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September 14, 2020

Governor Kevin Stitt
Capitol Building, Rm. 212
2300 Lincoln Blvd.
Oklahoma City, OK 73105

Mark Burget
General Counsel for the Governor
2300 N. Lincoln Blvd,
Oklahoma City, OK 73105

Attorney General Mike Hunter
313 NE 21st St.
Oklahoma City, OK 73105

Dear Governor Stitt and other distinguished State officials:

Oklahoma Disability Law Center (“ODLC”) is the federally funded Protection and Advocacy system (“P&A”) for individuals with disabilities in the state of Oklahoma. Our office is mandated to protect the legal and civil rights of Oklahomans with disabilities. Our mission and legal advocacy have never been more important than in the face of the current Covid-19 pandemic, as we continue to monitor the emerging challenges faced by our citizens living with disabilities and the state’s response to this public health emergency.

As Oklahoma’s P&A, and pursuant to 42 U.S.C. § 15043(a)(2)(A) (i), ODLC is specifically authorized to pursue legal, administrative and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of individuals with disabilities living within our state. It is with this authority that we are writing you today, on behalf of the nearly 395,700 Oklahomans who are deaf or hard of hearing.

Through several conversations with the Oklahoma Association for the Deaf (“OAD”) and its members, it has come to ODLC’s attention that the use and provision of simultaneous American Sign Language (“ASL”) interpretation for Governor Stitt’s COVID-19 press briefings has not been consistent. While we applaud the Governor and his staff for providing this much needed and legally required accommodation for the majority of his COVID-19 briefings, we are concerned by the gaps that have occurred when effective communication was not provided for Oklahomans who are deaf or hard of hearing. These briefings are designed to provide critical information to the citizens of Oklahoma about steps taken by the state and federal government to address the current health crisis and recommendations and orders put in place to help keep Oklahomans safe and to help limit the spread of the virus. Governor Stitt’s briefings have

advised the public about important developments in the fight against Corona Virus and provided information about the government's response at the local, state and national levels.

The briefings cover a wide range of topics, including the number of confirmed COVID-19 cases, the availability of testing and testing procedures, information and recommendations about mask wearing and social distancing and other personal safety measures to be utilized by Oklahomans to stop the spread of the virus, and the coordination of local, state and federal government emergency response systems. However, many Oklahomans who are deaf or hard of hearing cannot understand Governor Stitt's briefings without live televised ASL interpretation in frame. ASL is the primary language for the majority of individuals who are deaf and for many individuals who are hard of hearing or culturally deaf. Often times, these individuals are unable to follow or understand closed captioning because of imperfections in the transcription, English being their second language, cognitive and/or processing issues, and other factors. Therefore, it is a fundamental necessity for all Oklahoman's who are deaf or hard of hearing that live televised ASL interpretation be provided, in frame, at ALL press briefings delivered by the Governor or his COVID-19 task force.

However, on August 6, 2020, Governor Stitt failed to provide live ASL interpretation in frame during his COVID-19 press briefing for that day. As a result, a multitude of Oklahomans who are deaf or hard of hearing were left worried, confused and outraged because they could not access or understand the information about the current pandemic being provided by the Governor. OAD immediately began receiving calls and emails from many of its members, all expressing concerns and frustration over the Governor's failure to provide live ASL interpretation for his August 6th COVID-19 press briefing. Many OAD members reported having contacted Governor Stitt's office to state their concerns directly, only to receive little or no response from the Governor. In an effort to address the concerns of its members and to resolve this serious issue, OAD reached out to Governor Stitt directly. Unfortunately, this was his response:

Subject: Thank you for contacting the Office of Governor J. Kevin Stitt

Thank you for contacting me regarding ASL Interpretation. It is important for me to hear your concerns, ideas, and hopes.

I am humbled and honored to be the 28th Governor of the great State of Oklahoma. My vision is to make Oklahoma a top ten state. Thank you for your active role as a citizen of Oklahoma and I appreciate you contacting my office.

If you have any further questions or concerns, please feel free to contact my office at (405)-521-2342.

Again, I appreciate your letter and thank you for your continued support.
Sincerely,

J. Kevin Stitt, Governor of Oklahoma

Clearly, this is unresponsive, unhelpful and utterly unacceptable.

