

# In the Supreme Court of Texas

No. 21-0686

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IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY  
AS GOVERNOR OF THE STATE OF TEXAS,  
*Relator.*

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On Petition for Writ of Mandamus  
from the Dallas Court of Appeals

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*and*

No. 21-0687

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IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY  
AS GOVERNOR OF THE STATE OF TEXAS,  
*Relator.*

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On Petition for Writ of Mandamus  
from the San Antonio Court of Appeals

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## BRIEF FOR AMICUS CURIAE DISABILITY RIGHTS TEXAS

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## STATEMENT OF INTEREST

Amicus curiae Disability Rights Texas (DRTX) is a nonprofit organization mandated to protect the legal rights of people with disabilities by the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. §§ 6001 *et seq.*, the Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. §§ 1081 *et seq.*, and the Protection and Advocacy of Individual Rights Program of the Rehabilitation Act of 1973, 29 U.S.C. § 794(e). DRTX is the designated “protection and advocacy” system for the State of Texas. In accordance with its federal mandate, DRTX has the authority to, among other things, pursue administrative, legal, and other appropriate remedies to protect the rights of persons with disabilities. 42 U.S.C. § 6042(2); 42 U.S.C. § 10805(a)(1). A significant portion of DRTX’s work is representing students with disabilities and their families throughout the state of Texas to secure appropriate education services from public schools. DRTX is interested in this matter because of the implications that the Court’s decision will have for the ability for certain students with disabilities to safely return to school in-person without serious risk to their health and safety.

**STATEMENT OF COMPLIANCE WITH TEX. R. APP. P. 11(C)**

No fee was paid nor will be paid for preparing this brief by any source.

**To the Honorable Supreme Court of Texas:**

## **INTRODUCTION**

The executive order at issue here is not mere inattention to a fire; it is an attempt to prevent any fire brigade from fighting the fire as it deems best while the citizens risk being consumed by the flames. This Court is surely not a forum for a robust debate about medically-sound public health and safety policy. But it just as surely is the state forum of last resort to check government overreach or abuse.

Governor Abbott's Executive Order GA-38 is an overreach of executive authority never contemplated by the Texas Disaster Act of 1975, as explained by the Real Parties in Interest. Moreover, as explained herein, it is also preempted by federal law. This Court should allow local officials to make evidence-based decisions tailored to the needs of their constituents, including the medically fragile children with disabilities that Amicus represents, and deny the request for mandamus relief.

## **SUMMARY OF ARGUMENT**

Amicus curiae Disability Rights Texas writes to emphasize the impact of Governor Abbott's Executive Order GA-38 on children with disabilities throughout the state of Texas.

It is broadly accepted that students benefit from in-person learning and that in-person instruction must be the norm for the quickly approaching school year. The pandemic has already caused untold disruption to students across the state, but for students with disabilities, the lack of safe in-person instruction has resulted in significant setbacks in educational development, and it has limited access to related aids and services needed to support these students' academic progress and prevent regression.

Governor Abbott's attempt to bar local authorities from adopting mask requirements to protect their students and staff in line with current CDC guidance puts in place another barrier for students with disabilities—in particular those students with disabilities that place them at a higher risk of hospitalization, severe illness, or death should they contract COVID-19. As explained herein, federal law requires that local school districts have the discretion to adopt policies in line with CDC guidance and with the needs of their communities, which will allow these most vulnerable children to safely return to school in-person this year without serious risk to their health and safety.

## ARGUMENT

### I. School-Aged Children Face Increased Risks from the COVID-19 Delta Variant

After COVID-19 hospitalizations initially peaked in January, the number of deaths, hospitalizations, and infections in Texas began declining once vaccines became available. Things drastically changed last month with the arrival of the highly contagious and virulent COVID-19 Delta variant.<sup>1</sup> The number of newly reported cases, hospitalizations, and deaths due to COVID-19 have all increased sharply.<sup>2</sup> Over the past 14 days, there has been a 72% increase in positive cases, 94% increase in hospitalizations, and 128% increase in deaths due to COVID-19.<sup>3</sup> The surging hospitalization rate has left many hospitals in Texas out of ICU beds, especially those dedicated to pediatric care.<sup>4</sup> For example, a lack of

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<sup>1</sup> Centers for Disease Control, *Delta Variant: What We Know About the Science*, <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html> (noting that the Delta variant is “more than 2x as contagious as previous variants,” and studies indicated that “patients infected with the Delta variant were more likely to be hospitalized”).

