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18 of J.D., as guardian ad litem

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

20 **COUNTY OF SAN DIEGO**

21 LET THEM CHOOSE, an initiative of LET  
22 THEM BREATHE, a California nonprofit public  
23 benefit corporation;

24 Plaintiffs,

25 v.

26 SAN DIEGO UNIFIED SCHOOL DISTRICT;  
27 and DOES 1 through 50, inclusive,

28 Defendants.

29 S.V., individually, and on behalf of J.D., as  
30 guardian ad litem,

31 Plaintiffs,

32 v.

33 SAN DIEGO UNIFIED SCHOOL DISTRICT;  
34 and DOES 1 through 50, inclusive,

35 Defendants.

**ELECTRONICALLY FILED**  
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County of San Diego

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Case No.: LEAD CASE 37-2021-00043172-CU-  
WM-CTL/ CONSOLIDATED WITH 37-2021-  
00049949-CU-MC-CTL

**PLAINTIFF'S REPLY TO DEFENDANT'S  
OPPOSITION TO MOTION FOR  
JUDGMENT ON PETITION FOR WRIT OF  
MANDATE**

**Hon. John S. Meyer, in Department C-64**  
**Date: December 20, 2021**  
**Time: 9:00 a.m.**

Complaint filed: November 24, 2021  
Trial Date: Not yet set

1 **MEMORANDUM OF POINTS AND AUTHORTIES FURTHER SUPPORT**

2 **INTRODUCTION**

3 In the opening brief, Plaintiff S.V. established that the SD Mandate<sup>1</sup> is preempted because it both  
4 conflicts with state law and impermissibly enters into a field entirely occupied by state law. In  
5 opposition, Defendant SDUSD argues that because state law grants School Districts significant  
6 discretion, it should be permitted to implement the SD Mandate regardless of what state law says  
7 regarding mandatory vaccinations. Unfortunately for SDUSD, that is not how preemption works.

8 As shown below, SDUSD is wrong to claim that there is a heightened standard for preemption  
9 of local School District actions, in fact, nothing in the caselaw or statutes cited by SDUSD even hints at  
10 such a heightened standard. Furthermore, SDUSD makes a short reference to *EC* § 49405 but misses  
11 the fact that this section is dispositive of the issues in this case because it states that “no rule or regulation  
12 on the subject of vaccination shall be adopted by school or local health authorities.” The SD Mandate  
13 is just such a regulation and as such it is preempted by *EC* § 49405.

14 As to SDUSD’s other arguments, the language of *H&S* § 120335, the structure of the state  
15 vaccination statutes, and the express policy choices made by the California State Legislature  
16 (“**Legislature**”) in enacting those statues are all consistent with *EC* § 49405 in that they show that the  
17 Legislature has prohibited School Districts from adding required vaccinations. SDUSD tries to get  
18 around these facts by claiming the SD Mandate does not directly conflict with *H&S* § 120335, but those  
19 arguments are nothing more than attempts to exalt form over substance. SDUSD either ignores the  
20 remainder of Plaintiff S.V.’s arguments in favor of preemption (thereby waiving those arguments) or its  
21 remaining arguments are simply red herrings intended to distract the court from S.V.’s actual assertions.

22 **ARGUMENT**

23 **I. THE SD MANDATE STILL IS PREEMPTED BY STATE LAW**

24 **A. SDUSD Fails to Establish a Heightened Standard for Preemption**

25 SDUSD spent the first portion of its argument discussing various grants of authority to local  
26 School Districts under California law. (Defendant’s Opposition filed December 13, 2021

27 \_\_\_\_\_  
28 <sup>1</sup> Terms capitalized herein have the meanings given to them in Plaintiff’s opening brief.