Governor Stitt's failure or refusal to provide live, in frame, ASL interpretation of all of his COVID-19 press briefings is in violation of Title II of the Americans With Disabilities Act ("ADA"), (42 U.S.C. § 12101, et seq.) and Section 504 of the Rehabilitation Act of 1973 ("Section 504"), (29 U.S.C. § 794). Title II of the ADA states, in pertinent part: [N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or subjected to discrimination by any such entity. (42 U.S.C. § 12132).

The ADA defines a "public entity" as any state and/or local government, their agencies, and their instrumentalities. Accordingly, Governor Stitt, while acting in his official capacity, is at all times a "public entity" within the meaning of Title II of the ADA. In conjunction with Title II of the ADA, 28 C.F.R. § 35.160(a)(1) requires public entities to take appropriate steps to ensure that communications with members of the public with disabilities are as effective as communications with others. The federal Code further requires that public entities provide reasonable accommodations in the form of "appropriate auxiliary aides and services" when necessary to provide individuals with disabilities an equal opportunity to participate in a service, program or activity. (28 C.F.R. § 35.160(b)(1)). The definition of "auxiliary aides and services" includes qualified interpreters. (28 C.F.R. § 35.104). Finally, 28 C.F.R. § 35.160(b)(2) imposes an obligation on public entities to give primary consideration to the requests of individuals with disabilities when determining what types of auxiliary aids and services are needed. Therefore, by failing to consistently provide live, in frame, ASL interpretation during his COVID-19 press briefings during this health pandemic and ignoring the requests and concerns of OAD and its members, Governor Stitt is acting in violation of Title II of the ADA.

Similarly, Section 504 provides, in pertinent part: [N]o otherwise qualified individual with a disability in the United States...shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (29 U.S.C. § 794(a)).

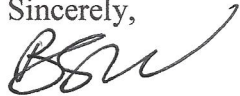
As Governor of the state of Oklahoma, Governor Stitt is currently a recipient of federal financial assistance within the meaning of Section 504. 29 U.S.C. § 794(b)(1)(A) defines a "program or activity" as "all operations of a department, agency, special purpose district, or other instrumentality of a State or of a local government." Accordingly, Governor Stitt's COVID-19 press briefings fall squarely under the definition of a "program or activity". The Governor's inability or unwillingness to provide consistent live, in frame, ASL interpretation during his briefings denies individuals who are deaf or hard of hearing the opportunity to participate in or benefit from an aid, benefit or service; excludes said individuals from participation in and/or denies the benefits of the program or activity, or otherwise subjects these individuals to discrimination on the basis of disability; and affords individuals who are deaf or hard of hearing an opportunity to participate in or benefit from the aid, benefit or service that is not equal to that afforded to others. (See 45 C.F.R. § 84.4(b)(1)(i); 28 C.F.R. § 41.51(b)(1)(i); 29 U.S.C. § 794(a); 28 C.F.R. § 41.51(a); 45 C.F.R. §§ 84.4(b)(1)(ii), 84.52(a)(2); and 28 C.F.R. § 41.51(b)(1)(ii)). These acts or omissions by the Governor are in violation of Section 504.

Additionally, this very issue has recently been successfully litigated against Governor Cuomo of the state of New York, in *Martinez v. Cuomo*, 20-CV-3338 (S.D.N.Y. 2020), wherein the court issued a preliminary injunction against Governor Cuomo, ordering him to immediately implement in-frame ASL interpretation during his daily press briefings.

As the entity tasked with protecting the legal and civil rights of Oklahoma citizens with disabilities, ODLIC is particularly alarmed by reports from our own constituents and fellow disability rights organizations, like OAD, that the Governor has failed to consistently provide live, in frame ASL interpretation for his COVID-19 press briefings. The Governor's failure to provide this necessary accommodation deprives Oklahomans who are deaf or hard of hearing of the opportunity to obtain critical health and safety information from his press briefings and denies them the full benefits of the briefings that are afforded to others. Governor Stitt's actions or inactions in this regard are in clear violation of Title II of the ADA and Section 504. It is both legally and ethically imperative that Governor Stitt provide consistent live, in frame, ASL interpretation for ALL of his COVID-19 press briefings.

Accordingly, we are requesting that the Governor and his COVID-19 task force immediately put protocols in place to ensure that all future COVID-19 press briefings have live, in frame, ASL interpretation. We would be happy to engage in further discussions with all parties to assist in reaching an amicable resolution to this problem. However, please be advised that if you have another press conference without an interpreter present, we will have no other recourse but to take further legal action to enforce and seek all remedies available under state and federal law.

Sincerely,



Brian S. Wilkerson
Attorney at Law

BSW/jt