<sup>2</sup> *Tracking Coronavirus in Texas: Latest Map and Case Count*, N.Y. Times, <https://www.nytimes.com/interactive/2021/us/texas-covid-cases.html> (last updated Aug. 14, 2021).

<sup>3</sup> *Id.*

<sup>4</sup> Reese Oxner, *Dozens of Texas Hospitals are out of ICU beds as COVID-19 cases again overwhelm the state’s capacity*, Tex. Trib., Aug. 10, 2021, <https://www.texastribune.org/2021/08/10/coronavirus-texas-hospitals-icu-beds/>.

pediatric ICU beds has forced young patients to be transported across the state or to out-of-state hospitals to receive care.<sup>5</sup>

These developments are particularly troubling for students and school districts because the Delta variant and on-going exponential growth in cases is threatening the fast-approaching school year. While COVID-19 vaccines are widely available, Texas schoolchildren under the age of 12 cannot currently be vaccinated. After access to the vaccine increased in February, 99.5% of COVID-19 deaths have been people who were unvaccinated.<sup>6</sup> While less than 50% of the Texas population is fully vaccinated, almost all students ages 5 to 12 years remain at significant risk until they are eligible to receive a vaccine.<sup>7</sup>

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<sup>5</sup> *Id.* For example, as of August 10, 2021, only two pediatric beds were available for all of North Texas. Lauren Girgis, Charles Scudder and Allie Morris, *In North Texas, intensive care bed space is running out. Only 2 pediatric ICU spots remain in region*, Dall. Morning News, Aug. 10, 2021, <https://www.dallasnews.com/news/public-health/2021/08/10/in-north-texas-intensive-care-bed-space-is-running-out-only-2-pediatric-icu-spots-remain-in-region/>.

<sup>6</sup> Colleen Deguzman, *Texas has seen nearly 9,000 COVID-19 deaths since February. All but 43 were unvaccinated people*, Tex. Trib., July 23, 2021, <https://www.texastribune.org/2021/07/21/coronavirus-texas-vaccinated-deaths/> (reporting on statistics provided by the Texas Department of State Health Services).

<sup>7</sup> *Id.* (“As of Aug. 12, about 44.8% of Texas’ 29 million people have been fully vaccinated — 83% of Texans are age 12 and older and thus eligible for a vaccine.”); see also *Tracking Coronavirus in Texas: Latest Map and Case Count*, N.Y. Times (Aug. 14, 2021), <https://www.nytimes.com/interactive/2021/us/texas-covid-cases.html> (showing that 45% of Texans are fully vaccinated and 54% have received at least one dose). And yesterday “there were no pediatric intensive care unit beds available in

While full vaccination is the “leading public health prevention strategy to end the COVID-19 pandemic,” every school district in this state “serve[s] children under the age of 12 who are not eligible for vaccination at this time.”<sup>8</sup> Based on current estimates from the Food and Drug Administration, a vaccine for students under 12 is not likely to be given emergency approval until late into the coming school semester at the earliest.<sup>9</sup>

Data also unfortunately confirms that school-aged children have been infected at higher rates with the Delta variant, especially among those children who are unvaccinated.<sup>10</sup> According to the American Academy of Pediatrics, “the Delta variant has created a new and pressing

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Dallas” and the 19 surrounding counties. Tori B. Powell, *No pediatric ICU beds left in Dallas amid COVID surge, county judge says*, CBS News (Aug. 13, 2021), <https://www.cbsnews.com/news/dallas-hospitals-pediatric-icu-beds-covid>.

<sup>8</sup> Centers for Disease Control, *Guidance for COVID-19 Prevention in K-12 Schools*, Aug. 5, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>.

<sup>9</sup> Erika Edwards, *Covid vaccines for kids under 12 expected midwinter, FDA official says*, NBC News, <https://www.nbcnews.com/health/health-news/vaccines-kids-under-age-12-expected-mid-winter-fda-official-n1274057>.

