

1 THE HAKALA LAW GROUP, P.C.  
2 Brad A. Hakala, CA Bar No. 236709  
3 Jeffrey B. Compangano, CA Bar No. 214580  
4 Ryan N. Ostrowski, CA Bar No. 305293  
5 One World Trade Center, Suite 1870  
6 Long Beach, California 90831  
7 Telephone: 562.432.5023  
8 Facsimile: 562.786.8606  
9 Email: [bhakala@hakala-law.com](mailto:bhakala@hakala-law.com)

10 Attorneys for Plaintiffs – Devon Torrey Love, S.L.,  
11 Alison Heather Grace Gates, M.M., K.M., A.M., Courtney  
12 Barrow, A.B., Margaret Sargent, T.S., W.S., and A Voice  
13 for Choice, Inc.

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF PLACER

**APR 04 2017**

**JAKE CHATTERS**  
**EXECUTIVE OFFICER & CLERK**  
By: **C. Waggoner, Deputy**

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF PLACER**

11 DEVON TORREY LOVE; S.L.; ALISON  
12 HEATHER GRACE GATES; M.M.; K.M.;  
13 A.M.; COURTNEY BARROW; A.B.;  
14 MARGARET SARGENT; T.S.; W.S.; and  
15 A VOICE FOR CHOICE, INC. on behalf  
16 of its members,

17 Plaintiffs,

18 v.

19 STATE OF CALIFORNIA,  
20 DEPARTMENT OF EDUCATION;  
21 STATE OF CALIFORNIA, BOARD OF  
22 EDUCATION; TOM TORLAKSON, in  
23 his official capacity as Superintendent of  
24 the Department of Education; STATE OF  
25 CALIFORNIA, DEPARTMENT OF  
26 PUBLIC HEALTH; DR. KAREN SMITH,  
27 in her official capacity as Director of the  
28 Department of Public Health,

Defendants.

Case No.: **SCV 0039811**

UNLIMITED CIVIL MATTER

ASSIGNED FOR ALL PURPOSES TO:

**COMPLAINT FOR DECLARATORY,  
INJUNCTIVE, OR OTHER RELIEF**

**1. VIOLATION OF CALIFORNIA  
CONSTITUTION, ARTICLE I, §7 (Right to  
Due Process)**

**2. VIOLATION OF CALIFORNIA  
CONSTITUTION, ARTICLE IX, §5 (Right  
to Public Education, Grades K-12)**

**3. VIOLATION OF CALIFORNIA  
CONSTITUTION, ARTICLE I, §1 (Right to  
Privacy)**

**BY FAX**

26 TO THIS HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF  
27 RECORD HEREIN:

1 Plaintiffs, DEVON TORREY LOVE ("Love"), an individual residing in California in  
2 Humboldt County; S.L. ("S.L."), a minor residing in California in Humboldt County; ALISON  
3 HEATHER GRACE GATES, ("Gates"), an individual residing in California in Placer County,  
4 M. M., ("M.M."), K.M., ("K.M."), and A.M. ("A.M."), are each minors residing in California in  
5 Placer County; COURTNEY BARROW ("Barrow"), an individual residing in California in  
6 Riverside County; A.B. ("A.B."), a minor residing in California in Riverside County;  
7 MARGARET SARGENT ("Sargent"), an individual residing in California in San Diego County;  
8 T.S., ("T.S.") and W.S. ("W.S."), are each minors residing in California in San Diego County;  
9 and A VOICE FOR CHOICE, INC., a California Not For Profit entity ("AVFC"), on behalf of  
10 its members (Love, S.L., Gates, M.M., K.M., A.M., Barrow, A.B., Sargent, T.S., W.S., and  
11 AVFC are collectively referred to herein as the "Plaintiffs") complain against the above named  
12 DEFENDANTS STATE OF CALIFORNIA, DEPARTMENT OF EDUCATION; STATE OF  
13 CALIFORNIA, BOARD OF EDUCATION; TOM TORLAKSON, in his official capacity as  
14 Superintendent of the Department of Education; STATE OF CALIFORNIA, DEPARTMENT  
15 OF PUBLIC HEALTH; DR. KAREN SMITH, in her official capacity as Director of the  
16 Department of Public Health, and all named Defendants for declaratory, injunctive, and/or and  
17 all further relief to which they may be justly entitled, as well as costs, and attorneys' fees, and as  
18 grounds therefore allege:

### 19 20 **THE PARTIES**

21 1. Plaintiff Devon Torrey Love resides in Humboldt County, California and is the  
22 parent of minor child S.L. Love wishes to exercise her fundamental Due Process rights through  
23 her right to parent and raise her own child; however, through the passage and enforcement of  
24 California's Health and Safety Code, Section 120325, *et seq.* ("Section 120325"), she has been  
25 denied this right. As the parent of S.L., Love decides which medical procedures involving  
26 vaccinations, vaccines, and/or medical treatments related to or involving vaccines (collectively  
27 referred to herein as "medical treatments") to administer to S.L. Love has raised other perfectly  
28 healthy children, but by exercising her fundamental rights, she must now bear the burden of

1 staying home to homeschool S.L. and forego a much-needed income, all to the detriment of her  
2 family.

