



IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

DR. VALERIE RITTER for herself as )  
an individual and for and on behalf of )  
her minor children RR and ER; )  
KIMBERLY BUTLER for herself as )  
an individual and for and on behalf )  
of her minor child HB; )  
MARY ANN MARTIN for herself as )  
an individual and for and on behalf of )  
her minor children KM, EM, and MM; )  
DR. BRITNEY ELSE for herself as an )  
individual and for and on behalf of her )  
minor child BJ; and )  
THE OKLAHOMA STATE )  
MEDICAL ASSOCIATION, an )  
Oklahoma Not for Profit Corporation, )

Case No. 119840

Plaintiffs/Appellees, )

vs. )

THE STATE OF OKLAHOMA and )  
THE HONORABLE KEVIN STITT, )  
in his official capacity as GOVERNOR )  
OF THE STATE OF OKLAHOMA, )

Defendants/Appellants. )

On Appeal from  
Oklahoma County District Court  
Case No. CV-2021-1918  
Judge: The Honorable Natalie Mai  
Nature of Action: Injunction

**BRIEF OF AMICUS CURIAE OKLAHOMA DISABILITY LAW CENTER IN  
SUPPORT OF PLAINTIFFS' PETITION FOR DECLARATORY JUDGEMENT AND  
PERMANENT INJUNCTIVE RELIEF**

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INDEX

INTEREST OF AMICUS CURIAE..... 1

    42 U.S.C. § 6042(2) ..... 1

    42 U.S.C. § 10805(A)(1) ..... 1

INTRODUCTION..... 1

SUMMARY OF ARGUMENT ..... 2

    O.S. Title 70 §§ 1210.189-1210.191..... 2

ARGUMENT..... 3

**I. School-Aged Children Face Increased Risks from the COVID-19  
    Delta Variant** ..... 3

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        about-covid-19/basics-covid-19.html](https://www.cdc.gov/coronavirus/2019-ncov/your-health/about-covid-19/basics-covid-19.html) ..... 3

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Corey Jones, <i>Gov. Stitt still supports banning mask mandates in public schools despite pandemic’s classroom upheaval</i> , Tulsa World, October 3, 2021, <a href="https://tulsaworld.com/news/local/gov-stitt-still-supports-banning-mask-mandates-in-public-schools-despite-pandemics-classroom-upheaval/article_8f916330-1f9d-11ec-800b-97107e741bd7.html">https://tulsaworld.com/news/local/gov-stitt-still-supports-banning-mask-mandates-in-public-schools-despite-pandemics-classroom-upheaval/article_8f916330-1f9d-11ec-800b-97107e741bd7.html</a> .....	4
<i>Unvaccinated people now account for nearly all COVID deaths in US</i> , Oklahoma News 4, Associated Press, June 24, 2021, <a href="https://kfor.com/news/coronavirus/unvaccinated-people-now-account-for-nearly-all-covid-deaths-in-us/">https://kfor.com/news/coronavirus/unvaccinated-people-now-account-for-nearly-all-covid-deaths-in-us/</a> .....	4
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<i>COVID-19 Dashboard</i> , Oklahoma State Department of Health, September 22, 2021, <a href="https://oklahoma.gov/covid19.html">https://oklahoma.gov/covid19.html</a> .....	4
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**II. The CDC and Medical Experts Have Recommended Universal Indoor Masking to Help Schools Safely Return to In-Person Learning**..... 6

Centers for Disease Control, *Guidance for COVID-19 Prevention in K-12 Schools*, August 5, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html> ..... 6

