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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRIANNA BOLDEN-HARDGE,

Plaintiff,

v.

OFFICE OF THE CALIFORNIA STATE CONTROLLER, *et al*.,

Defendants.

No. 2:20-CV-02081-JAM-SCR

AMICUS BRIEF OF CHRISTIAN LEGAL SOCIETY, CHURCH STATE COUNCIL, ISLAM AND RELIGIOUS FREEDOM TEAM OF THE RELIGIOUS FREEDOM INSTITUTE, HINDU AMERICAN FOUNDATION, JEWISH COALITION FOR RELIGIOUS LIBERTY, AND THE NATIONAL ASSOCIATION OF EVANGELICALS, IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (Liability)

Judge:	**Hon. John A. Mendez**
Trial Date:	**March 16, 2026**
Action Filed:	**October 19, 2020**
Hearing Date:	**June 17, 2025**
Location:	**Robert T. Matsui U.S. Courthouse 501 I Street Sacramento, CA 95814**

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INTEREST OF THE AMICI

Amici are organizations representing diverse faiths, with different views about the particular religious questions at the center of this case. They all agree, however, that the religious accommodation and disparate impact requirements of Title VII, and their proper application to individual cases, are critical to ensuring that people of all faiths are permitted to participate fully in society.

Christian Legal Society ("CLS") is a nonprofit, non-denominational association of Christian attorneys, law students, and law professors with members in every state and chapters on over 135 law school campuses. It believes that the religious accommodation and disparate impact protections of Title VII are important protections for people of all faiths to not be forced to decide between practicing their faiths and pursuing their livelihoods.

The Church State Council is a California religious not-for-profit corporation devoted to the protection of liberty of conscience and the separation of church and state. Its legal services ministry is widely recognized for its representation of workers of diverse faiths suffering religious discrimination, and continues to represent Gerald Groff, whose Supreme Court case changed the standard of "undue hardship" under Title VII.

The Hindu American Foundation ("HAF") is a nonprofit organization that advances the understanding of Hinduism and Hindu Dharma traditions to secure the rights and dignity of Hindu Americans for present and future generations. HAF provides accurate and engaging educational resources, impactful advocacy to protect and promote religious liberty, and programming that empowers Hindu Americans to sustain their culture and identity. HAF is committed to religious liberty for Hindus and members of all faiths throughout the United States.

The Islam and Religious Freedom Action Team of the Religious Freedom Institute explores and supports religious freedom from within the traditions of Islam and also partners in advocacy with other action teams within the Religious Freedom Institute (RFI). RFI is

committed to achieving broad acceptance of religious freedom as a fundamental human right. RFI Action Teams have a presence on the ground in each region to build coalitions and work toward making religious freedom a priority for governments, civil society, religious communities, businesses, and the general public.

The Jewish Coalition for Religious Liberty ("JCRL") is a non-denominational organization of Jewish communal and lay leaders, seeking to protect the ability of Americans to freely practice their faith. Since its founding, JCRL has recruited a volunteer network of accomplished attorneys, submitted legal briefs, and written many op-eds in Jewish and general media outlets in defense of religious liberty.

The National Association of Evangelicals is the largest network of evangelical churches, denominations, colleges, and independent ministries in the United States. It serves 40 member denominations, as well as numerous evangelical associations, mission social-service charities, refugee and humanitarian aid agencies, colleges, seminaries, and independent churches.

INTRODUCTION

Amici submit this brief to make three points which support Plaintiff Brianna Bolden-Hardge's Motion for Summary Judgment.

First, Ms. Bolden-Hardge has presented undisputed evidence that she has a sincere religious belief that her faith conflicts with the oath required by Defendants. Specifically, she understands the oath, without clarification or other accommodation, to require putting loyalty to the State above loyalty to God, to require pledging to take arms to defend the State, to require a willingness for political action, and to require her to assert that she has no mental reservation in signing it. Defendants contend that the words in portions of the oath are not as she understands them to be, but their argument is legally irrelevant. The Supreme Court has made clear that what is relevant is a plaintiff's "honest conviction" that there is a conflict, *Thomas v. Review Bd, Ind. Empl. Sec. Div.*, 450 U.S. 707, 715 (1981), and that employers (and courts) must defer to the reasonable, sincere line-drawing of religious claimants. *Id.* It is no answer that a religious claimant's line-drawing is "too attenuated." *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania,* 591 U.S. 657, 681 (2020).

