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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

14 MATTHEW BRACH, et al.

15 Plaintiffs,

16 vs.

17 GAVIN NEWSOM, et al.,

18 Defendants.

) Case No.: 2:20-cv-06472-SVW-AFM
)
) **BRIEF OF AMICUS CURAE**
) **EDUCATORS FOR SAFE SCHOOL**
) **OPENING IN OPPOSITION TO**
) **PLAINTIFFS' APPLICATION FOR A**
) **RESTRAINING ORDER AND**
) **PRELIMINARY INJUNCTION**

) Judge: Hon. Stephen V. Wilson

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INTERESTS OF AMICI CURIAE

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2 Proposed amicus curiae Educators for Safe School Opening (“ESSO”) is an
3 unincorporated association of 31 named¹ educators (teachers, educational
4 audiologists, language and speech pathologists and others who work at public
5 school sites on a regular basis) together with dozens of unnamed educators who fear
6 retaliation by their employers for participating in this legal proceeding. Each
7 member of ESSO has a personal and tangible stake in the outcome of Plaintiffs’
8 request for injunctive relief because they are required to enter California school
9 sites to fulfill their job functions. The members of ESSO are employed in multiple
10 different counties of California. Some work within the Palos Verdes Peninsula
11 Unified School District, the same district in which lead plaintiff Matthew Brach is a
12 member of the public School Board. ESSO’s interests are not adequately
13 represented by the Plaintiffs, who focus on exploiting the needs of specific groups
14 of children and parents while ignoring generally agreed upon scientific guidance for
15 protecting the health of school employees, students, and the greater population of
16 the state of California.

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24 ¹ The educators willing to be named are: Alma Marquez, Anne Schmitt, Anthony
25 Fadale, Carmen Chic, Caroline Shin, Christina Giltzow, Coco Tuttle, Deidra
26 Jeffery, Denise Bolton, Ellen Ebert, Fred Garcia, Gissell G. Quincy, Jamie Evans,
27 Janae Jeffery, Jeff Mirosavich, Jennifer Briggs, Jill Fish, Judy Sartor, June
28 Edmonds, Karen Aguilar, Kelsey Goldberg, Kimberly Lewis, Larissa Villavicencio,
Laurie Bongard, Lisa Parker, Melissa de Mayo, Samantha Weiss, Sara Aguilar,
Sylvia Tseng, Vanessa Guevara, and Wendy Gonzalez.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Summary of Argument

The most important factor of mitigating transmission of any virus is limited exposure and/or contact. These two factors are least preserved in school settings.²

Dr. Chris Colbert.

Plaintiffs challenge Governor Newsom’s July 17, 2020 framework for reopening schools in California (the “Framework.”) The Framework allows opening schools for in-person education for any school within a county that no longer appears on a COVID monitoring list³ for fourteen consecutive days. The Framework is based on science and objective data (COVID test results)⁴ rather than partisan politics and campaign slogans. If a school is located within a county that falls off the watch list, it is eligible to reopen. This Framework provides the appropriate balance between the legitimate needs of students to learn and educators to have a safe workplace. The impact of this Court’s order on Plaintiffs’ request for injunctive relief will directly impact more than 6.6 million people (6.2 million students and 319,004 teachers) plus non-teaching staff such as administrators,

² Dr. Colbert is the Assistant Program Director of Emergency Medicine Residency Program, University of Illinois at Chicago. Leah Campbell, Why Reopening Schools Isn’t as Easy as Reopening Walmart, Healthline (Jul. 23, 2020), available as of the date of filing: <https://www.healthline.com/health-news/why-reopening-schools-isnt-as-easy-as-reopening-walmart#The-challenges-schools-face>.

³ The data that drives a county’s inclusion or exclusion from the watchlist is available at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/CountyMonitoringDataStep1.aspx>. One factor is if a county is experiencing either more than 100 new COVID cases per 100,000 population or more than 25 per 100,000 and the rate of positive test results is greater than 8 percent.

