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12 **STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES**
14 **STANLEY MOSK COURTHOUSE**

15 **JASON KNOPKE,**

16 **Petitioner,**

17 **vs.**

18 **COMMISSION ON PROFESSIONAL**
19 **COMPETENCE,**

20 **Respondent.**

21 **LOS ANGELES UNIFIED SCHOOL**
22 **DISTRICT,**

23 **Real Party in Interest.**

24 **Case No.:** _____

25 **PETITION FOR A WRIT OF**
26 **ADMINISTRATIVE MANDAMUS**
27 **PURSUANT TO CCP §1094.5; 1094.6**

28 **FILED CONCURRENTLY WITH:**

- 29 **(1) ADMINISTRATIVE RECORD;**
- 30 **(2) PETITIONER'S REQUEST FOR**
31 **JUDICIAL NOTICE**
- 32 **(3) PETITIONER'S EXHIBITS IN**
33 **SUPPORT OF PETITION:**
 - 34 **(i) LAUSD'S EXHIBIT 11**
 - 35 **(ii) LAUSD'S EXHIBIT 18**
 - 36 **(iii) RESPONDENT'S DECISION**

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9	the August 13, 2021 Memo distributed to All LAUSD Employees	
10	LAUSD’S Exhibit 11, “Emails,” a collection of emails	
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Petition for a Writ of Administrative Mandamus Pursuant to §194.5, 194.6

1 **TABLE OF EXHIBITS**

2 **(Separately Filed as “Petitioner’s Exhibits in Support of Petition for Writ”)**

3 **LAUSD’S EXHIBIT 18, “COVID Vaccination Requirement,”**
4 the August 13, 2021 Memo distributed to All LAUSD Employees

5 **LAUSD’S EXHIBIT 11, “Emails,”**
6 a collection of emails between Petitioner and LAUSD in which Petitioner
7 asserts his right to refuse vaccination under Health & Safety Code section
8 24170 et seq. and the Constitution’s Preamble and its Eighth, Ninth, Tenth
and Fourteenth Amendments

9 **LAUSD’S EXHIBIT 9, “Amended Accusation,”**
10 which set out three statutory bases for firing Petitioner

11 **COMMISSION ON PROFESSIONAL COMPETENCE’S DECISION upholding**
12 **LAUSD’s decision to dismiss Petitioner**

1 related requirements had ever been adopted by a vote of LAUSD’s governing
2 board, as required by Government Code section 35160 to create a legally effective
3 school rule or regulation.

4 **8.** The State of California allows the governing board of any school district to act in
5 any manner that is not in conflict with, or is inconsistent with, or preempted by, any
6 existing law. (§ 35160.)

7 **9.** School district rules, regulations and policies are adopted by each district’s govern-
8 ing board, sitting as such boards in public meetings, where they vote on numbered
9 resolutions, which then become a matter of public record. [See Petitioner’s Request
10 for Judicial Notice, Request 1.]

11 **10.** LAUSD’s Board of Education never officially adopted the vaccination requirements
12 contained in Exhibit 18, as shown by the absence of any evidence presented by
13 LAUSD to Commission of any official Resolution; any and all school districts’
14 rules, regulations or policies adopted in violation of state law as to how such rules,
15 regulations and policies must be adopted are null and void, as stated in the accom-
16 panying Memorandum of Points & Authorities.

17 **11.** Instead, Exhibit 18 was merely distributed to all employees by LAUSD employees
18 Ileana M. Dávalos, Chief Human Resources Officer; Kristen Murphy, Chief of Em-
19 ployee Support and Labor Relations; and Karla Gould, Personnel Director, with the
20 Subject Line, “COVID-19 VACCINATION REQUIREMENT FOR EMPLOYEES
21 AND OTHER ADULTS WORKING AT DISTRICT FACILITIES.”

22 **12.** Exhibit 18 stated “The purpose of this correspondence is to inform District staff of
23 the vaccination requirement as a condition of continued employment/service, as
24 well as the supports in place to assist with receiving the vaccination and/or
25 verifying vaccination status, and the process for seeking a medical or religious ex-
26 emption from this requirement.”

1 **13.** Exhibit 18 was not identified, by Resolution Number, or in any other way, such as a
2 reference to the governing board having adopted or approved such requirement by a
3 vote of LAUSD’s governing board of LAUSD.

