

IN THE  
**Supreme Court of the United States**

---

**Danville Christian Academy, Inc.,  
Commonwealth of Kentucky, *ex rel.*  
Attorney General Daniel Cameron,**

*Applicants,*

v.

**Andrew Beshear, Governor of Kentucky,**

*Respondent.*

---

**Motion for Leave to File Brief as *Amici Curiae* and Brief of  
The American Medical Association and The Louisville Metro  
Department of Public Health & Wellness  
In Support of Respondent**

---

Leonard A. Nelson  
*Counsel of Record*  
Erin G. Sutton  
American Medical Association  
330 N. Wabash Ave.  
Suite 39300  
Chicago, Illinois 60611  
(312) 464-5532  
Leonard.nelson@ama-assn.org

*Counsel for Amici Curiae*

---

---

## Motion for Leave to File Brief as *Amici Curiae*

The American Medical Association (AMA) and the Louisville Metro Department of Public Health & Wellness respectfully move for leave to file the accompanying brief as *amici curiae* in support of the Respondent, the Governor of Kentucky. The Applicants, Danville Christian Academy and the Kentucky Attorney General, do not oppose this motion or the brief. The Respondent, Kentucky Governor Andrew Beshear, has consented to this motion and the filing of this *amicus* brief.

Since the COVID-19 pandemic began, this Court and others have grappled with the States' attempts to balance public health and civil liberties, including the free exercise of religion. For scientific questions, particularly questions about the relative risks of religious services and other activities, this Court has acknowledged that its members "are not public health experts." *Roman Catholic Diocese of Brooklyn, New York v. Cuomo*, 592 U.S. \_\_\_ (Nov. 25, 2020), slip opinion at 5.

*Amici* are public health experts. While this emergency application raises questions of religious liberty, those questions come in the context of a public health crisis. *Amici* therefore tender this brief because it may help this Court better understand the medical basis for the executive order that has given rise to the issues before it.

Respectfully submitted,

Leonard A. Nelson  
*Counsel of Record*  
Erin G. Sutton  
American Medical Association  
330 N. Wabash Ave.  
Suite 39300  
Chicago, Illinois 60611  
(312) 464-5532  
Leonard.nelson@ama-assn.org

Date: December 8, 2020

## **CORPORATE DISCLOSURE STATEMENT**

The American Medical Association has no parent corporation, and no publicly held company has a 10% or greater ownership interest in its stock.

The Louisville Metro Department of Public Health & Wellness is a division of the Louisville, Kentucky city government. No publicly held company has a 10% or greater ownership interest in its stock.

## TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT .....	iii
TABLE OF AUTHORITIES .....	v
BRIEF OF <i>AMICUS CURIAE</i> .....	1
INTEREST OF <i>AMICI CURIAE</i> .....	1
SUMMARY OF THE ARGUMENT .....	2
ARGUMENT .....	2
CONCLUSION.....	5

## TABLE OF AUTHORITIES

### Cases

<i>Roman Catholic Diocese of Brooklyn, New York v. Cuomo</i> , 592 U.S. ____ (Nov. 25, 2020) .....	i
---	---

### Other Authorities

AAP COVID-19 Planning Considerations: Guidance for School Re-entry, <i>available at</i> <a href="https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-inperson-education-in-schools/">https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-inperson-education-in-schools/</a> .....	3
NASEM Report, Reopening K-12 Schools During the COVID-19 Pandemic: Prioritizing Health, Equity, and Communities (2020) <i>available at</i> <a href="https://www.nap.edu/catalog/25858/reopening-k-12-schools-during-the-covid-19-pandemic-prioritizing">https://www.nap.edu/catalog/25858/reopening-k-12-schools-during-the-covid-19-pandemic-prioritizing</a> .....	4
Operating schools during COVID-19: CDC’s Considerations, <i>available at</i> <a href="https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html">https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html</a> .....	4

## **BRIEF OF *AMICUS CURIAE***

The American Medical Association (AMA) and the Louisville Metro Department of Public Health & Wellness respectfully submit this brief as *amici curiae* in support of the Respondent.<sup>1</sup>

### **INTEREST OF *AMICI CURIAE***

The AMA is the largest professional association of physicians, residents, and medical students in the United States. Through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all United States physicians, residents and medical students are represented in the AMA's policymaking process. The AMA was founded in 1847 to promote the science and art of medicine and the betterment of public health, and these remain its core purposes. AMA members practice in every state, including Kentucky, and in every medical specialty, including infectious diseases. The AMA believes that governmental mandates designed to halt the spread of SARS-CoV-2, the virus that causes COVID-19, should be based on sound science.