⁴ A summary of California’s Framework is available at <https://www.gov.ca.gov/2020/07/17/governor-gavin-newsom-lays-out-pandemic-plan-for-learning-and-safe-schools/>.

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1 janitors and supervisors.⁵ This Court’s order will indirectly impact tens of millions
2 more California residents who come in contact with the students and educators that
3 attend school.

4 The pleadings and moving papers by Plaintiffs myopically focus on the self-
5 evident proposition that in-person education serves children and parents better than
6 online education. ESSO agrees with this assertion. In-person education is typically
7 superior to online education. However, the serious, immediate and long-term
8 societal health risks associated with abandoning the Framework outweigh the
9 benefits of in-person education. Moreover, in the area of regulation of public health,
10 the judiciary has historically deferred to the executive and legislative branches.

11 The briefing on this motion will likely⁶ focus on the extent and limits of the
12 State’s power to regulate in the area of the health and safety. While the Plaintiffs
13 discuss the interests of children in receiving in person education, they do not
14 address the serious health and safety questions facing school personnel returning to
15 the workplace in a COVID-19 environment. ESSO’s amicus brief provides the
16 Court with additional information about the health risks to the greater population
17 from having educators return to schools and then interact with the community.
18 ESSO also illustrates several unintended consequences should the Court grant
19 injunctive relief.

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25 ⁵ See <https://www.cde.ca.gov/ds/sd/cb/ceffingertipfacts.asp>.

26 ⁶ As of the time of this brief’s writing, the Defendants’ opposition papers will not
27 have been filed. In order to avoid any argument of delay or prejudice in regard to
28 ESSO’s participation in this matter, ESSO is filing its brief as soon as possible in
advance of the August 17, 2020 hearing on Plaintiffs’ ex parte application.



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1 **II. The Court Should Withhold Injunctive Relief Based on Recent**
2 **Experiments in Opening up Youth Settings During COVID Outbreaks**

3 California is not the first jurisdiction to grapple with the question of whether
4 and how to allow youths to congregate during COVID. This Court has the benefit
5 of observing the results of at least two failed experiments in opening up youth
6 institutions too early.

7
8 **A. The May 2020 Reopening of Schools in Israel**

9 In May, Schools were re-opened in Israel under far more favorable health
10 conditions⁷ than California is currently experiencing:⁸

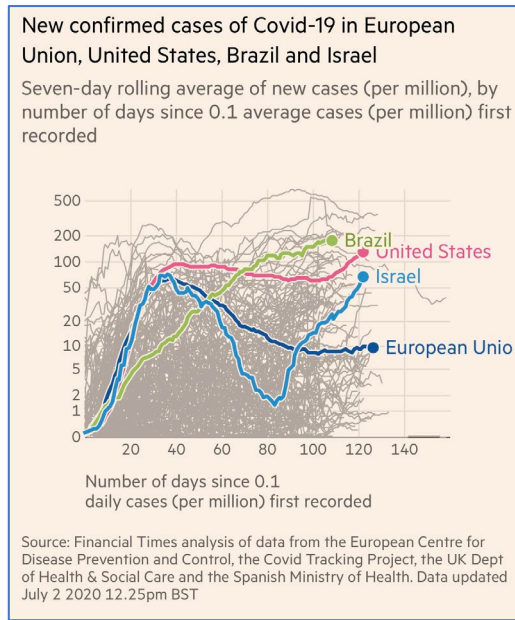
- 11 • Students in the fourth grade and higher were required to wear masks, keep
- 12 classroom windows open, wash hands frequently and keep six feet apart;
- 13 • Within two days of reopening, 154 students and 26 staff members were
- 14 found to be infected in one school.
- 15 • About 60 percent of infected students were asymptomatic. Teachers, some of
- 16 whom had been teaching multiple classes, suffered the most and a few were
- 17 hospitalized.
- 18 • Seeking to contain the contagion, the Education Ministry vowed to shut any
- 19 school with even one COVID-19 case. It ultimately closed more than 240
- 20 schools and quarantined more than 22,520 teachers and students.