<sup>10</sup> Kathy Katella, *Five Things to Know about the Delta Variant*, Yale Medicine, Aug. 9, 2021, <https://www.yalemedicine.org/news/5-things-to-know-delta-variant-covid> (noting that a recent study “showed that children and adults under 50 were 2.5 times more likely to become infected with Delta”).

risk to children and adolescents across this country.”<sup>11</sup> Pediatric cases of COVID-19 have been “skyrocketing alongside cases among unimmunized adults; child hospitalizations have now reached an all-time pandemic high.”<sup>12</sup> For the week ending July 29, 2021, “nearly 72,000 new coronavirus cases were reported in kids—almost a fifth of all total known infections in the U.S., and a rough doubling of the previous week’s stats.”<sup>13</sup> The next week the number of new coronavirus cases in children jumped to almost 94,000.<sup>14</sup> As the American Academy of Pediatrics explained: “The higher proportion of cases in this population means this age group could be contributing in driving continued spread of COVID-19. Sadly, over 350 children have died of COVID since the start of pandemic, and millions of children have been negatively impacted by missed schooling, social isolation, and in too many cases, the death of

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<sup>11</sup> Letter from Leo Savior Beers, President of AAP, to Dr. Janet Woodcock, Acting Comm’r of the FDA, August 5, 2021, [https://downloads.aap.org/DOFA/AAP%20Letter%20to%20FDA%20on%20Timeline%20for%20Authorization%20of%20COVID-19%20Vaccine%20for%20Children\\_08\\_05\\_21.pdf](https://downloads.aap.org/DOFA/AAP%20Letter%20to%20FDA%20on%20Timeline%20for%20Authorization%20of%20COVID-19%20Vaccine%20for%20Children_08_05_21.pdf).

<sup>12</sup> Katherine J. Wu, *Delta Is Bad News for Kids*, The Atlantic, Aug. 10, 2021, <https://www.theatlantic.com/health/archive/2021/08/delta-variant-covid-children/619712/>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*



parents and other caregivers.”<sup>15</sup> For example, only days into the start of this school year without a mask requirement in place, Florida’s Brevard Public Schools reported more than 470 COVID-19 cases among students and teachers and roughly 1,060 people in quarantine.<sup>16</sup>

## **II. The CDC and Medical Experts Have Recommended Universal Indoor Masking to Help Schools Safely Return to In-Person Learning**

Due to the recent surge caused by the Delta variant and the unavailability of vaccines for children under 12, medical experts recommend that masks be worn at schools to prevent the further spread of COVID-19 and help schools safely return to in-person learning. Specifically, the CDC currently “recommends universal indoor masking by all students (age 2 and older), staff, teachers, and visitors to K-12 schools, regardless of vaccination status.”<sup>17</sup> In addition, the Texas Medical Association, Texas Pediatric Society, and Texas Public Health Coalition have all called for universal masking in schools: “Let’s face it;

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<sup>15</sup> AAP President’s Letter, *supra* note 9.

<sup>16</sup> Christina Maxouris, *More than 470 Covid Cases and 1,000 Quarantined After the First Week of School in a Florida County*, CNN, [https://www.cbs46.com/more-than-470-covid-cases-and-1-000-quarantined-after-the-first-week-of-school/article\\_f2cf5110-74d5-5cc4-aab4-4a8c8118b7da.html](https://www.cbs46.com/more-than-470-covid-cases-and-1-000-quarantined-after-the-first-week-of-school/article_f2cf5110-74d5-5cc4-aab4-4a8c8118b7da.html) (last updated Aug. 13, 2021).

<sup>17</sup> *Id.*

if we don't take action, the more infectious COVID-19 delta variant will spread among students when they gather together in schools. We urge use of every tool in our toolkit to protect our children and their families from COVID-19.”<sup>18</sup> And 125 physicians from Cook Children's Medical Center in Fort Worth wrote to Fort Worth ISD asking for a mask mandate, noting the increase in COVID-19 infections and hospitalizations.<sup>19</sup>

The conclusion of these experts is that masking works. Recent studies agree. The ABC Science Collaborative, led by top physicians on the staff of Duke University, studied data from 100 school districts in North Carolina, and found that “[w]hen masking is in place, COVID-19 transmission in schools is low.”<sup>20</sup> And, as stated by the CDC, “when teachers, staff, and students consistently and correctly wear a mask, they

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<sup>18</sup> Tex. Pediatric Soc'y, *Physicians Encourage Masking and Vaccination of Students*, July 28, 2021, <https://txpeds.org/physicians-encourage-masking-and-vaccination-students>.

