access to funds after fleeing their abuser)

Drop off items at Tom Wood Volkswagen in Noblesville, 14701 Tom Wood Way.





What's new for 2020? The Atlas Cross Sport.



All Atlas Cross Sport models come with a touchscreen infotainment display with both Apple CarPlay and Android Auto integration. Navigation is optional, as is a reconfigurable digital gauge display and SiriusXM satellite radio. The Volkswagen Car-Net connectivity app allows for remote starting and analytics while a 4G LTE Wi-Fi hotspot allows occupants to remain connected to the internet with their smart devices while on the go.

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Filing for school board opens in county districts

By FRED SWIFT
ReadTheReporter.com

The first day of filing for school board brought only three candidates declaring their intentions to run in the Nov. 3 election.

There are 14 board seats at stake this year in the six Hamilton County school districts. Winners in the non-partisan elections will take office on Jan. 1, 2021.

Filing Wednesday for the Hamilton Southeastern board was Clinton Wilson, running for the Fall Creek Township seat on the sev-

en-member Southeastern board.

For the Hamilton Heights Board, David Adam Sheller was the first to file for the White River Township seat on the five-member board.

Carl (Mike) Steele officially declared his candidacy for Westfield Washington School Board in District 3, also a five-member board.

On Thursday, one additional candidate filed. Kevin J. Cavanaugh filed for the Hamilton Heights Board in the Jackson Township district.

School boards next year

will face a continued tough challenge dealing with the COVID-19 pandemic in both the classroom and athletics as well as school security issues and budgetary matters.

School systems control the largest budgets and the largest number of employees in their communities.

Whether the challenges facing local schools increases or decreases interest in running for a school board position remains a question.

Filing for office ends at noon on Aug. 21 at the county elections office.

Memory lane often brings tears in the Sandwich Generation

I'm writing this on Wednesday, the day before I head up to Mishawaka, my hometown near South Bend, for a viewing for a dear friend's mother. I had some amazing times with Kevin and his family growing up, and while there will certainly be sadness, I look forward to talking with some people that I haven't seen in decades.

But I already know this trip will also bring me sadness outside of the funeral home. Since it's located just a couple of miles from the house where I grew up, I plan to take a drive through my old neighborhood.

I haven't seen my mother's house since we sold it in December of 2017. Actually, while I helped to pack and clear things out of it, my brother and his wife did the lion's share of the work. Kudos to them!

I'm sure there will be changes to the outside of the house. I also know just seeing it will bring back a

flood of memories – and some tears. If someone were to ask me what causes the greatest amount of sadness when you're a member of the sandwich generation, I would say it's remembering how your parents used to be.

Seeing the sidewalk on my old block will undoubtedly make me remember my mother holding the back of my bicycle when I first ditched the training wheels. The poor woman ran up and down ... up and down ... up and down that sidewalk. I took longer than most kids to get confident on two wheels and it shows when you see a picture of Mom from that day!

Looking at the front porch will take me back to all those times I'd see Mom with her nose buried in a book. Mom, my sister Vicky, my niece Melissa, and I were all voracious readers. We could have formed our own book club as we passed novels back and forth between us. Vicky,

Melissa, and I still do.

Viewing the bushes, flowers, and plants that I hope are still there will help me remember Mom working outside in the warmer months to make our yard the envy of the neighborhood. She had an incredible green thumb that I did not inherit.

These days, it's hard for Mom to even walk down the hallways of her facility. She can't seem to focus anymore in order to read a book. And whenever we bring her flowers or plants for her patio, she forgets to water them and they die quickly.

I've written that it's important to remember that our parents haven't always been elderly and frail. But I haven't shared how those memories can slice into your heart, form a lump in your throat, and bring tears to your eyes. Despite the pain, I know I'll drive into that neighborhood and be glad to have gone down memory lane. In my mind, it will always be important to remember Mom as energetic, a reader, immersed in greenery, and full of life.

Rain on Main barrels return to Main Street in Carmel

The REPORTER

Rain on Main, a painted rain barrel contest presented by Carmel Utilities, Carmel Department of Storm Water Management and the Hamilton County Soil and Water Conservation District, is returning to the Carmel Arts & Design District and will debut at the Meet Me on Main event on Saturday, Aug. 8. The barrels will remain on Main Street through the following week where they will be easy for everyone to enjoy while practicing physical distancing.

On Saturday, Aug. 15, the barrels will be relocated to the Carmel Farmers Market where they will be auctioned off to the highest bidders via an online silent auction. Unlike previous years, water information tents will not be present this year to reduce physical gatherings. The barrels will also be spread out over a wider area to allow for safe viewing.

The electronic silent auction opens at noon on Friday, Aug. 7 and will conclude at 11 a.m. Saturday, Aug. 15. Individuals can register for the auction by texting RAIN to 88793. Net proceeds from the auction will be used to fund water education signage in Carmel Clay Parks, some of which have been installed in Founders Park located at 116th Street and



Photos provided

Hazel Dell Parkway.