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<b>III. Senate Bill 658 Conflicts with Article 5, § 46 of the Oklahoma Constitution by Attempting to Regulate the Local Affairs of School Districts .....</b>	<b>8</b>
Okla. Const. art. 5, § 46 .....	8
<i>Letter from Secretary of Education Miguel A. Cardona to Governor Kevin Stitt and Oklahoma State Superintendent of Public Instruction Joy Hofmeister, August 18, 2021, <a href="https://oese.ed.gov/files/2021/08/21-006973-Letter-from-Secretary-Cardona-Oklahoma-final-signed.pdf">https://oese.ed.gov/files/2021/08/21-006973-Letter-from-Secretary-Cardona-Oklahoma-final-signed.pdf</a> .....</i>	<i>9</i>
<b>IV. Students with Disabilities are Particularly at Risk .....</b>	<b>9</b>
Centers for Disease Control, <i>COVID-19: People with Certain Medical Conditions</i> , August 20, 2021, <a href="https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html">https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html</a> .....	9
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<b>V. Students with Disabilities Need In-Person Schooling .....</b>	<b>9</b>
American Academy of Pediatrics, <i>COVID-19 Guidance for Safe Schools</i> , July 18, 2021, <a href="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/">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/</a> .....	10
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Centers for Disease Control, <i>Guidance for COVID-19 Prevention in K-12 Schools</i> , August 5, 2021, <a href="https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html">https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html</a> .....	10
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42 U.S.C. § 12132.....	11
29 U.S.C. § 701 <i>et seq.</i> .....	11
Okla. Const. art. 1, § 5 .....	11
<b>VI. Oklahoma Families of Students with High-Risk Disabilities and Health Conditions Face an Impossible Choice</b> .....	11
<i>BPSD Pandemic Precautions &amp; Distance Learning</i> , Bartlesville Public Schools, accessed September 22, 2021, <a href="https://sites.google.com/bps-ok.org/bpslearn/home">https://sites.google.com/bps-ok.org/bpslearn/home</a> .....	12
Centers for Disease Control, <i>COVID-19: People with Certain Medical Conditions</i> , August 20, 2021, <a href="https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html">https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html</a> .....	13
<i>Resolution to Return Local Control to School Districts Across Oklahoma</i> , Deer Creek Public Schools, August 31, 2021, <a href="http://p4cdn4static.sharpschool.com/UserFiles/Servers/Server_37435/File/2021-2022/Deer%20Creek%20BOE%20Resolution.pdf">http://p4cdn4static.sharpschool.com/UserFiles/Servers/Server_37435/File/2021-2022/Deer%20Creek%20BOE%20Resolution.pdf</a> .....	13
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<b>CONCLUSION</b> .....	14



## **INTEREST OF AMICUS CURIAE**

Oklahoma Disability Law Center (ODLC) is the federally funded, not-for-profit protection and advocacy system for individuals with disabilities in the state of Oklahoma. Our office is mandated to protect the legal and civil rights of Oklahomans with disabilities. ODLC's mission is to protect, promote and expand the rights of people with disabilities in Oklahoma. As the protection and advocacy system for Oklahoma, and pursuant to its federal mandate, ODLC investigates abuse, neglect, and rights violations affecting people with disabilities; pursues administrative, legal, and policy remedies to address identified violations; and advocates for individuals in many areas of disability rights, including voting, housing, employment, government benefits and services, and special education (42 U.S.C. § 6042(2); 42 U.S.C. §10805(A)(1)). A significant portion of ODLC's work is representing students with disabilities and their families throughout the state of Oklahoma to secure appropriate education services from public schools. ODLC 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 attend school in-person without serious risk to their health and safety. Our mission and legal advocacy have never been more important than in the face of the current Covid-19 pandemic, as we continue to monitor the continuing challenges faced by our citizens living with disabilities and the state's response to this public health emergency.

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

## **INTRODUCTION**

People with disabilities face unique and frightening challenges during the COVID-19 pandemic. COVID-19 could be a death sentence for many Oklahomans with disabilities, as they face not only a higher risk of contracting the virus, but also a higher risk for serious, or even fatal, complications resulting from the virus. This is even more true for thousands of school aged

children with disabilities throughout the state, many of whom are too young or medically unable to receive the vaccine.