Second, Defendants cannot meet their burden of showing that accommodating Ms. Bolden-Hardge would create an undue hardship on them. The broad availability of oath accommodations by other California governmental entities demonstrates both that accommodation is not forbidden by the California constitution, and that the goal of ensuring a loyal workforce can be achieved while accommodating clarifications of language in the oath as requested by Ms. Bolden-Hardge.

Finally, Defendants, as a matter of law, cannot show business necessity in applying a workplace practice that creates a disparate impact on a class protected by Title VII. That is because the accommodations offered by other agencies demonstrate that there are alternative employment practices that can achieve the same goals.

For these reasons, Plaintiff's Motion for Summary Judgment on her Title VII claims should be granted.

ARGUMENT

I. The Plaintiff has demonstrated a conflict between her religious beliefs and the requirement that she sign the oath without modification or addendum.

Ms. Bolden-Hardge challenges the California State Controller's Office's refusal to allow her to add a clarifying statement to the California public employee loyalty oath due to a conflict between the oath's language and her religious faith. Demonstrating a conflict between religious faith or practice and job requirements is a threshold requirement for Title VII cases. *Bolden-Hardge v. Off. of the Cal. State Controller*, 63 F.4th 1215, 1222 (9th Cir. 2023). As a devout Jehovah's Witness, Ms. Bolden-Hardge's principal allegiance is to God, and she may not swear primary allegiance to any human institution, nor may she pledge to take arms in defense of the government. *See* Plaintiff's Statement of Undisputed Facts at 5, 7-11 ("SUF"). Thus, she sincerely believes that taking the loyalty oath required of California State Comptroller's Office employees without clarification would require her impermissibly to subordinate her loyalty to God to her loyalty to California and the United States. *See id.* at 9.

Defendants argue, however, that there is no actual conflict for Ms. Bolden-Hardge because the words to which Bolden-Hardge objects, such as "defend," are not in fact as she understands them to be. They contend that "taking an oath to 'defend' the federal and state constitutions as a public employee requires nothing more than mental support, working within the confines of constitutional authority, and abstaining from trying to overthrow the government." *See* Brief of Appellee at 19, *Bolden-Hardge v. Off. of the Cal. State Controller*, Case No. 21-15660 (9th Cir.). Or so they state now, after litigation began. At the time she was asked to give the oath, Ms. Bolden-Hardge asked for clarification of the meaning of these particular parts of the oath but was given no guidance. *See* Plaintiff's Memorandum of Law at 6.

She was left on her own to discern, based on the plain text of the oath and her conscience, whether her faith permitted her to sign the oath. Based on her sincere beliefs, she concluded that she could not do so without a clarifying statement.

Ms. Bolden-Hardge has thus met her burden under Title VII of showing a conflict between her faith and the oath. *See Bolden-Hardge*, 63 F.4th at 1223 ("the burden to allege a conflict with religious beliefs is fairly minimal."). There is no suggestion in the record that her beliefs are not sincere; indeed, she has presented substantial and undisputed evidence of her sincerity. *See* SUF 5, 7-18. Moreover, her sincerity is evident in the care with which she parsed the oath and proposed specific language to address the parts of the oath that were of concern and by her willingness to lose a job she very much desired rather than compromise her faith. The Supreme Court has instructed courts to defer to plaintiffs' sincere understanding of the conflict between their faith and secular duties.

In *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania,* 591 U.S. 657, 663 (2020), the Supreme Court considered nuns' objections to certifying that they had religious beliefs against providing contraceptive coverage under the Affordable Care Act of 2010, 124 Stat. 119 (the "ACA"). This arose in the Court's review of states' challenges to federal regulations accommodating the nuns and others similarly situated. *Little Sisters*, 591 U.S. at 672-73. Under an initial regulatory accommodation to the ACA for religiously objecting employers like the nuns, employers who believed they could not provide contraceptive coverage in their health care plans had to sign a certification to that effect. *Id.* at 667. Those who signed the certification of religious conflict would not have to provide contraceptive coverage directly in their insurance plan, but instead the insurer would separately provide contraceptive payments completely outside of the religious employer's health plan. *Id.*