The barrels will be judged by artists but there will also be a People's Choice selection based on votes from the public via Facebook likes on the [Rain on Main page](#). The voting takes place from noon on Friday, Aug. 7 until noon on Friday, Aug. 14.

Rain on Main is possible due to sponsorship by Greenscape Geeks, a landscape architecture and landscaping company that specializes in sustainable and eco-friendly landscape design, installation, and maintenance. The event is also supported by Carmel businesses Touch'N Go Collision, White's Ace Hardware and Sherwin-Williams Automotive.

In addition to the main and in-kind sponsors, support can be shown by being an individual barrel sponsor. Barrel sponsorships are \$100 each and details can be found on the [Rain on Main webpage](#) in the

sponsorship section. A few individual barrel sponsorship opportunities are still available for 2020.

Rain Barrels continue to grow in popularity across the country; beautifully painted rain barrels increase their desirability and encourage water conservation by using recycled rainwater. Rain barrels sit under gutter downspouts to collect and store rainwater from roofs that would otherwise be lost to runoff and diverted to storm drains, streams and rivers. The collected water can then be used to water plants in the landscape instead of using treated water which saves water and energy. Additionally, Carmel residents who install a rain barrel are eligible for a \$50 cost share per barrel from the City's Storm Water Utility.

More information about Rain on Main can be found at [RainOnMain.com](#) or [Facebook.com/RainOnMain](#).

Letter to the Editor

Reader: Mask mandate won't address the actual problem

Dear Editor:

I believe a year or so from now the "experts" will discover that the healthy people not wearing a mask was not the problem, but that COVID-19 positive people wearing a mask was. I believe they will learn we actually invited the ill to go out by creating a public environment where they felt good about not staying home. This was because everyone was mandated to wear a mask so they "knew" they were not a risk to anyone.

I wish the government would realize that the priority is to keep the COVID-19 positive people at home and not to mandate masks for everyone. If someone wants to wear a mask, great, but do not mandate masks.

Instead of mandating masks, the government should do something that actually is proactive and attacks the problem. People leaving home when ill is the problem. A mandate that would require all venues to do wellness checks before someone can enter would be proactive and attack the real problem. If a person cannot pass the wellness check they get ticketed/fined on the spot. They should be immediately quarantined and forced to get immediate treatment, not just sent home to spread the virus.

I'll wear a mask if required, but I don't want people to wear a mask to protect me. I just want them to stay home. Also, if people are going to wear masks, they should learn not to wear contaminated masks.

I think the "experts" will find that a lot of people have been made ill by wearing contaminated masks. They may

find that the mask has spread COVID-19 and other illnesses because most people don't use or maintain their masks properly. They haven't practiced good sterile techniques by sanitizing their hands before putting on the mask and before and after removing the mask.

They contaminated their new clean mask by placing it in the same dirty area, i.e. purse, car glove box etc. that they kept the old contaminated mask in. They also probably infected themselves by putting the contaminated mask on backwards by mistake. This is especially true for any cloth masks or single use mask.

So many issues here. Will the experts wonder why the Infection Control People were so silent during this time?

Remember, in an infectious environment, a health professional would never go from one space to another without a clean sterile mask because of the cross-contamination issues, and neither should we. Also remember this mask is harboring the "virus," germs, bacteria from the area it passed through or from the person who is exhaling into it.

It is good to remember that the purpose of exhaling is to get the toxins out of the lungs and the body. With wearing a mask, you are keeping all those toxins within one inch of your mouth/nose. This may not be too bad for a healthy person but for someone who is compromised, such as asthma, allergies to pollen, COPD, etc., this is a real problem they don't need.

Is this mask mandate about really people's safety or about appeasement?

Eric Faulkner
Indianapolis

Letters to the Editor do not reflect the opinions of The Reporter, its publisher or its staff. You can submit your own Letter to the Editor by email to News@ReadTheReporter.com.

CASES

I think we are all working towards the same goal of creating a healthier and more prosperous community. It [the spike] is a concern. We are being proactive and conscience of the situation. We've put a lot of safety measures in place at our county buildings. Barriers, social distancing, temperature checks, masks and hand sanitizer are required. We have protocols in place to remove employees in the event they may begin to feel ill."

The Reporter asked Heirbrandt if we are losing the battle.

"I'm optimistic about whether we are losing the battle because of the recent July 4 holiday," Heirbrandt said. "I think there is room for improvement. From what we know about this virus, we are doing everything we can to protect our employees and citizens. Hamilton County Facilities Director Steve Wood and

his guys do is amazing in keeping our facilities as clean and safe as possible."

In regards to the Governor's recent announcement of a mask mandate, Westfield Mayor Andy Cook said, "I support Governor Holcomb's mandate. It is a commonsense action to help get a handle on the COVID-19 situation in Indiana. It also prevents a piecemeal approach across the state."