1 (“**Opposition**”) pp. 10-14). However, what is glaring from this recitation of statutes is that SDUSD  
2 never actually identifies any law or regulation that explicitly authorizes a School District to require  
3 vaccinations in addition to those required by *H&S* § 120335 in order to admit a student to in-person  
4 school in California. Instead, SDUSD merely falls back on the generic discretion granted to School  
5 Districts pursuant to *EC* §§ 35160 and 35160.1 (the “**Generic Discretion Statutes**”), which it argues  
6 should be permitted to upend a comprehensive and carefully crafted statutory vaccination scheme. The  
7 problem is that these Generic Discretion Statutes do not give SDUSD carte blanche to do anything it  
8 wishes. To the contrary, as one of the primary cases cited by SDUSD states, “the flexibility provided  
9 by section 35160 is not without limits. School districts are authorized only to ‘initiate and carry on any  
10 program, activity, or ... otherwise act in any manner **which is not in conflict with [or inconsistent  
11 with, or preempted by,] any law[.]**” *Hartzell v. Connell*, 35 Cal. 3d 899, 915 (1984) (quoting *EC* §  
12 35160 with emphasis in original).

13 Perhaps cognizant of this limitation, SDUSD further attempts to argue that Plaintiff made “the  
14 significant error” of claiming that the standards for preemption of a regular local ordinance, and the  
15 standard for preemption of a school district decision, are somehow different, and that the latter is harder  
16 to establish. (Opposition p. 12). However, again SDUSD never cites a case that actually holds this to  
17 be true. Neither of the two cases SDUSD cites, *Costa Mesa City Employees’ Assn. v. City of Costa  
18 Mesa*, 209 Cal. App. 4<sup>th</sup> 298, 314 n.7 (2012) and *Choice-in-Educ. League v. Los Angeles Unified School  
19 Dist.*, 17 Cal. App. 4<sup>th</sup> 415, 429 (1993) addresses the preemption standard. Those cases merely  
20 acknowledge that the Generic Discretion Statutes invest School Districts with more discretion to act  
21 than a typical local entity, but never touch on the question of whether that discretion effects how courts  
22 address preemption of local School District’s actions. Same for SDUSD’s references to its role as *in  
23 loco parentis*, none of the cases cited on this point have anything to do with preemption or the  
24 preemption standards.

25 Instead, the evidence is that there should be no enhanced standard for preemption. As the  
26 California Supreme Court noted in *Hartzell*, *EC* § 35160 specifically limits the discretion afforded  
27 School Districts to acting in a “manner which is not in conflict with or inconsistent with, or preempted  
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1 by, any law[.]” At no time does that statute, or any other statute, assert that finding conflict or  
2 preemption of a School District’s action requires anything more than what is required for finding  
3 preemption of any other local ordinance. Furthermore, numerous California court opinions show that  
4 where School Districts ground their actions in the Generic Discretion Statutes in the face of more  
5 specific state statutes, it is the specific state statutes that always control and the local ordinance that is  
6 preempted, without resorting to any higher standard for establishing the preemption. *See, e.g.,*  
7 *California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.*, 14 Cal. 4th 627, 649 (1997)  
8 (accepting that the *EC* § 35160 “delegated broad discretion,” but “[t]hese broad grants of power,  
9 however, do not control over the more specific section[s]” of state law); *Hartzell*, 35 Cal. 3d at 915  
10 (holding that where a regulation prohibited fees, a School District’s fee program was preempted);  
11 *California School Employees Assn. v. Del Norte County Unified Sch. Dist.*, 2 Cal. App. 4th 1396, 1404  
12 (1992) (refusing to accept that *EC* § 35160 permitted a School District to “authorize a contract which is  
13 prohibited by other sections of the Education Code”); *see also Associated Gen. Contractors of*  
14 *California v. San Francisco Unified School Dist.*, 616 F.2d 1381, 1385 (9th Cir 1980) (holding that  
15 despite *EC* § 35160, where the Education Code required school districts to hire the vendor who was the  
16 “lowest responsible bidder” the district could not then add an affirmative action requirement).

17 **B. A Conflict Exists Between the SD Mandate and H&S § 120335**

18 After trying, but failing, to establish a higher standard for preemption, SDUSD then tries to argue  
19 that because *H&S* § 120335(b) does not explicitly prohibit a School District from requiring additional  
20 vaccinations, there is no conflict between the SD Mandate and Section 120335(b). (Opposition pp. 17-  
21 18). In making this argument, SDUSD applies a hyper technical reading of the statute in hopes that the  
22 Court will lose the forest for the trees. The problem is that the language of the statutes, the rules of  
23 statutory construction, the legislative history, and the regulations all show that the Legislature never  
24 intended for School Districts to add to the list of required vaccinations.