But even this certification process, established as a religious accommodation to eliminate the religious conflict for religious employers opposed to contraception or abortion, created too

much of a conflict for the nuns. *Id.* at 668. The nuns contended that filling out the certification form would be "tak[ing] actions that directly cause others to provide contraception or appear to participate in the Departments' delivery scheme." *Id.* When the federal Departments revised their regulations to accommodate religious objectors like the nuns who perceived a religious conflict even in the certification of the need for an accommodation, states filed suit challenging the new regulations. The Supreme Court rejected the challenge, finding the additional accommodation to be appropriate. *Id.* at 681-83. The Court rejected the states' claim that there was no religious violation in making the nuns fill out the certification form. *Id*. The Court held that the regulations reasonably applied the Court's decision in *Burwell v. Hobby Lobby Store, Inc.* 573 U.S. 682, 723-24 (2014), and *Zubik v. Burwell*, 578 U.S. 403, 410 (2016) (per curiam), and simply heeded the Court's instruction that "the Departments must accept the sincerely held complicity-based objections of religious entities." *Little Sisters*, 591 U.S. at 681. The Departments, the Court held in *Little Sisters*, cannot "tell the plaintiff's that their beliefs are flawed because, in the Departments' view the connection between what the objecting parties must do and the end that they find to be morally wrong is simply too attenuated." *Id.* (quoting *Burwell,* 573 U.S. at 723-24 (cleaned up). Thus, while signing the certification form was seen by many as a simple administrative step to obtain a religious accommodation, what mattered was the nuns' sincere belief that even that still created a conflict between their religious beliefs and the requirements of the law. *See also Hernandez v. Comm'r*, 490 U.S. 680, 699 (1989) ("It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds.").

The Supreme Court likewise deferred to a plaintiff's sincere understanding of the conflict between his faith and his job duties in *Thomas v. Review Bd., Ind. Empl. Sec. Div.*, 450 U.S. 707, 715 (1981). The plaintiff, like Ms. Bolden-Hardge a Jehovah's Witness, left his job after refusing to participate in the fabrication of turrets for military tanks in conformance with his perception of

the pacifistic demands of his faith. He did so despite a co-worker, who was also a Jehovah's Witness, advising him that doing this work was not barred by their faith. *Id.* at 711. The plaintiff also had previously worked rolling sheet metal that would be used for armaments, a fact that the Indiana Supreme Court below found to be inconsistent with his asserted religious opposition to building armaments. *Id*. at 715. The U.S. Supreme Court, however, held that what mattered was the plaintiff's "honest conviction that such work was forbidden by his religion." *Id.* at 716. The Court found that plaintiff "drew a line, and it is not for us to say that the line he drew was an unreasonable one." *Id.* at 715. The Court further held that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others" to merit protection. *Id*. at 714.

Ms. Bolden-Hardge has been clear, articulate, and consistent in her position that to take the California loyalty oath would unacceptably subordinate her loyalty to God to loyalty to California and could be construed as agreeing to take arms. Most importantly, though, she has been sincere. As with the plaintiff in *Thomas*, she has an "honest conviction" that there is a conflict between taking the oath and fulfilling the demands of her faith. That others may not view this as a conflict, as with Thomas' coworker or the Indiana Supreme Court in that case, does not matter. The issue is whether she sincerely believes it, and the record unequivocally shows that she does. Defendants' quibbling with whether particular words in the oath really should be troubling to her or not, *see, e.g.*, *Bolden-Hardge*, 63 F.4th at 1223; Brief of Appellee at 19, is entirely beside the point as a legal matter. Likewise, as in *Little Sisters*, 591 U.S. at 681, the Defendants' arguments that Ms. Bolden-Hardge's concerns about the oath are "too attenuated," are not issues for them to decide. They are for her to determine, through her sincere exercise of her faith. She has shown that she sincerely believes that signing the oath without clarification would violate her faith. She has therefore shown that there is a conflict between her job requirements and her faith. A showing of sincerity regarding a conflict, the Supreme Court has instructed, is an end of the inquiry into that element.

II. The Defendants cannot show that accommodating Ms. Bolden-Hardge would cause undue hardship.

Under Title VII, an employer is required to reasonably accommodate an employee's religious practices unless doing so would impose an undue hardship. 42 U.S.C. § 2000e(j). Defendants argue that they are entitled to the affirmative defense of undue hardship because accommodating Ms. Bolden-Hardge's religious beliefs would require them to violate the California constitution's oath requirement, *Bolden-Hardge*, 63 F.4th at 1225, and undermine their interest "in ensuring that government employees are committed to upholding the federal and state constitutions." *Id.* at 1226. Accommodating Ms. Bolden-Hardge's religious beliefs would not impose an undue hardship on Defendants, however, because they cannot demonstrate a substantial burden on their operations that is real and palpable and not merely hypothetical.