21
22
23 ⁷ At the time of its reopening in May 2020, Israel’s infection rates had fallen from
24 more than 750 confirmed cases a day to only double digits per day. Los Angeles
25 County reported 3,116 new daily cases as of August 7. Israel has a population of
over 9 million. Los Angeles County has a population of 10 million.

26 ⁸ Kershner & Belluck, When Covid Subsided, Israel Reopened Its Schools, It
27 Didn’t Go Well, NY Times (Aug. 4, 2020), available as of the date of filing:
28 <https://www.nytimes.com/2020/08/04/world/middleeast/coronavirus-israel-schools-reopen.html> (hereinafter, “NY Times.”)

1 Israel’s advice for other countries? “They definitely should not do what we
2 have done,” said Eli Waxman, a professor at the Weizmann Institute of Science and
3 chairman of the team advising Israel’s National Security Council on the pandemic.
4 “It was a major failure.”

5 The impact of prematurely opening schools was dramatic:⁹



17 **B. The June 2020 Opening of a Summer Camp in Georgia with**
18 **Mandatory COVID Testing**

19 Israel is not an aberration. A summer camp in Georgia re-opened in June
20 2020.¹⁰ The camp implemented a number of precautionary measures, including
21 advanced mandatory COVID testing for all persons entering the camp. A negative
22 COVID test was required to enter the camp. Nonetheless, the camp experienced a

23 _____
24 ⁹ @DrEricDing, Twitter (Jul. 2, 2020, 6:30 a.m.),
<https://twitter.com/DrEricDing/status/1278682387325616129?s=20>.

25 ¹⁰Szablewski et al., *SARS-CoV-2 Transmission and Infection Among Attendees of*
26 *an Overnight Camp — Georgia, June 2020*, CDC Morbid & Mortality Weekly
27 Report (Jul. 31, 2020), available as of the date of filing:
<https://www.cdc.gov/mmwr/volumes/69/wr/mm6931e1.htm> (hereinafter, “*CDC Georgia Camp Report*.”)
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1 COVID outbreak among the youth and staff as a result of asymptomatic infected
2 people:

3 Five days after the start of orientation and two days after the start of
4 the camp session, a teenage staff member fell ill and left camp; the
5 next day that person was confirmed to have Covid-19. Officials began
6 sending campers home that day and closed the camp three days later.

6 The Georgia Department of Health was notified and began its contact
7 tracing investigation the day after the first teenage staffer fell ill. All
8 in all, test results were available for 344 (58%) of the 597 attendees
9 from Georgia; among these, 260 (76%) were positive. At least 44%
10 (260 of 597) got infected, although the researchers say not everyone
11 was tested so the rate could be even higher. The 27 out-of-state
12 attendees were not counted in this preliminary analysis.¹¹

11 This investigation adds to the body of evidence demonstrating that
12 children of all ages are susceptible to SARS-CoV-2 infection...and,
13 contrary to early reports ... might play an important role in
14 transmission...¹²

14 The Court should not flirt here with the “major failure” that Israel and the
15 Georgia summer camp experienced and should heed the warning that the CDC has
16 given about the “important role” of youth in COVID transmission. The purpose of
17 this brief is to inform the Court of potential unintended consequences to members
18 of ESSO and other educations should Plaintiffs’ application be granted.