The mandate, which the governor was set to sign on Thursday, will go into effect on Monday, July 27. Non-compliance could result in a \$1,000 fine and 180 days in jail.

"Enforcement is an obvious question. I do not want residents to call 911 or the Westfield Police Department to report a 'mask' violation," Cook said. "That is not what our officers need to be doing. What we will do is have a place on our website where

people can make a complaint. Based on those reports, we will evaluate trends and act accordingly. At the end of the day, we want our citizens across Indiana to do the right thing, work together and wear a mask without threat of penalty."

Noblesville Mayor Chris Jensen commented on the governor's order, saying, "Since the beginning of the COVID-19 outbreak, the health and safety of residents has been top priority and we have closely followed CDC and state guidelines. The statewide mask order directed by Governor Holcomb will lead our state to a safer, healthier future. This order will work to keep our businesses open and get students, teachers and staff back to school safely. I know we in Noblesville will wear our masks with a sense of pride knowing this act protects our families, friends and neighbors."

from Page 1

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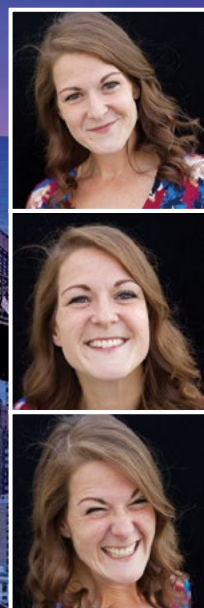
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AG Curtis Hill issues advisory opinion on question of governor’s authority to criminalize not wearing a mask

Editor’s note: The following is an advisory opinion published by Indiana Attorney General Curtis Hill on Wednesday. The opinion is addressed to five Indiana State Senators and serves as a response to their inquiry on whether Governor Eric Holcomb has the constitutional authority to criminalize not wearing a mask.

OFFICIAL OPINION 2020-6

The Honorable James Buck
The Honorable Mark Messmer
The Honorable Blake Doriot
The Honorable Jim Tomes
The Honorable Aaron Freeman
Indiana State Senate
200 W. Washington Street
Indianapolis, IN 46204

RE: Mask Mandate

Dear Senators Buck, and Doriot, Freeman, Messmer and Tomes:

This letter responds to your request for an official opinion of the Attorney General regarding whether the governor may issue an executive order mandating masks and make it a criminal offense to not wear a mask.

QUESTION PRESENTED

Whether the governor may issue a statewide mask mandate pursuant to his authority under the Emergency Management and Disaster Law, Ind. Code ch. 10-14-3 (EMDL), and whether such a mandate could be enforced by criminal penalty?

BRIEF ANSWER

The governor has various powers under the EMDL, although the limitations of those powers are not clearly spelled out in the law. The EMDL does not provide that a governor may issue a mandate on wearing masks. Additionally, even if such broad authority was granted under the EMDL, it is outside the scope of the General Assembly’s authority to delegate to the governor the limitless ability to create laws. Without properly delegated authority from the General Assembly, the proposed order would not have the force and effect of law. The General Assembly would need to specifically and clearly allow for a mask mandate by law.

By declaring that a violation of his proposed executive order requiring masks is a class B misdemeanor under the EMDL, the governor has taken conduct that has not been specifically criminalized by the General Assembly and unilaterally declared it as criminal. The General Assembly has not clearly delegated this law-making authority to the governor, and cannot delegate law-making power. If the governor believes it is necessary to enact a mask wearing mandate before the beginning of the next legislative session, he should call a special session of the General Assembly.

BACKGROUND

In the face of the COVID-19 pandemic and resulting public health emergency, Governor Holcomb has, pursuant to statutory authority (see Indiana Code ch. 10-14-3), issued a series of temporary Executive Orders designed to limit the spread of the pandemic and to conserve resources useful for fighting the pandemic, a few of which are relevant here. First, on March 6, 2020, he issued Executive Order 20-02, officially declaring a COVID-19 public health emergency in the State of Indiana. More recently, with Executive Order 20-34, the governor renewed the state of emergency for the fourth time until August 3, 2020. On July 22, 2020, the governor announced that he would issue an executive order mandating that masks be worn by all individuals eight (8) and over effective July 27, 2020. ([Click here for source.](#)) This inquiry is a result of the governor’s announcement. This Office has not been contacted by the governor or his staff for legal guidance.

ANALYSIS

Experts largely agree that wearing masks helps to stem the spread of COVID-19. Many businesses including Walmart and Meijer and myriad small businesses have opted to require masks to enter their stores. However, the governor’s announcement of a mask mandate raises the question whether the governor has gone be-

yond the scope of his authority and whether the General Assembly ceded or delegated power to the governor under the EMDL beyond the scope of its authority.

A. The authority to issue a mask mandate was not granted to the governor by the General Assembly, and broad authority to create a law would be unconstitutional.