Senate Bill 658 improperly interferes with local school districts' ability to make safe and reasoned policies with regard to COVID-19 mitigation strategies within our Oklahoma public schools. The implementation of the new laws' ban on masking policies and mandates unnecessarily places thousands of school aged children, particularly those living with disabilities, at risk.

### **SUMMARY OF ARGUMENT**

Amicus curiae Oklahoma Disability Law Center writes to emphasize the impact of Senate Bill 658, as codified in O.S. Title 70 §§ 1210.189-1210.191, on children with disabilities throughout the state of Oklahoma.

It is broadly accepted that students benefit from in-person learning and that in-person instruction must be the norm for the current 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 Stitt's and the State'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, existing state 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

The history of the COVID-19 pandemic is well-known,<sup>1</sup> and an extensive body of evidence shows that COVID-19 is a highly communicable respiratory virus that spreads through close contact.<sup>2</sup> Since the inception of the pandemic, more than 600,000 positive cases of COVID-19 in Oklahoma have been logged, and more than 9,900 Oklahomans have died.<sup>3</sup> COVID-19 hospitalizations peaked in Oklahoma in January, 2021, when almost 2,000 Oklahomans were lying in hospital beds due to COVID-19 complications.<sup>4</sup> The number of deaths, hospitalizations, and infections began declining in early 2021 once vaccines became available in Oklahoma. By June, 2021, the number of COVID-19 hospitalizations had decreased to fewer than 150 Oklahomans.<sup>5</sup>

However, the medical landscape in Oklahoma changed dramatically in May with the first reported cases of the highly contagious and virulent Delta variant of COVID-19.<sup>6</sup> The number of

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<sup>1</sup> Centers for Disease Control, *COVID-19: Basics of COVID-19*, May 24, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/your-health/about-covid-19/basics-covid-19.html>.

<sup>2</sup> Centers for Disease Control, *Scientific Brief: SARS-CoV-2 Transmission*, May 7, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/sars-cov-2-transmission.html>.

<sup>3</sup> *Oklahoma surpasses 600,000 total COVID-19 cases since pandemic began; 91 more deaths added*, KOCO News 5, ABC, September 22, 2021, <https://www.koco.com/article/oklahoma-600000-total-covid-19-cases-91-more-deaths/37692776>.

<sup>4</sup> Kassie McClung, *Nearly 47% of Oklahomans are fully vaccinated against COVID-19*, The Frontier, September 22, 2021, <https://www.readfrontier.org/stories/coronaviruscasesandhospitalizationinoklahoma>.

<sup>5</sup> *Id.*

<sup>6</sup> Dana Branham, *Oklahoma sees uptick in COVID-19 cases as faster-spreading delta variant alarms officials*, The Oklahoman, June 25, 2021, <https://www.oklahoman.com/story/news/2021/06/25/oklahoma-covid-cases-rising-possible-delta-variant-trend-alarming-health-leaders/7781208002/>; Centers for Disease Control, *Delta Variant: What We Know About the*

newly reported cases, hospitalizations, and deaths due to COVID-19, since the arrival of the Delta variant in Oklahoma, have all increased sharply.<sup>7</sup>

These developments are particularly troubling for students and school districts because the Delta variant and on-going exponential growth in cases is threatening both students and staff as the current school year progresses. Recently, the Tulsa Health Department reported that school classrooms are experiencing the most COVID-19 cases, as compared to other high-risk settings, in which the ability to social distance is limited.<sup>8</sup> Dr. Lance Frye, former Oklahoma Health Commissioner, confirmed that COVID-19 transmission was continuing, “especially in schools.”<sup>9</sup>

While COVID-19 vaccines are now widely available, Oklahoma 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>10</sup> While less than 50% of the Oklahoma 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>11</sup>

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*Science*, August 6, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>.

