

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

E.T., BY AND THROUGH HER
PARENTS AND NEXT FRIENDS;
J.R., BY AND THROUGH HER
PARENTS AND NEXT FRIENDS;
S.P., BY AND THROUGH HER
PARENTS AND NEXT FRIENDS;
M.P., BY AND THROUGH HER
PARENTS AND NEXT FRIENDS;
E.S., BY AND THROUGH HER
PARENTS AND NEXT FRIENDS;
H.M., BY AND THROUGH HER
PARENTS AND NEXT FRIENDS;
A.M., BY AND THROUGH HER
PARENTS AND NEXT FRIENDS,

Appellees,

v.

KENNETH PAXTON, IN HIS
OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF
TEXAS,

Appellant.

Case No. 21-51083

MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Pursuant to Rule 29, Federal Rules of Appellate Procedure, Harris County hereby moves this Court for an order allowing it to file the attached *amicus curiae* brief in support of Plaintiffs-Appellees. In support of this motion, Harris County states:

MOVANT’S INTEREST & RELEVANCE OF MOVANT’S *AMICUS*

***CURIAE* BRIEF**

Harris County is the largest and most diverse county in Texas, and the county with the greatest number of COVID-19 cases and deaths in the State. As such, Harris County has a serious interest in the outcome of this case and in the authority of local school boards and local officials generally to promulgate policies in response to the ongoing COVID-19 pandemic. In the broader Houston region, 1.2 million school-aged children were enrolled in public schools for the 2019–2020 school year. There are over twenty school districts and over a thousand public schools in Harris County, including Houston Independent School District, which is the largest school district in Texas and the seventh largest school district in the United States. Harris County writes to support Plaintiffs-Appellees’ positions and to emphasize the County’s concerns about the ongoing spread of COVID-19 and the importance of local control for school boards and local officials who may want to promulgate policies to address the public health concerns of their students and constituents. Harris County frequently files *amicus curiae* briefs in cases that will impact the County and obtained affirmative consent from Plaintiffs-Appellees to the filing of the proposed *amicus curiae* brief. Harris County files here out of concern that the outcome of this case will greatly impact residents of Harris County, especially parents and children.

CONCLUSION

For the foregoing reasons, Harris County hereby requests the Court to grant leave to Harris County to file the attached *amicus curiae* brief in support of Plaintiffs-Appellees.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Federal Rules of Appellate Procedure 25, I hereby certify that I electronically filed this motion with the Clerk of Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system on January 14, 2022. I certify that service will be accomplished by the CM/ECF system.

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No. 21-51083

**United States Court of Appeals
For the
Fifth Circuit**



E.T., BY AND THROUGH HER PARENTS AND NEXT FRIENDS; J.R., BY AND THROUGH HER PARENTS AND NEXT FRIENDS; S.P., BY AND THROUGH HER PARENTS AND NEXT FRIENDS; M.P., BY AND THROUGH HER PARENTS AND NEXT FRIENDS; E.S., BY AND THROUGH HER PARENTS AND NEXT FRIENDS; H.M., BY AND THROUGH HER PARENTS AND NEXT FRIENDS; A.M., BY AND THROUGH HER PARENTS AND NEXT FRIENDS,

Plaintiffs-Appellees,

– v. –

KENNETH PAXTON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF TEXAS,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS (AUSTIN)
NO. 1:21-CV-717-LY

**BRIEF OF *AMICUS CURIAE* HARRIS COUNTY, TEXAS IN
SUPPORT OF APPELLEES**

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that—in addition to the persons and entities listed in the Appellees’ Certificate of Interested Persons—the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

Plaintiffs-Appellees

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J.R., by and through her parents and next friends
S.P., by and through her parents and next friends
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TABLE OF CONTENTS

