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California  
Constitutional  
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Foundation

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Dear School District Board Members and Superintendents,

Please be advised that this law office represents numerous teachers and school staff in school districts all around the State of California. We have been retained to protect the constitutional rights of our clients regarding the federal and state Covid vaccine mandates, as well as regarding your ongoing attempts to coerce our client into invasive testing. Please understand that our clients are not asking you to defy the vaccine mandates, they are asking you to obey existing federal law.

In general, employee vaccine religious exemption requests must be accommodated, where a reasonable accommodation exists without undue hardship to the employer,

under Title VII of the Civil Rights Act of 1964. Many people hold sincere religious, or moral, beliefs against taking any vaccines, or taking those derived from aborted fetal cell lines, or taking those sold by companies that profit from the sale of vaccines and other products derived from abortion. Title VII, as amended, prohibits two categories of employment practices. It is unlawful for an employer: “(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a). Under federal case law, this applies to those who have no religious beliefs at all—atheists. *Wallace v. Jaffree*, 472 U.S. 38, 52-53 (1985). This also applies to the religious rights of individuals concerning their opposition to invasive forms of testing.

Virtually every employer in America has shown that reasonable accommodations and alternatives to vaccination and invasive testing exist for employees, and these have been required all along since the inception of COVID: self-screening with temperature checks and complying with other safety protocols until the number of COVID infections work their way down to acceptable levels. Logically, if these measures are and were

effective at preventing the spread of COVID, they will continue to be effective. Thus, no employer can claim an undue hardship by allowing employees to do what they have been doing for over a year, in the alternative to a vaccine and/or invasive testing.

This interpretation of Title VII is also supported by press releases from the Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Justice (US DOJ). It is unlawful for employers to force vaccinations and/or testing on staff and employees holding religious convictions against a vaccine and/or testing, and to refuse a reasonable accommodation. This applies to the United States and California state governments, and to all of its branches, as well as local government entities, including school districts, despite the unconstitutional and illegal mandates that Federal, California, and local governments have issued.

In interpreting the Americans With Disabilities Act (“ADA”), the EEOC has opined that it is improper to “ask only one employee—as opposed to asking all employees— questions designed to determine if [he/she] has COVID-19, or require that this employee alone have [his/her] temperature taken or undergo other screening or testing. “If an employer wishes to ask only a particular employee to answer such questions, or to have [his/her] temperature taken or undergo other screening or testing, the ADA requires the employer to have a reasonable belief based on objective evidence that this person might have the disease.” The EEOC has also stated that an employer may not

“ask an employee who is physically coming into the workplace whether they have family members who have COVID-19 or symptoms associated with COVID-19,” as such is a violation of the Genetic Information Nondiscrimination Act (GINA). The Occupational Safety and Health Administration (OSHA) has also recognized that there is “not evidence that COVID-19 vaccines prevent transmission of the virus from person-to-person,” and reiterated that employers should not improperly distinguish between employees.

Finally, questioning employees (much less taking adverse employment action against them) on the basis of church membership or church attendance potentially violates not only the ADA, but also Title VII, which prohibits discrimination based on religious worship or religious practices engaged in by the employee outside the workplace. You cannot scrutinize or question an employee's religious beliefs, as to do so would violate federal law. Once an employee has requested a religious exemption to the vaccine mandate, and/or invasive testing, it must be honored.

In conclusion, there are strong protections under federal and state laws for persons who wish to decline the current EUA-authorized COVID vaccines, as well as any invasive testing procedures—it should be noted that media articles recently have portrayed one of the currently used Covid vaccines as having been approved by the FDA, however, as the CDC has confirmed, this is NOT true, as the vaccine approved by

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the FDA is not currently available in the United States. Neither government nor private employers may force anyone to receive any of the COVID injections, nor any invasive testing. Failure to comply with these protections could result in significant liability for the offending government individuals responsible.

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