Whatever authority the governor has is predicated on his declaring a disaster emergency and is limited by the EMDL. The EMDL, however, does not provide specifically the authority to the governor to enact a mask mandate. By issuing such a mandate on all Hoosiers with criminal penalties attaching if violated, the governor’s intended mandate would have the effect of a law which goes beyond the scope of his authority and violates separation of powers.

Even if the EMDL was read to grant to the governor the authority to create laws, such authority would violate the separation of powers, and be unconstitutional. Under the “nondelegation doctrine,” the legislative branch is limited in its authority to transfer its lawmaking powers to administrative agencies in the executive branch. Throughout the years, Indiana courts have relied upon nondelegation principles to limit executive branch power. “It is elementary that the authority of the State to engage in administrative action is limited to that which is granted it by statute[.]” *Ind. State Bd. of Pub. Welfare v. Tioga Pines Living Ctr., Inc.*, 622 N.E.2d 935, 939 (Ind. 1993), *cert. denied* (1994); *see also Vehslage v. Rose Acre Farms, Inc.*, 474 N.E.2d 1029, 1033 (Ind. Ct. App. 1985) (“It is black-letter law that generally, administrative agencies are creatures of statute, and only the legislature has the broad power to provide for their creation. Administrative boards, agencies, and officers have no common law or inherent powers, but only such authority as is conferred upon them by statutory enactment.”). “Any act of an agency in excess of its power is *ultra vires* and void.” *Howell v. Ind.-Am. Water Co.*, 668 N.E.2d 1272, 1276 (Ind. Ct. App. 1996), *trans. denied* (1997). “To maintain the proper balance between the departments of government, the courts have power to confine administrative agencies to their lawful jurisdictions.” *Wilmont v. City of S. Bend*, 48 N.E.2d 649, 650 (1943).

“The legislature may only delegate rule-making powers to an administrative agency if that delegation is accompanied by sufficient standards to guide the agency in the exercise of its statutory authority.” *Gunderson v. State, Indiana Department of Natural Resources*, 90 N.E.3d 1171, 1186 (Ind. 2018). More recently, the Indiana Court of Appeals held in *Tyus v. Indianapolis Power & Light Co.* (IPL) that the Indiana Utility Regulatory Commission (IURC) exceeded its delegated authority when it approved an electric rate tariff for IPL that contained a release from liability for IPL for any injuries to third persons resulting from an interruption of service or supply of electricity, “unless due to willful default or neglect on the part of [IPL].” 134 N.E.3d 389, 408 (Ind. Ct. App. 2019). The legislature had given IURC the power “‘to formulate rules necessary or appropriate to carry out the provisions of [this] chapter.’ Ind. Code § 8-1-1-3(g).” But, this language was not specific enough to delegate authority to IURC to shield IPL from liability caused by its negligence to noncustomers. *Id.* at 406. Likewise, here, the General Assembly has not sufficiently articulated standards to guide the governor in the exercise of emergency powers under EMDL, including what acts may be subject to a criminal penalty, and when the emergency ends.

The legislature cannot delegate the power to make a law. *Gunderson*, 90 N.E.3d at 1186 (quoting *City of Carmel v. Martin Marietta Materials, Inc.*, N.E.2d 781, 788 (Ind. 2008)). However, the Indiana General Assembly may assign adjudicatory power to an agency to determine that a certain set of facts or circumstances exist to properly operate a certain law. *Id.* For the legislature to delegate more general and prospective rule-making powers to an agency, they must also prescribe sufficient standards to guide an agency in the exer-

cise of statutory authority. *Healthscript Inc. v. State*, 770 N.E.2d 810, 814 (Ind. 2002). The governor’s planned order requires compliance by all Hoosiers and threatens criminal liability. If the emergency continues, it is possible that the mandate could be in place for several more months without input by the General Assembly.

The governor has done all of this – extending the emergency and proposing a mask mandate, effectively making laws – without participation from the General Assembly and without notice and comment as through rule making. To promote transparency and out of respect for the rule of law and separation of powers, especially now that we have passed the early stages of the epidemic, the governor should have the support of the General Assembly. As the representatives of the people, the General Assembly should have a say in the regulation of behavior and whether there is a criminal element to violating an order issued by the governor.

As we continue to deal with COVID-19, there is less of a sense of immediate emergency, and we are learning to deal with the virus. We continue to learn more about the disease, and can therefore take a more thoughtful approach to policy matters as a result of the virus. If the State or localities want to enforce restrictions on people, they should go through the legislative process instead of governing by fiat. We are in the midst of what will be looked back on as perhaps the most significant event of the century, and our General Assembly is left on the sidelines while major policy prescriptions are left to one individual and branch of government. Moreover, at the local level, executives continue to operate via order as opposed to seeking input from their legislative bodies. We are at a time where governmental entities can look ahead, plan, and seek approval from the people’s representatives. Prudence requires and our system of government demands that the General Assembly and local legislative bodies not be carved out of the process when making laws.