19
20 **III. The Court Should Withhold Injunctive Relief Because the Framework is**
21 **Related to the Objective of Protecting the Public Health**

22 The Framework employed by California in response to COVID is measured,
23 reasonable and not subject to anything other than the most deferential judicial

24
25 ¹¹ Andrea Kane, *A Georgia sleepaway camp's coronavirus outbreak is a warning*
26 *for what could happen when schools reopen, CDC says*, CNN (Jul. 31, 2020),
27 available as of the date of filing: [https://www.cnn.com/2020/07/31/health/georgia-](https://www.cnn.com/2020/07/31/health/georgia-camp-coronavirus-outbreak-cdc-trnd/index.html)
28 [camp-coronavirus-outbreak-cdc-trnd/index.html](https://www.cnn.com/2020/07/31/health/georgia-camp-coronavirus-outbreak-cdc-trnd/index.html).)

¹²CDC Georgia Camp Report.



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1 review.

2 It is no part of the function of a court or a jury to determine which one
3 of two modes was likely to be the most effective for the protection of
the public against disease.

4 (*Jacobson v. Commonwealth of Massachusetts*, [197 U.S. 11](#), 30 (1905)).¹³

5 The United States Supreme Court has previously addressed the limits of the
6 power of a state to respond to a public health crisis. In *Jacobson*, the Supreme
7 Court upheld Massachusetts’ power to require vaccinations. The *Jacobson* Court
8 confirmed that the right of liberty in a society facing death and diseases is not
9 absolute:

10 [T]he liberty secured by the Constitution of the United States to every
11 person within its jurisdiction does not import an absolute right in each
12 person to be, at all times and in all circumstances, wholly freed from
restraint. There are manifold restraints to which every person is
necessarily subject for the common good.

13 (*Id.* at 26-27).

14 The outer limits of the State’s power to eradicate the disease is for those
15 extreme measures that: 1) have no relation to the public health; 2) are
16 unquestionably “a plain, palpable invasion of rights;” or 3) invade the federal
17 government’s domain. (*Id.* at 31). None of these three limits are implicated by the
18 Framework at issue here. The Framework is rooted in science and objective data
19 (infection rates). The most generous reading of Plaintiffs’ evidence is that if they
20 were in charge, they would have made different policy choices about schools. But
21 the burden of proof in this legal proceeding is higher than merely presenting this
22 Court with a second choice, even if that choice is objectively preferable to the one
23 chosen by California. (*Id.* at 30). Plaintiffs’ burden is to prove to this Court that the
24 Framework measures have no relation to public health, constitute an unquestionably
25 plain and palpable invasion of rights, or invade the federal government’s domain.

26

27 ¹³ *Jacobson* is a leading and controlling case on the question of state power to
28 regulate health issues in a pandemic. Plaintiffs do not mention or distinguish it.

1 (*Id.* at 30). Other federal courts within the Ninth Circuit facing similar challenges to
2 the power of a State to issue COVID-related restrictions have ruled to uphold
3 restrictions. (See, e.g., *Slidewaters, LLC v. Washington Department of Labor & Industries*,
4 [2:20-CV-0210-TOR](#), 2020 WL 3979661 (E.D. Wash. Jul. 14, 2020) [denying
5 injunction to invalidate restrictions that shut down water park]; *Cross-Culture Christian*
6 *Center v. Newsom*, [2:20-cv-00832-JAM-CKD](#), 2020 WL 2121111 (E.D. Cal. May 5,
7 2020) [denying injunction sought to invalidate restrictions on church gatherings];
8 *Brandy v. Villanueva*, [2:20-cv-02874-AB-SK](#), 2020 WL 3628709 (C.D. Cal. Apr. 6, 2020)
9 [denying injunction as to gun sales restrictions]).¹⁴
10

11 **IV. The Court Should Withhold Injunctive Relief Because Plaintiffs Invite**
12 **Unintended Health Risks to Children, Parents, School Staff and Those**
13 **that Come in Contact with Them that Cannot be Mitigated**

14 Plaintiffs are well meaning. Yet their myopic view of public school students’
15 needs ignores some troubling questions about schools re-opening. All long-term
16 health impacts of COVID are not yet known but at this point it is clear that those
17 who survive can have critical ongoing health complications.¹⁵ Moreover, in the
18 context of the classroom, ESSO has identified at least eight issues that cannot be
19 mitigated and should not be risked during a time when a county has sufficient
20 number of infections that it is placed on the watchlist.
21
22

23 _____
24 ¹⁴ ESSO has filed a request for judicial notice of these decisions concurrently
herewith.