<sup>7</sup> Lindsey Chastain, *COVID cases on the rise again in Oklahoma due to Delta variant*, Tulsa World, August 27, 2021, [https://tulsaworld.com/community/skiatook/news/covid-cases-on-the-rise-again-in-oklahoma-due-to-delta-variant/article\\_13b7ba72-e4c2-11eb-8609-e75e7249c3ca.html](https://tulsaworld.com/community/skiatook/news/covid-cases-on-the-rise-again-in-oklahoma-due-to-delta-variant/article_13b7ba72-e4c2-11eb-8609-e75e7249c3ca.html).

<sup>8</sup> Corey Jones, *Gov. Stitt still supports banning mask mandates in public schools despite pandemic's classroom upheaval*, Tulsa World, October 3, 2021, [https://tulsaworld.com/news/local/gov-stitt-still-supports-banning-mask-mandates-in-public-schools-despite-pandemics-classroom-upheaval/article\\_8f916330-1f9d-11ec-800b-97107e741bd7.html](https://tulsaworld.com/news/local/gov-stitt-still-supports-banning-mask-mandates-in-public-schools-despite-pandemics-classroom-upheaval/article_8f916330-1f9d-11ec-800b-97107e741bd7.html).

<sup>9</sup> *Id.*

<sup>10</sup> *Unvaccinated people now account for nearly all COVID deaths in US*, Oklahoma News 4, Associated Press, June 24, 2021, <https://kfor.com/news/coronavirus/unvaccinated-people-now-account-for-nearly-all-covid-deaths-in-us>.

<sup>11</sup> Kaitor Kay, *Study says 80% of school kids will catch COVID within next 2 months, top Oklahoma doctor shares insight*, Oklahoma News 4, August 23, 2021, <https://kfor.com/news/coronavirus/study-says-80-of-school-kids-will-catch-covid-within-next-2-months-top-oklahoma-doctor-shares-insight/>; *COVID-19 Dashboard*, Oklahoma State Department of Health, September 22, 2021, <https://oklahoma.gov/covid19.html>.

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>12</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>13</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>14</sup> According to the American Academy of Pediatrics, “the Delta variant has created a new and pressing risk to children and adolescents across this country.”<sup>15</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>16</sup> For the week ending September 16, 2021, nearly 226,000 new coronavirus cases were reported in kids across the nation — “the third highest number of child

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

<sup>13</sup> Erika Edwards, *Covid vaccines for kids under 12 expected midwinter, FDA official says*, NBC News, July 15, 2021, <https://www.nbcnews.com/health/health-news/vaccines-kids-under-age-12-expected-mid-winter-fda-official-n1274057>.

<sup>14</sup> Kathy Katella, *Five Things to Know about the Delta Variant*, Yale Medicine, September 17, 2021, <https://www.yalemedicine.org/news/5-things-to-know-delta-variant-covid>.

<sup>15</sup> *Letter from Leo Savior Beers, President of AAP, to Dr. Janet Woodcock, Acting Commissioner 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>16</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/>.

cases in a week since the pandemic began.”<sup>17</sup> In the past 4 weeks, over 925,000 child cases of COVID-19 have been reported nationwide.<sup>18</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 parents and other caregivers.”<sup>19</sup> For example, only days into the start of this school year without a mask requirement in place, Edmond Public Schools reported nearly 300 COVID-19 cases among students and teachers and 2,622 people in quarantine.<sup>20</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>21</sup> In addition, the Oklahoma Medical Association, the Oklahoma Chapter of the American Academy of Pediatrics, and the

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<sup>17</sup> *Children and COVID-19: State-Level Data Report*, American Academy of Pediatrics, September 20, 2021, <https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/children-and-covid-19-state-level-data-report/>.

<sup>18</sup> *Id.*

<sup>19</sup> *AAP President’s Letter*, *supra* note 13.

<sup>20</sup> Jessica Bruno, *Hundreds of Oklahoma City metro area students in quarantine, concerns mounting among parents*, Oklahoma News 4, August 25, 2021, <https://kfor.com/news/local/hundreds-of-oklahoma-city-metro-area-students-in-quarantine-concerns-mounting-among-parents>; Colleen Wilson, *Thousands in quarantine, nearly 300 test positive for COVID-19 at Edmond Public Schools*, Oklahoma Fox 25, August 24, 2021, <https://okcfox.com/news/local/thousands-in-quarantine-nearly-300-test-positive-for-covid-19-at-edmond-public-schools>.

