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August 9, 2016

VIA FEDEX AND ELECTRONIC MAIL (LARRY.WOLK@STATE.CO.US)

Dr. Larry Wolk
Executive Director
Colorado Department of Public Health & Environment
4300 Cherry Creek Drive South
Denver, CO 80246

Re: *Immunization Non-Medical Exemption Form*

Dear Dr. Wolk,

Home School Legal Defense Association is a national organization whose mission is to protect the fundamental constitutional right of parents to direct the education and upbringing of their children. We represent the interests of thousands of children and their families who object to certain rules, procedures and forms promulgated by the CDPHE with respect to the Infant Immunization Program and Immunization of Students Attending School and 6 CCR 1009-2.

In particular we are concerned about the "Immunization Non-Medical Exemption Form, June 2016," which we understand the CDPHE asserts is required to be used by all persons seeking a non-medical exemption from immunization requirements. This form contains language which many people seeking the legitimate exercise of the exemption cannot in good conscience affirm. We are writing to request that you alter this form to accommodate these concerns.

Specifically, this form contains language that requires those filling out the form to either explicitly or implicitly assent to viewpoints with which they do not agree. These include the sentence contained in each antigen exemption box description: "My child/I may be at increased risk of developing..." and "Failure to follow the advice of a physician, registered nurse, physician's assistant, or public health official who has recommended vaccines may endanger my child's/my health or life and others who come into contact with my child/me."

This language requires the affirmation of a viewpoint with which many people disagree or which violates their personal or religious beliefs. The Supreme Court has determined that

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“[j]ust as the First Amendment may prevent the government from prohibiting speech, [it] may prevent the government from compelling individuals to express certain views” (*United States v. United Foods* 533 U.S. 405, 410 (2001)) and also that “one important manifestation of the principle of free speech is that one who chooses to speak may also decide what not to say.” (*Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston* 515 U.S. 557, 573 (1995)).

Additionally, we challenge the Department's authority to create the exemption form at all. We note that C.R.S. 25-4-903 only requires a “statement of exemption.” The Department has regulatory authority to decide how often the statement of exemption may be required, but nowhere has the legislature deferred to the Department to create a burdensome, unconstitutional form that requires people to make statements that are contrary to their religious or personal beliefs.

In order to avoid litigation, we respectfully request that the CDPHE voluntarily cease implementation of 6 CCR 1009-2 pending alteration of the form to satisfactorily address the concerns raised in this letter.

Sincerely,



Michael P. Donnelly
Home School Legal Defense Association



Shaun Pearman
Pearman Law Firm

cc: Dr. Katy Anthes, Interim Commissioner of Education