25 ¹⁵ Medical opinions suggest there may be long term lung, heart, kidney, digestive
26 systems and brain problems for survivors of COVID. “What are the Long-Term
27 Effects of COVID-19? (Miami Health News July 1, 2020, Ana Veciana-Suarez,
28 available at <https://news.umiamihealth.org/en/what-are-the-long-term-effects-of-covid-19/>.

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A. The Health Risk Regarding Misuse or Nonuse of Masks that Cannot be Mitigated or Eliminated

Students may be challenged to keep masks on. When a student does not keep a mask on, ESSO members are immediately placed at risk. To either ensure compliance with the mask rule or to remove the student, educators will have to get in proximity to students or wait in a potentially dangerous situation until administration, security, or other school officials (who will also be placed at risk) can rectify the breach of policy. The health risks presented to educators cannot be mitigated or eliminated.

B. The Health Risk Regarding Social Distance that Cannot be Mitigated or Eliminated

Students may struggle to keep social distance from each other or educators. When students do not keep social distance, ESSO members will have to intervene and get in proximity to students, at their own peril, to enforce social distancing. The CDC has stated that “Physical distancing and consistent and correct use of cloth masks should be emphasized as important strategies for mitigating transmission in congregate settings.”¹⁶ In the context of the high infection rates that California is facing and the California infection rates that are above the threshold for schools to reopen, the risks presented by students not wearing masks or maintaining distances cannot be mitigated or eliminated.

C. The Health Risk Regarding Children that Come to School Sick that Cannot be Mitigated or Eliminated

During COVID, students will be brought to school sick. This is an inevitable result of schools reopening. ESSO members will have to interact with the student to

¹⁶*CDC Georgia Camp Report.*

1 assess their health, monitor the student and, if necessary, arrange for the student to
2 go home. Those activities will result in health risks to ESSO members. When a child
3 comes to school sick, other students and educators are exposed to health risks until such
4 time as the child is removed from school. When schools are located in counties that
5 are no longer on the watch list, the frequency of these COVID exposures will be
6 much lower than in counties that are on the watch list.

7
8 **D. The Health Risk Regarding Bussed Children that Cannot be**
9 **Mitigated or Eliminated**

10 Schools with Special Education students may be obligated to provide
11 transportation (i.e. bussing) to school.¹⁷ General education students may, by
12 necessity, have to take buses to school.

13 Following physical distancing guidelines means it will take more
14 buses to transport the same numbers of students to school each day.
15 Students’ health may need to be monitored before they even step on
16 the bus, and personal protective equipment must be available when
17 students don’t wear their own.

18 To make it all work, some districts will reduce the numbers of
19 students who ride the bus, so they can concentrate on those who
20 require it. That could require complex changes in scheduling and
21 added attention to the needs of both the high-priority bus riders and
22 the children who must find their own way to school.¹⁸

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25 ¹⁷ See e.g., Cal. Ed. Code, § [41851.2](#).

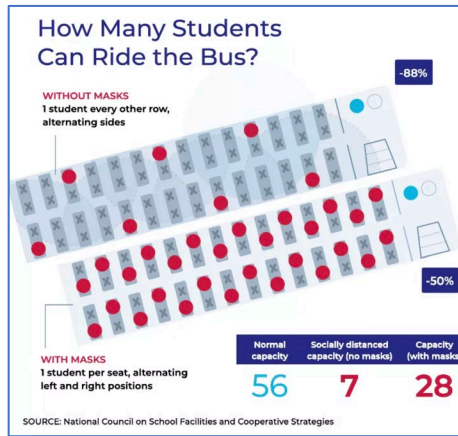
26 ¹⁸ Stephanie Shafer, *Getting Kids to School: Tackling the COVID-19*
27 *Transportation Problem*, Education Week (July 8, 2020), available as of the date of
28 filing: <https://www.edweek.org/ew/issues/reopening-schools/getting-kids-to-school-tackling-covid-19-transportation-problem.html> (hereinafter, “*Ed Week*.”)

