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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

AMY DOESCHER, STEVE  
DOESCHER, DANIELLE JONES,  
KAMRON JONES, RENEE  
PATTERSON, and DR. SEAN  
PATTERSON, individually and on  
behalf of their minor children,

Plaintiffs,

v.

TOMÁS ARAGÓN, in his official  
capacity as Department of  
Public Health Director and as the  
State Public Health Officer; ROB  
BONTA, in his official capacity as  
Attorney General of California.

Defendants.

Case No.: 2:23-cv-02995-KJM-JDP

**FIRST AMENDED COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

**JURY DEMANDED**

**[42 U.S.C. § 1983]**

1 **COMPLAINT**

2 Is it within California's authority to require families with sincere religious  
3 convictions to vaccinate their children for school enrollment, while at the same time  
4 granting secular families an exemption from school vaccination mandates on medical  
5 grounds? Such a policy violates the United States Constitution; therefore, Plaintiffs request  
6 declaratory and injunctive relief. Plaintiffs allege as follows:

7 **INTRODUCTION**

8 1. This action challenges the constitutionality of Senate Bill (SB) 277<sup>1</sup> under the  
9 Free Exercise Clause.

10 2. SB 277 eliminated the option for parents to object to vaccinations required to  
11 attend public or private school on personal grounds, including based on their religious  
12 convictions. Unvaccinated children can still attend public or private schools for secular  
13 reasons, if they are from foster families, homeless, from military families, enrolled with an  
14 individualized education program ("IEP"), or possess a medical exemption. Children in  
15 California are also allowed to participate in extracurricular activities, camps, attend  
16 religious services and visit museums and landmarks all without vaccination proof. The  
17 absence of a rational, let alone compelling, justification for removing religious exemptions  
18 to school-required vaccinations raises constitutional questions, especially when religiously  
19 exempt students do not pose a greater risk than secularly exempt students.

20 3. California stands out as one of a handful of states denying religious students  
21 the benefits of private or public school education. A recent decision by a United States  
22 District Court found that Mississippi's compulsory-vaccination law (a law similar to  
23 California's) violated the Free Exercise Clause by excluding religious exemptions.<sup>2</sup> The  
24

25 \_\_\_\_\_  
26 <sup>1</sup> Codified at Cal. Health & Saf. Code §§ 120325-120375.

27 <sup>2</sup> *Bosarge et al. v. Edney et al.*, United States District Court for the Southern District of  
28 Mississippi, Case No. 1:22-cv-00233-HSO-BWR.

Wyoming Supreme Court, in an effort to construe a school vaccination mandate to be constitutional, modified it to include a religious exemption, acknowledging the legislature's lack of authority to infringe on religious exercise.<sup>3</sup>

4. Plaintiffs hold unwavering sincere religious beliefs that prohibit them from vaccinating themselves or their children, and this commitment has come at a considerable cost. California's mandate, requiring various vaccines for students entering public or private schools (Cal. Health & Saf. Code §§ 120325-120375), places Plaintiffs' children at a disadvantage, depriving them of educational access enjoyed by their secular counterparts.

5. SB 277 encroaches upon and deprives Plaintiffs' First Amendment rights under the United States Constitution. Consequently, Plaintiffs seek a declaratory judgment and an injunction to prevent the Defendants from enforcing a law that lacks provisions for religious accommodation.

### **JURISDICTION AND VENUE**

6. This is a federal question action under 42 U.S.C. § 1983.

7. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(a), this being an action arising under, and for the violations of, federal laws. This action arises under the First and Fourteenth Amendments to the United States Constitution.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) and (2) because Defendants reside in this judicial district and a substantial part of the events or omissions giving rise to this action occurred in this judicial district.

9. This Court has authority to grant the requested declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, implemented through Rule 57 of the Federal Rules of Civil Procedure. This Court is also authorized to grant injunctive relief and damages under 28 U.S.C. § 1343, pursuant to Rule 65 of the Federal Rules of Civil Procedure, and reasonable attorneys' fees and costs under 42 U.S.C. § 1988.

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<sup>3</sup> *In re LePage*, 18 P.3d 1177 (Wyo. 2001).

**PARTIES**

**A. Plaintiffs**

**Amy and Steve Doescher**

10. Plaintiffs Amy Doescher and Steve Doescher are citizens of California and reside in Placerville.

11. The Doeschers are parents of one school-aged child: A.D. (16-years-old).

12. A.D. attends a charter school under independent study guidelines.

13. A.D. is exempt from SB 277 and attends the charter school two days a week in person.

14. At the same time, A.D. is not permitted to attend school outside of the independent study framework in person more than two days a week because of not being fully vaccinated.