4 **14.** Exhibit 18 did not include, as an attachment or as a website URL, any reference to
5 any official resolution related to mass vaccination requirements actually adopted by
6 LAUSD’s governing board and recorded as such in the records of LAUSD.

7 **15.** This Policy was later amended, via a mass e-mail to employees, to add that “Being
8 fully vaccinated is an ‘essential job function,’” an *ipse dixit* with no effort to explain
9 the logical connection, if any, between being “fully vaccinated” and the perfor-
10 mance of the necessary tasks demanded of all secondary school employees. [AR:
11 714]

12 **16.** Petitioner notified LAUSD that this Policy violated his constitutional rights (the
13 Preamble and Amendments 8, 9,10 and 14). [See Petitioner’s Exhibits in Support of
14 Petition of Writ of Mandate, LAUSD’s Exhibit 11, a true and correct copy of which
15 Exhibit is found at AR: 512-518, is incorporated here by this reference as though
16 fully set forth herein, and a true and correct copy of which is provided with concu-
17 rently filed Petitioner’s Exhibits in Support of Petition for Writ of Mandate.

18 **17.** Petitioner also informed LAUSD that his right to refuse vaccination was guaran-
19 teed by California’s Health & Safety Code, sections 24170 et. seq., (“the Protection
20 of Human Subjects in Medical Experimentation Act”), which makes it unlawful to
21 pressure anyone, in any way, to take part in a human medical experiment, as also
22 shown in Exhibit 11.

23 **18.** Under the Policy, Petitioner was denied a medical exemption with no explanation,
24 but was granted a “religious exemption.”² [AR 717-718]

25 2 The term “religious exemption” is a misnomer for a religious accommodation. Title VII
26 of the Civil Rights Act of 1964 [hereinafter “Title VII”] prohibits employment discrimination
27 based on religion. This includes refusing to accommodate an employee’s sincerely-held religious
28 beliefs or practices unless the accommodation would impose an undue hardship (more than a
minimal burden on operation of the business). Because the record uses the term “exemption”
rather than accommodation, Petitioner’s Petition will use the term “exemption” but Petitioner
does not thereby signify that he agrees that this was anything but a religious accommodation

1 **19.** Petitioner learned that the religious accommodation required him to leave his nor-
2 mal work site at Peary, where he taught band and music, and to instead teach via an
3 online independent studies program at City of Angels, where he would be expected
4 to teach subjects outside his credential area. [AR 726]

5 **20.** Petitioner’s teaching credential only authorized him to teach Music; thus teaching
6 any subjects for which he was not credentialed, and for which LAUSD had not ob-
7 tained a waiver, was a violation of ESSA [“Every Student Succeeds Act”], sections
8 1111(g)(2)(J) 1112(c)(6), a federal law that requires that all teachers must meet
9 state certification and licensure requirements; while District’s witness, Gifty Beets,
10 a Human Resources Officer, testified “Any teacher with a valid credential is able to
11 teach at the City of Angeles without violating CTC credentialing rules,” that would
12 only be true under ESSA if such teacher only taught the subjects allowed under his
13 or her credential. [AR 726]

14 **21.** Petitioner therefore rejected an assignment to teach at City of Angeles as being an
15 inadequate accommodation. [AR 730]

16 **22.** LAUSD presented no evidence to the Commission that it had obtained or even tried
17 to obtain a Short-Term Waiver pursuant to Education Code section 44225, subdivi-
18 sion (m)(1), or any other kind of waiver as allowed by California Code of Regula-
19 tions, Title 5, § 80120, in order to allow Petitioner to lawfully teach outside his cre-
20 dential’s authorization.

21 **23.** Because Petitioner refused to be vaccinated for COVID and also refused to accept
22 an inadequate accommodation contrary to state law, LAUSD’s governing board de-
23 cided to dismiss Petitioner from his employment.

24 **24.** State law sets out a limited number of bases for dismissing a tenured teacher. (See
25 Cal. Ed. Code, § 44932.)³

26 **25.** Those limited bases for dismissal do not include refusing to obey unlawful orders.

27 within the meaning of Title VII.

28 ³ All further references to any code section will be to the Education Code except where
otherwise noted.