	Page
I. INTEREST OF <i>AMICUS CURIAE</i>	1
II. SUMMARY OF ARGUMENT.....	1
III. ARGUMENT	3
A. Local Control is Vital to Public Schools’ Effective Management of the COVID-19 Pandemic to Ensure the Safety of Students and Staff.....	3
B. Local Control and Public Schools’ Effective Management of the COVID-19 Pandemic Are Vital to the Economic Prosperity of Texas and the Harris County Region	9
IV. CONCLUSION	14
CERTIFICATE OF SERVICE	
CERTIFICATE OF	
COMPLIANCE APPENDIX	

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>E.T. v. Morath</i> , No. 1:21-CV-717-LY, 2021 WL 5236553, at *1 (W.D. Tex. Nov. 10, 2021).....	3
<i>Milliken v. Bradley</i> , 418 U.S. 717 (1974).....	3
Other Authorities	
Elizabeth Balderrama, et al., <i>July 2021 Houston Economic Highlights, Greater Houston Partnership</i> , https://www.houston.org/sites/default/files/2021-07/Economic%20Highlights_2021_Final.pdf (last visited Jan. 11, 2021).....	10
Federal Reserve Bank of Dallas, <i>Your Texas Economy</i> , (Dec. 17, 2021), https://www.dallasfed.org/-/media/Documents/research/econdata/texasconomy.pdf	10
<i>Greg Abbott’s Educating Texans Plan: Governance</i> , https://www.gregabbott.com/wp-content/uploads/2014/04/Greg-Abbotts-Educating-Texans-Plan-Governance.pdf (last visited Jan. 12, 2022).....	8
Harris County Office of Economic Development, https://hcoed.harriscountytexas.gov/MapRoom_isd.aspx (last visited Dec. 20, 2021)	2
Texas Education Agency, <i>Enrollment in Texas Public Schools 2019–20</i> , https://tea.texas.gov/sites/default/files/enroll_2019-20.pdf (2020)	1

I. INTEREST OF *AMICUS CURIAE*¹

Harris County files as *amicus curiae* in the instant case. As the largest and most diverse county in Texas, and the county with the greatest number of COVID-19 cases and deaths,² Harris County has a serious interest in the outcome of this case and in the authority of local school boards and school officials generally to promulgate policies in response to the ongoing COVID-19 pandemic. Local school boards and school officials must be able to act efficiently and effectively in response to the COVID-19 pandemic and its impacts on the unique and particular needs of the communities they serve.

II. SUMMARY OF ARGUMENT

According to the most recent United States Census, over 4.7 million people live in Harris County.³ In the broader Houston region, 1.2 million school-aged children were enrolled in public schools for the 2019–2020 school year.⁴ Harris

¹ This brief is submitted under Federal Rule of Appellate Procedure 29(a). Undersigned counsel for *amicus curiae* certifies that this brief was not authored in whole or part by counsel for any of the parties; no party or party's counsel contributed money for the brief; and no one other than *amicus* and their counsel have contributed money for this brief.

² Texas Department of State Health Services, <https://www.arcgis.com/apps/dashboards/45e18cba105c478697c76acbbf86a6bc> (last visited Jan. 10, 2022).

³ United States Census Bureau, <https://www.census.gov/quickfacts/harriscountytexas> (last visited Dec. 20, 2021).

⁴ Texas Education Agency, *Enrollment in Texas Public Schools 2019–20*, https://tea.texas.gov/sites/default/files/enroll_2019-20.pdf (2020).

County is home to over twenty school districts and over a thousand schools,⁵ including Houston Independent School District (“HISD”), which is the largest school district in Texas and the seventh largest school district in the United States.⁶ HISD alone serves nearly 200,000 students.⁷

Harris County’s COVID-19 positivity rate is currently the highest it has ever been at over thirty-four percent.⁸ Over the past few weeks, hospitalizations in the Houston area have doubled.⁹ The United States recently surpassed its previous record for COVID-19 hospitalizations. As of January 11, 2022, 145,982 people were hospitalized with COVID-19, including over four thousand children.¹⁰ More than

⁵ Harris County Office of Economic Development, https://hcoed.harriscountytexas.gov/MapRoom_isd.aspx (last visited Dec. 20, 2021).

