

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

FLORIDA EDUCATION ASSOCIATION;
STEFANIE BETH MILLER; LADARA
ROYAL; MINDY FESTGE; VICTORIA
DUBLINO- HENJES; and, ANDRES HENJES,

Plaintiffs,

v.

Case No.: 2020-CA-001450

RON DESANTIS, in his official capacity as
Governor of the State of Florida; RICHARD
CORCORAN, in his official capacity as
Florida Commissioner of Education;
FLORIDA DEPARTMENT OF
EDUCATION; FLORIDA BOARD OF
EDUCATION,

Defendants.

MONIQUE BELLEFLEUR, individually and on
behalf of D.B. Jr., M.B., and D.B., and
KATHRYN HAMMOND,

Plaintiffs,

v.

Case No.: 2020-CA-1467

RON DESANTIS, in his official capacity as
Governor of the State of Florida, et al.,

Defendants.

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

In this landmark case regarding public education and the reopening of schools in the midst of the Coronavirus pandemic gripping this nation, the **American Federation of Teachers (“AFT”)**, **Alachua County Education Association; Brevard Federation of Teachers; Broward Teachers Union; Charlotte Florida Education Association; Collier County Education**

Association; DeSoto County Educators Association; Duval Teachers United; Glades Classroom Teachers Association; Hernando Classroom Teachers' Association; Hillsborough Classroom Teachers Association; Jackson County Education Association; Jackson Educational Staff Professional Association; Lake County Education Association; Leon Classroom Teachers Association; Madison County Education Association; Manatee Education Association; Marion Education Association; Marion Essential Support Personnel); Nassau Educational Support Personnel Association; Nassau Teachers' Association; Orange County Classroom Teachers Association; Osceola County Education Association; Palm Beach County Classroom Teachers Association; Pinellas Classroom Teachers Association; Polk Education Association; Putnam Federation of Teachers/United; Sarasota Classified/Teachers Association; Seminole Education Association; Seminole Educational Clerical Association; St. Lucie County Classroom Teachers' Association And Classified Unit; Support Personnel Association of Lee County; Teachers Association of Lee County; United Teachers of Dade; United Teachers of Monroe; and Volusia United Educators (collectively the "Movants"), hereby move this Court to exercise its broad discretion and to grant Movants leave to file the attached Amicus Curiae Brief in support of Plaintiffs' Complaint. (Exhibit A).

The proposed amici curiae include Florida teachers' unions with hundreds of thousands of members directly impacted by Emergency Order 2020-E0-06 ("Order"), which was issued by Florida's Commissioner of Education, Defendant Richard Corcoran, on July 6, 2020. That Order, issued in the midst of a dramatic surge in COVID-19 infections throughout the State of Florida, has the express purpose of "reopening brick and mortar schools with the full panoply of services"¹ this

¹ See <http://www.fldoe.org/core/fileparse.php/19861/urlt/DOE-2020-EO-06.pdf>.

month. As set forth in the Complaint, Plaintiffs seek a declaration that the Order, as well as subsequent acts and omissions by Defendant Corcoran and Florida’s Governor, Defendant Ron DeSantis, violate the “paramount duty” imposed on the state by Article IX, Section 1(a) of the Florida Constitution “to make adequate provision for the education of all children residing within its borders”—a duty that explicitly includes providing for “safe” and “secure ... system of free public schools that allows students to obtain a high quality education.”

The lawsuit also seeks a declaration from the court that the Defendants are putting arbitrary and capricious demands on Florida’s public schools, in violation of Article I, Section 9 of the Florida Constitution. The lawsuit seeks an injunction against the Defendants to ensure the safety of Florida’s public school system, including an order enjoining Defendants from forcing millions of students and educators to report to unsafe schools that should remain physically closed during the spike of this dangerous pandemic. The Movants have a direct and substantial interest in the critical issues before this Court.

IDENTITY AND INTERESTS OF AMICI CURIAE

AFT, an affiliate of the AFL-CIO, was founded in 1916 and represents over 1.7 million members employed across the Nation in public schools, higher education, government service, and healthcare. AFT has over 140,000 thousand members within the state of Florida. AFT’s representation spans pre-K through 12th-grade teachers; paraprofessionals and other school-related personnel; higher education faculty and professional staff; federal, state and local government employees; and nurses and other healthcare professionals. AFT frequently participates in litigation involving public education and constitutional interests, and is frequently permitted to file amicus briefs in state and federal courts across the country.

