

March 3, 2022

VIA CM/ECF ELECTRONIC FILING

Michael E. Gans, Clerk of Court
U.S. Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Courthouse
111 South 10th Street
Room 24.329
St. Louis, MO 63102

Re: *The Arc of Iowa, et al. v. Kimberly Reynolds, et al.* (Case No. 21-3268)

Dear Mr. Gans:

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiffs-Appellees respectfully submit this letter to inform the Court of significant developments.

On February 25, 2022, the Centers for Disease Control and Prevention (CDC) released new guidelines pertaining to mask use.¹ Unlike the prior guidelines, which had been in effect throughout this litigation, the new guidelines do not include a blanket recommendation for universal indoor masking for all students, staff, teachers, and visitors to K-12 schools, regardless of vaccination status.

The new guidelines' recommendation for masking depends on a range of circumstances tailored to community risk. Iowa and Iowan school districts in this litigation have counties currently in all three community risk categories: low, medium, and high. The CDC recommends universal masking only where the risk category is high.

Notably, the updated recommendations reaffirm that layered prevention strategies, including masks, "can help prevent severe illness and reduce the potential for strain on the healthcare system."

The U.S. Department of Education also issued new guidance, stating in part: "To comply with their federal obligations, school districts must (among other things) make

¹ *COVID-19 Use and Care of Masks*, CENTERS FOR DISEASE CONTROL & PREVENTION (Feb. 25, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html>.

Michael E. Gans, Clerk of Court
March 3, 2022
Page 2

reasonable modifications when necessary to ensure equal access for their students with disabilities Depending on the circumstances, a school district could decide that some degree of masking is necessary as a reasonable modification to ensure that students with disabilities have meaningful access to in-person schooling without incurring an elevated risk of hospitalization or death due to COVID-19. This is necessarily a fact-specific inquiry”²

The Eighth Circuit Panel remanded with directions “to allow the district court to enter a tailored injunction.” *Arc of Iowa v. Reynolds*, 24 F.4th 1162, 1168 (8th Cir. 2022). In light of these changes, Plaintiffs believe the most appropriate course is, consistent with the Panel’s guidance, for the *en banc* petition to be denied and the case to be remanded for the District Court to consider the scope of the injunction.

Shefali Aurora
Rita Bettis Austen
Leah Patton
AMERICAN CIVIL LIBERTIES
UNION OF IOWA FOUNDATION
505 Fifth Avenue, Suite 808
Des Moines, IA 50309-2316
(515) 243-3988

Catherine Johnson
Cynthia A. Miller
DISABILITY RIGHTS IOWA
666 Walnut Street, Suite 1440
Des Moines, IA 50309
(515) 278-2502

Shira Wakschlag
ARC OF THE UNITED STATES
1825 K Street, NW, Suite 1200
Washington, DC 20006
(202) 534-3708

Respectfully Submitted,

s/ John A. Freedman
John A. Freedman
Elisabeth S. Theodore
Anthony Franze
Tara L. Williamson
ARNOLD & PORTER
KAYE SCHOLER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
(202) 942-5000
john.freedman@arnoldporter.com

Louise Melling
Jenessa Calvo-Friedman
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad St.
New York, NY 10004
(212) 549-2637

² *Disability Rights*, U.S. DEP’T OF EDUC. COVID-19 RESOURCES (Feb. 24, 2022), <https://www.ed.gov/coronavirus/factsheets/disability-rights>.

Michael E. Gans, Clerk of Court
March 3, 2022
Page 3

Jim T. Duff
Thomas J. Duff
DUFF LAW FIRM
4090 Westown Parkway, Suite 102
West Des Moines, IA 50266
(515) 224-4999

Susan Mizner
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
39 Drumm Street
San Francisco, CA 94111
(415) 343-0781

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

s/ John A. Freedman

John A. Freedman