⁶ Houston Independent School District, <https://www.houstonisd.org/achievements> (last visited Dec. 20, 2021).

⁷ *Id*

⁸ Lucio Vasquez, *Harris County’s Covid-19 Threat Level Raised to ‘Red’ as Region’s Infection Rate Hits Record High*, (Jan. 11, 2022, 10:14 AM) <https://www.houstonpublicmedia.org/articles/news/health-science/2022/01/10/416929/harris-countys-covid-19-threat-level-raised-red-as-regions-infection-rate-hits-record-high/>; Harris County Public Health Data, https://covid-harriscounty.hub.arcgis.com/datasets/24622c48d2e047849de8b35daff4a745_0/explore (last visited Jan. 12, 2022).

⁹ Gianella Ghiglino, *Houston Reports Highest COVID Positivity Rate as Texas Hospitals Experience Staff Shortages*, (Jan. 10, 2022, 9:14 AM), <https://cw39.com/news/coronavirus/houston-reports-highest-covid-positivity-rate-as-texas-hospitals-experience-staff-shortages/>.

¹⁰ Fenit Nirappil et al., *U.S. Breaks Record for Covid-19 Hospitalizations*, WASHINGTON POST (Jan. 11, 2022, 9:37 AM), <https://www.washingtonpost.com/health/2022/01/10/covid-hospitalized-omicron/>.

seventy-five children are currently hospitalized with COVID-19 at Texas Children’s Hospital—the highest number reported since the beginning of the pandemic.¹¹

Harris County writes to support Appellees’ positions and to highlight the County’s concerns about the ongoing spread of COVID-19 and the importance of local control for school boards and school officials who may want to adopt policies to address the public health concerns of their constituents. Specifically, Harris County asks this court to affirm the district court’s decision holding that “GA-38 violates Plaintiffs’ rights under the ADA and Section 504 and is preempted by the ADA, Section 504, and the ARP Act.” *E.T. v. Morath*, No. 1:21-CV-717-LY, 2021 WL 5236553, at *1 (W.D. Tex. Nov. 10, 2021).

III. ARGUMENT

A. Local Control is Vital to Public Schools’ Effective Management of the COVID-19 Pandemic to Ensure the Safety of Students and Staff.

“No single tradition in public education is more deeply rooted than local control over the operation of schools.” *Milliken v. Bradley*, 418 U.S. 717, 741 (1974). “[L]ocal control . . . affords citizens an opportunity to participate in decision-making, permits the structuring of school programs to fit local needs, and encourages experimentation, innovation, and a healthy competition for educational

¹¹ Stephanie Whitfield, *Texas Children’s Hospital Reports Highest Number of Pediatric COVID Hospitalizations*, (Jan. 10, 2022, 6:43 PM), <https://www.khou.com/article/news/health/coronavirus/record-number-pediatric-covid-hospitalizations-texas-childrens-hospital/285-98c3875c-b8c7-42a4-b939-fc7b76b2ec26>.

excellence.” *Id.* (cleaned up). The Texas Attorney General’s enforcement of GA-38 against public schools removes local control from local government officials, elected school board trustees, and school officials, and it prevents school districts from making decisions informed by medical professionals, scientists, and local conditions. GA-38 thwarts school districts’ abilities to respond to the public health needs of their communities and constituents as those needs arise. If public schools cannot take measures to try to prevent community spread of COVID-19, they will likely be forced to close campuses and return to remote learning for days or weeks at a time, which has been shown to negatively impact both students’ academic success and students’ mental health.¹²

Some Texas school districts have already been forced to close campuses or are considering closures for campuses with high rates of COVID-19 infections as the number of new COVID-19 cases throughout Texas has increased.¹³ Lancaster ISD started the semester off virtually and instated a mask mandate when in-person