<sup>19</sup> Anna Caplan, *Fort Worth ISD will require masks in schools*, Dall. Morning News, Aug. 11, 2021, <https://www.dallasnews.com/news/2021/08/11/letter-from-125-cook-childrens-physicians-prompts-fwisd-to-mandate-masks-for-school-year/>.

<sup>20</sup> The ABC Science Collaborative, *Zimmerman, Benjamin Urge Mask Wearing in Press Conference*, <https://abcsciencecollaborative.org/zimmerman-benjamin-urge-mask-wearing-in-press-conference/>.

protect others as well as themselves.”<sup>21</sup> Most critically, local school districts and communities should be allowed to make the decision that masks are needed based on local conditions and the populations they serve.

### **III. Governor Abbott’s Executive Order Conflicts with Federal Law Mandating That Local School Districts Have the Authority to Adopt Health and Safety Policies Including Mask Requirements**

Governor Abbott’s Executive Order impermissibly interferes with local school districts’ authority to adopt policies, including mask requirements, to protect students and educators as they develop plans for safe return to in-person instruction as required under federal law. Under section 2001(i) of the American Rescue Plan Act of 2021 (ARP), local school districts in Texas have been allocated billions of dollars in Elementary and Secondary School Emergency Relief (ESSER) funding so that they can adopt plans for a safe return to in-person instruction. Section 2001(e)(2)(Q) of the ARP Act explicitly gives local school districts the authority to use these ARP ESSER funds for “developing strategies

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<sup>21</sup> Centers for Disease Control, *Guidance for COVID-19 Prevention in K-12 Schools*, Aug. 5, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>.

and implementing public health protocols including, to the greatest extent practicable, policies in line with guidance from the Centers for Disease Control and Prevention for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff.” As discussed above, the CDC’s guidance specifically recommends universal indoor masking in all K-12 schools.

Furthermore, interim final requirements adopted by the U.S. Department of Education specifically require each local school district to adopt a plan for safe return to in-person instruction that describes “the extent to which it has adopted policies, and a description of any such policies, on each of the following safety recommendations established by the CDC[,]” specifically including “universal and correct wearing of masks.”<sup>22</sup> In other words, federal law as interpreted by the Department of Education mandates that local school districts—and not the state—have the authority to decide whether and to what extent they will adopt mask policies consistent with CDC guidance. Governor Abbott’s

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<sup>22</sup> Letter from Secretary of Education Miguel A. Cardona to Governor Greg Abbott and Texas Education Agency Commissioner Mike Morath, August 13, 2021, <https://oese.ed.gov/files/2021/08/Letter-from-Secretary-Cardona-TX-08-13-21.pdf>.

Executive Order impermissibly conflicts with and is preempted by this federal law.

#### **IV. Students with Disabilities are Particularly at Risk**

School-aged children with certain disabilities, including a range of underlying medical conditions, face a higher rate of severe illness from COVID-19 as compared to other children without those underlying medical conditions. According to the CDC, “children with medical complexity, with genetic, neurologic, metabolic conditions, or with congenital heart disease can be at increased risk for severe illness from COVID-19.”<sup>23</sup> And as with adults that face increased risks, “children with obesity, diabetes, asthma or chronic lung disease, sickle cell disease, or immunosuppression can also be at increased risk for severe illness from COVID-19.”<sup>24</sup> Texas school districts regularly serve students with these exact disabilities—moderate to severe asthma, chronic lung and heart conditions, cerebral palsy, Down syndrome, and weakened immune

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<sup>23</sup> Centers for Disease Control, *COVID-19: People with Certain Medical Conditions*, May 13, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

<sup>24</sup> *Id.*

systems are common. Asthma alone impacts ten percent of school-age children.<sup>25</sup>

## **V. Students with Disabilities Need In-Person Schooling**

The COVID-19 pandemic has already dramatically affected students with disabilities, beginning with the closure of the public school system in the spring of 2020. While school districts across Texas have been on the front lines this pandemic, many students lost critical instruction and services, continuing throughout the 2020-21 school year.

The American Academy of Pediatrics has explained that “remote learning highlighted inequities in education, was detrimental to the educational attainment of students of all ages and exacerbated the mental health crisis among children and adolescents.”<sup>26</sup> That detrimental impact has been especially dramatic for students with disabilities. As detailed by the Department of Education, COVID-19 has significantly disrupted the education and related aids and services

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<sup>25</sup> *Percentage of ever having asthma for children under age 18 years, United States, 2019*, Nat’l Ctr. for Health Stat., Aug. 14, 2021, [https://wwwn.cdc.gov/NHISDataQueryTool/SHS\\_child/index.html](https://wwwn.cdc.gov/NHISDataQueryTool/SHS_child/index.html).