3         2.         Plaintiff S.L. is the five-year-old child of Love and resides in Humboldt County,  
4 California. S.L does not have and cannot obtain a medical exemption from Section 120325.  
5 After its passage, which revoked S.L.'s personal-belief exemption, Love has been forced to  
6 homeschool S.L., to their family's financial detriment. S.L. wants to exercise his right under the  
7 California Constitution to a free, public K-12 education, but cannot, unless S.L. relinquishes (a)  
8 his statutory and constitutional rights to privacy for his medical records; and (b) his rights to  
9 bodily autonomy and to refuse medical treatments.

10         3.         Plaintiff Alison Heather Grace Gates resides in Placer County, California and is  
11 the parent of minor children M.M., K.M., and A.M. Gates wishes to exercise her fundamental  
12 right to parent and raise her children as she desires and without the necessity to administer  
13 unwanted medical treatments; however, through the passage and enforcement of Section 120325,  
14 she has been denied this right. By exercising her fundamental rights, Gates now bears the burden  
15 of foregoing much-needed income of her family in order to homeschool her children. Through  
16 the passage and enforcement of Section 120325, Defendants have removed all other schooling  
17 options as Gates does not wish to forego her or any of her children's right to privacy or due  
18 process rights.

19         4.         Plaintiff M.M., is the eleven-year-old child of Gates and resides in Placer County,  
20 California. M.M. does not have and is unable to obtain a medical exemption from Section  
21 120325. The passage of Section 120325, which rescinds M.M.'s personal-belief exemption, has  
22 caused Gates to homeschool M.M., to their family's financial detriment. M.M. wants to exercise  
23 her rights under the California Constitution to a free, public-school K-12 education, but cannot,  
24 unless M.M. relinquishes (a) her statutory and constitutional rights to privacy for her medical  
25 records; and (b) her rights to bodily autonomy and to refuse medical treatments. .

26         5.         Plaintiff K.M. is the nine-year-old child of Gates. K.M. does not and is unable to  
27 obtain a medical exemption from Section 120325. The passage of Section 120325, which  
28 rescinds K.M.'s personal-belief exemption, has caused Gates to homeschool K.M., to their

1 family's financial detriment. K.M. wants to exercise her rights under the California Constitution  
2 to a free, public-school K-12 education, but cannot, unless K.M. relinquishes (a) her statutory  
3 and constitutional rights to privacy for her medical records; and (b) her rights to bodily autonomy  
4 and to refuse medical treatments. ate.

5 6. Plaintiff A.M. is the seven-year-old child of Gates and resides in Placer County,  
6 California. A.M. does not and is unable to obtain a medical exemption from Section 120325.  
7 The passage of Section 120325, which rescinds A.M.'s personal -belief exemption, has caused  
8 Gates to homeschool A.M., to their family's financial detriment. A.M. wants to exercise her  
9 rights under the California Constitution to a free, public-school K-12 education, but cannot,  
10 unless A.M. relinquishes (a) her statutory and constitutional rights to privacy for her medical  
11 records; and (b) her rights to bodily autonomy and to refuse medical treatments.

12 7. Plaintiff Courtney Barrow resides in Riverside County, California and is the  
13 parent of minor child A.B. Barrow wishes to retain her fundamental and due process rights as a  
14 parent to raise her own child without the necessity to have to inject her children with medical  
15 treatments, as mandated by the Defendants. As the parent of A.B., Barrow has made the personal  
16 parenting decision not to vaccinate A.B. Since the passage of Section 120325, Barrow has been  
17 unable to obtain an exemption for her child to attend public-school, as intended, and has  
18 consequently been forced to forego earning an income in order to homeschool her child, all to  
19 the detriment of her family. Barrow also does not wish to forego her Children's fundamental  
20 Right to Privacy by being forced to disclose their family's personal, medical records with  
21 government officials, preferring these intimate decisions to remain private.

22 8. Plaintiff A.B. is the five-year-old child of Barrow and resides in Riverside County,  
23 California. A.B. does not have and cannot obtain a medical exemption from Section 120325.  
24 Since the passage of Section 120325, which revoked A.B.'s personal-belief exemption, A.B. has  
25 been forced to give up the right to attend public-school, and her mother has been forced to  
26 homeschool A.B., to their family's financial detriment. A.B. wants to exercise her right under  
27 the California Constitution to a free, public-school K-12 education, but cannot, unless A.B.  
28

1 relinquishes (a) her statutory and constitutional rights to privacy for her medical records; and (b)  
2 her rights to bodily autonomy and to refuse medical treatments.

3 9. Plaintiff Margaret Sargent resides in San Diego County, California and is the  
4 parent of minor children, T.S. and W.S. Sargent desires to retain her fundamental right to parent  
5 and raise her own child without the necessity to have to inject her children with medical  
6 treatments mandated by the Defendants. As the parent of T.S. and W.S., Sargent has made the  
7 personal parenting decision not to subject T.S. and W.S. to medical treatments. As her husband  
8 is an enlisted member of the U.S. Military and there currently is no option whatsoever to move  
9 outside of California, Sargent has been forced to forego much-needed income to homeschool T.S.  
10 and W.S. Sargent also does not wish to forego her Children's fundamental Right to Privacy by  
11 being forced to disclose their family's personal, medical records with government officials,  
12 preferring these intimate decisions to remain private.