The additional participating amici curiae are local teachers' unions, and almost exclusively affiliates of AFT, the National Education Association ("NEA"), and Plaintiff Florida Education Association ("FEA"). They are as follows: **Alachua County Education Association** (approximately 3,210 unit members); **Brevard Federation of Teachers** (approximately 4,849 unit members); **Broward Teachers Union** (approximately 18,589 unit members); **Charlotte Florida Education Association** (approximately 1,061 unit members); **Collier County Education Association** (approximately 3,192 unit members); **DeSoto County Educators Association** (approximately 609 unit members); **Duval Teachers United** (approximately 9,398 unit members); **Glades Classroom Teachers Association** (approximately 108 unit members); **Hernando Classroom Teachers' Association** (approximately 1,421 unit members); **Hillsborough Classroom Teachers Association** (approximately 19,158 unit members); **Jackson County Education Association** (approximately 504 unit members); **Jackson Educational Staff Professional Association** (approximately 337 unit members); **Lake County Education Association** (approximately 2,900 unit members); **Leon Classroom Teachers Association** (approximately 2,294 unit members); **Madison County Education Association** (approximately 334 unit members); **Manatee Education Association** (approximately 3,485 unit members); **Marion Education Association** (approximately 2,827 unit members); **Marion Essential Support Personnel** (approximately 1,382 unit members); **Nassau Educational Support Personnel Association** (approximately 622 unit members); **Nassau Teachers' Association** (approximately 817 unit members); **Orange County Classroom Teachers Association** (approximately 14,315 unit members); **Osceola County Education Association** (approximately 5,148 unit members); **Palm Beach County Classroom Teachers Association** (approximately 12,947 unit members); **Pinellas Classroom Teachers Association** (approximately 7,267 unit members); **Polk Education**

Association (approximately 9,025 unit members); **Putnam Federation of Teachers/United** (approximately 1,362 unit members); **Sarasota Classified/Teachers Association** (approximately 3,900 unit members); **Seminole Education Association** (approximately 4,718 unit members); **Seminole Educational Clerical Association** (approximately 1,212 unit members); **St. Lucie County Classroom Teachers' Association And Classified Unit** (approximately 3,587 unit members); **Support Personnel Association of Lee County** (approximately 4,565 unit members); **Teachers Association of Lee County** (approximately 5,835 unit members); **United Teachers of Dade** (approximately 30,240 unit members); **United Teachers of Monroe** (approximately 718 unit members); and **Volusia United Educators** (approximately 5,971 unit members).

The proposed amici curiae have a profound interest in ensuring that the Florida constitution's guarantees of a "safe and secure" public school system are fulfilled, particularly in the midst of this pandemic. Collectively, they represent hundreds of thousands of educators and educational support professionals who will be living and working under the Order—the very people whose health and safety are at stake. The proposed amici seek to protect the rights of their members under the Florida Constitution, including the right to be free of arbitrary and capricious actions that undermine the public school system and the health and safety of its employees, as well as the communities in which their schools are situated. Further, Movants have a unique and direct perspective of the impact of the threatened potential loss of millions of dollars of funding on local school boards if they do not follow the arbitrary and capricious Order. Movants would address these issues in the context of the Order.

Never before have Florida courts been faced with the prospect of millions of students, educators, and education support professionals being forced during a deadly and dangerous global pandemic, in which a virus is spread in a contagious, airborne and asymptomatic manner to re-

enter brick and mortar public schools without any consequential mitigating measures. The issues are novel and complex. Given the proposed amici curiae's direct involvement in and dedication to public education, and in the history of public education cases, Movants believe that their involvement in this case will assist the Court in the disposition of this landmark case.

Counsel for the Plaintiffs do not oppose the filing of the attached Amicus Curiae Brief. Counsel for the Defendants have not yet objected or agreed to the filing of the attached brief.

WHEREFORE, the Movants respectfully requests that the Court enter an order granting them leave to file the attached Amicus Curiae Brief in support of Plaintiffs' complaint.

