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February 11, 2022

The Honorable Scott S. Harris
Clerk of the Court
Supreme Court of the United States
1 First Street, N.E.
Washington, DC 20543

Re: *Doe* v. *San Diego Unified School District*, No. 21A217

Dear Mr. Harris,

I write in response to Respondents' email explaining that a state court of appeal has "authorized the District to proceed with the vaccination requirement." Respondents now announce that they may advance that requirement piecemeal, with the "requirement for in-person instruction" not being implemented prior to August, and the "requirement for non-instructional activities" (including the sports Jill participates in) potentially being implemented after the Board's next meeting on February 22.

This short, entirely voluntary delay does not eliminate Applicants' need for relief. Sixty-three days after filing this motion, Applicant Jill Doe remains unsure whether Respondents' illegal mandate will prevent her participation in extracurricular activities, including the sports she participates in. She likewise has no guarantee of how long the District's at-will delay will last, and no way to know whether she can or should plan to remain at her high school for her upcoming senior year.

The District's discretionary delay is even more half-hearted than the transparent last-minute retreats undertaken by New York, California, and other governments in the COVID worship restriction cases. See *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 141 S. Ct. 63, 68–69 (2020) ("there is no reason why [applicants] should bear the risk of suffering further irreparable harm in the event of another reclassification"); *Tandon* v. *Newsom*, 141 S. Ct. 1294, 1297 (2021) ("officials with a track record of 'moving the goalposts' retain authority to reinstate those heightened restrictions at any time") (quoting *South Bay United Pentecostal Church* v. *Newsom*, 141 S. Ct. 716, 718 (2021) (statement of Gorsuch, J.).

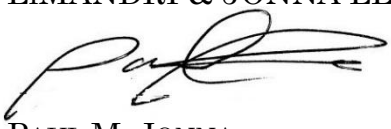
In those cases, at least New York and California claimed their restrictions had already been lifted, though they could be reinstated. Here, however, the sword of Damocles still hangs over Jill's head: The District promises only that the vaccine requirement will be *delayed*, at most a short while. The District should not be permitted to manipulate this Court's docket and leave Ms. Doe, her parents, and her fellow students in limbo by delaying, but not ceasing, their illegal conduct. The Court should therefore grant Applicants' emergency application.

But whether the Court deems it advisable to grant emergency relief or not, it should in either case grant Applicants' alternative request to treat the application as a petition for certiorari, and grant that petition. The District's voluntary delay of its mandate creates an opportunity for this Court to address a pressing issue of national importance that has already deeply divided the courts of appeals. While the District may prefer to avoid resolution of the important religious liberty questions raised by its mandate, this Court, state and local governments, and students and parents across the country would be better served by addressing these issues on the merits docket now, while there will be ample time after a ruling for officials to implement any guidance from this Court. Granting certiorari will allow the Court to address these questions in an orderly fashion, with full briefing and argument, for decision by the end of June. There is no need to wait to address these questions (almost certainly on an emergency basis) just before school starts again in August.

For these reasons, Applicants respectfully request that the Court grant the application and grant certiorari to address this case on the merits docket this Term.

Respectfully submitted,

LiMANDRI & JONNA LLP



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