25 **1. The California Legislature Explicitly Prohibits School Districts from**  
26 **Adopting Rules or Regulations “on the Subject of Vaccination”**

27 In its opposition, SDUSD makes a passing reference to *EC* § 49405, but it appears to miss the  
28 significance of that section, which states in its totality:

1 The control of smallpox is under the direction of the State Department of  
2 Health Services, and **no rule or regulation on the subject of vaccination**  
3 **shall be adopted by school or local health authorities.**

4 (emphasis added). This statute is dispositive. The second clause prohibits regulations “on the subject  
5 of vaccination” generally, it is not limited to just smallpox vaccinations. It is no wonder that a search  
6 of the EC for the terms “vaccination” or “vaccine” or “immunization” returns 33 separate sections of  
7 the code, because of *EC* § 49405 the Legislature must explicitly authorize a School District to do  
8 anything with regard to vaccinations. Even though the Legislature enacted *EC* § 49405 in 1921, it  
9 remains good law and it is referenced in *H&S* §131052, a section enacted in 2007 as part of the  
10 reorganization of the State Department of Health Services into the modern CDPH and most recently  
11 updated in a bill passed just this year. 2006 Cal. Legis. Serv. Ch. 241 (S.B. 162) (enacting §131052);  
12 2021 Cal. Legis. Serv. Ch. 666 (A.B. 486). Thus, for the last 100 years, the Legislature has explicitly  
13 prohibited School Districts from taking independent action with regard to the subject of vaccination.  
14 The SD Mandate is a “rule or regulation on the subject of vaccination[,]” and as such, it is preempted  
15 by *EC* § 49405.

16 **2. By Allowing the CDPH to Add Vaccinations the Legislature Implicitly**  
17 **Prohibited Any Other Body from Adding Vaccinations**

18 Ignoring the problems created for it by *EC* § 49405, SDUSD tries to claim that *H&S* § 120335(b)  
19 does not make the CDPH’s power to add statewide vaccination requirements “exclusive, or that [an]  
20 individual board ... cannot impose local requirements[.]” (Opposition p. 19). Obviously, *EC* § 49405  
21 makes SDUSD’s argument moot. Nevertheless, SDUSD’s position encounters other obstacles as well.  
22 SDUSD never disputes that *H&S* § 120335 permits CDPH only to add vaccination requirements. *H&S*  
23 § 120335(b)(11). Nor does SDUSD show any reason why the “familiar rule of construction, *expressio*  
24 *unius est exclusio alterius*,” should not be applied to conclude that because the Legislature created an  
25 explicit exception for CDPH to add vaccination “by statute, other exceptions are not to be implied or  
26 presumed.” *Mut. Life Ins. Co. v. City of Los Angeles*, 50 Cal. 3d 402, 410 (1990). Nor does the discretion  
27 granted in *EC* § 35160 change the application of this rule concerning statutes regarding School Districts.  
28 *See Grupe Dev. Co. v. Superior Ct.*, 4 Cal. 4th 911, 921 (1993) (“From the fact that the Legislature

1 specified one class of special [school] taxes that is not subject to the limitations of section 65995, ... we  
2 may reasonably infer that it intended that all other classes of special taxes fall within the  
3 statute. *Expressio unius est exclusio alterius.*"); *California Teachers Assn. v. Governing Bd.*, 195 Cal.  
4 App. 3d 285, 294 (1987) (applying the *expressio unius* rule to a school's actions).