Respectfully submitted,

By: /s/ David J. Strom

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CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished by the Florida Courts e-filing Portal pursuant to Fla. R. Jud. Admin. 2.516(b)(1), this 18th day of August, 2020, to the following:

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EXHIBIT A

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***AMICUS CURIAE* BRIEF IN SUPPORT OF PLAINTIFFS' COMPLAINT**

I. STATEMENT OF INTEREST

AFT, an affiliate of the AFL-CIO, was founded in 1916 and represents over 1.7 million members employed across the Nation in public schools, higher education, government service, and healthcare. AFT has over 140,000 thousand members within the state of Florida. AFT's representation spans pre-K through 12th-grade teachers; paraprofessionals and other school-related personnel; higher education faculty and professional staff; federal, state and local government employees; and nurses and other healthcare professionals. AFT frequently participates in litigation involving public education and constitutional interests, and is frequently permitted to file amicus briefs in state and federal courts across the country.

The additional participating amici curiae are local teachers' unions, and almost exclusively affiliates of AFT, National Education Association ("NEA"), and Plaintiff Florida Education Association ("FEA"). They are as follows: **Alachua County Education Association** (approximately 3,210 unit members); **Brevard Federation of Teachers** (approximately 4,849 unit members); **Broward Teachers Union** (approximately 18,589 unit members); **Charlotte Florida Education Association** (approximately 1,061 unit members); **Collier County Education Association** (approximately 3,192 unit members); **DeSoto County Educators Association** (approximately 609 unit members); **Duval Teachers United** (approximately 9,398 unit members); **Glades Classroom Teachers Association** (approximately 108 unit members); **Hernando Classroom Teachers' Association** (approximately 1,421 unit members); **Hillsborough Classroom Teachers Association** (approximately 19,158 unit members); **Jackson County Education Association** (approximately 504 unit members); **Jackson Educational Staff Professional Association** (approximately 337 unit members); **Lake County Education Association** (approximately 2,900 unit members); **Leon Classroom Teachers Association**

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At issue in the Complaint in this case is Emergency Order 2020-E0-06 (“Order”), which was issued by Florida’s Commissioner of Education, Defendant Richard Corcoran, on July 6, 2020, on the same day that Florida experienced more than 6,300 new cases (a number that has more than

doubled on days within the past month).¹ In that Order, Defendant mandated that “[u]pon reopening in August, all school boards and charter school governing bodies must open brick and mortar schools at least five days per week for all students, subject to advice and orders of the Florida Department of Health, local departments of health, Executive Order 20-149 and subsequent executive orders.” The Order further mandated that all school districts “must provide the full array of services required by law so that families who wish to educate their children in a brick and mortar school full time have the opportunity to do so.” The Order also directed school districts to “submit to the Department a reopening plan that satisfies the requirements of this Order.”

The amici support the Plaintiffs’ position that the Order, as well as subsequent acts and omissions by Defendant Corcoran and Florida’s Governor, Defendant Ron DeSantis, violate the “paramount duty” imposed on the state by Article IX, Section 1(a) of the Florida Constitution “to make adequate provision for the education of all children residing within its borders”—a duty that explicitly includes providing for “safe” and “secure ... system of free public schools that allows students to obtain a high quality education.” The amici further support Plaintiffs’ position that the Defendants are putting arbitrary and capricious demands on Florida’s public schools, in violation of Article I, Section 9 of the Florida Constitution. Finally, the amici support Plaintiffs’ position that this Court should enter an injunction against the Defendants to ensure the safety of Florida’s public school system, including an order enjoining Defendants from forcing hundreds of thousands of their members and their students to report to schools before it is safe to re-open.

The amici have a profound interest in ensuring that the guarantees within the Florida Constitution for a “safe and secure” public school system are fulfilled, particularly in the midst of

¹ See *Florida Coronavirus Map and Case Count*, N.Y. Times, <https://www.nytimes.com/interactive/2020/us/florida-coronavirus-cases.html#cases>.

this pandemic. Collectively, they represent hundreds of thousands of educators and educational support professionals who will be living and working under the Order—the very people whose health and safety are at stake. Amici seek to protect the rights of their members under the Florida Constitution, including the right to be free of arbitrary and capricious actions that undermine the public school system and the health and safety of its employees, as well as the communities in which their schools are situated. Further, the amici have a unique and direct perspective of the impact of the threatened potential loss of millions of dollars of funding on local school boards if they do not follow the arbitrary and capricious Order.