¹² See, e.g., Yalda Safai, *How School Closures Put Children at Risk*, (Apr. 24, 2020, 11:36 AM), <https://abcnews.go.com/US/school-closures-put-children-risk/story?id=70329613>; UNESCO, *Adverse Consequences of School Closures*, <https://en.unesco.org/covid19/educationresponse/consequences> (last visited Jan. 11, 2022); Yael Halon, *We ‘Robbed’ Our Children of Academic Achievement: Perino*, (Jan. 4, 2022), <https://www.foxnews.com/media/school-closures-mental-health-pandemic-omicron>.

¹³ See Reagan Roy, *East Texas School Districts Cancel Classes Due to Illnesses*, (Jan. 13, 2022, 2:00 PM), <https://www.cbs19.tv/article/news/local/east-texas-school-districts-cancel-classes-due-to-illnesses/501-5d477666-8825-453c-b8fe-d32c436923a5>; Lori Brown & Shannon Murray, *Mask Mandates and Closures: Local School Districts Make Changes to Combat COVID-19 Surge* (Jan. 10, 2022, 6:02 PM), <https://www.fox4news.com/news/mask-mandates-and-closures-local-school-districts-make-changes-combat-covid-19-surge>.

learning resumed.¹⁴ Among others, Gary ISD, Texarkana ISD, Rio Vista ISD, and Zavalla ISD have temporarily closed campuses due to high rates of COVID-19 infection.¹⁵ Likewise, Northwest ISD, Mansfield ISD, and Mesquite ISD were forced to close due to staff and substitute shortages¹⁶ with no remote learning during cancelled days. Notably, over fifteen percent of Mesquite ISD's staff was absent during the second week of school after winter break.¹⁷ Fort Worth ISD may also be forced to temporarily close campuses in response to increasing rates of infection; as of Tuesday, January 11, 2022, more than ten percent of Fort Worth ISD's staff members were absent due to COVID-19 exposure or infection.¹⁸ Since January 1,

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Although Round Rock ISD has not closed campuses as of the time this amicus brief was filed, on January 13, 2022, Round Rock ISD reported 579 school staff members as absent, and only forty percent of those absences were filled by substitutes due to substitute shortages. Britny Eubank & Pamela Comme, *On Jan. 13, 40% of Round Rock ISD's Absent Staff Positions Were Filled by Substitutes*, (Jan. 14, 2022, 12:14 PM), <https://www.kvue.com/article/news/education/schools/round-rock-isd-teacher-shortage-substitutes/269-59f035ec-3582-41d4-b568-8af9b607ac46>. Round Rock ISD's spokesperson stated they were dealing with the shortage in a variety of different ways, including placing students in other teachers' classes for the day, which leads to overcrowded classrooms and minimal social distancing. *Id.*

¹⁷ Valeria Olivares, *More North Texas Districts Cancel Should Due to Staffing Shortages*, THE DALLAS MORNING NEWS (Jan. 12, 2022, 12:05 PM), <https://www.dallasnews.com/news/education/2022/01/12/rural-districts-across-north-texas-districts-cancel-classes-due-to-staffing-shortages/>. Northwest ISD's superintendent reported that his district's positive COVID-19 cases have increased by 878 percent since Christmas, and said, "w[e] have to break the cycle of positive tests [because] [w]e cannot assure our schools are being successfully run day to day with so many campus-level staff out." *Id.*

¹⁸ Kaley Johnson, *North Texas Schools May Face Closures as COVID-19 Spike Causes Teacher, Staff Shortages*, (Jan. 12, 2022, 10:08 AM), <https://www.star-telegram.com/news/local/education/article257220028.html>.