<sup>26</sup> American Academy of Pediatrics, *COVID-19 Guidance for Safe Schools*, <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/> (last updated July 18, 2021).

needed to support their academic progress and prevent regression.”<sup>27</sup> Students with disabilities not only lost critical in-class instruction, they lost services such as speech and occupational therapy, as well as behavioral support and counseling. Many parents have reported regression.<sup>28</sup> And there is evidence that the disruption in services and instruction “may be exacerbating longstanding disability-based disparities in academic achievement.”<sup>29</sup>

One thing is clear: “Students benefit from in-person learning, and safely returning to in-person instruction in the fall 2021 is a priority.”<sup>30</sup> Moreover, students with disabilities need in-person schooling more than any other student group, but these children must be able to receive

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<sup>27</sup> U.S. Dep’t of Educ., *The Disparate Impacts of COVID-19 on America’s Students*, June 9, 2021, iv, <https://www2.ed.gov/about/offices/list/ocr/docs/20210608-impacts-of-covid19.pdf>.

<sup>28</sup> Hannah Natanson, Valerie Strauss, Katherin Frey, “*How America failed students with disabilities during the pandemic*,” Washington Post, May 20, 2021, <https://www.washingtonpost.com/education/2021/05/20/students-disabilities-virtual-learning-failure/>.

<sup>29</sup> *Id.*

<sup>30</sup> Centers for Disease Control, *Guidance for COVID-19 Prevention in K-12 Schools*, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html> (last updated Aug. 5, 2021).

instruction and services safely.<sup>31</sup> As many of these students have underlying health conditions and are at high risk for illness and even death due to COVID-19, local counties and school district should not be prevented from taking measures designed to protect their most vulnerable children and allow those students to safely return to school this year. By blocking those safety measures, the effect of Governor Abbott’s Executive Order is to place an unlawful barrier for students with disabilities that effectively excludes them from participation in the benefits of in-person schooling, in violation of their rights under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132, and section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*

**VI. Governor Abbott’s Executive Order GA-38 Prevents Local Communities from Adopting Protections Most Appropriate for Their Students**

Since March 13, 2020, Governor Abbott has recognized by proclamation the “imminent threat” posed by the COVID-19 pandemic for all counties across the State of Texas. He has renewed that

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<sup>31</sup> Anne Masi, et al., *Impact of the COVID-19 pandemic on the well-being of children with neurodevelopmental disabilities and their parents*, *J. of Pediatric and Child Health* (2021), <https://onlinelibrary.wiley.com/doi/10.1111/jpc.15285>.



proclamation each month by successive executive orders, and each recognize that the COVID-19 threat remains in place today.

Notably, among his executive orders, Governor Abbott issued Executive Order GA-29 in July 2020, which required all Texans to “wear a face covering over the nose and mouth when inside a commercial entity or other building or space open to the public” in counties that exceeded certain thresholds of positive cases unless those counties affirmatively opted out of the mask requirement. In doing so, Governor Abbott recognized the importance of both using masks to help limit and control the spread of COVID-19,<sup>32</sup> and the differences across Texas communities that may require a variety of approaches as to masking.

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<sup>32</sup> Indeed, Governor Abbott emphasized at that time that wearing masks “is the best strategy you can use to make sure that you and others do not contract Covid-19,” citing a Texas A&M study on face masks. SBG San Antonio, *Gov. Abbott: 'Masks are our best option' against COVID-19 spike*, June 24, 2020, <https://news4sanantonio.com/news/local/gov-abbott-masks-are-our-best-option-against-covid-19-spike>; see also Keith Randall, Texas A&M Study: Face Masks Critical In Preventing Spread Of COVID-19, Texas A&M Today, June 12, 2020 (“A study by a team of researchers led by a Texas A&M University professor has found that not wearing a face mask dramatically increases a person’s chances of being infected by the COVID-19 virus.”). <https://today.tamu.edu/2020/06/12/texas-am-study-face-masks-critical-in-preventing-spread-of-covid-19/> (“A study by a team of researchers led by a Texas A&M University professor has found that not wearing a face mask dramatically increases a person’s chances of being infected by the COVID-19 virus.”).