The Louisville Metro Department of Public Health & Wellness ("LMPHW") is a division of the Louisville, Kentucky city government. Its mission is to achieve health equity and improve the health and well-being of all Louisville residents and visitors. In coordination with other city departments, the LMPHW is spearheading

---

<sup>1</sup> All parties provided written consent to the filing of this brief. Providing ten days' notice to the parties as required under Rule 37.2(a) was not possible because of the emergency nature of this application. No counsel for a party authored this brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief. No person other than *amici curiae* made such a monetary contribution.

the city's response to this global pandemic. The LMPHW joins the AMA in the belief that governmental mandates aimed at slowing the spread of COVID-19 should be based on sound science.

### SUMMARY OF ARGUMENT

The public health order at issue in this case, which temporarily ordered the closure of all Kentucky schools from kindergarten through high school for in-person learning, was based on sound scientific considerations.

### ARGUMENT

The Declaration of Dr. Steven J. Stack, M.D. [App. 97], Commissioner of the Kentucky Department for Public Health, gives a detailed scientific explanation for the temporary in-person closure of Kentucky schools, grades K-12.<sup>2</sup> It also explains why other Kentucky institutions may face fewer restrictions. Dr. Stack's declaration is based on solid medical reasoning, which is largely apparent from the declaration itself.

The district court, however, asserted that Dr. Stack and the Governor had inadequately explained why K-12 schools should close, while other institutions can remain open. The court particularly noted a statement from CDC Director Robert Redfield<sup>3</sup> that schools should remain open during the pandemic. [App. 18-19]. While it is true that public health officials should *generally* strive to keep the

---

<sup>2</sup> As Dr. Stack notes at Par. 4 of his declaration, he is a former AMA trustee and president.

<sup>3</sup> The district court mistakenly identified the CDC director as "Robert Redford."



schools open, that is not invariably the case. In fact, Dr. Stack’s declaration, at paragraphs 27-36, explains why an exception needed to be made in Kentucky.

In addition to the authorities Dr. Stack cited, other experts have specifically advised that, under appropriate circumstances, in-person K-12 learning should be suspended. For example, a report of the National Academies of Sciences, Engineering, and Medicine on K-12 school opening counsels as follows:

“Weighing all of the relevant factors to arrive at a decision about reopening and staying open involves simultaneously considering the public health risks, the educational risks, and other potential risks to the community. This kind of risk assessment requires expertise in public health, infectious disease, and education as well as clear articulation of the community’s values and priorities.”

*See*, NASEM Report, Reopening K-12 Schools During the COVID-19 Pandemic: Prioritizing Health, Equity, and Communities (2020), p. 3, *available at* <https://www.nap.edu/catalog/25858/reopening-k-12-schools-during-the-covid-19-pandemic-prioritizing>.

Similarly, the American Academy of Pediatrics (AAP) has issued the following guidance for in-person learning at K-12 schools:

“The AAP strongly advocates that all policy considerations for the coming school year should start with a goal of having students physically present in school. Unfortunately, in many parts of the United States, there is currently uncontrolled spread of SARS-CoV-2. Although the AAP strongly advocates for in-person learning for the coming school year, the current widespread circulation of the virus will not permit in-person learning to be safely accomplished in many jurisdictions. Ultimately, the decision to re-open schools to in-person learning should be

based on the guidance of local and state public health authorities and school administrators.”

AAP COVID-19 Planning Considerations: Guidance for School Re-entry, *available at* <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>

Finally, the CDC itself has counseled:

“Schools should determine, in collaboration with state and local health officials to the extent possible, whether and how to implement each of these considerations while adjusting to meet the unique needs and circumstances of the local community. Implementation should be guided by what is feasible, practical, acceptable, and tailored to the needs of each community. It is also critically important to develop strategies that can be revised and adapted depending on the level of viral transmission in the school and throughout the community and done with close communication with state and/or local public health authorities and recognizing the differences between school districts, including urban, suburban, and rural districts.”

Operating schools during COVID-19: CDC’s Considerations, *available at* <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html>.

In sum, one size does not fit all regarding K-12 school closures. Dr. Stack’s recommendation, based on a high level of expertise and a close study of specific health issues, comes well within acceptable epidemiological practice.

## CONCLUSION

While *Amici* recognize that the public response to the COVID-19 pandemic cannot be decided by science alone, they believe that the Court's understanding of the science should be as accurate as possible. The science indicates that under certain circumstances, such as those described in Dr. Stack's declaration, temporary school closures in grades K-12 for in-person learning, including closure of religiously oriented schools, may be necessary public health measures.

Respectfully submitted.

Leonard A. Nelson  
*Counsel of Record*  
Erin G. Sutton  
American Medical Association  
330 N. Wabash Ave.  
Suite 39300  
Chicago, Illinois 60611  
(312) 464-5532  
Leonard.nelson@ama-assn.org

*Counsel for Amici Curiae*

December 8, 2020