2022, nearly six percent of all Fort Worth ISD staff members have tested positive for COVID-19.¹⁹

Some school districts are already enforcing mask mandates to protect their students and staff in spite of GA-38. In October 2021—three months after Governor Abbott issued GA-38—over one hundred independent school districts across Texas continued to require students and school staff to wear masks on campus.²⁰ Mask mandates have been in effect in HISD,²¹ Spring ISD,²² Dallas ISD,²³ and Austin ISD²⁴ for the entirety of the 2021–2022 school year. Richardson ISD and Channelview ISD both recently announced mask mandates in response to increasing

¹⁹ *Id.*

²⁰ Huey, *supra* note 11.

²¹ Lucio Vasquez & Caroline Love, *HISD Will Keep Its Mask Mandate and Expand COVID Testing As Omicron Continues to Spread*, (Dec. 27, 2021, 12:53 PM), <https://www.houstonpublicmedia.org/articles/news/education-news/2021/12/27/416308/hisd-will-keep-its-mask-mandate-and-expand-covid-testing-as-omicron-continues-to-spread/>. When HISD announced its intention to extend its mask mandate into 2022, Andrew Dewy with the Houston Federation of Teachers stated that the union supported the decision and was “in favor of any measure that [would] help keep schools open.” *Id.* He noted that teachers are “desperate to keep schools open” and do not “want to go back to where we were when schools were closed” because “face-to-face education is the most effective education.” *Id.*

²² Paul Wedding, *Spring ISD Mask Mandate to Remain in Place for New Semester*, (Jan. 3, 2022, <https://www.houstonchronicle.com/neighborhood/spring-klein/article/Spring-ISD-mask-mandate-to-remain-in-place-for-16746742.php>).

²³ Dallas ISD, *Face Coverings Required*, <https://www.dallasisd.org/mask> (last visited Jan. 12, 2022). Dallas ISD’s website specifically addresses GA-38, noting that “Gov. Abbott’s order does not limit the district’s rights as an employer and educational institution to establish reasonable and necessary safety rules for its staff and students. Dallas ISD remains committed to the safety of our students and staff.” *Id.*

²⁴ Austin ISD, *COVID-19 Health and Safety Protocols*, <https://www.austinisd.org/student-health/covid-19> (last visited Jan. 12, 2022).

rates of COVID-19 infections.²⁵ And, if COVID-19 numbers continue to increase, other school districts will and should be able to follow suit.

Moreover, other school districts may want to announce mask mandates but are afraid to do so because of fear of enforcement of GA-38. For example, Spring Branch ISD has publicly stated that, although masks are encouraged, the district cannot require them because school districts “have been prohibited from doing so by the Governor of Texas” and “the attorney general of Texas has warned that leaders of school districts that defy the governor’s order will be prosecuted.”²⁶ Likewise, Cypress-Fairbanks ISD’s superintendent released a statement at the beginning of the school year stating that “[p]er Gov. Gregg Abbott’s Executive Order, face masks cannot be mandated for students and staff,”²⁷ and Fort Bend ISD issued a statement that, “[i]n light of [GA-38], the District is not requiring the

²⁵ Nick Starling, *North Texas School Districts Making Changes as COVID-19 Cases Surge*, (Jan. 9, 2022, 7:40 PM), <https://dfw.cbslocal.com/2022/01/09/north-texas-school-districts-making-changes-as-covid-19-cases-surge/>; Hannah Dellinger, *Channelview ISD Moves to Mask Requirement as Omicron Spreads*, (Jan. 5, 2022, 1:30 PM), <https://www.houstonchronicle.com/news/houston-texas/education/article/Channelview-ISD-moves-to-mask-requirement-as-16751869.php>.

²⁶ Maria Salazar, *Spring Branch ISD Parents Pull Their Kids Out of School Over COVID-19 Concerns*, (Aug. 19, 2021), <https://www.fox26houston.com/news/spring-isd-parents-pull-their-kids-out-of-school-over-covid-19-concerns>.

