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To whom it may concern:

As an attorney specializing in litigation on behalf of people injured as a consequence of pharmaceutical products, I was recently asked to take a look at the new mandatory vaccine law for school-aged children in California, Senate Bill 277. In reviewing the language of the bill, I became concerned about its vulnerability to litigation and ultimately to potentially successful constitutional challenges. The Constitution of the State of California affords every child the right to a free public education. There is no legal precedent allowing the legislature to diminish, limit, or deny a fundamental right to such an important segment of the population. Thus, a constitutional challenge is inevitable and carries with it, in my view, some real likelihood of being successful. But even in the interim period, before such a determination by the courts is entertained, the financial and legal implications for school districts attempting to implement the new law are also potentially serious for a couple of key reasons.

Prior to passing the law, it appears that the legislature eliminated language from the bill assigning the costs of implementation to a State entity. As a result, the costs of implementation fall squarely on the shoulders of each individual school district in the State. Accordingly, each school district in California that implements SB 277 opens itself up for litigation having now been unwittingly placed in the role of legal gatekeeper for the law's implementation. Unavoidably, they will find themselves as the entity named in lawsuits and will thereby be financially responsible for any associated legal costs, as well as potential damage awards. Even in the absence of prospective litigation, each school district will be required to bear the burden of decreased funding in connection with predictably decreased enrollment. For example, in some counties, children previously attending school with a vaccine exemption made up 21% of the school population. With the implementation of the new law, those children who persist in their effort to avoid exposure to vaccination will no longer be permitted to attend school, causing a potentially significant decrease in school enrollment in those areas.

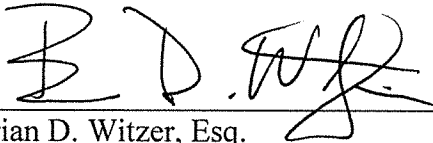
School districts will potentially also incur the costs of litigation initiated to address ambiguous language contained in the bill. Such will likely be the case with respect to the bill's impact on students with exceptional needs. While the Individuals with Disabilities Education Act (IDEA) clearly affords every student with an IEP the unequivocal right to a free and appropriate public education, the new vaccine law is not so clear. Specifically, it is unclear whether the legislature intended for the new law to apply to students with IEPs or not, and if so to what extent. School districts are left with the difficult task of determining if, and to what extent, the new law should apply to the students with IEPs within their district. This invites inconsistent application of the law and will invite litigation from affected students. While there is no question that students with IEPs are entitled under the new law to receive their necessary accommodation services from their school district, the students' continued classroom placements are uncertain under SB 277. Already, some school districts have taken a position that classroom placement for

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non-complying students with IEPs will not be provided, and have taken it a step further, threatening civil action to obtain court orders requiring vaccine compliance prior to allowing classroom placement.

California school districts are already experiencing budgetary constraints and the last thing they need is to see any uptick in legal suits for the school districts to bear. This atmosphere of uncertainty makes costly litigation unavoidable as both parents and school districts seek out answers not explicit in the text of the law. For these reasons, I would encourage school districts to support emerging efforts to delay implementation of SB 277. Gaining clarity on these issues would save school districts time and money, and would also save the valuable relationships between districts and parents from the inevitable damage likely to be incurred by being subjected to the adversarial process.

A handwritten signature in black ink, appearing to read 'B D Witzer', written over a horizontal line.

Brian D. Witzer, Esq.

Attorney at law practicing over 30 years in the Los Angeles area