Never before have Florida courts been faced with the prospect of millions of students, educators, and education support professionals being forced during a deadly and dangerous global pandemic, in which a virus is spread in a contagious, airborne and asymptomatic manner to re-enter brick and mortar public schools without any consequential mitigating measures. The issues are novel and complex, and real lives—including those of the members (and their families) represented by the amici—are at stake. Given their direct involvement in and dedication to public education, the amici have a unique perspective that can help this Court understand the impact of Defendants’ unconstitutional actions and omissions on Florida’s public schools.

II. SUMMARY OF THE ARGUMENT

As of August 17, 2020, Florida has reported 576,094 positive confirmed Coronavirus cases—the second highest in the country—and a staggering 9,539 deaths.² Moreover, the 14-day positivity rate in every county is well over the five percent (5%) safety threshold. While still at the height of this dangerous pandemic, Florida public school districts are not simply being reopened, but local control is being stripped from them, and instead, regardless of the health and safety of

² <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429>

communities , they are being forced to physically reopen, with some teachers, staff, and students already being forced to report to brick and mortar schools. The dangers are real and imminent. Through Emergency Order No. 2020-EO-06, Defendants are denying students, public school staff, their family members, and the public with whom they come in contact within the public school system their basic human needs for health and safety. Plaintiffs are entitled to a declaratory judgment that Defendants are violating Article IX, Section 1(a) of the Florida Constitution, which requires that state entities and public officials who are charged with overseeing the funding and operations of public education ensure that Florida’s public schools operate safely. Protecting the health and safety of each person connected with the state’s education system is undisputedly a matter of paramount importance—and one that could mean life or death for the members represented by amici throughout the state of Florida.

Plaintiffs are also entitled to a declaration that Defendants have violated Article I, Section 9 of the Florida Constitution, which provides that “[n]o person shall be deprived of life, liberty or property without due process of law,” with respect to the arbitrary and capricious Order. The Order pits school funding versus the safety of staff, students, and their families by forcing brick-and-mortar schools to reopen to receive funding from the state. The Order is confusing, unreasonable, and inconsistent, and does not survive constitutional scrutiny.

Defendants actions and omissions with respect to the Order and the premature re-opening of brick and mortar schools across the state of Florida create an imminent and real threat to the safety of public schools, and to the members throughout this state represented by amici. Injunctive relief is necessary from this Court to prohibit the Defendants from taking actions to unconstitutionally force millions of public school students and employees to report to brick and mortar schools that should remain closed during the resurgence of COVID-19 cases pursuant to

the CDC and other federal guidelines as well as the overwhelming opinion of medical and epidemiological experts. Reasonable alternatives exist for remote instruction. The lives of public school educators and educational support staff cannot and should not be gambled—the science must be followed.

III. ARGUMENT

A. The Order Puts Public School Employees, Students, and the Community in Harm’s Way During the COVID-19 Pandemic, in Violation of the Express and Paramount Duty in the Florida Constitution for “Safe and Secure” Public Schools.

Defendants have breached their duty under the Article IX, Section 1(a) of the Florida Constitution, which makes it “a paramount duty of the state to make adequate provision for the education of all children residing within its borders.” This express constitutional duty includes making “[a]dequate provision . . . by law for a *safe[and] secure* . . . system of free public schools that allows students to obtain a high quality education” Fla. Const. art. IX, § 1(a) (emphasis added). The Florida Constitution thus places on the state an affirmative duty—one of “paramount” importance by its express language—to adequately provide for safety and security in the state’s public schools. The Order, and the subsequent acts and omissions by Defendants Corcoran and DeSantis, manifestly violate Article IX, Section 1(a) of the Florida Constitution.

Defendants have breached their paramount constitutional duty. Whatever may be the minimum or maximum bounds of the state’s affirmative duty to make adequate provision for safe and secure public schools, the state most certainly may not, consistently with Article IX, Section 1(a), *actively harm* the safety and security of students, staff, and their families throughout the state’s public school system. But that is precisely what the Order and subsequent actions by Defendants Corcoran and DeSantis have done by pushing school districts to re-open to in-person instruction as COVID-19

surges throughout the state this month, and by continuing to reinforce that message in subsequent (confusing) statements.