<sup>21</sup> Centers for Disease Control, *Guidance for COVID-19 Prevention*, *supra* note 10.

Oklahoma Academy of Family Physicians have all called for universal masking in schools: “Using a non-medical grade mask will not decrease all risk of viral transmission, but when used with other risk mitigating efforts, masks can further reduce the transmission of SARS-CoV-2 in public areas and a school building. For schools, the Task Force has recommended a state-wide requirement for masks to be worn indoors for teachers and for students in K-12th grades.”<sup>22</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>23</sup> And, as stated by the CDC, “when teachers, staff, and students consistently and correctly wear a mask, they protect others as well as themselves.”<sup>24</sup> A study conducted by Cincinnati Children’s Hospital Medical Center found that rates of COVID-19 transmission were much higher in districts with only partial masking requirements.<sup>25</sup> Specifically, the study determined that the rate of students getting diagnosed with COVID-19 was 78% higher in partially masked schools than in those that had universal masking.<sup>26</sup> An Arizona study concluded that schools without universal mask requirements were 3.5 times more likely to experience a COVID-19 outbreak than schools which had mask mandates in place at the start of

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<sup>22</sup> *Letter to Physician Colleagues*, Oklahoma Chapter American Academy of Pediatrics, Oklahoma Academy of Family Physicians, August 17, 2020, [https://www.okmed.org/Web/Online/Member\\_Resources/COVID-19\\_Masks.aspx](https://www.okmed.org/Web/Online/Member_Resources/COVID-19_Masks.aspx).

<sup>23</sup> *The ABC Science Collaborative, Zimmerman, Benjamin Urge Mask Wearing in Press Conference*, <https://abcsciencecollaborative.org/zimmerman-benjamin-urge-mask-wearing-in-press-conference>.

<sup>24</sup> Centers for Disease Control, *Guidance for COVID-19 Prevention*, *supra* note 10.

<sup>25</sup> Terry DeMio, *Cincinnati Children’s study: COVID-19 cases, quarantines lower in schools with mask mandates*, Cincinnati Enquirer, September 21, 2021, <https://www.cincinnati.com/story/news/2021/09/21/cincinnati-childrens-study-masks-lower-covid-19-cases-quarantines-school/5800121001/>.

<sup>26</sup> *Id.*

the academic year.<sup>27</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. Senate Bill 658 Conflicts with Article 5, § 46 of the Oklahoma Constitution by Attempting to Regulate the Local Affairs of School Districts**

Senate Bill 658, as codified in O.S. Title 70 §§ 1210.189-1210.191, impermissibly interferes with local school districts' authority to adopt policies, including mask requirements, to protect students and educators as they develop plans for safe continued in-person instruction. The Oklahoma Constitution Article 5, § 46 specifically prohibits the enactment of laws regulating the affairs of school districts. By banning public school districts from implementing mask mandates, except in certain limited circumstances, Senate Bill 658, as codified in O.S. Title 70 §§ 1210.189-1210.191, is in fact regulating the affairs of Oklahoma school districts. Taking this authority away from local public school districts during the current pandemic unnecessarily endangers the lives of thousands of Oklahoma students, teachers and staff, including those with disabilities. 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

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<sup>27</sup> Megan Jehn, J. Mac McCullough, Ariella Dale, et al. *Association Between K-12 School Mask Policies and School-Associated COVID-19 Outbreaks — Maricopa and Pima Counties, Arizona, July–August 2021*. MMWR Morbidity and Mortality Weekly Report 2021, October 1, 2021, <http://dx.doi.org/10.15585/mmwr.mm7039e1>.