5 As discussed in Plaintiff S.V.'s opening brief, the California Senate's Judiciary Committee  
6 Analysis makes clear why the Legislature only granted the CDPH a limited ability to add required  
7 vaccinations. The Legislature wanted to make certain that the statute was narrowly tailored to a  
8 compelling state interest so that it would pass strict scrutiny analysis. (Tucker Declaration ("**Tucker**  
9 **Dec.**") ex. A, p. 18). It concluded that permitting the CDPH to add any vaccination requirement it  
10 wanted "has the potential to dramatically expand the scope of the bill and disrupts the careful balancing  
11 of the various rights involved." (*Id.*) The Judiciary Committee made this statement in connection with  
12 explaining why it proposed an amendment to the original bill (which was eventually passed) to require  
13 a personal belief exemption ("PBE") for any new vaccinations added by the CDPH.<sup>2</sup> Nevertheless, if  
14 the Legislature thought that permitting the CDPH to unrestrictedly add vaccinations without affording  
15 a PBE would "dramatically expand the scope of the bill and disrupts the careful balancing of the various  
16 rights" then it is nonsensical to claim that the Legislature intended through its silence in *H&S*  
17 § 120335(b) to give that same power to add any vaccination it wished – without the PBE restriction as  
18 SDUSD now claims – to over 1000 independent School Districts. (*Id.*) Clearly giving such authority  
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21 <sup>2</sup> SDUSD tries to infuse the SD Mandate with validity by noting that State Senator Pan, one of the  
22 sponsors of SB 277 that amended *H&S* § 120335, attended a meeting where the SDUSD discussed the  
23 SD Mandate and appeared to verbally support its adoption. Senator Pan, in endorsing the SD Mandate  
24 apparently chose to ignore *EC* § 49405, making his endorsement questionable at best. Moreover,  
25 Senator Pan is merely a single Senator, who's opinions do not speak for the entire Legislature, or even  
26 for any of the relevant committees cited by Plaintiff S.V. In fact, as noted by the Senate Judiciary  
27 Committee Analysis, the Committee had to propose the amendment to permit a PBE for vaccinations  
28 added by the CDPH because the original bill (as authored by Senator Pan) did not adequately protect  
the rights of individuals and was not sufficiently narrowly tailored. The fact that the Legislature thought  
this amendment to Senator Pan's bill was necessary shows that his opinions regarding, *inter alia*, the  
proper balancing of state and individual rights concerning vaccines did not reflect the views of the  
majority of the Legislature. As such, his verbal endorsement of the SD Mandate is of little moment and  
should be given no weight by the Court. If anything, it supports S.V.'s argument regarding preemption.

1 to those School Districts would have had at least the same – if not a greater – disruptive effect on “the  
2 careful balancing of the various rights” that the California Legislature was concerned about. (*Id.*)

3 This history establishes that the Legislature did not view the required vaccinations listed in *H&S*  
4 § 120335(b) as just a floor that any locality could add vaccinations to, but as a ceiling that prohibited  
5 anyone else other than the CDPH – including any local School District – from adding vaccinations. *See*  
6 *Fleice v. Chualar Union Elementary School Dist.*, 206 Cal. App. 3d 886, 890 (1988) (holding that where  
7 a statute permitted awarding tenure to a teacher after two years, but did not prohibit awarding tenure  
8 sooner, the fact that the Legislature made the policy decision to require two years meant that awarding  
9 it sooner conflicted with that policy). This is the only interpretation that can ensure that the competing  
10 “various rights” of both individuals and the state are protected. Thus, the legislative history is consistent  
11 with *EC* § 49405, supports the argument for applying the *expressio unius* rule, and establishes that  
12 SDUSD is wrong to claim that it has the authority to add vaccinations merely because *H&S* § 120335(b)  
13 does not explicitly prohibit it from taking that authority.

14 **3. By Referencing School Districts, but Not Permitting them to Add**  
15 **Vaccinations, the Legislature Chose to Not Grant Them that Authority**

16 SDUSD also cannot claim that *H&S* § 120335 is silent with regard to the role of School Districts.  
17 That Section clearly discuss the role School Districts play in this process, and it is only ministerial. *E.g.*,  
18 *H&S* § 120335(a) (defining “governing authority” as local School Districts); *Id.* § 120335(b) (requiring  
19 School Districts to exclude students who are not “fully immunized” and defining the 10 vaccinations  
20 required to be “fully immunized”); *Id.* § 120335(c),(d) (requiring School Districts to prohibit attendance  
21 if a student is not immunized against hepatitis B). Thus, the statute establishes that the Legislature *did*  
22 consider the School Districts, and could have granted them the authority to add vaccinations, but  
23 consistent with *EC* § 49405 it chose a limited, ministerial role for School Districts that did not include  
24 local decision making, reserving the right to add vaccinations to the CDPH.