The Order, and the subsequent pronouncements by Defendants DeSantis and Corcoran, have the dominant overall effect of pushing local school districts to resume in-person instruction in “brick and mortar” school buildings, notwithstanding dire pandemic conditions throughout Florida that threaten the safety of public school students and staff, as well as their families.

While there is mitigating language in the Order that might be read to create some local discretion as to how these mandates are carried out, that has not been the case, as seen in subsequent pronouncements from the Governor or Commissioner of Education. The Order commands that “all school boards and charter school governing boards must open brick and mortar schools at least five days per week for all students” and “must provide the full array of services that are required by law so that families who wish to educate their children in a brick and mortar school full time have the opportunity to do so.” At the same time, the Order states that the resumption of full in-person instruction is “subject to advice and orders of the Florida Department of Health, local departments of health, Executive Order 20-149 and subsequent executive orders,” and that “absent these directives, the day-to-day decision to open or close a school must always rest locally with the board or executive most closely associated with a school.” The lack of clarity in the Order as to when and in reliance on what advice a school board can decide that it is unsafe to resume in-person, full-time instruction—has created widespread confusion among school boards, the members represented by amici, and communities on how they are permitted to proceed.³

³ Jefferey S. Solocheck, *Do Florida school buildings have to be open in August? The answer isn't so clear*, Tampa Bay Times, July 14, 2020, <https://www.tampabay.com/news/health/2020/07/13/do-florida-school-buildings-have-to-be-open-in-august/>; see also Joe Hendricks, *School board members question legality of reopening order*, Anna Maria Island Sun, July 12, 2020, <https://www.amisun.com/2020/07/12/school-board-members-question-legality-of-reopening-order/>.

Subsequent statements from the Defendants have only made matters worse. On July 18, Governor DeSantis gave a press conference in which he adhered to the position that schools should reopen, stating that schools “need to have the option to hold in-person classes” and that “[p]arents should be able to make the decision that’s best for their kid.”⁴ These statements came two days after the governor’s office received a letter from the Florida Chapter of the American Academy of Pediatrics urging him and Defendant Corcoran to “rethink your order requiring superintendents around the state to open their brick and mortar schools in August.”⁵ That letter, like the other expert reports and guidance, again stressed the critical role that community transmission rates must play in school reopening decisions:

Currently, viral infection rates in Florida are extremely high, with a rolling average of 14.2% of tests positive for new infections over the past two weeks. Public health experts and infectious disease physicians almost universally recommend that children not go to schools until the positive test rate is 3-5% over a rolling two-week average. If children go to school with such high infection rates, schools will be forced to close very quickly after opening, and many children and families will likely become ill with SARSCoV-2.⁶

Importantly—as schools re-open brick and mortar buildings—reported community transmission rates within Florida are still not within the recommended guidelines.

When a reporter asked Governor DeSantis about this letter, the governor stated that he had not seen the letter but asserted that “the general view of pediatricians” was “that kids should be in school.”⁷ In a July 21, 2020 address, Governor DeSantis hewed to this position, indicating that all schools would open, regardless of local circumstances, because every Florida parent would have “a

⁴ *Gov. DeSantis doubles down on belief that schools should reopen their doors, supra* note 7.

⁵ <https://theamericanonews.com/wp-content/uploads/sites/11/2020/07/FCAAP-Letter-DeSantispdf.pdf>.

⁶ *Id.* (footnote omitted).

⁷ *Gov. DeSantis doubles down on belief that schools should reopen their doors, supra* note 7.

choice to send your child back to school for in-person instruction.”⁸ To the extent Governor DeSantis addressed the possibility that conditions in some communities may not allow schools to reopen schools safely, it was only to say that “if a school district needs to delay the school year for a few weeks so that everything will be in good shape, have at it.”⁹

This approach—pushing schools to reopen while the pandemic is raging across the state, while ignoring entreaties of experts and mischaracterizing their positions—violates the constitutional obligation to make adequate provision for safe and secure schools by actively undermining the safety and security of the schools during a public health crisis that is unprecedented in living memory. It puts the members represented by amici at risk unreasonably and unnecessarily, in violation of the guarantees of the Florida Constitution.