B. The proposed mask mandate order is not enforceable as a class B misdemeanor.

While encouraging wearing masks and understanding the health benefits of doing so is important in the fight against COVID-19, such a mandate and threat of criminal penalty goes beyond the power delegated to the governor by the EMDL. By declaring violations of his executive orders a class B misdemeanor, the governor has effectively exercised legislative authority. That is, he has taken conduct that has not been specifically criminalized by the General Assembly and declared it as criminal. This declaration raises the question whether such authority was properly delegated by the General Assembly.

While there is legal support for the proposition that the legislature can delegate limited authority to the executive to define criminal conduct via rule making or executive order, the General Assembly has not explicitly delegated such authority with respect to the governor’s executive orders issued under the EMDL. See e.g. *Meier v. American Maize-Products Co., Inc.*, 645 N.E.2d 662, 671 (Ind. Ct. App. 1995) (“The law is well-settled that ‘the legislature may constitutionally delegate rule-making powers to an administrative agency if that delegation is accompanied by sufficient standards to guide the agency in the exercise of its statutory authority’”); *U.S. v. Arch Trading Co.*, 987 F.2d 1087 (4th Cir. 1993) (upholding a conviction for violating an executive order issued under the International Emergency Economic Powers Act (IEEPA)). Additionally, the “creation of criminal statutes is an inherently legislative function,” thereby raising the question whether the governor’s attempt to define criminal conduct constitutes an improper exercise of legislative authority. *Tiplick v. State*, 43 N.E.3d 1259, 1266 (Ind. 2015). While the court in *Tiplick* upheld criminal conduct that was provided by an administrative body, the General Assembly had provided clear guardrails and a delegation of authority to define what constituted the offense. That is, the General Assembly laid out the criminal behavior, and the

board filled in the gaps. The General Assembly has not done that here.

The question remains, then, what are the limitations on a governor exercising his authority under the EMDL? As previously noted, the authority of the governor under the EMDL is not without limits. For example, the governor’s authority includes taking “any action and giv[ing] any direction to state and local law enforcement officers and agencies as may be reasonable and necessary for securing compliance with [EMDL] and with any orders, rules, and regulations made under [EMDL].” Ind. Code § 10-14-3-11(b)(3). The authority also allows suspending the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency if strict compliance with any of these provisions would in any way prevent, hinder, or delay necessary action in coping with an emergency. Ind. Code § 10-14-3-12(d)(1). Additionally, the ISDH (Ind. Code § 16-19-3-10, -12; Ind. Code § 16-19-4-10) and IOSHA (Ind. Code §22-8.1-1.1-2) have authority to address epidemics or harm to employees.

In addition to the authority under the EMDL, the government has broad police power. But that power too is limited. In 1905, the United States Supreme Court held that certain restrictions may become necessary and reasonable to protect all Americans during times of public health crisis, but those restrictions must be reasonable and must not be a “plain and palpable” invasion of rights. *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 29, (1905). While a mask mandate may be allowed under *Jacobson*, it is still required to be a law that is duly enacted. At issue in *Jacobson* was a statute that allowed a locality to require vaccines, not an order or decree. This is a far cry from the issue here which is a mandate on all Hoosiers by order. Under our system of government, the legislature passes laws, and it is the executive’s job to enforce laws. Here, the governor has created a law in violation of separation of powers.

CONCLUSION

Individual rights secured by the Constitution do not disappear during a public health crisis. Although the governor has powers under the EMDL, the General Assembly is limited by nondelegation principles in its ability to delegate its lawmaking powers to the governor and his agencies. And while the General Assembly maintains the authority to terminate the public health emergency, this authority can only be exercised when the General Assembly is in session. To ensure a check on the governor’s proposed executive order, and the establishment and maintenance of appropriate guidelines, it would be necessary for the governor to call the General Assembly into special session.

The governor has taken conduct that has not been specifically criminalized by the General Assembly and declared that a violation of his executive order under EMDL is a Class B misdemeanor. The General Assembly did not clearly delegate this authority to the governor. Even if the authority was clearly delegated, it is questionable whether the General Assembly could grant such broad authority without clear guidelines provided to the governor.

I encourage the use of masks, but we are bound by the Indiana Constitution and the laws of our state. Indeed, we have a duty to uphold and defend our laws pursuant to our oaths. This Opinion is not an argument for or against masks, but it is about process. These decisions on matters that have the effect of law and bind all of us continue to be made in private and handed down by decree. For Hoosiers, whose lives and livelihoods are on the line, to have a voice in how we continue to deal with the virus, it is critical that the General Assembly assume its constitutional role. Pursuant to the Indiana Constitution, and the laws of our great state, if a mask mandate is to be a law, it is up to the General Assembly to make that determination.