1 **26.** Therefore, LAUSD’s First Amended Accusation, Exhibit 9, instead of charging Pe-
2 titioner with refusing to be vaccinated or teach outside his credential area, charged
3 Petitioner with accusations copied directly from the limited statutory bases for such
4 dismissal in § 44932.

5 **27.** A true and correct copy of Exhibit 9 is included in the Administrative Record at
6 pages 94-98, incorporated here by this reference as though fully set forth herein,
7 and is provided in the concurrently filed Petitioner’s Exhibits in Support of Petition
8 for Writ of Mandate.

9 **28.** Thus, in order to justify Petitioner’s dismissal, LAUSD accused Petitioner, pursuant
10 to sections 44932 and 44939, and as set out in LAUSD’S Exhibit 9, LAUSD’s
11 “First Amended Accusation,” with the following “causes” for his dismissal:

- 12 a. Evidence unfitness for service (§ 44932, subd. (a)(6));
- 13 b. Persistent violation of, or refusal to obey, the school laws of the state or reason-
14 able regulations prescribed for the government of the public schools by the State
15 Board of Education or by the governing board of the school district employing
16 him (§ 44932, subd. (a)(8));
- 17 c. Willful refusal to perform regular assignments without reasonable cause, as de-
18 scribed by reasonable rules and regulations of the employing district (§ 44939).
19 (See Exhibit 9, “Amended Accusation,” AR: 98-98, a true and correct

20 **29.** These “causes” for dismissal all arose entirely and only from Petitioner’s refusal to
21 comply with LAUSD’s unlawful Policy related to COVID-19 and to accept the in-
22 adequate and equally unlawful “accommodation” offered to him, also part of such
23 unlawful Policy.

24 **30.** Petitioner, upon being notified of LAUSD’s Notice of Intention to Dismiss and the
25 Statement of Charges, on December 15, 2021, timely requested a hearing. [AR 387]

26 **31.** Pursuant to Education Code section 44944, subdivision (c)(2), that hearing was
27 held before Commission.
28

1 **32.** Commission affirmed LAUSD’s governing board’s decision to dismiss Petitioner
2 from his employment, effective on September 7, 2022, when the last two members
3 of Commission’s panel signed the Decision that affirmed Petitioner’s dismissal by
4 LAUSD’s governing board; a true and correct copy of the Decision is included in
5 the Administrative Record at pages 709-753, incorporated here by this reference as
6 though fully set forth herein, and is provided with the concurrently filed Petitioner’s
7 Exhibits in Support of Petition for Writ of Mandate.

8 **33.** In affirming LAUSD’s decision to dismiss Petitioner, Commission abused its dis-
9 cretion and acted in excess of jurisdiction by concluding that there was evidentiary
10 support for its conclusion that Petitioner was properly discharged for “persistent vi-
11 olation of, or refusal to obey, the school laws of the state or reasonable regulations
12 prescribed for the government of the public schools by the State Board of Education
13 or by the governing board of the school district employing him,” the basis in section
14 44932, subdivision (a)(8), because the Policy Petitioner refused to obey was neither
15 a school law of the state, nor a regulation prescribed by the State Board of Educa-
16 tion, nor a regulation prescribed by LAUSD’s governing board.

17 **34.** In affirming LAUSD’s decision to dismiss Petitioner, Commission also abused its
18 discretion and acted in excess of jurisdiction by concluding that there was eviden-
19 tiary support for its conclusion that Petitioner was properly discharged for “willful
20 refusal to perform regular assignments without reasonable cause, as described by
21 reasonable rules and regulations of the employing district,” the basis in section
22 44939, because there was no evidence that LAUSD’s governing board had ever
23 lawfully adopted the Policy that purported to require Petitioner to perform an as-
24 signment that would have required him to teach outside his credential area.

25 **35.** In affirming LAUSD’s decision to dismiss Petitioner, Commission also abused its
26 discretion and acted in excess of jurisdiction by concluding that there was eviden-
27 tiary support for its conclusion that Petitioner was properly discharged for “willful
28 refusal to perform regular assignments without reasonable cause, as described by

1 reasonable rules and regulations of the employing district,” the basis in section
2 44939, when the only evidence presented showed that: (i) Petitioner’s credential
3 only authorized him to teach band and music; (ii) LAUSD had not obtained the
4 waiver necessary to allow Petitioner to lawfully teach any other subjects; (iii) there-
5 fore, it would have been a violation of the Education Code for Petitioner to have ac-
6 cepted the proffered assignment without a proper waiver; (iv) furthermore, the ac-
7 commodation, like the rest of the Policy of which it was part, had never been
8 adopted by LAUSD’s governing board, so was null and void; (v) therefore, clearly
9 Petitioner had “reasonable cause” to refuse to accept the accommodation offered
10 him in lieu of being dismissed for refusing to be vaccinated, so there was no evi-
11 dence to support this charge.