13 10. Plaintiff T.S. is the six-year-old child of Margaret Sargent and resides in San  
14 Diego, California. T.S. does not have and cannot obtain a medical exemption from Section  
15 120325. T.S. is currently enrolled in the first-grade at a public-school as a result of a  
16 "grandfathered" personal belief exemption which will ultimately expire as a result of the passage  
17 and enforcement of Section 120325, thereby denying him the right to continue with his free  
18 public-school education. As a result, T.S. will have to be homeschooled by his mother, Sargent,  
19 to the financial detriment of their family. T.S. wants to exercise his right under the California  
20 Constitution to a free, public-school K-12 education, but cannot unless T.S. relinquishes (a) his  
21 statutory and constitutional rights to privacy for his medical records; and (b) his rights to bodily  
22 autonomy and to refuse medical treatments.

23 11. Plaintiff W.S. is the five-year-old child of Margaret Sargent and resides in San  
24 Diego County, California. W.S. does not have and cannot obtain a medical exemption from  
25 Section 120325. Due to the passage of Section 120325 and not having a medical exemption,  
26 W.S. is not currently in compliance with the now statutorily required medical treatments for  
27 admission and attendance within a public-school in California, and will force his mother, Sargent,  
28 to homeschool W.S. to the financial detriment of their family. W.S. wants to exercise his right

1 under the California Constitution to a free, public-school K-12 education, but cannot unless W.S.  
2 relinquishes (a) his statutory and constitutional rights to privacy for his medical records; and (b)  
3 his rights to bodily autonomy and to refuse medical treatments.

4 12. Plaintiff A Voice for Choice, Inc. is a California non-profit 501(c)(3) corporation  
5 whose primary purpose is to protect the rights of individuals and ensuring that people have a  
6 choice in what medications are put into the bodies of their children and themselves, and hereby  
7 asserts claims on behalf of its members in order to protect those who would otherwise have  
8 standing to sue in their own right as they have been unlawfully impacted by the enactment and  
9 continued enforcement of Section 120325. As such, AVFC seeks to protect the interests of its  
10 members as they are germane to the organization's purpose and the relief requested herein does  
11 not necessitate the participation of individual members in the matter at hand.

12 13. The State of California is the legal and political entity with the non-delegable  
13 responsibility of educating all of California's school children by providing a free public  
14 education, grades K-12 under Article IX, Section 5 of the California Constitution, by ensuring  
15 that all California children retain their fundamental right to an education, and that the State of  
16 California not burden or violate one's own right to privacy under Article I, Section 1 of the  
17 California Constitution.

18 14. Defendant California Department of Education is the governmental department  
19 responsible for administering and enforcing California's laws related to education.

20 15. Defendant California Board of Education is responsible for determining the  
21 policies governing California's schools and for adopting rules and regulations for the supervision  
22 and administration of all local school districts. Pursuant to California Education Code sections  
23 22020-22032, Defendant California Board of Education is required to supervise local school  
24 districts to ensure that they comply with California's state laws concerning educational services.

25 16. Defendant Tom Torlakson, sued in his official capacity, is the Superintendent of  
26 Public Instruction for the State of California, the Secretary and Executive Officer for the State  
27 Board of Education, and the Chief Executive Officer of the California Department of Education.  
28 He is obligated to take all necessary steps to ensure that school districts comply with the

1 California Constitution and laws of the State of California. Pursuant to the California Education  
2 Code, he is the Director of Education in whom all executive and administrative functions of the  
3 California Department of Education are vested. He is responsible for ensuring that all children  
4 within the State of California receive a free and equal public education, as enumerated and  
5 guaranteed under the California Constitution.

6 17. The California Department of Public Health is a state agency created by California  
7 statute, charged with implementing the California Health and Safety Code and regulating the  
8 statutes at issue, including, *inter alia*, Health & Safety Code §§ 120325, 120335, 120338, 120370,  
9 and 120375 (previously defined, herein, as “Section 120325”).

10 18. Defendant Karen Smith, MD, MPH, sued in her official capacity, is the Director  
11 and State Public Health Officer for the California Department of Public Health. She is obligated  
12 to take all necessary steps to ensure that the California Department of Public Health and local  
13 health departments comply with federal and California state laws in discharging their duties to  
14 protect public health and safety.

15 19. All Defendants either are recipients of California state funds in support of the  
16 operation of schools or health departments, or are responsible for and capable of ensuring that  
17 California state funds are spent by recipients in a constitutional, nondiscriminatory manner in the  
18 California public-school system.

19 20 Plaintiffs are informed and believe, and based thereon allege, that all of the  
20 Defendants were, are, and for so long as Section 120325 remains in full force and effect will  
21 continue to be, in some manner, legally liable for the conduct at issue in this action. Plaintiffs are  
22 further informed and believe, and based thereon allege, that each Defendant was at all times  
23 acting with the implied or express direction, approval, and ratification of each of the other  
24 Defendants.

