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TO: South Carolina General Assembly
Department of Health and Environmental Control

Re: Constitutionality of Current Vaccine Religious Exemption Law and Procedure

Honorable Senators, Representatives and Public Health Officials:

§ 44-29-180 (D) allows school pupils and daycare center children to attend school or daycare without being immunized if they present a valid South Carolina Certificate of Religious Exemption. However, South Carolina Code of Regulations § 61-8 II.A.2 requires parents to be “members of a recognized religious denomination in which the tenets and practices of the religious denomination conflict with immunizations.” This section of the code is problematic, as the requirement of membership in an organized religion has been consistently held to violate the Constitution in courts around the country over the past few decades. This requirement should, therefore, be removed, and the statute and/or regulation amended accordingly, to bring South Carolina’s code into compliance with Constitutional boundaries, and to protect South Carolina citizens’ Constitutional rights.

Federal courts have held that a vaccine religious exemption law limiting the exemption to a “recognized religious organization . . . violates both the establishment and free exercise clauses of the First Amendment to the United States Constitution,” Sherr and Levy vs. Northport East-Northport Union Free School District, 672 F. Supp. 81, 99 (E.D.N.Y., 1987); that the “beliefs need not be consistent with the dogma of any organized religion, whether or not the plaintiffs belong to any recognized religious organization,” Farina v. The Board of Education, 116 F. Supp.2d 503, 507 (S.D.N.Y. 2000) (citing Sherr, 672 F. Supp. at 91); and more recently, that the state’s religious exemption clause requiring membership in an organized religion with tenets in opposition to the immunization requirements violated the First and Fourteenth Amendments, McCarthy v. Boozman, 212 F.Supp.2d 945 (W.D.Ark. 2002).

State courts have also ruled vaccine religious exemption statutes requiring church membership were unconstitutional. See, e.g., Dalli v. Board of Education, 358 Mass. 753, 267 N.E.2d 219 (1971), and Davis v. State, 294 Md. 370, 451 A.2d 107 (1982).

Therefore, we respectfully request that South Carolina’s statutory and/or regulatory law be amended to remove the requirement of membership in an organized religion for the exercise of a vaccine religious exemption.

Thank you for your kind and prompt attention to the above. If I may be of any further assistance, please do not hesitate to ask.

Sincerely Yours,

A handwritten signature in cursive script that reads "Alan Phillips". The signature is written in dark ink on a light-colored, slightly textured background.

Alan Phillips, Esq.
NC State Bar No. 30436