12 **36.** In affirming the Real Party in Interest’s decision to dismiss Petitioner, Commission
13 abused its discretion and acted in excess of its jurisdiction by adopting findings not
14 only unsupported by any substantial evidence, but contrary to controlling law, to
15 wit, the Fourteenth Amendment of the U. S. Constitution; depriving Petitioner, a
16 tenured public school teacher, of his employment in the absence of any evidence of
17 a valid policy or regulation which he has violated, i.e., a regulation or policy actu-
18 ally adopted by his school board as required by state law, was and is a violation of
19 Petitioner’s 14th Amendment rights.

20 **37.** In affirming the Real Party in Interest’s decision to dismiss Petitioner, Commission
21 abused its discretion and acted in excess of its jurisdiction by adopting findings not
22 only unsupported by any substantial evidence, but contrary to controlling law, to
23 wit, California Health & Safety Code section 24170 et seq., the chapter known as
24 and citable as the “Protection of Human Subjects in Medical Experimentation Act.”

25 **38.** Petitioner has exhausted his administrative remedies in that, under Education Code
26 section 44944, subdivision (d)(4), the decision of Commission is the final decision
27 of LAUSD, except for such action as may be taken by a judicial tribunal as permit-
28 ted or required by law, e.g., by this superior court.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **STANDARD OF REVIEW**

3
4 When an appeal involves only questions of law that can be decided without resort to
5 facts, it is well-settled law that reviewing courts apply the *de novo* standard of review, do not
6 defer to the lower finder of facts and laws' decisions, and instead look at the legal issues as if the
7 lower finders of fact and law had never considered or ruled on them. (See, e.g., *First Options of*
8 *Chicago, Inc. v. Kaplan*, 514 U. S. 938, 948 (1995).)
9

10 Here, this Petition for a Writ of Mandate can be decided based on legal and constitutional
11 issues raised in the administrative record, not discussed at trial, but which may be properly raised
12 now. As a general rule, a litigant cannot assert a new theory for the first time on appeal (*Brown*
13 *v. Boren* (1999) 74 Cal.App.4th 1303, 1316), a rule based on fairness that incorporates principles
14 of estoppel and waiver. (*Id.*) But there are well-established exceptions to such rule: a reviewing
15 court has discretion “to consider a new theory on appeal when it is purely a matter of applying
16 the law to undisputed facts.” (*Id.*; see also *Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52
17 Cal. App.4th 820 [“when the issue presented involves purely a legal question, on an
18 uncontroverted record and requires no factual determinations, it is appropriate to address new
19 theories.” (*Id.* at p. 847.) (Italics in original.)
20
21

22 The administrative record shows that Petitioner clearly raised the legal and constitutional
23 issues presented in this petition in his written objections to LAUSD’s efforts to try to force him
24 to comply with its vaccine mandate policy, and never abandoned them. (See AR 477-478;
25 Petitioner’s Exhibits in Support Petition for Writ of Mandate, Exhibit 11, “Emails,” [in which
26 Petitioner referenced Cal. Health & Safety Code, §24172 and U. S. Const., Preamble, Articles 9,
27 10, 14].)
28

1 Although Petitioner’s trial attorney chose not to pursue these foundational legal issues
2 before the Commission, judicial discretion by this Court to consider them on writ review is
3 particularly appropriate now, “when . . . the asserted error fundamentally affects the validity of
4 the judgment . . . or important issues of public policy are at issue . . .” (*County of Orange v.*
5 *Ivansco* (1998) 67 Cal.App.4th 328, 331, fn. 2) and when such legal issues were actually raised
6 before LAUSD, the Real Party in Interest, before it chose to dismiss Petitioner. The legal issues
7 here are not “new theories”; they are legal issues already raised and part of the record, but just
8 given short-shrift by trial counsel despite her client’s having raised them himself.
9