15. The Doeschers attend District Church in El Dorado Hills, California.

16. Both of the Doeschers have gone on medical mission trips.

17. The Doeschers tithe monthly.

18. Steve Doescher leads a junior high ministry youth group at Church of the Foothills in Cameron Park, California.

19. A.D. has received some vaccinations earlier in life, but the Doeschers do not plan to vaccinate her further.

20. The Doeschers prayed extensively and consulted the Bible when deciding whether or not to vaccinate their children, and they arrived at the firm religious conviction that vaccinations violate their creed.

21. The Doeschers wish for A.D. to attend public or private school in California free from religious discrimination.

22. Ironically, Steve Doescher, who is a teacher at John Adams Academy in El Dorado Hills, California, submitted a religious exemption to vaccination requirements request for himself through his employer that was granted without issue.

**Danielle and Kamron Jones**

23. Plaintiffs Danielle and Kamron Jones are citizens of California and reside in Napa.

24. The Joneses are parents to four school-aged children: K.J. (14-years-old); A.J. (11-years-old); J.J. (10-years-old); and H.J. (7-years-old).

25. Of these four children, K.J. is partially vaccinated, and the other three children are not vaccinated.

26. As a result, the Joneses homeschool their children.

27. About 15 years ago, the Joneses started their own church due to God's calling.

28. After starting their church, the pastor of The Rock Worship Center suggested that the two churches merge, which they did.

29. Soon after merging, the pastor of The Rock Worship Center retired, and the Joneses took over as lead pastors.

30. The Joneses have been lead pastors for ten years.

31. The Joneses tithe every month.

32. The Joneses seek the Holy Spirit regarding all aspects of health for their family, and trust in His leading when making decisions regarding what will be placed in their children's bodies.

33. The Joneses prayed extensively and consulted the Bible when deciding whether or not to vaccinate their children, and they arrived at the firm religious conviction that vaccinations violate their creed.

34. The Joneses wish for K.J. to attend public high school free from religious discrimination, and for all of their other kids to do so when they are old enough.

**Renee Patterson and Dr. Sean Patterson**

35. Plaintiffs Dr. Sean and Renee Patterson are citizens of California and reside in El Dorado Hills.

36. The Pattersons are parents to three school-aged children: K.P. (17-years-old); C.P. (15-years-old); and K.P. (12-years-old).

37. The Pattersons' religious beliefs about vaccination date to 1999, after hearing a man preach about vaccines being antithetical to the Bible and the Book of Revelation. That sermon referenced blood pressed from grapes, likened the human cardiovascular system to rivers, and pronounced that vaccines were evil.

38. In 2003 and 2004 in Sacramento, California, the Pattersons and their fellow church members protested legislation seeking to discriminate against religious rights in the vaccine context . This protest arose from God telling Dr. Patterson that this is *his* fight.

39. The Pattersons prayed extensively and consulted the Bible when deciding whether or not to vaccinate their children, and they arrived at the firm religious conviction that they must not vaccinate.

40. The Pattersons' children are not vaccinated with no plans for future vaccinations.

41. The Pattersons wish for all of their children to attend public or private school in California free from religious discrimination.

42. The Pattersons have been disheartened by watching their kids be excluded from the schools that are funded by their tax dollars. Their children have lost friendships, been spoken to inappropriately, and treated unfairly.

## **B. Defendants**

43. Defendant Tomás Aragón is made party to this Action in his official capacity as the Department of Public Health Director and as the State Public Health Officer. Under California law, Dr. Aragón is tasked with implementing and enforcing, and does implement and enforce, the mandatory immunization requirements of SB 277 for school-aged children.

44. Defendant Rob Bonta is made party to this Action in his official capacity as the Attorney General of California. Under California law, Attorney General Bonta is the state's chief legal officer and is responsible for enforcing, and does enforce, the mandatory immunization requirements of SB 277 for school-aged children. Attorney General Bonta is charged with implementing and enforcing, and does implement and enforce, SB 277 through, among other things, threatening to bring criminal charges against anyone who violates SB 277.

### **FACTUAL ALLEGATIONS**

#### ***General Background of Compulsory Childhood Vaccination in California***

45. In 1960, the California Legislature began to institute certain vaccination requirements for school-age children and included a religious exemption.