25 ///

26 ///

27 ///

28 ///



1 **JURISDICTION AND VENUE**

2 21. This Court has jurisdiction over this action in that Plaintiffs have been injured in  
3 this Court’s jurisdiction and at all times has remained injured in Placer County, California due to  
4 Defendants’ actions.

5 22. This Court has jurisdiction over the Defendants in this action because Defendants  
6 injured Plaintiffs in Placer County, California to cause this Court to have jurisdiction over their  
7 actions in this County.

8 23. Venue is proper in this Court in accordance with California Code of Civil  
9 Procedure, §395(a) because the injuries and damages at issue in this Complaint occurred in Placer  
10 County, California.

11 **GENERAL ALLEGATIONS**

12 24. California has a longstanding and proud tradition of affording its residents certain  
13 more expansive constitutional protections than the federal government. As a later admittee to the  
14 union, California’s constitution mostly mirrors the federal constitution. However, it differs in  
15 several respects.  
16

17 25. To wit, the California Constitution states that, “The Legislature shall provide for  
18 a system of common schools by which a free school shall be kept up and supported in each  
19 district.” Cal. Const. Art. IX, § 5.

20 26. Thus, a free, public-school K-12 education is a fundamental right in California.  
21 *Hartzell v. Connell*, 35 Cal.3d 899 (1984); *Serrano v. Priest*, 18 Cal.3d 778 (1976); *Slayton v.*  
22 *Pomona USD*, 161 Cal.App.3d 538, 548 (1984); *Steffes v. Cal. Interscholastic Fed.*, 176  
23 Cal.App.3d 739, 746 (1986); *Jones v. Cal. Interscholastic Fed.*, 197 Cal.App.3d 751, 757 (1988);  
24 all construing Cal. Const. Art. IX, §5.

25 27. The California Constitution also provides that all individuals have a right of  
26 privacy. Cal. Const., Art. I, §1. This express right to privacy is broader than the implied federal  
27 right. *Williams v. Superior Court*, 236 Cal.App.4th 1151, 187 Cal.Rptr.3d 321, 326-27 (2015).



1           28.     It is black-letter law in California that this right to privacy is implicated in matters  
2 concerning “the preservation of...personal health” and matters involving “retaining personal  
3 control over the integrity of one’s own body.” *Am. Acad. Of Pediatrics v. Lungren*, 16 Cal.4th  
4 307, 332-33, 940 P.2d 797, 813 (1997). “It is settled that a person's medical history, including ...  
5 records, falls within the zone of informational privacy protected” by the California Constitution.  
6 *People v. Martinez*, 88 Cal.App.4th 465, 474–75 (2001). The ‘zones of privacy’ created by  
7 Article I, Section 1, extend to the details of one's medical history.” *Pettus v. Cole*, 49 Cal.App.4th  
8 402, 440 (1996).

9           29.     Further: “There can be no question but that minors, as well as adults, possess a  
10 constitutional right of privacy under the California Constitution.” *Id.* at 814.

11           30.     The California Constitution provides that “A person may not be deprived of life,  
12 liberty, or property without due process of law or denied equal protection of the laws.” Cal.  
13 Const., Art. I, §7. Federal cases construing these provisions are persuasive when construing the  
14 state constitutional rights, except of course when the state rights are more expansive. *Raven v.*  
15 *Deukmejian*, 52 Cal.3d 336 (1990).

16           31.     The right for parents to direct the upbringing of their children and the right for  
17 children to be raised by their own parents is a fundamental right, stemming from due process, or  
18 simply the concept that certain rights are so ancient and so self-evident, that they do not need to  
19 be enumerated. *In re Marriage of W.*, 114 Cal.App.4th 68, 73, 7 Cal.Rptr.3d 461, 463 (2003),  
20 (citing *In re B.G.*, 11 Cal.3d 679, 693–694, 114 Cal.Rptr. 444, 523 P.2d 244 (1974); *In re*  
21 *Carmaleta B.*, 21 Cal.3d 482, 489, 146 Cal.Rptr. 623, 579 P.2d 514 (1978).)

22           32.     Another substantive due-process right is the right to bodily autonomy and the  
23 accompanying right to refuse medical treatments. The judicial trend favors an expansive  
24 definition of this right. For example, three years ago, these rights were summarized as follows:  
25 “The Supreme Court has recognized fundamental rights to determine one’s own medical  
26  
27  
28

1 treatment, and to refuse unwanted medical treatment, and has recognized a fundamental liberty  
2 interest in medical autonomy.”<sup>1</sup>

3 33. Yet California’s stronger “constitutional right of privacy [independently]  
4 guarantees to the individual the freedom to choose to reject, or refuse to consent to, intrusions of  
5 his bodily integrity.” *Bartling v. Superior Court*, 163 Cal.App.3D 186, 195 (1984). This re-  
6 affirms and provides a second, independent, state-specific and stronger basis for the more  
7 generalized right to refuse medical treatment. Generally, an individual acting in *parens patriae*  
8 for another individual can refuse medical treatment on that individual’s behalf. *Conservatorship*  
9 *of Wendland*, 26 Cal.4th 519 (2001).