10 Under these circumstances, it is not clear that the decision to review such issues is purely
11 discretionary, but, in the interest of caution, Petitioner prays this Court to, if necessary, exercise
12 its discretion to review and decide the purely legal and constitutional issues raised in this
13 Petition, especially because the legal issues involve timely and important matters of public policy
14 related to the COVID vaccine mandates that have impacted, and may continue to impact, so
15 many others besides Petitioner.
16

17 **ARGUMENT**

18 **Introduction**

19
20 Respondent Commission concluded that a policy that mandated that employees be
21 vaccinated or be treated differently than vaccinated employees did not impact employees’
22 constitutional rights. (See Petitioner’s Exhibits, Decision at p. 43; AR 751]: "Thus, the
23 constitutional rights of Respondent or other teachers are not involved in this case."] However,
24 this conclusion was based on the Commission’s erroneous conclusion that Exhibit 18, LAUSD’s
25 “COVID-19 Vaccination Requirement,” was a valid rule or regulation. It was not, and was null
26 and void from the moment it was prepared and then distributed, for two reasons.
27
28

1 First, Exhibit 18 was never actually officially adopted by LAUSD’s governing board, as
2 required by section 35160, and therefore it is and was null and void *ab initio*. Second, a school
3 district is prohibited from adopting any regulation or policy that violates or conflicts with any
4 law, and Exhibit 18 conflicts with Health & Safety Code sections 24170 et seq. (§ 35160).

5 Scope of Judicial Review

6 The scope of judicial review in a particular context is not measured by generalities, but
7 rather the “proper scope of a court’s review is determined by the task before it.” (*Woods v.*
8 *Superior Court* (1981) 28 Cal.3d 668, 679.) The task presented by this appeal is to decide, as a
9 matter of law, whether LAUSD’s governing board complied with the statutory scheme for
10 adopting regulations and policies, so that it had adopted a legally enforceable vaccination policy
11 that then permitted the lawful dismissal of Petitioner.
12

13 The task of deciding such question “in turn is usually determined by a statutory system
14 which indicates the scope of both agency and judicial function.” (*Poverty Resistance Center v.*
15 *Hart* (1989) 213 Cal.App.3d 295, 303 [*“Poverty”*].)⁴ Whether an agency has stayed within the
16 boundaries set by the statutory scheme “present[s] questions of law for the court.” (*Poverty,*
17 *supra*, at p. 305, citing *Mooney v. Pickett* (1972) 4 Cal.3d 669, 681.) Here, the statutory scheme
18 that LAUSD was required to follow was the Education Code section that provided the governing
19 boards of public school districts with the power to adopt policies and regulations necessary to
20 operate schools for the purpose for which they are intended. (§ 35160)
21

22
23
24 ⁴ The statutory scheme considered in *Poverty* required counties, acting as agents of the State,
25 to set levels of general relief, but to do so only by adopting only regulations that were consistent
26 with the State-proscribed statutory scheme, not in conflict with it, and reasonably necessary to
27 carry it out. (*Id.*, 203 Cal.App.3d at 304.)

28 Thus, the statutory scheme in *Poverty* mirrors the scheme set up in the Education Code, by
which the State authorizes local school district’s governing boards, acting as agents of the State,
to set up local policies and regulations for each district, but only by adopting regulations and
policies not in conflict with any law.

1 When a governing board does not comply with a statutory mandate, any resulting
2 decision based on such failure must be set aside. (*Poverty, supra*, 213 Cal.App.3d at 299.) In
3 *Poverty*, the County of Sacramento’s Board of Supervisors set levels of general relief for county
4 residents, but failed to comply with the controlling state code sections, which mandated
5 standards of the general relief that were to be distributed by each California County.
6

7 When the Poverty Resistance Center and individual recipients of general assistance sued,
8 charging that the County had breached the statutory duties imposed upon it by Welfare and
9 Institutions Code sections 17000 and 17001, they lost at trial, but on review, the appellate court
10 held that that the County’s governing board, the Board of Supervisors, had not complied with the
11 statutory mandate and reverse the judgment, because the County had failed to comply with the
12 statutory scheme.
13

