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TO: The North Carolina Legislature

Re: S.B. 346, Enact Stricter Immunization Requirements<sup>1</sup>

Dear Legislators:

I am a nationally recognized legal expert on vaccine exemption and waiver law.<sup>2</sup> For the reasons cited below, I am respectfully requesting that you withdraw or oppose S.B. 346, and instead introduce a personal belief exemption bill giving North Carolinians the right to make informed vaccine choices.

First, claims that parents are abusing NC's religious exemption, § 130A-157, because few religions oppose immunizations, misrepresent the law. Federal courts have upheld vaccine religious exemptions whether or not the exemption applicant is a member of an organized religion, and regardless of what religion the applicant belongs to if they do belong to one. In fact, the Supreme Court has held that the First Amendment protects religious beliefs that do not include a belief in 'God' in the western theological sense of the word. The beliefs need only be "religious in nature" and "sincerely held."<sup>3</sup>

Next, claims that North Carolina's "herd immunity" is threatened by religious exemptions are contradicted by the science. The majority of residents in North Carolina and across the U.S. are adults who last received vaccines as children; their vaccine protection, which is temporary, wore off decades ago. Thus, the majority of the population consists of adults with no immunity to the childhood infectious diseases.<sup>4</sup> If lack of vaccine immunity led to disease outbreaks, we'd be having massive outbreaks regularly. In fact, peer-reviewed medical studies have been documenting outbreaks in highly and even fully vaccinated populations for many decades. Furthermore, since vaccines work only 85 – 95% of the time and the medial exemption rate nationally is 1.8%, there are many times more non-immune *vaccinated* children than exemption children. Exempt children do not pose a problem.

The U.S. Constitution may not require states to offer a religious exemption, but North Carolina's Constitution may:

All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority

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<sup>1</sup> Senate Bill 346, <http://www.ncleg.net/gascripts/BillLookup/BillLookup.pl?Session=2015&BillID=sb+346&submitButton=Go>

<sup>2</sup> [www.vaccinerights.com](http://www.vaccinerights.com)

<sup>3</sup> See, e.g., *Sherr and Levy vs. Northport East-Northport Union Free School District*, 672 F. Supp. 81, (E.D.N.Y., 1987), *Mason v. General Brown Cent. School Dist.*, 851 F.2d 47 (2nd Cir. 1988), *Lewis v. Sobel*, 710 F. Supp. 506, 512 (S.D.N.Y. 1989), and *Farina v. The Board of Education*, 116 F. Supp.2d 503 (S.D.N.Y. 2000), which cases cite *United States v. Seeger*, 380 U.S. 163, 85 S.Ct. 850 and other U.S. Supreme Court cases.

<sup>4</sup> List of studies and other information: [www.vaccinerights.com/herdimmunity.html](http://www.vaccinerights.com/herdimmunity.html)

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shall, in any case whatever, control or interfere with the rights of conscience.

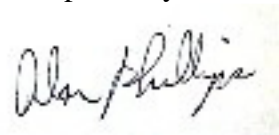
(N.C. Const. art. I, § 13. Religious liberty). Removal of the religious exemption would violate this NC's sacred tradition of religious freedom and take us down a slippery slope. What freedom is next for the chopping block? We must keep North Carolina's vaccine religious exemption firmly in place.

In fact, we must go further and give parents and other adults the right to make informed vaccine choices by providing a personal belief exemption right, which over ½ of other parents in the U.S. already have. S.B. 346 and similar bills around the U.S. were inspired by misinformation about a California measles outbreak. According to the CDC, no one in the U.S. has died from measles in the past 10 years, but the federal Vaccine Adverse Event Reporting System (VAERS) has received reports of 109 deaths from the MMR (measles, mumps, rubella) vaccine.<sup>5</sup> These deaths are not simply a necessary price for a disease-free society, because childhood infectious disease deaths had already declined 90-95% *before* vaccines were introduced in the first place. Currently, the National Vaccine Injury Compensation Program pays out more than \$220 million/year (5 year ave) for vaccine injuries and deaths. Since vaccine deaths far exceed disease deaths, and since there are more than 5 times more non-immune *vaccinated* children than exempt children, if there is a problem with childhood infectious disease in North Carolina, it is that the vaccine manufacturers—who have no liability for the harm caused by their products—are not held to a strict enough standard for the safety and effectiveness of their vaccines.

Finally, S.B. 346 defers to the ACIP. This centralization of power would give unelected federal authorities control over local matters. The ACIP is made up of members from the vaccine industry, whose conflicts of interest are routinely waived so that they can make self-serving decisions about vaccines. There are literally hundreds of new vaccines in development that we would have no say over if this provision is passed. To have and maintain integrity with vaccine decisions, those decisions must be made locally.