Despite the real threat of COVID-19 that Texans continue to face and despite his prior endorsement of masking as a means of protection from the threat, Governor Abbott’s Executive Order GA-38 purports to prohibit any requirement by “any jurisdiction to wear or to mandate the wearing of a face covering.”<sup>33</sup> This order will prevent those students with disabilities making them most vulnerable to COVID-19 from safely returning to school.

## **VII. Texas Families of Students with High-Risk Disabilities and Health Conditions Face an Impossible Choice**

The Governor’s Order has put parents and caregivers in the impossible situation of having to choose between protecting the health and safety of their at-risk child and providing those students with desperately needed in-person instruction and services by returning to school.

As the protection and advocacy agency in the state of Texas, Disability Rights Texas has received sustained calls and emails from parents in every corner of the state desperate for help overturning the

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<sup>33</sup> Exec. Order GA 38, [https://gov.texas.gov/uploads/files/press/EO-GA-38\\_continued\\_response\\_to\\_the\\_COVID-19\\_disaster\\_IMAGE\\_07-29-2021.pdf](https://gov.texas.gov/uploads/files/press/EO-GA-38_continued_response_to_the_COVID-19_disaster_IMAGE_07-29-2021.pdf) (July 29, 2021).

Governor's Order so that schools can implement policies to allow them to send their children with high-risk disabilities to school without fearing it will result in hospitalization or death. For example:

- M.P. is an eleven-year-old student with Down syndrome in Fort Bend ISD. She participated in virtual learning all last year because of the high risk of serious illness, hospitalization and death that faces people with Down syndrome who contract COVID-19. She also had a severe case of pneumonia four years ago that has further compromised her respiratory system putting her at even more risk. Due to the lack of in-person instruction, she has regressed academically and socially and needs in-person instruction to benefit from her special education program, which includes a combination of special and general education classes with a modified curriculum and related services to aid in her communication. Fort Bend ISD initially announced plans to have a mask mandate but reversed course with conflicting guidance from TEA and the Fort Bend County Judge.
- N.C. is an eight-year-old student with Sanfilippo Syndrome, which is a type of childhood dementia and a neurological disorder. She is

in the Friendswood ISD in Galveston County and receives significant special education modifications including assistive technology to help her communicate in the classroom and was unable to benefit from virtual instruction. Children with neurological conditions such as N.C. are at a higher risk of hospitalization, severe illness, or death should they contract COVID-19, and her parents need her school to be able to institute policies to allow her to safely attend. A recent study of children with her type of rare degenerative genetic disorder has found that school closures and virtual instruction can result in permanent loss of skills and even reduced life expectancy.<sup>34</sup> Galveston County is not currently under a court order allowing them to protect their residents from COVID-19, and Friendswood ISD is not currently implementing a mask mandate in schools.

- J.R. is an eight-year-old student in San Antonio ISD and lives with moderate to severe asthma, generalized anxiety disorder, ADHD, and a growth-hormone deficiency. After remaining in virtual

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<sup>34</sup> Julie B. Eisengart, et al., *Issues of COVID-19-Related Distance Learning for Children with Neuronopathic Mucopolysaccharidoses*, *Molecular Genetics and Metabolism* (2021), <https://doi.org/10.1016/j.ymgme.2021.06.012>.

schooling all last year, she needs the academic and social benefits of in-person instruction, where the supports from her special education plan can be provided. Pursuant to a temporary restraining order issued by a Bexar County District Judge, which has allowed county officials to issue mask requirements to Bexar County school districts, the San Antonio Independent School District has required masks in all its schools. However, given Gov. Abbott's recent requests to strike down mask mandates across the state, students like J.R. have no guarantee that masks will continue to be required in their schools and that their safety will be maintained during in-person instruction.

Students with disabilities need full, complete, and safe access to their education. Decisions affecting these most vulnerable students should be made by those closest to the student—parents, educators, and community leaders. This Court should reject the barriers put in place by Governor Abbott's Executive Order and allow local authorities to adopt mask requirements to protect their students and staff where best for their communities.

## CONCLUSION

For these reasons, the Court should deny Relator's Emergency Motion for Temporary Relief and the petition for writ of mandamus.

Dated: August 14, 2021

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been delivered to counsel of record on August 14, 2021.

*/s/ Thomas M. Melsheimer*

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