14 This – what was relevant in *Poverty* – was not the actual level of aid that Sacramento
15 County had set, but rather “the *lawfulness* of the Board’s action in setting the standard of aid
16 which is under review.” (*Id.*, at 203 Cal.App.3rd 302.) In turn, “the statutes which govern the
17 agency action” determine whether the agency – in that case, Sacramento County’s Board of
18 Supervisors – acted lawfully. (*Id.*)
19

20 Here, the issue is likewise purely legal, unrelated to any facts: did LAUSD comply with
21 the State’s proscribed statutory requirements in section 35160 so as to adopt a valid vaccination
22 policy? It did not.
23

24 **The Policy Here, Not Created in Compliance with Section 35160, Is Null and Void**

25 **The Policy Was Not Adopted by LAUSD’s Governing Board**

26 A policy or regulation adopted in a way not authorized by the controlling authority is null
27 and void. This general principle was clearly stated by the Judicial Council of California when it
28

1 amended the Rules of Court and preempted all local rules related to civil procedure, including
2 the allowed form and format of all papers. (See Cal. Rules of Court, Title 3, Civil Rules, Rule
3 3.20 (a) [“All local rules concerning [civil procedure] are null and void unless otherwise
4 permitted or required by a statute or rule in the California Rules of Court”].)

5
6 The same principle applies here, that the law of a controlling authority (the State of
7 California) preempts any conflicting law of a lesser authority (a school district). In adopting
8 Education Code section 35160, the State of California made it clear that only a school district’s
9 governing board – not mere district employees or officers – could adopt rules and policies for a
10 school district, and that any other policy or rule not adopted as required by section 35160 is
11 preempted, and therefore null and void. (See, e.g., *DeVita v. County of Napa* (1995) 9 Cal.4th
12 763, 773 (1995) [a County’s zoning ordinances are subordinate to and must be consistent with its
13 General Plan, so a conflicting ordinance is invalid at the time it is passed]; *Leshner*
14 *Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 544 [“the preemptive effect
15 of [a] controlling state statute, . . . invalidates [a conflicting subordinate law or rule] . . . [¶] A
16 void statute or ordinance [or school policy] cannot be given effect”].)

17
18
19 LAUSD failed to present any evidence that Exhibit 18, the Memo containing LAUSD’s
20 COVID Vaccination Policy, was ever adopted by LAUSD’s governing Board. Therefore, such
21 --Policy was not in compliance with the statutory scheme of section 35000, it was null and void
22 from the moment it was typed up and distributed, i.e., *ab initio* (see, e.g., *DeVita v. County of*
23 *Napa, supra*, 9 Cal.4th at p. 773), and could not form a lawful basis for demanding that any
24 LAUSD employee, including Petitioner, comply with any of such Policy’s requirements,
25 including, but not limited to, being vaccinated, or submitting exemption requests, or accepting
26 any accommodations related to such exemptions.
27
28

The Policy Conflicted with an Existing Law, Another Reason It Is Void

1
2 Section 35160 provides in relevant part that “the governing board of any school district
3 may . . . act in any manner which is not in conflict with or inconsistent with, or preempted by,
4 any law and which is not in conflict with the purposes for which school districts are established.”
5 In other words, school districts cannot adopt policies that conflict with any law, and cannot adopt
6 a policy that conflicts with the purposes for which school districts are established
7

8 There is no state law, in the Education or Government Code or anywhere else, that
9 indicates that school districts were established for any statutory purpose other than this: “Each
10 child is a unique person, with unique needs, *and the purpose of the educational system of this*
11 *state is to enable each child to develop all of his or her own potential.*” (§ 33080, emphasis
12 added, as found in Ed. Code, Title 2, Elementary and Secondary Education, Division 2, State
13 Administration, Part 20, State Educational Agencies, Chapter 1.5, Purpose.) In other words, it is
14 not a school district’s statutory “purpose” to impose vaccination requirements on its employees.
15

16 Furthermore, a school policy that requires employees to be vaccinated or be fired or
17 otherwise discriminated against for refusing to comply with such a policy is also “in conflict
18 with or inconsistent with, or preempted by,” a specific law, California’s Health & Safety Code
19 sections 24170 et seq., “the Protection of Human Subjects in Medical Experimentation Act,”
20 [“the Act”], which makes it unlawful to pressure anyone, in any way, to take part in a human
21 medical experiment. Telling employees, including Petitioner, that they will be fired if they do
22 not agree to comply with the terms of the Policy here, was clearly a form of pressure to agree to
23 be a human medical experiment. (Petitioner’s Request for Judicial Notice, Request No. 2 re “a
24 human medical experiment”.) This in turn conflicted with a controlling state law, the Act, which
25 creates yet an additional reason that the Policy is null and void: it does not comply with the
26
27
28

1 controlling authority of the Education Code, section 35160, which forbids governing boards from
2 adopting any regulation or policy that conflicts with any law.