10 34. Another critical concept is the doctrine of unconstitutional conditions. If the state  
11 may compel the surrender of a constitutional right as a condition of its favor, then the guaranties  
12 embedded in the Constitution may be manipulated out of existence. In such case, the  
13 “government bears a heavy burden of demonstrating the practical necessity for [such a]  
14 limitation. At the very least it must establish that the imposed conditions relate to the purposes  
15 of the legislation which confers the benefit or privilege.” *Bagley v. Washington Tp. Hospital*  
16 *Dist.*, 65 Cal.2d 499, 505–06, 55 Cal.Rptr. 401, 406, 421 P.2d 409, 414 (1966). Put simply, the  
17 “state may not impose conditions which require the relinquishment of constitutional rights.”  
18 *Troppman v. Gourley*, 126 Cal.App.4th 755, 24 Cal.Rptr.3d 372, 382 (2005), review granted and  
19 opinion superseded (Cal. 2005) 29 Cal.Rptr.3d 1, 112 P.3d 1, and aff’d sub nom. *Troppman v.*  
20 *Valverde*, 40 Cal.4th 1121, 57 Cal.Rptr.3d 306, 156 P.3d 328 (2007).

21 35. Courts faced with laws conditioning the exercise of one fundamental right on the  
22 relinquishing of another are unequivocal. *See e.g., Bourgeois v. Peters*, 387 F.3d 1303, 1324  
23 (11th Cir. 2004) (“This case presents an especially malignant unconstitutional condition because  
24 citizens are being required to surrender a constitutional right . . . not merely to receive a  
25 discretionary benefit but to exercise two other fundamental rights.”)

---

26  
27  
28 <sup>1</sup> *Coons v. Lew*, 762 F.3d 891, 899 (9th Cir. 2014).

1           36. California previously allowed children to receive a public-school education  
2 without the need for medical treatments if their parents declared a religious or personal belief  
3 exemption for such children. These exemptions allowed those children to attend a K-12 school  
4 education within the State of California without undergoing every single medical treatment on  
5 California’s required list.

6           37. Governor Edmund G. Brown signed the legislation that put in place the current  
7 version of Section 120325 on June 30, 2015, and on July 1, 2016, the newly modified Section  
8 120325 went into effect.

9           38. The new and current version of Section 120325 removed all exemptions to  
10 medical treatment requirements for a student’s entry into K-12 schools in California, and also  
11 unlawfully restricts entry into child care centers, nurseries, private schools, development centers,  
12 and family day care homes, without such policy being tailored to the least restrictive means.  
13 Exemptions that had been in place since the 1960’s are now obsolete by and through the  
14 enactment and enforcement of Section 120325

15           39. Section 120325 too heavily infringes on the right to California students to a free  
16 public K-12 education. To vaccinate for the ten diseases required by Section 120325, a child  
17 must receive at least twenty-seven different doses and fifteen different pokes. Not only can this  
18 cost money, but it can take large amounts of time and effort. “A school which conditions a  
19 student’s participation in educational activities upon the payment of a fee clearly is not a ‘free  
20 school.’” *Hartzell* at 911.

21           40. Section 120325 eliminates the right to public education to an otherwise healthy  
22 cohort, those who simply do not wish to be injected with the medical treatments the State of  
23 California now requires. Section 120325 forces these children to be homeschooled. It is black-  
24 letter law in California that forcing students to homeschool because of their health situations is  
25 improper, and homeschooling is an insufficient alternative. *See Phipps v. Saddleback Valley*  
26 *USD*, 204 Cal.App.3d 1110, 1114 (1988) (child with AIDS removed from his public school and  
27 forced to homeschool suffered “irreparable harm and damage by not being given the education  
28 and enjoying the educational facilities uniquely available at his . . . school”).

1           41.     Section 120325 infringes on California’s well-established right to privacy. School  
2 children must disclose to school officials whether they have received these medical treatments,  
3 or alternatively whether they have conditions that prevent them from doing so. The sharing of  
4 this medical information is protected by the California constitution. The parent Plaintiffs wish  
5 to exercise their fundamental right to privacy, namely to make confidential medical decisions  
6 without disclosing them, and subjecting their families to stigma.

7           42.     Section 120325 infringes on due process. It is not narrowly tailored, as it requires  
8 vaccination of kindergarteners for Hepatitis B, a disease that is almost always sexually  
9 transmitted, and one whose primary risk is liver cancer decades later. Section 120325 further  
10 requires the vaccination for tetanus, that while very rarely serious to an individual, is not even  
11 communicable.

12           43.     Section 120325 is so under-broad that it cannot possibly achieve its objectives. It  
13 does not cover homeschooled children and the statutory scheme categorically exempts foster  
14 children and children with an Individualized Education Program.<sup>2</sup> Those unvaccinated kids are  
15 still free to sweat in weekend sports leagues together, to sit on tightly packed subways for hours  
16 at a time, and to squirm through hours of services at churches and synagogues, each of which are  
17 configured similarly to schools.

18           44.     There are less intrusive ways of accomplishing the government’s ends, such as  
19 education programs, and offering free vaccines.

20           45.     Section 120325 infringes on the right to bodily autonomy and to refuse medical  
21 treatments. If a family wishes to enjoy all of the benefits provided by a free public education,  
22 the family must allow the Defendants to dictate what medical treatments its children must obtain.