²⁷ Cypress-Fairbanks ISD, *Lead Safely*, <https://www.cfisd.net/Page/6114> (last visited Jan. 12, 2022).

wearing of masks. The District continues to strongly urge employees, students, parents, and visitors to wear a mask.”²⁸

Notably, Governor Abbott has passionately and unequivocally expressed his support for local control of schools in the past. When schools reopened in 2021, Governor Abbott stated publicly that local school boards have the authority to decide how to open schools during the COVID-19 pandemic, noting that “[t]he bottom line is [that] the people who know best . . . are the local school officials.”²⁹ Governor Abbott’s Educating Texans Plan recommended “[e]stablishing genuine local control by giving school districts operational flexibility over their schools and by empowering families to make meaningful educational choices.”³⁰ Candidate Abbott once wrote in a guest column for the *Waco-Tribune Herald* that, if elected governor, he would “return control of our schools to the districts and the communities served.”³¹ Candidate Abbott stated “[t]he state should set high standards, provide the tools for success, then get out of the way. We must allow principals to lead and

²⁸ Erica Ponder et al., *Fort Bend ISD Lifts Mask Mandate for Students, Staff Days After It Went Into Effect*, (Aug. 30, 2021, 9:22 AM), <https://www.click2houston.com/news/local/2021/08/24/fort-bend-isd-approves-mask-mandate-for-students-staff/>.

²⁹ Patrick Svitek, *Gov. Greg Abbott Stresses Local School Officials ‘Know Best’ Whether Schools Should Reopen*, (Aug. 4, 2020), <https://www.texastribune.org/2020/08/04/texas-greg-abbott-coronavirus-press-conference/>.

³⁰ *Greg Abbott’s Educating Texans Plan: Governance*, <https://www.gregabbott.com/wp-content/uploads/2014/04/Greg-Abbotts-Educating-Texans-Plan-Governance.pdf> (last visited Jan. 12, 2022); see also Alexa Ura, *Abbott Calls for More Local Control of School Options*, (Apr. 23, 2014), <https://www.texastribune.org/2014/04/23/abbott-calls-more-local-control-school-options/>.

³¹ Greg Abbott, *Greg Abbott, Guest Columnist: Strengthening Local Control of Our Schools*, WACO-TRIBUNE HERALD, May 1, 2014 (last visited Jan. 13, 2022).

manage, teachers to teach and parents to decide, ultimately, what’s in their child’s best interest.”³² However, despite the Governor’s numerous statements supporting local control, he issued GA-38 that, among other things, forbids local school boards and school officials from issuing mask mandates. Like Governor Abbott, Harris County believes that local school districts are in a better position than the State of Texas to lead and manage schools. Harris County agrees with Governor Abbott that the State should “get out of the way” and allow local government officials, school boards, and school officials to respond to local conditions in accordance with the needs of their communities and constituents.³³

B. Local Control and Public Schools’ Effective Management of the COVID-19 Pandemic Are Vital to the Economic Prosperity of Texas and the Harris County Region.

As an economic powerhouse in the state of Texas, Harris County has a significant interest in allowing locally focused governance in public schools, especially when it comes to keeping school campuses open for in-person education. Texas has experienced unprecedented economic growth in the last decade, with over four million people moving to Texas in the last ten years³⁴ and some of the world’s largest companies relocating to Texas.³⁵ This economic growth shows no signs of

³² *Id.*

³³ *Id.*

³⁴ United States Census Bureau, <https://www.census.gov/quickfacts/TX> (last visited Jan. 5, 2021).

³⁵ Texas Economic Corporation, *Texas Enters 2021 as World’s 9th Largest Economy by GDP*, (Jan. 27, 2021), <https://businessintexas.com/news/texas-enters-2021-as-worlds-9th-largest-economy->

slowing down as six of the top fifteen fastest growing cities in the United States are in Texas,³⁶ and the Houston region, including Harris County, accounts for over 27.8% of Texas' gross domestic product.³⁷ Companies are moving here for the state's business-friendly climate and its diverse workforce of fourteen million workers.³⁸ Moreover, workers are moving here because Texas is a great place to raise a family.