Further, by making it a “paramount duty” of the state to make “adequate provision ... for a *safe[and] secure ... system of free public schools,*” Article IX, Section 1(a) plainly imposes on the state an affirmative obligation to provide adequate support to schools and school districts so that they may operate safely. Defendants Corcoran and DeSantis, through their *inaction* have failed to provide schools and school districts with the support that they need to make decisions about how to operate safely during the pandemic—support that should at a minimum include scientific and public health policy expertise as well as the resources that schools will need in order to provide instruction through means other than in-person instruction.

Through their actions and inaction, Defendants have breached their paramount duty under Article IX, Section 1(a) of the Florida Constitution.

⁸ <https://www.youtube.com/watch?v=3GviYCK9Nzo>.

⁹ *Id.*

B. The Arbitrary and Capricious Order Must Be Struck Down. Lives Cannot be Horse Traded for School Funding.

Article I, Section 9 of the Florida Constitution provides that “[n]o person shall be deprived of life, liberty or property without due process of law[.]” If a statute or government order is arbitrary and capricious, it violates due process rights guaranteed by the Florida Constitution. *See State v. Saiez*, 489 So. 2d 1125, 1128 (Fla. 4th DCA 1986). The Order at issue before this Court is arbitrary and capricious for several reasons, and should be struck down.

First, the decisions as to how and when to safely reopen schools should belong to the school boards and should be based on current and accurate information and in cooperation with each counties’ public health authorities, *not on threats to withhold funding*. However, the Order comes with severe pressure by the Defendants to physically reopen schools or face the loss of critical funding for public education. This threat pits students and safety against vitally needed funds for schools. Pursuant to the Order, only districts “with an approved reopening plan will receive reporting flexibility that is designed to provide financial continuity for the 2020 fall semester,” including “funding based on preCOVID FTE student membership forecasts.” As a result, Florida superintendents have expressed fear of losing funding as they make decisions to keep students and employees safe. Some school board members fear removal if they do not follow the Emergency Order’s mandate. School districts should not be forced to choose between receiving funds to educate students and keeping people safe. Local control—the bedrock principle of schooling in Florida—has become a nullity under this Order. Now more than ever, in the midst of a pandemic, localities need to make decisions based upon the situations of their communities, spread of the virus, and the state of buildings. The fear of funding should not be a factor, yet it is the dispositive factor.

Second, the Order's language and Defendant's subsequent acts and statements are inconsistent and unreasonable. For example, the Order requires all school boards to open brick and mortar schools, at least five days a week, beginning in August, while simultaneously recognizing that "[a]bsent these directives, the day-to-day decision to open or close a school must always rest locally with the board or executive most closely associated with a school[.]" (emphasis added.) Defendants cannot have it both ways.

Although (after the order was issued) the Department of Education reportedly said it is intended to apply only "when" schools reopen, the Order has not been amended accordingly. Conflicting positions have since been given to the school districts and passed on to the members represented by amici. Other than clearly requiring the physical reopening of schools in August, how the Order will be implemented is unpredictable and uncertain. As a result, the Order has created ambiguity and left school boards scrambling to comply with its ill-defined requirements, to the detriment of public school employees, students, and the community.

Public statements from Defendant DeSantis and Defendant Department of Education are just as perplexing. In addressing the Order, Defendant DeSantis has said "if you actually look at the way it's structured, it's not exactly mandatory." Similarly, Defendant Department of Education says the Order "encourages school boards and charter school governing boards to seek the advice of public health experts of the Florida Department of Health and local department of health when making decisions." However, local departments of health are reportedly being silenced. For example, the Palm Beach County Health Director who cautioned about the risk to children "got a call from the surgeon general of the State of Florida that told her to keep her mouth shut and not speak about it. . . Not only did she get the call, but other health directors from around the state got the same call that they should not get involved with the school districts' decisions on whether or

not to reopen schools.”¹⁰ Silencing medical experts who advocate for the safety of our children is unconscionable, and further adds to the arbitrariness of the Order that confusingly places the critical decision to open Florida’s public schools with these same local health officials.

This arbitrary and capricious Order cannot stand. The hundreds of thousands of members represented by the amici curiae have been left with confusion and anxiety as begin the upcoming school year amidst the chaos of this Order. Defendants’ unconstitutional efforts to pressure premature physical reopening of brick and mortar schools no matter the health costs cannot continue.