Sincerely,
Curtis T. Hill, Jr., *Attorney General*
David P. Johnson, *Chief Counsel*

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Songbook Foundation to hold virtual youth concert

The REPORTER

The Great American Songbook Foundation's annual Songbook Academy® summer intensive will wrap up its 11th year this Saturday with an all-day webcast of performances hosted by Michael Feinstein and featuring a guest appearance by The Manhattan Transfer's Janis Siegel.

The Final Showcase will premiere from 1 to 8 p.m. Saturday, July 25 on the Songbook Foundation [YouTube channel](#) and the Songbook Academy [Facebook page](#). Sponsored by Ruth's Chris Steak House, the program will air in five hour-long segments starting every 90 minutes, each featuring eight finalists per-

forming their selected songs with piano accompaniment. The full schedule, performer bios and other information are available in the [digital program booklet](#).

The Songbook Academy is the only program of its kind focused on musical standards from the worlds of pop, jazz, Broadway and Hollywood. Each year, a panel of judges selects 40 of the nation's top high school vocalists to experience a rigorous week of workshops, master classes and professional mentoring on topics including vocal technique, performance tips and song interpretation. This year's mentors included Broadway stars Ashley Park and Faith

Prince, Postmodern Jukebox founder Scott Bradlee, nine-time Grammy Award winner Siegel, and five-time Grammy nominee Feinstein, found of the Songbook Foundation.

The Academy typically takes place at the Center for the Performing Arts in Carmel, where key events draw capacity crowds to the Palladium concert hall. Due to public health concerns, this year's intensive was conducted virtually, providing an opportunity to share highlights of the week online. Thousands of viewers worldwide have tuned in for the sessions, including the Public Masterclass led by Feinstein and Prince and a "Song-

book 101" history lesson featuring anecdotes from friends and family of Duke Ellington and other greats.

"Despite the logistical challenges we faced this year, the sessions were as engaging and meaningful as ever, and it's been a great pleasure to share them with a broader audience," said Christopher Lewis, Executive Director of the Great American Songbook Foundation. "Saturday's event will certainly please the audiences who look forward to the Academy each year, and we hope it will introduce new fans to the timeless music of the American Songbook."

Learn more at [The-Songbook.org](#).

Support growing in U.S. Senate for RESTART Act in upcoming coronavirus relief package

The REPORTER

U.S. Senators Todd Young (R-Ind.) and Michael Bennet (D-Colo.) on Thursday announced 23 new co-sponsors have signed on to their *Reviving the Economy Sustainably Towards a Recovery in Twenty-twenty (RESTART) Act*, for a total of 33 co-sponsors. Young and Bennet are working to ensure the *RESTART Act* is included in the next phase of coronavirus relief to help provide a lifeline for the hardest-hit small and mid-sized businesses.

In addition to Young and Bennet, the *RESTART Act* is co-sponsored by Senators Lamar Alexander (R-Tenn.), Tammy Baldwin (D-Wisc.), Marsha Blackburn (R-Tenn.), Roy Blunt (R-Mo.), Richard Burr (R-N.C.), Shelley Moore Capito (R-W.Va.), John Cornyn (R-Texas), Catherine Cortez Masto (D-Nev.), Tom Cotton (R-Ark.), Kevin Cramer (R-N.D.), Steve Daines (R-Mont.), Tammy Duckworth (D-Ill.), Joni Ernst (R-Iowa), Dianne Feinstein (D-Calif.), Cory Gardner (R-Colo.), Kirsten Gillibrand (D-N.Y.), Lindsey Graham (R-S.C.), Martin Heinrich (D-N.M.),

Cindy Hyde-Smith (R-Miss.), Tim Kaine (D-Va.), Angus King (I-Maine), Amy Klobuchar (D-Minn.), Jeff Merkley (D-Ore.), Gary Peters (D-Mich.), Jack Reed (D-R.I.), Pat Roberts (R-Kan.), Mitt Romney (R-Utah), Jacky Rosen (D-Nev.), Brian Schatz (D-Hawaii), Debbie Stabenow (D-Mich.), Jon Tester (D-Mont.), Thom Tillis (R-N.C.), and Sheldon Whitehouse (D-R.I.).

"The Paycheck Protection Program was very successful, but we're learning that many PPP-eligible small businesses, and other mid-sized businesses that have slipped through cracks, are still struggling to stay open and pay their employees," said Young. "The RESTART Act would provide a low-interest, partially forgivable, long-term working capital loan to get them through one of the most disruptive economic periods in our history."

"Since March, I have spoken to countless small- and mid-sized business owners across Colorado who are facing enormous



Young

revenue hits — upwards of 50, 70, and even 90 percent," said Senator Bennet. "That's why we created the RESTART Act, which offers sustained support that includes flexible terms on a long-term loan with forgiveness based on how hard they've been hit. Momentum continues to build for our proposal as more of our colleagues hear from people in their states that we need to help the hardest-hit busi-

nesses weather the next year, not just the next two months."