23           46.     Section 120325 infringes on the right to make parental decisions. The wisdom of  
24 the state and the Defendants substitutes the wisdom of the parent.

25           47.     Section 120325 creates an unconstitutional condition. It is abundantly clear that  
26 it requires the surrender of one constitutional right to exercise another. For example, if a family

---

27 \_\_\_\_\_  
28 <sup>2</sup> See Cal. Health & Safety Code § 120341.

1 wishes to exercise its right to a free public education, it must give up its rights to privacy, to  
2 refuse medical treatments, and to be “let alone.” *Gill v. Curtis Pub. Co.*, 38 Cal.2d 273, 276;  
3 239 P.2d 630, 632 (1952).

4 48. Exemptions that had been in place since the 1960s are now obsolete by and  
5 through the modification and enforcement of the newly modified Section 120325.

6 49. Plaintiffs in this matter are school-aged children who have not had the medical  
7 treatments that California law seeks to command with Section 120325, and their parents. Each  
8 of the minor Plaintiffs desire to exercise their right to attend public-school, and receive all of the  
9 benefits of the same, which are guaranteed by the California Constitution without giving up their  
10 rights to refuse medical treatments or their constitutionally enumerated right to privacy.

11 50. In fall of 2016, Plaintiff parents were denied or knew they would be denied the  
12 constitutionally afforded right to enroll their children in free K-12 public-school education due  
13 to their children not having received every single medical treatment on California’s required list.

14 51. In fall of 2016, many other members hereby being represented by A Voice for  
15 Choice, Inc. were also denied access to a free K-12 school education in California, due to such  
16 children not currently being in compliance with each and every one of the now statutorily  
17 required medical treatments for admission and attendance within a public-school in California.

18 52. Since the enactment of Section 120325, Plaintiffs M.M., K.M., A.M., S.L., A.B.,  
19 T.S., and W.S. have been absolutely prohibited from receiving their full right to attend public-  
20 school and enjoying their fundamental right to a free public-school education through the  
21 enactment and enforcement of Section 120325. Unless Plaintiffs forego their constitutionally  
22 afforded rights to refuse medical treatments, their right to bodily autonomy, their right to privacy,  
23 and their right to make parental decisions, they will continue to be harmed by Section 120325.

24 53. For these reasons, Plaintiffs ask this Court to enjoin, preliminarily and  
25 permanently, Section 120325 and any other California statutes that seek to require a child to  
26 comply with receiving medications and/or disclosing what medical treatments a child has or has  
27 not received before such child may exercise their right under the California Constitution to attend  
28 K-12 public-school education.

1           54.     This action seeks (1) a declaration that Section 120325, which requires a child to  
2 comply with receiving medical treatments and/or disclosing what medical treatments a child has  
3 received before such child may exercise their right under the California Constitution to attend K-  
4 12 public-school education, is unconstitutional under the California Constitution, and (2) a  
5 preliminary and permanent injunction preventing Defendants from enforcing such provision  
6 against Plaintiffs.

7           55.     Plaintiffs' inability to receive a K-12 school education unless they agree to comply  
8 with receiving a long list of medical treatments and/or disclosing what medical treatments  
9 Plaintiffs have or have not received has caused them significant hardship, including but not  
10 limited to the deprivation of rights guaranteed by California's own Constitution, as well as  
11 humiliation, emotional distress, financial hardship, pain, suffering, psychological harm, and  
12 stigma. K-12 schooling is an exceptionally important social and educational part of a developing  
13 child's life, and one guaranteed by the California Constitution. Each day that Plaintiffs are denied  
14 their right to attend K-12 public-school education, they suffer irreparable harm as a direct result  
15 of Defendants' violation of their rights under the California Constitution.

16           56.     If Section 120325 and the related and resulting statutes are not enjoined and struck  
17 down as unconstitutional, Defendants will continue to enforce this unconstitutional law against  
18 Plaintiffs, as well as others similarly situated, thereby depriving them of their fundamental rights.  
19 The declaratory and injunctive relief sought by Plaintiffs, on the other hand, will require  
20 Defendants to cease enforcing the requirement of school-aged children to comply with receiving  
21 a long list of medical treatments and/or disclosing what medical treatments such children have or  
22 have not received in order to exercise their preexisting constitutional right to K-12 public-school  
23 education. Through the continued enforcement of Section 120325, either the child Plaintiffs will  
24 be forced to give up their fundamental right to attend school because they wish to exercise their  
25 constitutional right to privacy through their refusal of medical treatment, bodily autonomy, and/or  
26 disclosure of what medical treatments they have or have not received; or in the alternative, the  
27 child Plaintiffs will be forced to give up their constitutional right to refuse medical treatment  
28 because they wish to exercise their fundamental right to a public education. The relief sought will

1 also require Defendants to recognize a parent’s fundamental right to decide on what medications  
2 are put into their child’s body.

3  
4 **FIRST CAUSE OF ACTION**

5 **Violation of California Constitution, Article I, §7**

6 **(Right to Due Process)**

7 Plaintiffs against all Defendants

8 57. Plaintiffs incorporate here by reference paragraphs 1 through 56, *supra*, as if fully  
9 set forth herein.

10 58. California Constitution Article I, Section 7 provides that “A person may not be  
11 deprived of life, liberty, or property without due process of law or denied equal protection of the  
12 laws.”