25 **4. The Judiciary Committee’s Comments Regarding Statewide Standards was**  
26 **Not Limited to Just Removal of the PBE**

27 SDUSD is also wrong to claim that, when the Judiciary Committee’s Analysis rejected a  
28 patchwork approach in favor of a statewide vaccination approach, it was merely discussing the removal

1 of the PBE. The Analysis stated, in relevant part: “Some opponents have raised questions as to whether  
2 the bill is actually ‘narrowly tailored’ if the issue of public health could be addressed by **mandating**  
3 **vaccines on a community by community or school district or school district** basis.” (Tucker Dec.  
4 ex. A, p. 18). (emphasis added).) It then rejects that approach and provides the reasons given by the  
5 bill’s authors as to why “a statewide approach is the correct approach[.]” (*Id.*) When the opponents  
6 asked the Legislature to permit “mandating vaccines on a ... school district or school district basis” they  
7 were talking about more than just the PBE, and when the authors responded, they too addressed more  
8 than just the PBE, but rather how a “statewide standard, allows for a consistent policy” that would allow  
9 for “easy implement[ation]” and application of “best practices.” (*Id.*)

#### 10 5. The SD Mandate is Inconsistent with CDPH Policy and Other Statutes

11 To support its claim that the SD Mandate is not preempted, SDUSD notes that the CDPH’s  
12 “Guidance for K-12 Schools in California, 2021-22 School Year” (the “**CDPH Guidance**”) states, *inter*  
13 *alia*, that “the surest path to safe and full in-person instruction ... is a strong emphasis on ... [COVID-  
14 19] vaccination for all eligible individuals.” (Opposition p. 19). Setting aside whether this policy is  
15 true given that the vaccines do not prevent transmission of COVID-19,<sup>3</sup> the CHPH Guidance does not  
16 show that the SD Mandate is consistent with the CDPH’s policy. The CDPH has **not** mandated Covid-  
17 19 vaccinations. It could, and in fact has had two years to place regulations that could have required  
18 this vaccine, but as the CDPH Guidance shows, it has chosen to not do so yet. Instead, it merely  
19 recommends this vaccine, and SDUSD’s choice to mandate the vaccine is a very different policy  
20 decision.

21 SDUSD also quotes from *EC* § 49403, which requires local School Districts to cooperate with  
22 local health officers to prevent communicable diseases, but in doing so it only permits those School  
23 Districts “to administer an immunizing agent to a pupil **whose parent or guardian has consented in**  
24 **writing** to the administration of the immunizing agent.” (emphasis added). In contrast, the SD Mandate  
25 requires vaccination regardless of whether the parent or guardian consents, at the pain of having a child

26 \_\_\_\_\_  
27 <sup>3</sup> CDC Director stating “what [the COVID-19 vaccines] can’t do anymore is prevent transmission.”  
28 <https://twitter.com/CNNSitRoom/status/1423422301882748929>.



1 excluded from in-person learning, and as such abrogates the explicit policy choice made in the statute  
2 to only allow vaccinations with uncoerced consent. Thus, that Section shows that the SD Mandate is  
3 inconsistent with state policy. Moreover, *EC* § 49403 only concerns whether school employees can  
4 administer vaccines. It goes into considerable detail regarding who can administer the vaccines (§  
5 (b)(1)), under who’s authorization (§ (b)(2)), under what circumstances (§ (d)), and what limited  
6 vaccines can be administered (§ (b)(2)(C)). It does not permit School Districts to require vaccinations.  
7 To the contrary, by providing substantial detail regarding how the School Districts can act concerning  
8 vaccinations, the Legislature again showed that, when it wants to, it will identify exactly what authority  
9 a School District has regarding vaccinations, and in doing so will limit any discretion permitted the  
10 School District in carrying out its instructions.

