

No. 22-55908

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Health Freedom Defense Fund *et al.*,

Plaintiffs-Appellants,

v.

Megan K. Reilly *et al.*,

Defendants-Appellees.

On Appeal from the United States District Court
for the Central District of California
No. 2:21-cv-08688-DSF-PV
Hon. Dale S. Fischer

APPELLANTS' REQUEST FOR JUDICIAL NOTICE

John W. Howard (Cal. Bar No. 80200)
Scott J. Street (Cal. Bar No. 258962)
JW HOWARD/ATTORNEYS, LTD.
600 West Broadway, Suite 1400
San Diego, CA 92101
Tel.: 619-234-284
Email:
johnh@jwhowardattorneys.com
sstreet@jwhowardattorneys.com

*Attorneys for Appellants Health Freedom
Defense Fund et al.*

REQUEST FOR JUDICIAL NOTICE

Pursuant to Rule 201 of the Federal Rules of Evidence, Appellants Health Freedom Defense Fund *et al.* request that the Court take judicial notice of the following fact:

1. That, on September 26, 2023, the Los Angeles Unified School District (“LAUSD”) voted to rescind the mandatory COVID-19 vaccination policy that it issued during the fall of 2021, and which Appellants sued to enjoin in this action. A true and correct copy of a news article that reported on the vote is attached as **Exhibit “A.”**

Judicial notice is proper. A court may judicially notice information that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction, or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Judicial notice of properly presented materials is mandatory. A court “must take judicial notice if a party requests it and the court is supplied with the necessary information.” Fed. R. Evid. 201(c)(2) (emphasis added). New developments in a case are especially appropriate for appellate judicial notice. *See, e.g., United States v. Lowell*, 649 F.2d 950, 966 n.26 (3d Cir. 1981) (explaining that normal rule limiting appeal to existing record “is subject to the right of an appellate court in a proper case to take judicial notice of new developments not considered by the lower court.”); *Bryant v.*

Carleson, 444 F.2d 353, 357 (9th Cir. 1971) (“[W]e take judicial notice of a number of developments since the taking of this appeal ... since such circumstances may affect our consideration of the various issues presented.”).

Those principles apply here. Indeed, it appears that LAUSD voted to rescind the COVID-19 vaccination policy after the oral argument that occurred on September 14 and in response to ridicule of its argument that it could keep the policy in place for years to come and without meaningful judicial review.¹

Therefore, Appellants respectfully request that the Court take judicial notice of LAUSD’s action.

Date: October 2, 2023

JW HOWARD/ATTORNEYS, LTD.

/s/ Scott J. Street

Scott J. Street

*Attorneys for Appellants Health Freedom
Defense Fund et al.*

¹ Although LAUSD may move to dismiss this appeal as moot, it is not moot. In fact, LAUSD’s actions show precisely the type of voluntary cessation in response to legal action that the Supreme Court has said will not moot a case. *Los Angeles Cty. v. Davis*, 440 U.S. 625, 631 (1979).

EXHIBIT A



Sign in to dailynews.com with Google



Scott Street

sjstreet25@gmail.com

Continue as Scott

By logging in, you consent to receive emails from us. You may update your email preferences at any time.

NEWS • News

Los Angeles Unified School District ends COVID vaccine mandate for staff

The mandate was hit by lawsuits, but Sup. Carvalho says the decision is due to science and conditions



Laura Gama, of Bell, a parent of an eleventh-grader, joins a rally opposing LAUSD's student vaccine mandate outside the district office in Los Angeles while the school board meets on enforcement of the mandate on Tuesday, December 14, 2021. (Photo by Sarah Reingewirtz, Los Angeles Daily News/SCNG)

By **CLARA HARTER** | charter@scng.com |

PUBLISHED: September 26, 2023 at 4:08 p.m. | UPDATED: September 26, 2023 at 4:11 p.m.



The Los Angeles Unified School District Board of Education voted 6 to 1 on Tuesday to rescind its two-year-old [COVID-19 vaccine](#)

Boardmember George McKenna cast the sole dissenting vote, saying he believes that science still supports the need for the COVID-19 vaccine in today's environment.

The COVID mandate went into effect on Oct. 1, 2021 and over time led to the termination of more than 600 employees who refused the vaccine and did not qualify for medical or religious exemptions.

Staff who were placed on unpaid leave because they refused to follow the mandate may be invited to return under the conditions of their leaves. Staff who departed the district or were reassigned to a virtual classroom are eligible to apply for an in-person position.