Texas's workforce is the fuel to its burgeoning economic growth and is vastly made up of working parents. The Houston region serves the largest proportion of all public-school students in Texas: approximately 1.2 million school-aged children were enrolled in public schools as of the 2019–2020 school year.³⁹ The millions of working parents of these school-age children in Harris County rely on school campuses to stay open, as they are not only a place of learning for students, but also a refuge for their children to go as they work hard to provide for their families. Simply, while children are in school, parents are able to participate in the workforce

by-gdp/. Companies such as Amazon, CBRE, Tesla, Hewlett Packard and Oracle have moved to or expanded their operations in Texas in 2020. This trend continued in 2021 and is expected to continue well into 2022.

³⁶ United States Census Bureau, *Southern and Western Regions Experienced Rapid Growth This Decade*, (May 21, 2020, 1:00 PM), <https://www.census.gov/newsroom/press-releases/2020/south-west-fastest-growing.html>.

³⁷ Elizabeth Balderrama, et al., *July 2021 Houston Economic Highlights, Greater Houston Partnership*, https://www.houston.org/sites/default/files/2021-07/Economic%20Highlights_2021_Final.pdf (last visited Jan. 11, 2021).

³⁸ Federal Reserve Bank of Dallas, *Your Texas Economy*, (Dec. 17, 2021), <https://www.dallasfed.org/-/media/Documents/research/econdata/texasconomy.pdf>.

³⁹ See *supra* note 3.

without the burdens of remote learning and backup childcare. The Texas Attorney General's enforcement of GA-38 against public schools jeopardizes the economic prosperity of the Houston metropolitan area as open school campuses are a critical part of the economic infrastructure of Harris County and Texas.

Harris County has a vested interest in ensuring that its working parents are able to work. However, campus closures due to the COVID-19 pandemic thwart the economic recovery needed to ensure that Texas remains the world's ninth largest economy.⁴⁰ For one parent households, it is even more important that campuses remain open so that the single-income parent can remain in the workforce and provide for their family. In Harris County, the share of single-parent households is thirty-six percent, which is higher than the national average.⁴¹ And, as of 2017, Harris County had 173,881 single-parent households with school-age children.⁴² On average, working families are losing one to two workdays per week, specifically between eight to fourteen hours per week because of COVID-19 school closures.⁴³ This represents a massive impact to a household's total income, especially when

⁴⁰ John Egan, *Report: Lone Star State Snags Spot as World's 9th Largest Economy by GDP*, INNOVATION MAP (Jan. 29, 2021, 1:07 PM), <https://houston.innovationmap.com/texas-gdp-report-2021-2650178504.html>.

⁴¹ Understanding Houston, *Family Structure in Houston*, <https://www.understandinghouston.org/topic/community-context/family-structure/#overview> (last visited Jan 5, 2022).

⁴² *Id.*

⁴³ Alicia Sasser Modestino, Alisa Lincoln & Jamie Ladge, *The Importance of Childcare in Reopening the Economy*, ECONFACT (July 29, 2020), <https://econofact.org/the-importance-of-childcare-in-reopening-the-economy>.

sixty-six percent of Harris County students are considered economically disadvantaged.⁴⁴ School campus closures exacerbate this economic disadvantage by forcing parents to lose working hours and essential wages.

Continued remote learning is also not a viable option when campuses are forced to close repeatedly due to the COVID-19 pandemic. A 2020 survey revealed that thirty percent of school-aged children in Texas live in households without digital access and consequently have been unable to participate fully in schooling.⁴⁵ Students without access to high-speed internet or a learning device, such as a laptop or tablet computer, exacerbates the pressure on parents to act as full-time teachers all while falling behind in terms of workforce opportunities. In a 2021 survey, half of all families have had one or both parents leave a job, reduce their hours, or take a leave of absence to facilitate childcare or remote learning during the pandemic,⁴⁶

⁴⁴ Understanding Houston, *Public School Enrollment in Houston*, https://www.understandinghouston.org/topic/education/enrollment#enrollment_demographics (last visited Jan 5, 2022). During the 2019–2020 school year, 3.65 million Texas students were eligible for free or reduced-price school meals. *See also* Stacy Fernandez, *Texas Schools Seeing Steep Declines in Number of Students Getting Free Meals*, THE TEXAS TRIBUNE (Sept. 11, 2020, 6:00 AM), <https://www.texastribune.org/2020/09/11/texas-schools-free-meals/>.