13 59. Section 120325 violates fundamental liberties that are protected by the Due  
14 Process Clause, both on its face and as applied to Plaintiffs.

15 60. The right to bodily autonomy and the accompanying right to refuse medical  
16 treatments is a well-regarded substantive due process right. The California Supreme Court has  
17 recognized fundamental rights to determine one’s own medical treatment, and to refuse unwanted  
18 medical treatment, and has recognized a fundamental liberty interest in medical autonomy.

19 61. Section 120325 infringes on state constitutional rights by denying children the  
20 opportunity to exercise their right under the California Constitution to attend K-12 public-school  
21 education unless they first give up their separate right to refuse medical treatments and control  
22 what is put into their bodies. When receipt of a public benefit is conditioned upon the waiver of a  
23 constitutional right, the government bears a heavy burden of demonstrating the practical necessity  
24 for the limitation, which in this matter, the Defendants are unable to demonstrate.

25 62. Section 120325 also unconstitutionally negates the right of parents to make  
26 important decisions in the upbringing of their own child, to refuse medical treatments for their  
27 children, and to specifically decide on what types of medications are put into the bodies of such  
28 children, or else risk their children not being able to receive an adequate education or participate



1 in the social aspects and benefits of K-12 schooling in California, even though the government  
2 may not deny a benefit to a person on a basis that infringes their constitutionally protected  
3 interests.

4 63. Moreover, Section 120325 infringes on the very ancient right to direct the  
5 parenting of one's children, and for children to be raised by their own parents. *See In re Marriage*  
6 *of W.*, 114 Cal.App.4th 68, 73, 7 Cal.Rptr.3d 461, 463 (2003) (citing *In re B.G.*, 11 Cal.3d 679,  
7 693–694, 114 Cal.Rptr. 444, 523 P.2d 244 (1974); *In re Carmaleta B.*, 21 Cal.3d 482, 489, 146  
8 Cal.Rptr. 623, 579 P.2d 514 (1978)).

9 64. Section 120325 has infringed on the minor-aged Plaintiffs' due process rights to  
10 bodily autonomy and the right to refuse medical treatments, as each such Plaintiff will be required  
11 to receive a vast number of medical treatments in order to receive their fundamental right to a  
12 free public-school education.

13 65. Section 120325 has created an unconstitutional condition in that it mandates that  
14 one must forego their due process rights in order to receive their fundamental right to a free  
15 public-school K-12 education.

16 66. Section 120325 has infringed on the due process rights of the parent Plaintiffs in  
17 so much as it strips each such individual of their right to parent their own children and determine  
18 what, if any, medical treatments are in the best interest of their children if they also want their  
19 children to receive their fundamental right to a free public-school education.

20 67. Such deprivation of rights by Defendants has and continues to harm and injure  
21 Plaintiffs and as such, Section 120325 and the related and resulting statutes must be enjoined and  
22 struck down as unconstitutional.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **SECOND CAUSE OF ACTION**

2 **Violation of California Constitution, Article IX, §5**

3 (Right to Public Education, Grades K-12)

4 Plaintiffs against ALL Defendants

5 68. Plaintiffs incorporate here by reference paragraphs 1 through 67, *supra*, as if fully  
6 set forth herein.

7 69. Article IX, Section 5 of the California Constitution requires “the Legislature to  
8 ‘provide for a system of common schools by which a free school shall be kept up and supported  
9 in each district’” and such a provision “entitles ‘the youth of the State ... to be educated at the  
10 public expense.’” As such, “a public-school K-12 education is a fundamental right in the State  
11 of California. *Hartzell v. Connell*, 35 Cal.3d 899 (1984).

12 70. Through the modification and enforcement of the modified Section 120325, the  
13 Defendants have restricted the ability for children who have not received every single medical  
14 treatment under California’s required list, including Plaintiffs, to receive their fundamental right  
15 to attend a K-12 school education.

16 71. The California Constitution affords the right to attend K-12 public-school  
17 education to all individuals residing in California, and such right cannot be withheld from  
18 children whose parents have chosen not to force even one of California’s listed vaccines upon  
19 and into their child.

20 72. While Defendants will argue that homeschool is a viable option and substantially  
21 similar to that of a public-school education, California’s Fourth District Court of Appeal has  
22 clearly stated the position that it does not believe “that home teaching is the equivalent of  
23 classroom instruction.” *Phipps v. Saddleback Valley USD*, 204 Cal.App.3d 1110, 1120 (1988),  
24 as such home schooling options often place the child at an educational disadvantage, while also  
25 putting pressure on parents to pay for related services, hire private child care as other general  
26 child care is not allowed, and/or stay out of the workplace in order to assist the child during their  
27 educational development. Such deprivation of rights granted under the California Constitution  
28

1 should be protected for all groups of people residing in California, and not just those who have  
2 agreed to comply with a law that is unconstitutional on its face.

3 73. Section 120325 has created an unconstitutional condition in that it mandates that  
4 one must forego their due process rights as well and their constitutionally enumerated right to  
5 privacy in order to receive their fundamental right to a free public-school K-12 education.