For the above reasons and further referenced reasons below, we must keep North Carolina's religious exemption, and go further to add a personal belief exemption that allows parents and other adults to make informed vaccine decisions. This will provide the necessary "check and balance" against the overreaching influence of pharmaceutical marketing on state health policy and law.

Respectfully,



Alan G. Phillips  
NC State Bar No. 30436

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<sup>5</sup> NVIC MedAlerts Home, Search the VAERS Database, <http://www.medalerts.org/vaersdb/index.php>

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### Vaccine Fact Summary

1. In 2011, the U.S. Supreme Court ruled that vaccines are “unavoidably unsafe.” *Bruesewitz v. Wyeth LLC*, 131 S. Ct. 1068, 179 L.Ed.2d 1 (2011).<sup>1</sup>
2. National Vaccine Injury Compensation Program (NVICP) vaccine injury and death payouts<sup>2</sup>:
  - a. Total to date (1989-2015): \$ 3.1 Billion
  - b. Average annual payout 2005-2009: \$ 75,630,051 per year
  - c. Average annual payout 2010-2014: \$221,822,386 per year
  - d. Cases pending: 1,943
3. There is vast underreporting of vaccine adverse events. FDA: As few as 1% of serious adverse reactions are reported.<sup>3</sup> CDC: Only about 10% are reported.<sup>4</sup> Congress: Has heard testimony that medical students are told not to report suspected adverse events,<sup>5</sup> despite federal law requiring doctors to report suspected adverse events.<sup>6</sup> National Vaccine Information Center (NVIC) survey: 1 out of 40 doctor's offices (2.5%) in New York report a death or injury following vaccination.<sup>7</sup> Association of American Physicians and Surgeons (AAPS): Only 10% of serious vaccine adverse events are reported.<sup>8</sup>
4. The Federal Court of Claims lists about 140 attorneys that accept vaccine injury and death cases.<sup>9</sup> This number has been steadily increasing in recent years.
5. The National Childhood Vaccine Injury Act of 1986 (NCVIA) shields vaccine manufacturers from liability for the death and disability caused by their vaccines. There is no financial incentive for manufacturers to produce safer vaccines.<sup>10</sup>
6. 90-95% of 1900's infectious disease decline preceded the vaccines.<sup>11</sup> Absence of vaccination will not bring back infectious disease rates of pre-vaccine days.
7. According to the CDC:
  - a. Vaccines are 85 – 95% effective (5 - 15% of children do not develop immunity from their vaccines), and most outbreaks start in vaccinated children.<sup>12</sup>
  - b. The median vaccine exemption rate in the U.S. is 1.8%.<sup>13</sup> There are more than 5+ times more non-immune \*vaccinated\* children than exempt children.
  - c. Exempt children can get natural immunity, without even developing symptoms.<sup>14</sup> You can't tell a child's immune status based on their immunization status.
8. The American Medical Association Code of Medical Ethics recommends “medical, religious, or philosophic” exemptions to immunizations for medical doctors.<sup>15</sup>
9. The pharmaceutical industry is the biggest defrauder of the federal government under the False Claims Act.<sup>16</sup> In the last 5 years, \$19.2 billion were returned from attempts to defraud federal health programs, more than double that of the previous 5 years (as of February 2014).<sup>17</sup>
10. In 8 years (2004-2012), there were twenty pharmaceutical company settlements in the \$345 million to \$3 billion range.<sup>18</sup> Criminal fines in the \$100's of millions are common, and have been as high as \$1 billion (Pfizer 2009, GlaxoSmithKline 2012). This is routine business practice.
11. Merck, manufacturer of the mumps vaccine, is going to trial in two separate lawsuits for allegedly falsifying the efficacy rate of its mumps vaccine. One suit was filed by former employee-whistleblowers, the other by pharmaceutical competitors.<sup>19</sup>

#### Conclusions:

1. Childhood infectious diseases have extremely low mortality rates in developed nations. Vaccines kill and permanently disable far more children than the diseases, and the mortality decline from the diseases preceded the introduction of vaccines.
2. There is insufficient data available to determine whether or not vaccines provide a net benefit, and no way to determine the risk of vaccine injury or death for any given child or adult.

3. Individual freedom of choice provides a necessary “check and balance” to the pharmaceutical industry’s overreaching, no-liability, marketing influence over vaccine policy and law.

4. Young adults are not required to risk their lives with mandatory military service, but newborn infants are required to risk their lives with a Hep B vaccine, for a disease they are not at risk of acquiring or spreading unless the mother is a carrier. This is unconscionable!