The Supreme Court in *Groff v. DeJoy,* 143 S. Ct. 2279 (2023), clarified that undue hardship requires a showing of something "more than a de minimis cost and undue hardship is shown when a burden is substantial in the overall context of an employer's business." *Id.* at 2294 (citation omitted). As the EEOC explains, in guidance issued prior to *Groff* but consistent with it, to prove undue hardship, "the employer will need to demonstrate how much cost or disruption a proposed accommodation would involve" and "cannot rely on potential or hypothetical hardship." *EEOC Compliance Manual on Religious Discrimination*, Section 12-IV(B)(1)(2021); s*ee also Tooley v. Martin-Marietta Corp*., 648 F.2d 1239, 1243 (9th Cir. 1981) (holding that "[a] claim of undue hardship cannot be supported by merely conceivable or hypothetical hardships").

The Ninth Circuit's decision in this case was issued several months prior to the *Groff* decision. However, a decision the Ninth Circuit issued earlier this year shows just how demanding *Groff* is in requiring employers to prove undue hardship. In *Keene v. San Francisco.*, 2025 WL 341831 (9th Cir. Jan. 30, 2025), the court, applying *Groff*, determined that San Francisco violated the Title VII rights of two former employees who were denied religious exemptions to the COVID-19 vaccine during the pandemic. The court ruled that San Francisco

failed to show that it could not have granted accommodations such as allowing remote work, limiting interactions with public, or requiring the wearing of personal protective equipment to meet its goal of protecting others from the disease. *Id.* at *2. *Compare Bordeaux v. Lions Gate Ent., Inc.,* 2025 WL 655065 (9th Cir. Feb. 28, 2025) (denying vaccine exemption to actress where under film-making protocols any contact of unvaccinated person with anyone positive for COVID-19 would require a 10-day shutdown of production at a cost of $1.5 to $3 million dollars). Similarly to the *Keene* decision, the Fifth Circuit in *Hebrew v. Tex. Dep't of Crim. Just.*, 80 F.4th 717, 722 (5th Cir. 2023), held that it was not an undue hardship to allow a correction officer to wear a beard for religious reasons because "TDCJ nowhere identifies any actual costs it will face—much less "substantial increased costs" affecting its entire business—if it grants this one accommodation to [the Plaintiff]."

Defendants here cannot show that denying Ms. Bolden-Hardge's proposed accommodation of appending clarifying language to the oath would cause it undue hardship under *Groff*. Neither of their two arguments—that they need this to comply with the California constitution or that they need this to ensure loyal employees—comes close to meeting the *Groff* standard of undue hardship.

First, the Ninth Circuit was very skeptical that the defendants would be able to show that they would be in violation of the state constitution if they permitted the clarifying language that Ms. Bolden-Hardge requested. The court observed that "nothing suggests that the Controller's Office would face legal consequences for accommodating Ms. Bolden-Hardge. If anything, the Complaint suggests that enforcement is unlikely, given Ms. Bolden-Hardge's allegations that other state agencies have accommodated her." *Bolden-Hardge*, 63 F.3d at 1227.

The record bears out the Ninth Circuit's prediction. After being denied employment with the State Controller's Office, Ms. Bolden-Hardge returned to employment at another agency, the California Franchise Tax Board, which also required employees to take a loyalty oath. However,

in that instance, Ms. Bolden-Hardge's modification request was accommodated. SUF 109-110. The State Personnel Board has also recognized that it is not unreasonable for someone to read the oath as raising conflicts with pacifism, stating in its Personnel Management Policies and Procedures Manual that "it is permissible for a person to sign the Oath and attach a statement to the effect that religious beliefs prohibit their bearing arms." *Id.* 117-119. Similarly, the California State University allows religious objectors on a "case-by-case basis" to provide religious accommodations to the oath. *Id.* 129. Several school districts across the State permit religious accommodations to their loyalty oaths, which sometimes include the use of an addendum or modified oath, *id*. 122, as has the Department of Food and Agriculture. *Id*. 123. The widespread practice of other governmental agencies providing accommodations is strong evidence that it is permitted by the California constitution to provide such accommodations.

