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SENT VIA EMAIL

July 18, 2023

Commonwealth of Massachusetts
Joint Committee on Public Health
JointCommittee.PublicHealth@malegislature.gov

Re: Letter in Opposition to bills H.604, An Act relative to routine childhood immunizations and S.1391, An Act relative to vaccines and preventing future disease outbreaks

Dear Massachusetts Elected Representatives:

We write on behalf of our client, ICAN Legislate, to oppose bills S.1391 and H.604. These bills are extremely problematic and we encourage you to **vote no** on both. These bills seek to remove religious exemptions for vaccinations required for public and private school attendance. By continuing to allow secular medical exemptions, but removing religious exemptions, the State of Massachusetts would be violating its citizens' rights to free exercise of religion under the First Amendment.

We respectfully remind the legislators that a federal court recently ordered the state of Mississippi to provide a process by which parents can seek a religious exemption where the state had a process by which parents could seek a secular exemption. *See Bosarge v Edney*, 2023 U.S. Dist. LEXIS 67439, at *27 (S.D. Miss. Apr. 18, 2023) (finding likely First Amendment violation because "there was a method by which Mississippi officials could consider secular exemptions, particularly medical exemptions," but not religious exemptions) (citing *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021)). This is because under Supreme Court precedent, the proposed statutory scheme of allowing medical exemptions while prohibiting the possibility for religious exemptions is flagrantly unconstitutional under the First Amendment's Free Exercise Clause.

Massachusetts, through bills S.1391 and H.604, is considering whether it can force families with religious convictions to vaccinate their children as a condition of enrolling their children in school, while simultaneously allowing secular families to be exempt from the state's childhood vaccination requirements on medical grounds; this question has been answered by the *Bosarge* Court and is a resounding no.

If this law were to pass, Massachusetts would be making an unconstitutional value judgment that secular (i.e., medical) motivations for opting out of compulsory immunization are permitted, but that religious motivations are not. The law would benefit certain individuals (secular), and deliberately exclude others (non-secular). However, Massachusetts cannot show that an

unvaccinated child with a religious exemption undermines the state's asserted interests any more than an unvaccinated child with a medical exemption. Additionally, even if children were excluded from school due to their religious beliefs (in violation of the First Amendment), these children do not simply vanish. They will continue to exist within the state and participate in activities such as camp, visiting public libraries, taking part in sporting events, and will otherwise live their daily lives within Massachusetts. Exclusion from school is only punitive in nature and serves no other compelling interest.

For all of these reasons, we respectfully request that you honor the First Amendment and not pass a law that will, on its face and as applied, violate Massachusetts citizens' rights to free exercise. If you do, we have been directed to bring litigation as we did in Mississippi. Instead, we urge you to **vote no** on bills S.1391 and H.604.

Regards,

A handwritten signature in blue ink, appearing to be 'AS', is positioned above the typed names.

Aaron Siri, Esq.
Elizabeth A. Brehm, Esq.