5. Parents for their children, and adults for themselves, must be allowed to make vaccine decisions, in consultation with the healthcare professional of their choice. No one should ever be required, absolutely, to take a product from an industry that routinely engages in large-scale criminal behavior.

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<sup>1</sup> *Bruesewitz v. Wyeth LLC*, <http://www.supremecourt.gov/opinions/10pdf/09-152.pdf>

<sup>2</sup> NVICP Statistics Report, February 2015, <http://www.hrsa.gov/vaccinecompensation/statisticsreport.pdf>

<sup>3</sup> Less than 1%, according to Barbara Fisher, citing former FDA Commissioner David Kessler, 1993, JAMA, Statement of the National Vaccine Information Center (NVIC), Hearing of the House Subcommittee on Criminal Justice, Drug Policy and Human Resources, “Compensating Vaccine Injuries: Are Reforms Needed?” September 28, 1999.

<sup>4</sup> American Association of Physicians and Surgeons, Fact Sheet on Mandatory Vaccines at <http://www.aapsonline.org/>.

<sup>5</sup> Jane Orient, M.D., Director of the American Association of Physicians and Surgeons, “Mandating Vaccines: Government Practicing Medicine Without a License?” 1999.

<sup>6</sup> 42 U.S.C. § 300aa-25.

<sup>7</sup> National Vaccine Information Center (NVIC), 512 Maple Ave. W. #206, Vienna, VA 22180, 703-938-0342; “Investigative Report on the Vaccine Adverse Event Reporting System.”

<sup>8</sup> Statement of the AAPS to the Subcommittee on Criminal Justice, Drug Policy and Human Resources of the Committee on Government Reform U.S. House of Representatives, Re: Hepatitis B Vaccine, Jane Orient, MD, June 14, 1999, <http://www.aapsonline.org/testimony/hepbcom.htm>

<sup>9</sup> <http://www.uscfc.uscourts.gov/sites/default/files/20141208%20Vaccine%20Attorneys.pdf>

<sup>10</sup> See the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. § 300aa-1 *et seq.*, and *Bruesewitz v. Wyeth, LLC*, *supra*.

<sup>11</sup> See, e.g., graphs here: <http://www.theoneclickgroup.co.uk/documents/vaccines/Immunization%20Graphs%20PPT%20-%20RO%202009.pdf>, <https://childhealthsafety.wordpress.com/graphs/>

<sup>12</sup> Centers for Disease Control and Prevention, Vaccines and Immunizations, Misconception #2. The majority of people who get disease have been vaccinated. The original link, <http://www.cdc.gov/vaccines/vac-gen/6mishome.htm>, is now directed to a new CDC page that does not state these facts (but does not state contrary facts). The original CDC page can be viewed here: <http://web.archive.org/web/20150120055820/http://www.cdc.gov/vaccines/vac-gen/6mishome.htm>

<sup>13</sup> Vaccination Coverage Among Children in Kindergarten – United States 2012-2013 School Year, Morbidity and Mortality Weekly Report (MMWR), CDC, [http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6230a3.htm?s\\_cid=mm6230a3\\_eThe](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6230a3.htm?s_cid=mm6230a3_eThe)

<sup>14</sup> Centers for Disease Control and Prevention, Vaccines and Immunizations, Glossary, “Asymptomatic infection: The presence of an infection without symptoms. Also known as inapparent or subclinical infection.” <http://www.cdc.gov/vaccines/about/terms/glossary.htm>

<sup>15</sup> American Medical Association, Opinion 9.133 Routine Universal Immunization of Physicians, <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion9133.page>

<sup>16</sup> “Public Citizen Study: Pharmaceutical Industry Is Biggest Defrauder of the Federal Government Under the False Claims Act,” Dec. 20, 2010, <http://www.pharmpro.com/news/2010/12/public-citizen-study-pharmaceutical-industry-biggest-defrauder-federal-government-under-false-claims-act>

<sup>17</sup> False Claims Act Whistleblowing Blog, February 2014 archive, <http://www.fraudwhistleblowersblog.com/2014/02/>

<sup>18</sup> List of largest pharmaceutical settlements (2004 – 2012), Wikipedia, [http://en.wikipedia.org/wiki/List\\_of\\_largest\\_pharmaceutical\\_settlements](http://en.wikipedia.org/wiki/List_of_largest_pharmaceutical_settlements)

<sup>19</sup> Lawsuits claiming Merck lied about mumps vaccine efficacy headed to trial, Fierce Vaccines, September 9, 2014, <http://www.fiercevaccines.com/story/lawsuits-claiming-merck-lied-about-mumps-vaccine-efficacy-headed-trial/2014-09-09>