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Schools will require at least *twice* as many buses to get students to school, assuming they all have masks. Buses will have to be made available to return children home if they arrive at school sick. Bus drivers will need personal protective equipment for themselves and those entering the bus. If a student has no mask or removes their mask, the bus driver will be exposed during the time it takes to deny the student entrance to the bus or to provide the student a mask.

E. The Health Risk Regarding Special Needs that Cannot be Mitigated or Eliminated

Students with special needs (IEPs, 504s) are required by law to receive specialized services and accommodations. Such students will need to leave and return to a classroom or have a specialist enter the classroom to receive these services. Either circumstance presents a risk to the student receiving services and all who come in contact with that student, thereby increasing the amount of exposure to all at the school site.

F. The Health Risk Regarding Shared Material and Seating that Cannot be Mitigated or Eliminated

Historically, students share classroom materials (e.g. textbooks, computers, writing materials, pencil sharpeners) and sit in desks placed close together. Many



1 schools do not have the financial resources to mitigate this problem by providing
2 individual materials to students and re-aligning classroom desks to meet social
3 distancing needs. In a situation when county COVID numbers are too great to
4 warrant school opening and shared materials, distance learning with online
5 materials and shared screens could be a more effective modality in terms of limited
6 textbooks and curriculum delivery.

7
8 **G. The Health Risk Regarding Sanitization that Cannot be Mitigated or**
9 **Eliminated**

10 Schools that reopen may not have the capability of adequately cleaning
11 classrooms in between student or cohort use. In a middle or high school setting,
12 students will need to change classrooms. There is no effective way for the class to
13 be sanitized between periods. Who will be responsible for cleaning? Typically,
14 schools have a limited cleaning crew. In the event of a possible pathogen exposure
15 in a classroom, it is likely there will be lag time between exposure and professional
16 cleaning, thereby putting more students at risk. Such risks might be manageable
17 within a county with low infection rates. Counties on the watch list present too high
18 a risk to manage.

19
20 **H. The Health Risk Regarding Restroom Use that Cannot be Mitigated**
21 **or Eliminated**

22 Students and educators will need to use the restroom while at school. In
23 addition to general education students using the restroom independently, adult
24 support is needed in restrooms with young students who are potty training and also
25 some special education students who attend school up to age 22. This is a proximity
26 concern in the time of the pandemic. In general education restrooms, supervision
27 and between-use cleanings is not always feasible. In restrooms, masks may be
28

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1 removed, proximity may not be observed and infections may occur. Such risks
2 within a county with low infection rates are more easily measured and minimized.

3
4 **I. Taking Student Temperatures or Requiring COVID Testing is not**
5 **Sufficient to Mitigate Risks**

6 The Georgia camp experience in June 2020 proved that asymptomatic
7 transmission of COVID is a substantial risk with youth.¹⁹ Camp attendees all had a
8 negative test result. Yet transmission occurred. Schools that reopen that implement
9 either a temperature or COVID test requirement are still at risk for asymptomatic
10 transmission, such as what occurred in Georgia. Taking temperature checks at the
11 start of the school day provides educators, students and parents a false sense of
12 security for two reasons: increased temperature is not a consistent symptom of
13 COVID, and parents often give students with low-grade fever a fever reducer
14 before they leave for school. When counties are still on the watch list, there is an
15 increased chance that such measures will result in COVID spread at school sites.