3 **Commission’s Decision, Unsupported by Evidence or Law,**

4 **Violates Petitioner’s Fourteenth Amendment Rights**

5 Tenured public school teachers have a property interest in their jobs, and therefore have a
6 constitutional right to due process of law under the Fourteenth Amendment (U.S. Const. amend.
7 XIV). (*Board of Regents v. Roth*, 408 U.S. 564, 577 (1972).) Because tenured teachers are
8 entitled to due process, this means that they cannot be deprived of their employment in the
9 absence of evidence to support such deprivation. (*Id.*)

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11 *Cleveland Board of Education v. Loudermill*, 470 U. S. 532 (1985), a case involving a
12 tenured teacher facing dismissal, is the leading case involving the question of what process is due
13 under the Constitution. This case provides that tenured teachers, who have a property interest in
14 continued employment, have a Fourteenth Amendment, due process right to be given oral or
15 written notice of the dismissal and the charges against them, an explanation of the employers’
16 evidence, and an opportunity for a fair and meaningful hearing.

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19 The *Loudermill* Court, given the posture of the case before it, was not called upon to hold
20 that whatever decision was reached in such cases must be based on facts and law. But the very
21 nature of what is “fair” – the spirit behind the concept of “due process” – must also mean that no
22 one can be deprived of life, liberty or property in the absence of both applicable evidence and
23 law, which is exactly what happened to Petitioner. (See, e.g., *Schwarre v. Board of Bar*
24 *Examiners*, 353 U.S. 232, 246-247 (1960) [evidence insufficient to rationally justify a lower
25 court’s finding related to a litigant’s right to practice law violates due process].)

26
27 Here, Petitioner was not only deprived of his career and his means of support in the
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1 absence of any real evidence of unfitness or incompetence as a teacher, and on the basis of a null
2 and void Policy never properly adopted by LAUSD’s governing board, but his reputation was
3 also besmirched by having the statutory language of the charges against him – *which had been*
4 *used because the Education Code does not allow tenured teachers to be fired for refusing to be*
5 *vaccinated* – made part of a record against him, a record that will damn him for the rest of his
6 life if Commission’s Decision is not reversed.
7

8 What began as Petitioner’s simple exercise of his lawful right to refuse to participate in a
9 medical experiment was turned by LAUSD into the modern equivalent of a Kafkaesque show
10 trial. Petitioner’s simple action of lawfully declining an unwanted medical procedure was
11 confabulated into insulting assertions of statutory-language-based accusations that bear little
12 resemblance to what he had actually done. His exercise of his lawful right to not be vaccinated,
13 and to not be asked to violate the Education Code (by teaching outside his credential without a
14 proper waiver) was contorted into evidence unfitness for service (§ 44932, subd. (a)(6));
15 persistent violation of, or refusal to obey, the “school laws,” i.e., the null and void vaccination
16 Policy (§ 44932, subd. (a)(8)); and “willful refusal to perform regular assignments without
17 reasonable cause, as described by reasonable rules and regulations of the employing district.”
18 (§44939). (See Petitioner’s Exhibits in Support of Petition for Writ of Mandate, Exhibit 9,
19 “Amended Accusation”; AR: 98-98.)
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22 Petitioner’s experience is thus similar to what happened in *Schwarre v. Board of Bar*
23 *Examiners, supra*, 353 U.S. 232, 246-247. In that case, Schwarre, who had gone to law school
24 and passed the Bar of his state, New Mexico, was declined admission to practice as a lawyer on
25 the grounds of bad moral character. That finding was based on events that had occurred 20 years
26 earlier, when he had been much younger, and his circumstances had been very different.
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1 Petitioner had made a strong showing of good moral character in the most recent two
2 decades of his life, but from 1933 to 1937, he had used certain aliases, had been arrested (but
3 never tried or convicted) a few time before 1940, and, from 1932 to 1940, was a member of the
4 Communist Party. The Board of Bar Examiners of New Mexico denied him admission, and New
5 Mexico's Supreme Court sustained the Board.