At the time the mandate was enacted, many praised the bold action to protect students and staff from the spread of the virus, and some 97% of employees met the deadline for getting vaccines.

By logging in, you consent to receive emails from us. You may update your email preferences at any time.

"I do not regret what we did for one moment, not 30 seconds, not one tiny bit" said Board President Jackie Goldberg during Tuesday's meeting. "The highest death rates in the country were in states where there were no vaccine requirements."



LAUSD Board President Jackie Goldberg speaks during a ceremony at BMO Stadium in Los Angeles on Monday, May 22, 2023, honoring LAUSD high school seniors who have experienced homelessness or housing insecurity who will be graduating. (Photo by Hans Gutknecht, Los Angeles Daily News/SCNG)

But some staff and community members saw the mandate as an attack on people's medical freedom and were outraged by the ultimatum that staff either get vaccinated or lose their jobs.

Several former employees and activist organizations [filed lawsuits](#) against the district seeking to repeal the vaccine requirement.

The LAUSD board's resolution to rescind the measure does not refer to any legal action, and instead points to the winding down of city, state and federal emergency health declarations and to COVID-19's transition to an endemic disease that is here to stay but no longer a pandemic.

"This was a necessary requirement and it was adopted so that schools could reopen safely based on information that was known then, verified then," said LAUSD Superintendent Alberto Carvalho. "COVID-19 is now in an endemic phase. It has entered the state of stability and increased predictability that comes usually with other viruses such as RSV and the flu."

"Today, I am recommending before this board the rescission of the LAUSD vaccination requirement," he said. "It is a decision based on scientific knowledge and current conditions, nothing more, nothing less."

Nevertheless, parties involved in legal battles against the district see the board's decision as a big win.

“They fired all of these people who have dedicated their lives, their careers to helping educate children,” she added. “Why do they care so little about the hundreds and hundreds of employees who have a different opinion about this shot than LAUSD’s management?”

In a separate lawsuit, more than 20 former school police officers allege that they were improperly terminated after filing for religious exemptions to reject the mandate. In the complaint, the former employees asked for compensatory damages, and to repeal the mandate.

Francis Calderon, a former early learning teacher at Willow Elementary School who refused the vaccine, said she was excited that the board was considering repealing the mandate.

By logging in, you consent to receive emails from us. You may update your email preferences at any time.

Calderon was reassigned to an online classroom in fall 2021 and then terminated at the end of the academic year after working for LAUSD for 15 years.

“It was a very horrible experience,” she said. “It was hard on me and for my family, the gap in my income went on for several months.”

Calderon was part of a group of current and former employees who staged a protest outside LAUSD’s district headquarters in April 2022 demanding to be allowed back in the classroom. They were responding to Superintendent Alberto Carvalho’s plan to address teacher vacancies by assigning about 400 employees – some lacking teaching credentials – to classrooms.

Now, more than a year later, Calderon has a job in another school district and is not sure she wants her former position back.

“I really feel like I was discriminated against not just by the district, but also by colleagues who were very mean to us (unvaccinated employees),” Calderon said. “I don’t feel like I’m excited like ‘oh my god we can go back,’ because we’ve been through a lot.”

[Newsroom Guidelines](#)

[News Tips](#)

[Contact Us](#)

[Report an Error](#)



The Trust Project

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

9th Cir. Case Number(s) 22-55908

I am the attorney or self-represented party.

This brief contains 377 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

☒ [X] complies with the word limit of Cir. R. 32-1.

☐ [] is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

☐ [] is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

☐ [] is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

☐ [] complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):

☐ [] it is a joint brief submitted by separately represented parties;

☐ [] a party or parties are filing a single brief in response to multiple briefs; or

☐ [] a party or parties are filing a single brief in response to a longer joint brief.

☐ [] complies with the length limit designated by court order dated _____.

☐ [] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature: /s/ Scott J. Street

Date: October 2, 2023

CERTIFICATE OF SERVICE

Health Freedom Defense, et al. v. Megan K. Reilly, et al.

U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

Case No. 22-55908

At the time of service, I was over 18 years of age and not a party to this action. I am employed by JW Howard/Attorneys, LTD. in the County of San Diego, State of California. My business address is 600 West Broadway, Suite 1400, San Diego, California 92101.

On October 2, 2023, I caused the **APPELLANTS' REQUEST FOR JUDICIAL NOTICE** to be filed and served via the Court's Electronic Service upon the parties listed on the Court's service list for this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 2, 2023 at San Diego, California.

/s/ Dayna Dang

Dayna Dang, Paralegal

dayna@jwhowardattorneys.com