Treasury Secretary Steven Mnuchin was [recently asked](#) about the RESTART Act being included in the next phase of coronavirus relief. He said, "I think parts of it should be incorporated." Additionally, the bipartisan legislation is supported by nearly 40 national organizations and more than 40 Indiana businesses. View a full list of supporters at [this link](#).

[Click here](#) to view a one-page summary on the *RESTART Act*.

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TODAY'S BIBLE READING

But the Jews which believed not, moved with envy, took unto them certain lewd fellows of the baser sort, and gathered a company, and set all the city on an uproar, and assaulted the house of Jason, and sought to bring them out to the people.
Acts 17:5 (KJV)

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Meeting Notices

The Carmel Clay School Board of Trustees will meet at 7 p.m. on Monday, July 27, 2020, at the Carmel Clay Schools Educational Services Center, 5201 E. Main St., Carmel.

The City of Westfield will meet virtually in an executive session, pursuant to I.C. 5-14-1.5-6.1(b): Legal Issues, at 7 p.m. on Monday, July 27, 2020.

The Noblesville Common Council will meet at 7 p.m. on Tuesday, July 28, 2020, in the Council Chamber at Noblesville City Hall, 16 S. 10th St., Noblesville.

The Noblesville Board of Public Works and Safety will meet at 9 a.m. on Tuesday, July 28, 2020, in the Council Chamber at Noblesville City Hall, 16 S. 10th St., Noblesville.

Public Notice

NOTICE OF PUBLIC HEARING
Notice is given that the Hamilton County Council will hold a public hearing at 5:00 p.m., on August 5, 2020, concerning Resolution CC 08-05-20-02 which Resolution approves the sale of a parcel of land presently owned by Hamilton County. The real estate is presently used for surface parking and contains approximately 2.9 acres. The real estate is generally located between State Road 32 and Maple Avenue, immediately east of White River, and is more specifically described as follows:
Lots 1, 2, 3 & 4 in Fractional Square 5 of the Original Plat of Noblesville Plus vacated alleys within Fractional Square 5.
Lots 3, 4, 5, 6, 7 & 8 in Fractional Square 17 of the Original Plan of Noblesville plus vacated alley north of Lot 5 and vacated alley between Lots 5, 6, 7 and 8.
Plus Vacated 5th Street between Fractional Square 5 and Fractional Square 17.
The Purchaser of the real estate has agreed to pay a purchase price equal to \$4,550,000, which is equal to the average of two appraisals of the real estate pursuant to Indiana Code 36-1-11-4.2. The Purchaser of the real estate will construct an Economic Development Project at a total cost of approximately \$50,000,000 which will increase the tax base, provide jobs, and promote the general economic development within the City of Noblesville, and Hamilton County. The sale of the property has been negotiated in a contract with the Board of Commissioners of Hamilton County and the sale must be approved by the Hamilton County Council, after a public hearing, pursuant to Indiana Code 36-1-11-3.
Members of the public may comment upon the proposed sale in person or in writing.
ss/*Robin Mills*, Auditor of Hamilton County
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Defensive standout continues to get noticed . . .

Miami University's Sterling Weatherford on watch list for two prestigious awards

Sterling Weatherford, an incoming redshirt junior for the Miami University football team, has been named to the watch lists for two prestigious college football awards.

Last week, Weatherford was placed on the Chuck Bednarik Award watch list, an annual award given to the outstanding defensive player in college football. The Maxwell Football Club has been presenting the award since 1995, said a July 13 article on the Miami RedHawks website.

One week later, Weatherford and Miami teammate Emmanuel Rugamba were both named to the watch list for the Jim Thorpe Award, which is presented to the top defensive back. A July 20 article on the RedHawks website said the list “is selected by a screening committee whose members compile a list of up to 50 players.” A screening committee will monitor the players and cut the field to 10 to 15 players by the first week of November, with the three finalists to be revealed on the Monday before Thanksgiving.

Weatherford, a Hamilton Heights graduate, had a solid season during his junior year, in which he started in all 14 games. Weatherford had 98 tackles, including 5.5 for a loss, two sacks, one interception, 10 pass breakups and two forced fumbles. Weatherford had two games during the season where he reached the 10-tackle mark.

The RedHawks finished last year 8-6, but not before winning the Mid-American Conference championship over Central Michigan. Weatherford had seven tackles and three pass breakups in that game, which qualified Miami to play in the LendingTree Bowl.



Photo provided
Sterling Weatherford has been named to the watch lists for two prestigious college football awards. The Hamilton Heights graduate and incoming redshirt junior is on the list for the Chuck Bednarik Award, given to the outstanding defensive player, and the Jim Thorpe Award, presented to the top defensive back.

Indiana PGA Women's Open

Brittany Kelly finishes as runner-up



File photo
Brittany Kelly finished as the runner-up at the Indiana PGA Women's Open, which took place Wednesday and Thursday at Rock Hollow in Peru. The Hamilton Southeastern and Ball State graduate, now the assistant golf professional at Carmel's Woodland Country Club, scored a 145 for the tournament, including five birdies.