“universal and correct wearing of masks.”<sup>28</sup> Senate Bill 658 interferes with local school districts’ ability adopt appropriate COVID-19 safety protocols, as directed by the U.S. Department of Education, the CDC, and local Health Departments, by prohibiting them from requiring mask wearing, when appropriate. Any law that attempts to regulate the affairs of cities and school districts, such as Senate Bill 658, is unconstitutional.

#### **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>29</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>30</sup> Oklahoma 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 systems are common. Asthma alone impacts ten percent of school-age children.<sup>31</sup>

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

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<sup>28</sup> Letter from Secretary of Education Miguel A. Cardona to Governor Kevin Stitt and Oklahoma State Superintendent of Public Instruction Joy Hofmeister, August 18, 2021, <https://oese.ed.gov/files/2021/08/21-006973-Letter-from-Secretary-Cardona-Oklahoma-final-signed.pdf>.

<sup>29</sup> Centers for Disease Control, *COVID-19: People with Certain Medical Conditions*, August 20, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

<sup>30</sup> *Id.*

<sup>31</sup> National Center for Health Statistics, *Percentage of ever having asthma for children under age 18 years, United States, 2019*, National Health Interview Survey, [https://www.n.cdc.gov/NHISDataQueryTool/SHS\\_2019\\_CHILD3/index.html](https://www.n.cdc.gov/NHISDataQueryTool/SHS_2019_CHILD3/index.html).

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 Oklahoma 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>32</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 needed to support their academic progress and prevent regression.<sup>33</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>34</sup> And there is evidence that the disruption in services and instruction “may be exacerbating longstanding disability-based disparities in academic achievement.”<sup>35</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>36</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>32</sup> American Academy of Pediatrics, *COVID-19 Guidance for Safe Schools*, July 18, 2021, <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>.

<sup>33</sup> U.S. Department of Education, Office for Civil Rights, *Education in a Pandemic: The Disparate Impacts of COVID-19 on America’s Students*, June 9, 2021, <https://www2.ed.gov/about/offices/list/ocr/docs/20210608-impacts-of-covid19.pdf>.

<sup>34</sup> Hannah Natanson, Valerie Strauss, Katherine 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>35</sup> *Id.*

<sup>36</sup> Centers for Disease Control, *Guidance for COVID-19 Prevention*, *supra* note 10.

instruction and services safely.<sup>37</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 Senate Bill 658, as codified in O.S. Title 70 §§ 1210.189-1210.191, 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, section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.* and the Oklahoma Constitution Article 1 § 5, which provides that there will be established a system of public schools, free to all Oklahoma children, in a reasonably safe environment. This is a fundamental right of all children of the state, as it is established by the Oklahoma Constitution.

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

Senate Bill 658 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 Oklahoma, Oklahoma Disability Law Center has received numerous calls and emails from parents in every corner of the state desperate for help overturning Senate Bill 658 so that schools can implement policies to allow them to send their

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<sup>37</sup> Anne Masi, et al., *Impact of the COVID-19 pandemic on the well-being of children with neurodevelopmental disabilities and their parents*, Journal of Pediatric and Child Health, January 10, 2021, <https://onlinelibrary.wiley.com/doi/10.1111/jpc.15285>.

children with high-risk disabilities to school without fearing it will result in hospitalization or death. For example:

J.M. is a 5-year-old immunocompromised student who is enrolled in the Edmond Public Schools district. He has complex medical needs, including Langerhans cell histiocytosis, liver disease, and developmental delay. J.M. previously received a liver transplant and currently takes medications that impair his immune system. J.M.'s parents fear that J.M. has regressed due to remote learning, which did not appropriately address his social and educational needs. J.M.'s medical providers have advised that J.M. may safely participate in in-person schooling when universal indoor masking and other social distancing protocols are in place. At the start of the school year, Edmond Public Schools did not implement a mask mandate, due to Senate Bill 658. However, after the temporary injunction was granted, Edmond Public Schools instituted a mask requirement for students and teachers, allowing J.M. to safely attend school.