6
7 As a boy and young man during the Great Depression, he had done what many young
8 men had done then, including joining the Communist Party, and getting into trouble but without
9 being prosecuted. He also had used several aliases, to disguise the fact that he was Jewish,
10 which impaired his ability to find work.

11
12 Then, as many other such men had done, as the Depression lifted, his life changed, he
13 renounced the Communist Party, married, joined the military, served in the Army from 1944 to
14 1946, returned to civilian life and joined a synagogue and went to law school. But the New
15 Mexico Board of Bar Examiners denied him the opportunity to take the bar to try to gain
16 admission to the practice of law, finding he had bad moral character, a finding based on the
17 events of 20 years before. This was so, despite the fact that he presented of good character from
18 multiple witnesses for the more recent period of time, and that the Bar Examiners presented no
19 current evidence showing moral unfitness.

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21 The U.S. Supreme Court reversed, concluding that this constituted a denial of due
22 process, in violation of the Fourteenth Amendment, not because there was no evidence of
23 questionable behavior,, but because the evidence was insufficient to *rationaly justify* the lower
24 court's finding that Schwarre was presently ineligible to practice law.

25
26 As Justice Frankfurter said, in his concurring opinion at page 249, "Refusal to allow a
27 man to qualify himself for [a] profession on a wholly arbitrary standard or on a consideration that
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1 offends the dictates of reason[,] offends the Due Process Clause.”

2 No matter what findings the Commission made, not only is its Decision based on a null
3 and void Policy, but it was based on considerations that “offend[] the dictates of reason,” and
4 hence offends the Due Process Clause.

5 Unlike the petitioner in *Schwarre*, whose antecedent life had included matters which, if
6 they had been more recent, might have formed the basis for denying him the right to take the bar
7 exam, Petitioner here had *no* black marks against his name. He had done nothing that could have
8 supported a legitimate dismissal. All he had done was to exercise his legal rights.

9
10 But rather than merely “refus[ing] to allow a man to *qualify* himself for [a] profession on
11 a wholly arbitrary standard or on a consideration that offends the dictates of reason[,]” (*Schwarre*
12 *v. Board of Bar Examiners, supra*, 353 U.S. 232, 249, emphasis added), in this case LAUSD
13 actively expelled an already well-qualified, experienced, tenured teacher for the “sin” of refusing
14 to give up his lawful right to say “No” to an unwanted vaccination. If the New Mexico
15 Committee of Bar Examiners’ conduct in denying *Schwarre* an opportunity to join the bar could
16 be said to be based on a wholly arbitrary standard and/or on a consideration “that offends the
17 dictates of reason,” then surely LAUSD’s dismissal of Petitioner – for standing on his legal rights
18 under the Act to not be vaccinated, and for refusing to teach outside his credential area in the
19 absence of any evidence that LAUSD had even *attempted* to obtain the requisite waiver to make
20 it legal to do so – is an even *more* offensive violation of his due process rights.
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CONCLUSION

For the foregoing reasons, this Court should reverse Commission’s Decision, and issue a peremptory writ of mandate that Commission enter a new and different decision, directing Real Party in Interest, LAUSD, to reinstate Petitioner to his prior position and make him whole.

Dated December 21, 2022

RESPECTFULLY SUBMITTED,

LETITIA E. PEPPER, SBL 105277, for
Petitioner Jason Knopke

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CERTIFICATE OF WORD COUNT

I, Letitia E. Pepper, counsel for Petitioner, hereby certify, pursuant to California Rules of Court 8.204 and 8.486, that I prepared the foregoing petition for review on behalf of my client, and that the word count for this petition is 5,572, which does not include the cover, the tables, the Certificate of Interested Entities or Persons, the certificate of word count, the signature block, and any attachment allowed under Rule 8.204, subdivision (d). This petition therefore complies with the rule, which limits a petition for review to 14,000 words. I certify that I prepared this document in LibreOffice Version: 6.1.6.3 (x64), and that this is the word count that LibreOffice showed me was generated for this document.

Dated: December 21, 2022

LETITIA E. PEPPER, SBL 105277, for
Petitioner Jason Knopke