16
17 **J. Re-Opening Prematurely Presents a Risk of Disruption from**
18 **Opening, Closing and Reopening Cycles when Specific School Sites**
19 **Have Infections**

20 All school re-opening plans also involve re-closure plans in the event that a
21 sufficient number of students or teachers from any specific school are found to be
22 infected. As explained above, and as experienced in Israel, this is not easily
23 predictable. Multiple infections and their infectious aftershocks may result in
24 repeated open-shut-open cycles at schools. This lack of certainty regarding school
25 operations, academic instruction, and student mentality can be more disruptive to
26 student learning than simply starting schools in a more consistent online

27
28 ¹⁹ *CDC Georgia Camp Report.*

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1 environment until such time as the schools can open on a more permanent basis.
2 The harm to children described in the declarations supporting the Plaintiffs’ papers
3 will be present, perhaps more so, when a child enrolled in in person education is
4 suddenly required to shift to online education due to an outbreak. Governor
5 Newsom’s Framework will minimize the open-close-reopen-reclose cycle by
6 delaying reopening until such time as the likelihood of specific school site
7 shutdowns is reduced.

8
9 **V. The Court Should Deny Injunctive Relief Because Plaintiffs Have Based**
10 **Their Request on Factually Unsound Premises**

11 Much of the “evidence” relied on by Plaintiffs rests on false or misleading
12 statements. For example, Plaintiffs say: “the scientific data clearly shows that the
13 risks of COVID-19 to school-age children are negligible...” (Doc. 28-1, p. 1, li. 24-
14 25.) That is demonstrably false. The CDC states: children of all ages are susceptible
15 to SARS-CoV-2 infection.”²⁰ Moreover, even if it were true, the evidence from
16 Georgia demonstrates that children can be asymptomatic spreaders. If the students
17 attending school do not get sick, they certainly can infect school staff, teachers and
18 families.

19 Plaintiffs also justify their request because the “CDC now estimates that the
20 population-wide death rate of COVID-19 is 0.26%. (Doc. 28-1, p. 9, li. 20-21.)
21 California has a population of 39.51 million people. If reopening schools were to
22 result in the same disastrous effects as what occurred in Israel or at the Georgia
23 summer camp, then using the death rate that Plaintiffs casually toss around could
24 result in as many as *102,000 people dying* in just this state.²¹ If California schools
25 are reopened and experience the same rates of infection as in Israel, Korea and the

26
27 ²⁰ *CDC Georgia Camp Report.*

28 ²¹ 0.26% of 39.51 million is 102,726.

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1 Georgia Summer camp, we would expect to see as many as 15,000 to 23,000
2 additional cases of COVID in students, grades K-12, in California within 30 days of
3 re-opening. Furthermore, we would expect roughly 1,000 teachers, staff and
4 administration to be infected over the same period.

5
6 **VI. Science Demonstrates that School Closures Can Substantially Slow**
7 **Infection Rates**

8 The moving papers argue that Governor Newsom was whimsical, cavalier
9 and arbitrary in enacting the Framework. In fact, the Framework is based on
10 science. Scientific data demonstrates that closing schools can have an impact in an
11 epidemic. “Although proactive school closures cannot interrupt transmission on
12 their own, they can reduce peak incidence by 40 to 60% and delay the epidemic.”²²

13 The Journal of the American Medical Association found:

14
15 Between March 9, 2020, and May 7, 2020, school closure in the US
16 was temporally associated with decreased COVID-19 incidence and
17 mortality; states that closed schools earlier, when cumulative
18 incidence of COVID-19 was low, had the largest relative reduction in
19 incidence and mortality.²³

20 The University of Washington’s Department of Global Health found:

21 Based on the experience of four European countries (Denmark,
22 Norway, Sweden, and Germany), there is some evidence that school
23 closures led to declines in the epidemic growth rates of COVID-19.
24 Reopening of schools for all students in countries with low
25 community transmission (Denmark and Norway) has not resulted in a
26 significant increase in the growth rate of COVID-19 cases. Return of