11 **6. SDUSD Cannot Comply with Both *H&S* § 120335 and the SD Mandate**

12 SDUSD further argues that because *H&S* § 120335 states that School Districts only need to  
13 preclude unconditional admission to students without the vaccinations listed in paragraph (b), that  
14 SDUSD can preclude such students, while at the same time also refusing in-persona admission to  
15 students who are not vaccinated against COVID-19. As a result, SDUSD argues that the SD Mandate  
16 and *H&S* § 120335 do not conflict because the school district can comply with both. Setting aside that  
17 *EC* § 49405 makes this argument irrelevant because SDUSD was not permitted to pass the SD Mandate,  
18 SDUSD’s claim to comply with both statutes is a red herring. In asking the Court to accept this  
19 interpretation, SDUSD is asking the Court to ignore the structure of the statute, the explicit legislative  
20 purpose of the statute, and every other vaccination related statute and regulation. The fallacy of this  
21 argument is obvious from the CDPH’s regulation § 6025, which interprets *H&S* § 120335 as providing  
22 that a school “shall unconditionally admit or allow continued attendance to any pupil ... [who] has  
23 provided documentation of any of the following” immunizations. 17 Cal. Code Regs § 6025(a). This  
24 interpretation is not, as SDUSD would claim inconsistent with the statute, but rather is entirely consistent  
25 with the statute read in context, and not in isolation as SDUSD would have the Court do.

26 Preemption is not a game of gotcha, where the court allows a locality to act so long as it is in  
27 compliance with the most technical reading of a statute. Instead, courts take into account the wording  
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1 of the statute, the purpose behind the statute, the history of the statute, and how the statute fits into the  
2 larger scheme created by the Legislature for the issue. *See, e.g., Fleice*, 206 Cal. App. 3d at 890  
3 (identifying a conflict after examining the statute’s history and the Legislature’s policy). For the  
4 foregoing reasons, S.V. has established that the SD Mandate conflicts with state law and is preempted.

5 **C. SDUSD Fails to Show that the SD Mandate is Not Preempted Because the**  
6 **California Legislature Occupied the Field of Vaccinations for School Admission**

7 In the opening brief, S.V. explains in detail how the Legislature, through a comprehensive  
8 statutory structure and a policy decision to favor statewide standards, chose to occupy the field of  
9 vaccinations required for school admission. (Plaintiff’s Opening Brief filed December 6, 2021  
10 (“**Opening Brief**”), p. 7, 12). SDUSD largely ignores this point, never even trying to refute S.V.’s  
11 arguments concerning the comprehensive legislative structure. At most, SDUSD merely tries to brush  
12 off the argument by noting that School Districts have duties regarding the health and safety of their  
13 students. (Opposition p. 19). However, these arguments fail because they misidentify the relevant field.  
14 Plaintiff is not arguing that the Legislature has preempted the field of student health and safety generally.  
15 Plaintiff is merely asserting that the Legislature has chosen to establish statewide standards for the  
16 vaccinations required for school admission, and in doing so has occupied that field. This is a much  
17 narrower field, and one that Plaintiff has shown is comprehensively occupied by the State, making it an  
18 exclusive matter of state concern.

19 The previously discussed intent by the Legislature to create an easily implementable, consistent  
20 statewide vaccination policy further exposes the flaw in SDUSD’s claim that a School District’s  
21 responsibilities regarding student safety prohibit implied field preemption. SDUSD claims that  
22 immunization cannot be a topic where “the adverse effect of a local ordinance ... outweighs the possible  
23 benefit to the locality.” (Opposition p. 20). However, as shown, the Legislature did determine exactly  
24 that. It found that vaccinations should be exclusively a matter of state concern because having a  
25 patchwork of “school district by school district” vaccination requirements would undermine their goals  
26 of having a consistent, easily implementable policy that treats all students equally. (Tucker Dec. ex. A,  
27 p. 18). As such, the SD Mandate is preempted because it intrudes on a field occupied by the state.  
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**D. SDUSD Entirely Ignores Plaintiff S.V.’s Argument that the State’s Medical Exemption Statutes and Regulations Preempt the SD Mandate**

Plaintiff S.V. described in the opening brief how the SD Mandate only affords students a medical exemption, but showed that in addition to occupying the field of vaccinations required for school admissions generally, the Legislature also occupied the field of vaccine related medical exemptions and how the SD Mandate conflicts with the existing statutes concerning medical exemptions. (Opening Brief p. 16-18). SDUSD entirely ignores this argument, never once even engaging with it, and barely even mentioning the medical exemptions to the SD Mandate.