⁴⁵ Ross Ramsey, *Analysis: Shopping for Students Without Schoolrooms, Texas is Spending \$250 Million to Narrow the Digital Divide*, THE TEXAS TRIBUNE (Aug. 14, 2020, 4:00 AM), <https://www.texastribune.org/2020/08/14/texas-schools-remote-internet-access/>.

⁴⁶ Caitlin Mullen, *The Exodus of Working Parents Isn't Over: 4 in 10 are Considering Leaving Their Jobs*, BIZ WOMEN: THE BUSINESS JOURNALS (Aug. 18, 2021, 10:04 AM), <https://www.bizjournals.com/bizwomen/news/latest-news/2021/08/the-exodus-of-working-parents-isn-t-over-4-in-10.html?page=all>.

with another forty percent of working parents considering leaving their jobs.⁴⁷ A mass exodus of more working parents will only further hamper the economic recovery of Harris County, especially as it has not been immune to the nationwide labor shortages affecting companies and business owners of all industries.⁴⁸

Local governments should be able to utilize the tools at hand to ensure schools can safely remain open. GA-38 threatens this ability. It strips local governments and school districts of decision-making power even as they are best suited to know and serve the needs of their communities. Millions of working parents in Harris County are relying on school campuses to stay consistently open and continue in-person education so that they may get back to work. Allowing local governments and school boards to decide what is best for their communities and students, especially during a global pandemic, ensures that schools can take the necessary

⁴⁷ Cleo, *Seven Insights on Investing in Working Families Now and Moving Forward*, (Aug. 13, 2021), <https://hicleo.com/resource/seven-insights-on-investing-in-working-families-now-and-moving-forward/>.

⁴⁸ William Menjivar, *A Pandemic-Fueled Labor Shortage has put a Strain on some Houston Restaurants*, HOUSTON PUBLIC MEDIA (Nov. 24, 2021, 1:36 PM), <https://www.houstonpublicmedia.org/articles/news/in-depth/2021/11/24/414025/a-pandemic-fueled-labor-shortage-has-put-a-strain-on-some-houston-restaurants/>; See Amanda Drane, *Houston Retailers, Facing Labor Shortage, Pull out all the Stops to Entice Workers for Holiday Rush*, HOUSTON CHRONICLE (Nov. 2, 2021, 2:15 PM), <https://www.houstonchronicle.com/business/retail/article/houston-business-holiday-rush-labor-shortage-16584550.php>; Robert Downen, *As Omicron Spreads, Houston Business Owners Again Find Themselves in Limbo*, HOUSTON CHRONICLE (Jan. 12, 2022, 6:16 AM), <https://www.houstonchronicle.com/business/economy/article/As-omicron-spreads-business-owners-again-find-16768505.php>.

steps to stay open and avoid disruptions to the lives of students, working parents, and employers.

IV. CONCLUSION

Local government officials, school boards, and school officials are in a better position than the State of Texas to make public health decisions based on their unique and particular knowledge of local conditions in their communities. These communities, especially the millions of working families and school-aged children in Harris County and in Texas, rely on school campuses to continue in-person education. Accordingly, the Texas Attorney General's enforcement of GA-38 to prevent local school boards from promulgating public health policies to address the COVID-19 pandemic is deeply troubling to *amicus curiae*, who join Appellees in urging the Court to affirm the district court's decision.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4,561 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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