

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 21-51083

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 his 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 his parents and next friends; A.M., by and through his 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

UNOPPOSED MOTION OF THE UNITED STATES AS AMICUS CURIAE TO
PARTICIPATE IN ORAL ARGUMENT

Pursuant to Federal Rule of Appellate Procedure 29(a)(8), the United States respectfully seeks permission to participate in oral argument of this appeal. In support of this motion, the United States provides as follows:

1. On December 3, 2021, this Court expedited this appeal. On December 20, the Court scheduled oral argument for February 2, 2022 and allotted 20 minutes per side.

2. On January 14, 2022, the United States filed its brief as amicus curiae in support of plaintiffs-appellees on the issues addressed therein, pursuant to Federal Rule of Appellate Procedure 29(a).

3. This case involves a challenge to an Executive Order issued by the Governor of Texas that bars public school districts from adopting masking requirements in all circumstances. The United States has a strong interest in the resolution of this appeal, which raises important questions about the proper interpretation of Title II of the Americans with Disabilities Act of 1990, 29 U.S.C. 12131 *et seq.* (Title II), and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (Section 504), and the relationship between those statutes and the Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.* (IDEA).

4. As discussed in the United States' amicus brief (at 1-2), Congress gave the Attorney General express authority to issue regulations under Title II, see 42 U.S.C. 12134(a), and directed all federal agencies to issue regulations implementing Section 504 with respect to programs or activities that receive federal financial assistance, 29 U.S.C. 794(a). Additionally, the Department of Education administers the IDEA and has promulgated regulations implementing that statute. See 20 U.S.C. 1406; 34 C.F.R. Pt. 300. The Attorney General has authority to bring civil actions to enforce both Title II and Section 504, see 42 U.S.C. 12133; 29 U.S.C. 794(a), and may bring actions to enforce the IDEA upon

referral from the Department of Education, see 20 U.S.C. 1416(e)(2)(B)(vi) and (e)(3)(D).

5. Given the United States' substantial interest in this appeal, the United States now requests leave to participate in the oral argument and believes that its participation will be helpful to the Court.

6. Counsel for plaintiffs-appellees consents to this motion and has agreed to cede a portion of plaintiffs-appellees' oral argument time to the United States if this motion is granted. As a result, the United States' participation in oral argument will not affect the overall time allotted for this case.

7. Counsel for defendant-appellant does not oppose this motion.

WHEREFORE, the United States respectfully requests leave to participate in oral argument.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2022, I electronically filed the foregoing UNOPPOSED MOTION OF THE UNITED STATES AS AMICUS CURIAE TO PARTICIPATE IN ORAL ARGUMENT with the Clerk of the Court using the appellate CM/ECF system. All participants in this case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Janea L. Lamar
JANEA L. LAMAR
Attorney

CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 32(f), the motion contains 416 words.

2. This motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2019 in Times New Roman, 14-point font.

s/ Janea L. Lamar
JANEA L. LAMAR
Attorney

Date: January 18, 2022