6 74. Here, Plaintiffs desire to not surrender their due process rights nor their  
7 constitutionally enumerated and protected privacy rights, and as a result, they are being  
8 unlawfully forced by the Defendants to surrender and forego their fundamental right to a free  
9 public-school education. Such restriction upon Plaintiffs and deprivation of their rights is in  
10 abeyance of well-settled precedent.

11 75. Such deprivation of rights by Defendants has and continues to harm and injure  
12 Plaintiffs and as such, Section 120325 and the related and resulting statutes must be enjoined and  
13 struck down as unconstitutional.

14  
15 **THIRD CAUSE OF ACTION**

16 **Violation of California Constitution, Article I, §1**

17 (Right to Privacy)

18 Plaintiffs against ALL Defendants

19 76. Plaintiffs incorporate here by reference paragraphs 1 through 75, *supra*, as if fully  
20 set forth herein.

21 77. Article I, Section 1 of the California Constitution delineates that all individuals  
22 have a right to privacy.

23 78. “There can be no question but that minors, as well as adults, possess a  
24 constitutional right of privacy under the California Constitution.” *Am. Acad. Of Pediatrics v.*  
25 *Lungren*, 16 Cal.4th 307, 334, 940 P.2d 797, 814 (1997).

26 79. The right to privacy is implicated in matters concerning “the preservation  
27 of...personal health” mad matters involving “retaining personal control over the integrity of one’s  
28 own body. *Am. Acad. Of Pediatrics v. Lungren*, 16 Cal.4th 307, 332-33, 940 P.2d 797, 813

1 (1997). Additionally, California’s strong “constitutional right of privacy [also] guarantees to the  
2 individual the freedom to choose to reject, refuse to consent to intrusions of his bodily integrity.”  
3 *Bartling v. Superior Court*, 163 Cal.App.3d 186, 195.

4 80. Additionally, “A person’s medical profile is an area of privacy infinitely more  
5 intimate, more personal in quality and nature than many areas already judicially recognized and  
6 protected.” *Bd. of Med. Quality Assurance v. Gherardini*, 93 Cal.App.3d 669, 678 (1979).  
7 Moreover, “It is settled that a person’s medical history, including...records, falls within the zone  
8 of informational privacy protected” by the California Constitution. *People v. Martinez*, 99  
9 Cal.App. 4th 465, 474-75, 105 Cal.Rptr.2d 841, 847 (2001). Additionally, “The right to control  
10 circulation of personal information is fundamental. This right reaches beyond the interests  
11 protected by the common law right to privacy...The ‘zones of privacy’ created by Article I,  
12 Section 1, extend to the details of one’s own medical history.” *Pettus v. Cole*, 49 Cal.App.4th  
13 402, 440, 57 Cal.Rptr.2d 46, 72 (1996).

14 81. As a result of Section 120325, Plaintiffs’ Right to Privacy has been infringed by  
15 the Defendants in two distinct ways; namely (i) by causing the Plaintiffs to forego the right to  
16 control the integrity of their own body or that of their children; and (ii) By causing Plaintiffs to  
17 have to disclose private and confidential medical records in order to obtain their fundamental  
18 right to a free public-school education.

19 82. By and through the Defendants’ actions in enacting and enforcing Section 120325,  
20 Defendants have created an unconstitutional condition whereby the Plaintiffs must surrender their  
21 Constitutionally enumerated Right to Privacy and subject themselves and/or their children to  
22 unwanted medical treatments, or on the converse, surrender their fundamental right to an  
23 education. This has all been to the extreme detriment and harm of Plaintiffs.

24 83. Section 120325 has caused and will continue to cause Plaintiffs to forego their  
25 constitutionally enumerated right to privacy in order to obtain their fundamental right to a free  
26 public-school education by unlawfully forcing Plaintiffs to disclose their private medical records  
27 to public agencies in order to be allowed to exercise such right to a free public-school education,  
28 all in violation of Plaintiffs’ Right to Privacy.



1           II.       Plaintiffs respectfully request that this Court enter a preliminary and a permanent  
2 injunction enjoining enforcement or application of Section 120325 and any other California law  
3 which requires a child to receive medical treatments and/or disclose what medical treatments a  
4 child has or has not received before such child may exercise their right under the California  
5 Constitution to attend K-12 public-school education.

6           III.       In the alternative, Plaintiffs respectfully request that this Court reform Section  
7 120325, et seq. just as the court did in *In re LePage* with respect to a substantially similar  
8 overbroad vaccine mandate. *In re LePage*, 18 P.3d 1177 (Wyo. 2001) (reforming unconstitutional  
9 vaccine mandate to engraft on personal-beliefs waiver).

10          IV.       Plaintiffs respectfully request costs of suit, including reasonable attorneys' fees,  
11 and all further relief to which they may be justly entitled.

12  
13 DATED: April 3, 2017

**THE HAKALA LAW GROUP, P.C.**

14  
15 By: 

16 Brad A. Hakala

17 Attorneys for Plaintiffs, Devon Torrey Love,  
18 S.L., Allison Heather Grace Gates, M.M.,  
19 K.M., A.M., Courtney Barrow, A.B.,  
20 Margaret Sargent, T.S., W.S.,  
21 and A Voice for Choice, Inc.