## IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF VIRGINIA CHARLOTTESVILLE DIVISION

CHRISTOPHER SEAMAN et al.

Case No. 3:22-cv-00006-NKM

Plaintiffs,

v.

The COMMONWEALTH OF VIRGINIA; et al.

Defendants.

PLAINTIFFS' SUPPLEMENT TO MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

On February 1, 2022, Plaintiffs filed a Complaint under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. The Complaint challenges Executive Order 2, which prohibits Virginia public schools from requiring students to wear masks to prevent the spread of COVID under any circumstances. On February 10, 2022, Plaintiffs moved for a Temporary Restraining Order or Preliminary Injunction to enjoin enforcement of Executive Order 2 pending resolution of this litigation. On February 16, 2022, S.B. 739, which codifies Executive Order 2 into Virginia law, was enacted and signed by the Governor. Va S.B. 739 (2022 Session, Feb. 16, 2022); to be published at Va. Code Ann. § 22.1-2.1 (2022). S.B. 739 will go into effect March 1, 2022. It threatens the same violations of federal law and the same irreparable harms as Executive Order 2. On February 18, Plaintiffs filed a First Amended Complaint, adding S.B. 739 to their claims. Now Plaintiffs' file this Supplement to their Motion for Temporary Restraining Order and Preliminary Injunction to add S.B. 739 as a subject of Plaintiffs' requested injunction, to detail harm to Plaintiffs arising from S.B. 739 after Plaintiffs' original motion was filed, including harm to Plaintiff M.K., who did not previously move for preliminary injunctive relief, and to supply additional relevant caselaw since the original filing.

Plaintiffs can demonstrate that they are likely to succeed on the merits because Defendants, via both Executive Order 2 and S.B. 739, are discriminating against students with disabilities in violation of federal law; Plaintiffs are likely to suffer irreparable harm in the absence of preliminary relief; the balance of equities tips in Plaintiffs' favor; and an injunction is in the public interest.

This motion is supported by a supplemented memorandum of law which will be filed contemporaneously.

Dated: February 22, 2022

Respectfully submitted,

## /s/ Eden B. Heilman

Eden B. Heilman (Va. Bar No. 93554)
Matthew Callahan (pro hac vice to be filed)
Monique Gillum (pro hac vice to be filed)
American Civil Liberties Union (ACLU)
Foundation of Virginia
701 E. Franklin St., Suite 1412
Richmond, VA 23219
Tel: (804) 644-8022
Fax: (804) 649-2733
eheilman@acluva.org
mcallahan@acluva.org

eheilman@acluva.org mcallahan@acluva.org mgillum@acluva.org

Eve L. Hill (VA Bar # 96799)
Sharon Krevor-Weisbaum (pro hac vice)
Jessica Weber (pro hac vice pending)
Brown Goldstein Levy LLP
120 E. Baltimore Street, Suite 2500
Baltimore, MD 21202
Tel: (410) 962-1030
Fax: (410) 385-0869
EHill@browngold.com
skw@browngold.com
jweber@browngold.com

Steven M. Traubert (Va. Bar #41128) Kerry M. Chilton (Va. Bar #90621) disAbility Law Center of Virginia 1512 Willow Lawn Drive, Suite 100 Richmond, Virginia 23230 (804)225-2042 steven.traubert@dLCV.org kerry.chilton@dLCV.org

Ian S. Hoffman (VA Bar #75002)
John A. Freedman (*pro hac vice* to be filed)
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Ave., N.W.
Washington, DC 20001
Tel: (202) 942-5000
Fax: (202) 942-5999
Ian.Hoffman@arnoldporter.com
John.Freedamn@arnoldporter.com

Kaitlin Banner (pro hac vice pending)
Margaret Hart (pro hac vice to be filed)
Marja K. Plater (pro hac vice to be filed)
WASHINGTON LAWYERS'
COMMITTEE FOR CIVIL RIGHTS AND
URBAN AFFAIRS 700 14th Street, NW, Suite 400
Washington, DC 20005 Phone: (202) 319-1000
Fax: (202) 319-1010
kaitlin\_banner@washlaw.org
margaret\_hart@washlaw.org
marja\_plater@washlaw.org

Counsel for Plaintiffs

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of February 2022, I filed the foregoing document with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all parties of record.

/s/ Eve L. Hill

Eve L. Hill (VA Bar # 96799) Brown Goldstein Levy LLP 120 E. Baltimore Street, Suite 2500 Baltimore, MD 21202

Tel: (410) 962-1030 Fax: (410) 385-0869 EHill@browngold.com