**II. Forcing Students Into Independent Study Makes the SD Mandate *Ultra Vires***

SDUSD also tries to argue that it is allowed to force students into independent studies if they refuse to be vaccinated. Contrary to SDUSD’s claims, those students are not choosing independent study over in-person study. S.V. certainly is not making that choice for J.D., S.V. wants J.D. to be in in-person schooling. (Declaration of S.V. ¶ 10). As noted in S.V.’s opening brief, *EC* § 51747(g) provides that “independent study is an **optional** educational alternative in which **no pupil may be required to participate.**” (emphasis added). *Cal. Code Regs.*, tit. 5, § 11700 defines this requirement to mean, in relevant part: “a pupil’s ... choice to commence, or to continue in, independent study **must not be coerced...**” *Cal. Code Regs.*, tit. 5, § 11700(d)(2)(A) (emphasis added). Here, the SD Mandate requires students to be placed into independent study if they are not fully vaccinated against COVID-19 by a certain date. Even if that decision to not vaccinate could be somehow seen as a parent choosing independent study for their child, which it cannot, there is no way to say that choice was not “coerced.” SDUSD is also wrong to claim that *H&S* § 120335(f) gives parents a choice between vaccination or independent study. That section merely says that the vaccination requirements do not apply to students enrolled in private school or independent study. *H&S* § 120335(f). It does not state that a parent’s refusal to vaccinate a child means they are choosing independent study. Nor does it waive the requirements that independent study must be optional and not coerced for unvaccinated students; the Legislature could have done so, it did not. Thus, SDUSD’s plan to force all unvaccinated students into independent study is still *ultra vires* and must be found to be invalid.

**CONCLUSION**

Based on the foregoing and Plaintiff’s Opening Brief, the Court should grant Plaintiff’s Motion for Judgment on Writ of Mandate and sign the [Proposed] Order previously submitted jointly by Plaintiff S.V. and Plaintiff Let them Choose.

Dated: December 15, 2021

**SIRI & GLIMSTAD LLP**

By: /s/ Aaron Siri  
Aaron Siri  
Caroline Tucker  
Attorneys for Plaintiff  
S.V., individually, and on behalf of J.D.,  
as guardian ad litem

1 **PROOF OF SERVICE**

2 (CCP §§ 1013(A)(3))

3 I, the undersigned, declare I am over the age of eighteen years and not a party to the  
4 within action. My business address is 700 S. Flower Street, Suite 1000, Los Angeles, CA 90017.

5 On December 15, 2021, I served the following document(s) described as:


6 **PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO MOTION FOR**  
7 **JUDGMENT ON PETITION FOR WRIT OF MANDATE**

8 On the interested parties in this action as follows:

9 \*\*\* SEE ATTACHED SERVICE LIST \*\*\*

10  
11 [X] **BY ELECTRONIC SERVICE VIA ONE LEGAL:** Complying with California Rule of  
12 Court 2.251 and Code of Civil Procedure § 1010.6, I caused a true and correct copy of the  
13 document(s) to be served through One Legal at www.onelegal.com addressed to the parties shown  
14 herein appearing on the above-entitled case. The service transmission was reported as complete  
15 and a copy of One Legal's Receipt/Confirmation Page will be maintained with the original  
16 document in this office

17 I declare under penalty of perjury, under the laws of the State of California, that the  
18 foregoing is true and correct. Executed on December 15, 2021, at Concord, California.

19   
20 Nicky Tenney

3  
4  
5 **Service List**

6 Mark R. Bresee  
7 Atkinson, Andelson, Loya, Ruud & Romo  
8 4275 Executive Square, Suite 700  
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00043172.*