C. *Amici Curiae* Strongly Support all Injunctive Relief Necessary to Keep Their Members, the Students, and the Community Safe. As Schools are Forced to Re-Open Before it is Safe, there is No Time to Waste.

Plaintiffs are seeking an injunction to prohibit the Defendants from taking actions to unconstitutionally force millions of public school students and employees to report to brick and mortar schools that should remain closed during the resurgence of COVID-19 cases pursuant to the CDC and other federal guidelines as well as the overwhelming opinion of medical and epidemiological experts.

Amici Curiae fully support all such injunctive relief. Hundreds of thousands of their members will be directly and uniquely impacted by the forced and premature reopening of Florida public schools—they are the people who must report to these schools on a daily basis. Educators and education support professionals (*e.g.*, bus drivers, cafeteria workers, custodial staff) face serious risks from the unsafe reopening of schools in the midst of an uncontrolled pandemic. Indeed, a study by the Kaiser Family Foundation concluded that approximately one in four teachers (24%, or about

¹⁰ <https://www.wptv.com/news/region-c-palm-beach-county/was-palm-beach-countys-health-director-politically-silenced-in-recommendation-to-keep-schools-closed>

1.47 million people nationwide), have a condition that puts them at higher risk of serious illness from the virus that causes COVID-19.¹¹

Further, public health officials and medical experts have strongly urged against reopening schools—where in-person instruction indisputably requires prolonged close indoor contact between students and school employees—unless community transmission of the virus is low and declining. Beginning in May of this year, the Centers for Disease Control and Prevention (“CDC”) acknowledged the reality that “full sized, in-person classes,” present the “highest risk”¹² of virus transmission and accordingly issued guidelines for schools advising that unless communities met specific “gating criteria,” schools that are closed should remain closed.¹³ On July 23, 2020, the CDC supplemented that guidance regarding the reopening of schools, cautioning as follows:

If there is substantial, uncontrolled transmission, schools should work closely with local health officials to make decisions on whether to maintain school operations. The health, safety, and wellbeing of students, teachers, staff and their families is the most important consideration in determining whether school closure is a necessary step. ... [I]f community transmission levels cannot be decreased, school closure is an important consideration.¹⁴

The CDC further stressed that “[s]chool officials should make decisions about school reopening based on available data including levels of community transmission and their capacity to implement appropriate mitigation measures in schools.”¹⁵ **That has not yet happened in Florida.**

¹¹ Gary Claxton et al., *How Many Teachers Are at Risk of Serious Illness If Infected with Coronavirus?*, July 10, 2020, <https://www.kff.org/coronavirus-covid-19/issue-brief/how-many-teachers-are-at-risk-of-serious-illness-if-infected-with-coronavirus/>.

¹² See Center for Disease Control, *Considerations for K-12 Schools: Readiness and Planning Tool*, July 1, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community/School-Admin-K12-readiness-and-planning-tool.pdf>; Center for Disease Control, *Considerations for Schools*, May 19, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html>

¹³ *Id.*

¹⁴ Center for Disease Control, *Preparing K-12 School Administrators for a Safe Return to School in Fall 2020*, July 23, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/prepare-safe-return.html>

¹⁵ *Id.*

The CDC's guidance is in line with that of other experts. The Infectious Disease Society of America has called for evidence-based decisions on school re-openings and has cautioned that “[w]e will not gain control of this pandemic or successfully reopen the economy unless we protect people and public health first. The safety of our children, their families, teachers and other school staff must be guiding factors in all school reopening decisions, and no school should be forced to open in a situation that presents unacceptable risks.”¹⁶

The American Academy of Pediatrics also advises that re-opening schools should depend on the judgment of health experts based on science, rather than on political considerations:

Returning to school is important for the healthy development and well-being of children, but we must pursue re-opening in a way that is safe for all students, teachers and staff. Science should drive decision-making on safely reopening schools. Public health agencies must make recommendations based on evidence, not politics. We should leave it to health experts to tell us when the time is best to open up school buildings and listen to educators and administrators to shape how we do it.¹⁷

And the Academy has specifically advised that “schools in areas with high levels of COVID-19 community spread should not be compelled to reopen against the judgment of local experts.”¹⁸

The CDC also has advised that once community transmission levels are low enough that it is safe to begin resuming some level of in-person instruction, comprehensive protections should be put in place to protect students and staff.¹⁹ **Again, Florida schools are not up to these standards.**

¹⁶ Infectious Disease Society of America, *Infectious Diseases Society of America and the HIV Medicine Association Call for Evidence-based Decisions on School Re-openings*, July 10, 2020, https://www.hivma.org/news_and_publications/hivma_news_releases/2020/infectious-diseases-society-of-america-and-the-hiv-medicine-association-call-for-evidence-based-decisions-on-school-re-openings/.