Yet even if accommodations like modifying or clarifying the oath or excusing individuals from signing it were in violation of the California constitution, federal law is the supreme law of the land and state law must give way to avoid conflict with it. Section 708 of Title VII emphasizes that adherence to state law does not excuse discrimination in violation of its terms. 42 U.S.C. § 2000e-7. To excuse Defendants from fulfilling an accommodation requirement of a federal civil rights law solely because it would violate the state constitution would raise Supremacy Clause concerns, as the Ninth Circuit noted. *Bolden-Hardge*, 63 F.4th 1215 at 1225 ("to exempt the Controller's Office from a federal accommodation requirement solely because the requested accommodation would violate state law would essentially permit states to legislate away any federal accommodation obligation.") (quoting *Malabed v. N. Slope Borough*, 335 F.3d 864, 871 (9th Cir. 2003)); *see also Rosenfeld v. Southern Pac. Co.,* 444 F.2d 1219, 1225 (9th Cir. 1971) (holding that "state law limitations upon female labor run contrary to the general objectives of Title VII . . . and are therefore, by virtue of the Supremacy Clause, supplanted by Title VII."). The rule is the same when the state law that conflicts with federal law is a state

constitution. *See*, *e.g.*, *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464, 488 (2020) (invalidating application of state constitutional provision that barred scholarship funds from going to religious schools, holding that the "*supreme* law of the land condemns discrimination against religious schools and the families whose children attend them) (citation omitted); *Trinity Lutheran Church of Columbia v. Comer,* 582 U.S. 449, 466 (2017) (holding that discriminating against church in providing playground surface to comply with state constitution violated the federal Free Exercise Clause). And a judge of this Court so held with regard to the oath provision of the California constitution at issue in this case. In *Bessard v. California Cmty. Colleges*, 867 F. Supp. 1454 (E.D. Cal. 1994), the court held that the California loyalty oath is not protected from modification to comply with civil rights statutes simply because it is in the state constitution, observing that "[i]f this position were adopted, any requirement imposed by state law would be insulated from federal judicial review." *Id.* at 1465.

The Defendants thus cannot succeed based on their argument that the state constitution requires them to deny Ms. Bolden-Hardge's accommodation. Nor can they succeed in the second theory discussed by the Ninth Circuit, their "stated interest in ensuring that government employees are committed to upholding the federal and state constitutions." *Bolden-Hardge,* 63 F.4th at 1226. There is nothing in the clarifying language she seeks to add that detracts from the efficacy of the oath. Indeed, Defendants, in arguing that there is actually no conflict between her faith and the oath in its unaltered form make the point for her. If it truly is the case, as Defendants contend, that she is not required "to pledge loyalty to government over religion," *id.* at 1223, and that she is not required to pledge to defend the state by force of arms, *see* Appellee's Brief at 6-7, then adding clarifications about these things simply does not alter in any way the degree of loyalty she would be pledging.

This Court's decision in *Bessard* suggests that allowing Ms. Bolden-Hardge to add clarifying language to the loyalty oath might have the opposite effect: it could in fact *increase*

the likelihood that the individual signing the oath would be loyal. The court in *Bessard*, in holding that the loyalty oath violated the plaintiff's rights under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq*., questioned the general efficacy of loyalty oaths, and their ability to "make[ ] a disloyal employee more loyal." 867 F. Supp. at 1464. The court quoted Justice Black's landmark opinion in *West Virginia v. Barnette*, 319 U.S. 624 (1943), upholding a Jehovah's Witness child's right not to participate in the pledge of allegiance, where he stated that "[w]ords uttered under coercion are proof of loyalty to nothing but self-interest. Love of country must spring from willing hearts and free minds." 867 F. Supp. at 1464 (quoting 319 U.S. at 644). Ms. Bolden-Hardge could have done the things Justice Black warned of and simply signed the oath without meaning it. Instead, she carefully examined the language and concluded that for her to make this solemn pledge she needed to clarify certain points. She felt so strongly about this that she was willing to lose her job over it. An employee who takes such care with oaths likely would be far more loyal to her employer than many, or perhaps even most, people taking the oath.