Local golf star Brittany Kelly had a fine performance at the Indiana PGA Women's Open, which took place Wednesday and Thursday at Rock Hollow in Peru.

Kelly, a Hamilton Southeastern and Ball State graduate who is the assistant golf professional at Woodland Country Club in Carmel, finished as the runner-up at the event, with a two-day score of 145. Kelly had five birdies for the tournament and clinched second place by shooting an even-par 72 in her second round on Thursday. Julia Potter-Bobb of Indianapolis was the winner, with a score of 142; she carded a one-under par 71 in both rounds.

A Carmel golfer also finished in the top five. Haylin Harris tied for fourth with her score of 148. She also made five birdies for the tournament.

A list of Hamilton County players that participated in the event now follows.

2. Brittany Kelly, Woodland Country Club, 73-72=145; T4. Haylin Harris, Carmel, 73-75=148; T30. Sydney Hruskoci, Fishers, 81-81=162; Margaret Wentz, Westfield, 80-82=162; T36. Sophie McGinnis, Westfield, 84-80=164; T36. Morgan Lewis, Fishers, 80-84=164; T40. Kristini Hunt, Fishers, 83-82=165; Macy Beeson, Noblesville, 87-78=165; T52. Elizabeth Hedrick, Carmel, 85-87=172; T58. Adrienne Montalone, Prairie View, 88-85=173; T61. Ava Hedrick, Carmel, 88-86=174; Ella Woods, Carmel, 92-82=174; T71. Amber Luttrell, Fishers, 90-89=179; T78. Sydni Zebrasukas, Cicero, 91-100=191.

Total birdies made: Kelly 5, Harris 5, Montalone 4, Wentz 3, McGinnis 3, Hunt 3, E. Hedrick 3, Luttrell 3, Lewis 2, Beeson 2, Zebrasukas 2, Woods 1.

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Indy Ultimate walk-run to celebrate landmarks on city's 200th birthday

By OLIVIA RAY
WISH-TV

The fifth annual Indy Ultimate is still on for Saturday, and this year's race is special for a variety of reasons.

First of all, the 2020 Indy Ultimate is an "Official Indianapolis Bicentennial Community Project."

"It's really a celebration of Indy. It celebrates all the arts, culture, and really sports venues through Indy, which is really the highlight of the event. And re-

ally in general, it's just to come out, have fun, run the bases at Victory Field, kick a field goal at Lucas Oil Stadium, and really just experience something about Indy that you've never seen before," said Brett Kramer, Indiana Sports Corp public relations director.

Secondly, the run-walk is a chance to explore some of the city's landmarks that Hoosiers have missed visiting the last few months during the coronavirus pandemic.

Kramer said, "We all really miss

sports right now. So we're hoping this event will get people missing it a little bit less. They can finally get to Victory Field. Yeah, it's not an Indians game, but it's still great."

Finally, the race is supporting an area of need for the Indianapolis community. Part of registration fees will be donated to the Indiana Restaurant and Lodging Association to support Indiana hospitality workers due to the impacts of COVID-19.

New to this year's event: a 5.5-mile

downtown adventure race-walk will have extra safety measures in place.

Kramer said, "Safety is our top priority for this event."

Indiana Sports Corp will provide hand-sanitizing stations and masks along the race route. Event organizers also will send runners and walkers through a staggered start to ensure proper social distancing.

Registration is still open for the 2020 Indy Ultimate [online](#).

Roncalli High School to drop 'Rebels' nickname

WISH-TV

Roncalli High School is abandoning their nickname "Rebels" and assigning a task force to decide on a new name, school officials said Wednesday.

"For the past 50 years Roncalli High School has been a leader in education, forming young men and women in the Catholic faith," said Roncalli High School interim president Father Robert

Robeson in a [video posted online](#). "As we imagine the vision for the next 50 years, it's critically important to raise the question 'How do we best serve our mission as a Catholic high school?'"

Robeson explained the school's nickname of the "Rebels" derived from the "revolutionary spirit of Angelo Roncalli, St. John XXIII."

The school's principal, Chuck

Weisenbach, said the nickname "misses the mark" and the school is in the process of choosing a new one that better describes St. John XXIII's life and ministry.

"The confusion and negative connotations attached to the nickname 'Rebels' are also a source of concern as we move forward over the next 50 years," said Terese Carson, vice president for institutional advancement for Roncalli High School.

Robeson will be appointing the task force this summer. It will include cur-

rent students, faculty and staff as well as alumni, parents and board members.

"We know that there will be some members of our community who will be saddened by this change," Robeson said. "But as we look forward to the next 50 years, we believe this change is essential in order to better serve our mission as a Catholic high school..."

Details on when the new nickname will be selected was not immediately clear.

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