27
28 ²² Zhang et al., *Changes in Contact Patterns Shape the Dynamics of the Covid-19
Outbreak in China*, Science (Jun. 26, 2020), available as of the date of filing:
<https://science.sciencemag.org/content/368/6498/1481.full>

²³ Auger & Shah et al., *Association Between Statewide School Closure and COVID-19
Incidence and Mortality in the US*, JAMA (Jul. 29, 2020), available as of the
date of filing: <https://jamanetwork.com/journals/jama/fullarticle/2769034>.



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most students to school in countries with higher levels of community transmission (Germany) has been accompanied by increased transmission among students, but not school staff. After re-opening schools in Israel there have been a number of outbreaks of SARS-CoV-2 in schools that have resulted in those schools being closed. In South Korea, schools in some areas were closed again after re-opening in response to surges in the number of COVID-19 cases in the community.²⁴

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²⁴ Brandon L. Guthrie, *Summary of School Re-Opening Models and Implementation Approaches During the COVID 19 Pandemic* (Jul., 6, 2020), available as of the date of filing: <https://globalhealth.washington.edu/sites/default/files/COVID-19%20Schools%20Summary%20%28updated%29.pdf> [internal footnote removed].

1 **VII. CONCLUSION**

2 Everybody wants schools to open. Nobody wants to be in this pandemic
3 shutdown. ESSO members did not become educators to teach via online platforms.
4 They want nothing more than to return to “typical,” in person school. The
5 Framework sets an appropriate balance of interests of students, parents and school
6 staff. And while the Plaintiffs bemoan the lack of local control, they ignore the fact
7 that when schools do re-open, local school districts and counties will have
8 unfettered discretion to make a myriad of decisions regarding how to operate their
9 schools safely. The Framework affords California schools the ability to re-open
10 when a minimum safety threshold in the county has been reached. The Court should
11 not second guess the policy decisions of California’s Governor in enacting the
12 Framework. The motion for a preliminary injunction and temporary restraining
13 order must be denied lest the population of California experience the same results
14 as schools and camps in Israel, Germany, South Korea and Georgia.

15 DATED: August 10, 2020

16 **JEFF LEWIS LAW**

17
18 By: s/ Jeffrey Lewis

19 Jeffrey Lewis
20 Sean C. Rotstan

21 Attorneys for Amicus Curae
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PROOF OF SERVICE

Matthew Brach, et al. v. Gavin Newsom, et al.

U.S. Central District Court Case No. 2:20-cv-06472-SVW-AFM

I, Jason R. Ebbens, declare that I am over the age of 18 years, employed in the County of Los Angeles, and not a party to the within action; my business address is 609 Deep Valley Drive, Suite 200, Rolling Hills Estates, CA 90274.

On **August 10, 2020**, I served the foregoing: **BRIEF OF AMICUS CURAE EDUCATORS FOR SAFE SCHOOL OPENING IN OPPOSITION TO PLAINTIFFS' APPLICATION FOR A RESTRAINING ORDER AND PRELIMINARY INJUNCTION** on the interested parties in this action by placing " the original x a true copy thereof, enclosed in a sealed envelope with postage pre-paid, addressed as follows:

** See Attached Service List **

BY ELECTRONIC MAIL. I personally transmitted to the person(s) named in the attached service list who has/have previously consented in writing to receive documents via electronic mail to the e-mail address(es) shown on the service list, delivered on the date listed below, originating from an electronic e-mail address affiliated with Jeff Lewis Law. A true and correct copy of the above-described document(s) was transmitted by electronic transmission through the Jeff Lewis Law mail server, which did not report any error in sending the transmission

(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **August 10, 2020**, in Rolling Hills Estates, California.

s/ Jason R. Ebbens

Jason R. Ebbens

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