Finally, the accommodations given by other agencies recounted above also undermine Defendants' argument that their goal of ensuring loyal employees can bear no accommodation regarding the oath. The Supreme Court held in *Holt v. Hobbs*, 574 U.S. 352, 368 (2015), applying the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc, which also requires religious accommodation, that where "the vast majority of States and the Federal Government" permit inmates to grow short beards, the burden is on the Arkansas prison system to show why it could not accommodate a Muslim prisoner who sought to grow a beard for religious reasons. Likewise, in *Little Sisters*, Justice Alito noted that the "exceptions aplenty" to the contraceptive mandate undermined any argument that there was a compelling reason to deny the religious exemption sought by the nuns. 591 U.S. at 697 (Alito, J., concurring). In light of the many exceptions other agencies grant to religious individuals seeking modification of the oath,

Defendants cannot meet their burden of showing undue hardship in providing such an accommodation to Ms. Bolden-Hardge.

III. Defendants have not shown a business necessity in denying Ms. Bolden-Hardge's requested accommodation.

The Ninth Circuit held that Ms. Bolden-Hardge successfully established a prima facie case that Defendants' oath policy has a disparate impact on Jehovah's Witnesses. *Bolden-Hardge*, 63 F.4th at 1228. This shifts the burden to Defendants to show a business necessity in their policy of not allowing any modification to the oath. *Id.* For an employer's practice to be considered a business necessity, it must be demonstrably related to "successful performance of the jobs for which it was used," *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971), and "essential to effective job performance." *Dothard v. Rawlinson*, 433 U.S. 321, 331 (1977).

Defendants claims that the unmodified oath is a business necessity because having employees swear an oath to support the Constitution of both the United States and California helps ensure that public servants are "committed to working within and promoting the fundamental rule of law while on the job," which is of special importance to public servants responsible for the "proper functioning of constitutional government." *Bolden-Hardge*, 63 F.4th at 1228. They assert that the oath is a requirement for public service, despite the fact that Ms. Bolden-Hardge started employment at the Franchise Tax Board without signing the oath, SUF 34, and when she returned to a position there after being unable to work for the Defendants was permitted to sign the oath with the clarifying language she had proposed to the Defendants. SUF 110.

The Controller's Office claims that there is no alternative employment practice that has a less-disparate impact and also serves the employer's legitimate business interests. This argument alludes to another legal element surrounding the business necessity defense known as the "alternative employment practice" theory, which allows an employee to prevail in a disparate

impact case, even if there is a clear business necessity, by "proving that an alternative policy or practice could be adopted which would accomplish the same goal and that the employer refuses to adopt it." Steven D. Jamar, *Accommodating Religion at Work: A Principled Approach to Title VII and Religious Freedom*, 40 N.Y.L. SCH. L. REV. 719, 738 (1996). This test was codified in Title VII pursuant to the Civil Rights Act of 1991. 42 U.S.C. § 2000e-2(k)(1)(A)(ii). It provides that where there are "other ways for the employer to achieve its goals that do not result in a disparate impact on a protected class" which the employer ignores, the employer cannot be successful on the business necessity defense. *See Smith v. City of Jackson*, 544 U.S. 228, 243 (2005).

The "alternative employment practice" theory was applied by the Ninth Circuit in a case involving a defendant using two different methods for employing apprentices. *Eldredge v. Carpenters 46 N. Cal. Counties Joint Apprenticeship & Training Comm.*, 833 F.2d 1334, 1335 (9th Cir. 1987). One system assigned apprentices to contractors in numerical order from a list, while the "hunting license" system encouraged apprentices themselves to find contractors to employ them. *Id.* The hunting license program was used far more frequently and had a disparate impact on women. *Id.* at 1336, 1340. While the defendant claimed a business necessity in how it chose to operate its apprentice program, the court held that "an alternate method–numerical referral from the new applicant referral list–is already in place," *id.,* and therefore there could not be any business necessity in the "hunting license" method the defendant preferred. *Id.*

Here, as recounted in Section II above, various California government agencies have achieved their interest in meeting the oath requirement with a range of accommodations. In light of the ability of other California agencies and public institutions to administer a loyalty oath with an addendum, the Defendants' argument becomes increasingly similar to the failed argument in *Eldredge*, where the defendant tried to assert that its preferred system had to be used in place of the alternative system that was less burdensome to workers. 833 F.2d at 1341. The state has not

alleged and has not attempted to prove that there is something unique about the Controller's Office compared to the various other California agencies that would justify failing to employ the alternative method that they have found acceptable.

CONCLUSION

For the foregoing reasons, the Plaintiff's Motion for Summary Judgment should be granted.

Respectfully submitted,

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