¹⁷ Am. Academy of Pediatrics, *Pediatricians, Educators and Superintendents Urge a Safe Return to School This Fall*, July 10, 2020, <https://services.aap.org/en/news-room/news-releases/aap/2020/pediatricians-educators-and-superintendents-urge-a-safe-return-to-school-this-fall/>.

¹⁸ *Id.*

¹⁹ See *Preparing K-12 School Administrators for a Safe Return to School in Fall 2020*, supra note __; Center for Disease Control, *CDC Activities and Initiatives Supporting the COVID-19 Response and the President's Plan for Opening America Up Again*, May 2020, <https://www.cdc.gov/coronavirus/2019-ncov/downloads/php/CDC-Activities-Initiatives-for-COVID-19-Response.pdf>; *Considerations for Schools*, supra note __; Center for Disease Control, *Guidance for Child Care Programs that Remain Open*, July 23, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html>; Center for

The National Academies of Sciences, Engineering, & Medicine (“NAS”) has issued a comprehensive report with similar guidance, advising that when a decision is made to begin re-opening schools to in-person instruction—a decision that should be made in consultation with representatives of school staff, families, local health officials, and other community interests—schools should adopt essential safety measures, which would also require significant resources from federal and state governments.²⁰

The experts are being ignored. Despite the wealth of guidance from public health officials and experts as to when it is safe to reopen schools and how those schools should operate when it is safe to do so, Defendants Corcoran and DeSantis have opted to push school districts to re-open their school buildings to full-time in-person instruction for all students while providing no meaningful support to school districts in terms of health and safety resources, and they have done so during a devastating statewide surge in new cases, hospitalizations, and deaths from COVID-19.

Educators, staff, and parents are asking critical questions. How many cases are too many? How much is enough to protect our lives and our community? When is it too late to respond?

Injunctive relief is necessary from this Court to protect the hundreds of thousands of members represented by the amici who will be directly exposed to the virus on a daily basis if brick and mortar public schools throughout the state are forced to open under these local conditions. Further, the spread of COVID-19 that will result from the unsafe reopening of schools during the surge is not limited to students, teachers, school administrators, or school staff—it will undoubtedly spread to their families and communities.

Disease Control, *When You Can be Around Others After You Had or Likely Had COVID-19*, July 16, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/end-home-isolation.html>.

²⁰ Nat’l Academies of Sciences, Eng’g & Med., *Reopening K-12 Schools During the COVID-19 Pandemic* (2020), <https://www.nap.edu/catalog/25858/reopening-k-12-schools-during-the-covid-19-pandemic-prioritizing>.

We know schooling is vital for children, but the decision as to in which manner must be made by local school boards based on the health and safety considerations in the midst of this unprecedented global health pandemic. This Order fails to do this and must be stricken. It is simply not worth the health and safety risk. Reasonable and safe alternatives exist for temporary remote online instruction, which will allow for the protection of children, teachers and other education professionals, family members, and the community generally. On behalf of the hundreds of thousands of public school teachers, paraprofessionals, bus drivers, custodial staff, and other staff who will be directly impacted by the Order, the amici fully support all injunctive relief that will stop Defendants from creating an unsafe and unsecure environment for public school students, employees, and the community at large while Florida is still experiencing its dangerous surge.

IV. CONCLUSION

The safety and security of Florida’s public school system—and the health and safety of hundreds of thousands of dedicated public school employees throughout the state—are at stake as a result of Emergency Order 2020-E0-06, and Defendants’ unconstitutional, arbitrary and capricious actions. AFT and the local unions who have joined as Amici Curiae urge this Court to grant the declaratory and injunctive relief sought in Plaintiffs’ Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished by the Florida Courts e-filing Portal pursuant to Fla. R. Jud. Admin. 2.516(b)(1), this 18th day of August, 2020, to the following:

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