J.W. is a 7-year-old student with a congenital heart condition enrolled in the Bartlesville Public Schools district. Due to his heart condition, premature ventricular contractions, J.W. takes daily medication and is at increased risk for severe illness from COVID-19. Currently, Bartlesville Public Schools does not require universal indoor masking because of Senate Bill 658. According to the district's Pandemic Precautions & Distance Learning Plan, "...no public schools in Oklahoma may mandate masking unless the Governor declares a state of emergency and they consult with their county health department."<sup>38</sup> Every school day, J.W.'s parents must weigh his educational needs and the serious risk to his health posed by COVID-19 and the district's lack of mitigation protocols.

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<sup>38</sup> *BPSD Pandemic Precautions & Distance Learning*, Bartlesville Public Schools, accessed September 22, 2021, <https://sites.google.com/bps-ok.org/bpslearn/home>.

A.P., H.P., and W.P. are elementary age students and siblings with moderate to severe asthma. They are enrolled in the Deer Creek School District. The Centers for Disease Control has identified moderate to severe asthma as a condition which increases the risk for severe illness from COVID-19.<sup>39</sup> Remote learning does not meet the educational needs of A.P., H.P., or W.P., and their mother worries that each experienced regression during the previous school year. Because of Senate Bill 658, Deer Creek previously did not require that students wear masks. On August 31, 2021, the Deer Creek Public Schools Board of Education passed a resolution urging Governor Stitt and the Oklahoma Legislature “to amend Senate Bill 658 and return control to the local school districts across the state of Oklahoma so we can best serve our communities based on the needs and values of those we represent.”<sup>40</sup> After the temporary injunction was granted, Deer Creek implemented a mask requirement for students and staff. The current mask requirement allows A.P., H.P., and W.P. to safely attend school.

K.G. is a 7-year-old student with a disability enrolled in the Mustang Public Schools district. K.G. has complex medical needs, including Spina bifida, Scoliosis, Kyphosis, and Atelectasis. Due to K.G.’s congenital impairments, her left lung did not properly develop. K.G.’s medical providers have advised that she is at increased risk of contracting COVID-19 as well as increased risk of severe illness, due to her co-morbidities. Mustang Public Schools does not require that staff or students wear masks at school. According to Mustang’s 2021-2022 Learning Plan,

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<sup>39</sup> Centers for Disease Control, *People with Certain Medical Conditions*, *supra* note 24.

<sup>40</sup> *Resolution to Return Local Control to School Districts Across Oklahoma*, Deer Creek Public Schools, August 31, 2021, [http://p4cdn4static.sharpschool.com/UserFiles/Servers/Server\\_37435/File/2021-2022/Deer%20Creek%20BOE%20Resolution.pdf](http://p4cdn4static.sharpschool.com/UserFiles/Servers/Server_37435/File/2021-2022/Deer%20Creek%20BOE%20Resolution.pdf).

masks are optional at school “in line with SB 658.”<sup>41</sup> Without appropriate safety protocols in place, K.G. must risk her health and well-being to access necessary special education services.

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 students, parents, educators, and community leaders. This Court should reject the barriers put in place by Senate Bill 658 and allow local authorities to adopt mask requirements to protect their students and staff, where best for their communities.

### CONCLUSION

For all the reasons described above, the Court should deny the State of Oklahoma’s and Governor Stitt’s Interlocutory Appeal of the lower court’s Order for Temporary Injunction and the Petition in Error.

**Respectfully submitted,**



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<sup>41</sup> 2021-22 Revised Learning Plan, Mustang Public Schools, September 10, 2021, <https://filecabi.net5.eschoolview.com/45A95CC1-971A-4273-83B1-E95A9C0BAAD8/762d1891-cca1-49a2-b9cd-10a2a10de0d9.pdf>.

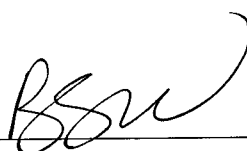
**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of December, 2021, I caused to be mailed a true and correct copy of the above and foregoing instrument by first class mail, postage prepaid, to the following:

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