46. The possibility for an exemption, however, was limited, requiring those seeking a religious exemption to vaccinations to be a bona fide member of a "recognized denomination" whose religious teachings required "reliance on prayer or spiritual means for healing" (e.g., Christian Scientists).

47. California started to require vaccines for public and private school entry in 1961, including a single dose of polio vaccination for school attendance.

48. That same year, California enacted a personal belief exemption ("PBE"), a provision allowing parents to exempt their children from school vaccine requirements if the requirements contradict parental beliefs – including those considered religious or spiritual beliefs.

49. Throughout the 1970s and 1990s, the California Legislature added to the required school vaccination schedule that children be immunized against diphtheria, pertussis (whooping cough), tetanus, measles, mumps, rubella, haemophilus influenzae type-b, hepatitis B, and varicella (chicken pox). All of these requirements allowed for a PBE, which included a parent exempting their child if they had sincerely held religious

1 beliefs against vaccinations. In 2010, the California Legislature added a tetanus, diphtheria,  
2 and pertussis booster as a requirement for advancement to the seventh grade in public and  
3 private schools. A PBE was also allowed for this booster.

4 50. In 2012, AB 2109 was passed requiring PBEs to be signed by a doctor. In his  
5 signing statement, then Governor Brown directed the California Department of Public  
6 Health to allow for religious exemptions to vaccination as an alternative to a parent being  
7 required to get a doctor's signature on the PBE form.

8 51. In 2014, PBEs were held by a mere 2.5% of students, and only 0.7% of  
9 students were completely unvaccinated. Most were partially vaccinated.

10 ***SB 277: Removal of California's PBE and Its Religious Exemption***

11 52. In 2015, the California Legislature passed SB 277, which abolished the PBE,  
12 thereby removing parents' ability to decline school-required vaccinations based on their  
13 sincerely held religious beliefs.

14 53. Nonetheless, SB 277 includes several exemptions to school vaccination  
15 requirements, including:

- 16 a. Medical exemptions (Cal. Health & Safety Code § 120370(a));
- 17 b. Exemptions for "home-based private school or...an independent study  
18 program[.]" (*Id.* at § 120335(f)); and
- 19 c. Exemptions for students who qualify for an IEP (*Id.* at § 120335(h)).

20 54. Medical exemptions are not temporary in nature. An exemption is provided  
21 for the entire duration that the student has their medical condition. There is no basis to  
22 suggest that a student who has a medical contraindication to the school-mandated vaccines  
23 will overcome that condition and be medically cleared to the vaccines during the school  
24 year.

25 55. Federal law may require the implementation of IEPs, but that does not give  
26 California justification to discriminate against students with religious exemptions. In a  
27 similar lawsuit filed in the Northern District of California, Santa Clara County attempted  
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to justify their reasoning for discriminating against employees with religious exemptions to the COVID-19 vaccine, claiming they were required to prioritize employees with medical exemptions because of federal and disability law. *UnifySCC v. Cody*, No. 22-CV-01019-BLF, 2022 WL 2357068, at \*10 (N.D. Cal. June 30, 2022). The court rejected this argument and enjoined the discriminatory practice, concluding that “under the Supremacy Clause, the edicts of the federal Constitution trump any obligation to comply with federal or state statutory or regulatory requirements.” *Id.*

56. Students qualifying for one of SB 277’s exemptions to school vaccination requirements are still free to participate in sports and extra-curricular activities with other students who attend their local school districts. Unvaccinated students sitting in a classroom setting pose no greater risk than exempt students who participate in sports or extra-curricular activities with vaccinated schoolmates.

57. California also allows migrant students, homeless children, military families and children, and foster youth to attend public and private schools without proof of vaccination:

- a. Foster Care Children: Section 48850(f)(8)(B) of the Education Code was amended this year to provide that when foster care children are transferred to a new school, the school “shall immediately enroll the foster child even if the foster child...is unable to produce...records normally required for enrollment, such as...proof of immunization history...”
- b. Homeless Children: Section 48852.7(c)(3) of the Education Code provides that to “ensure that the homeless child has the benefit of matriculating with his or her peers in accordance with the established feeder patterns of school districts...[t]he new school shall immediately enroll the homeless child even if the child...is unable to produce...records normally required for enrollment...including, but not limited to, records or other proof of immunization history...”

i. This section does not require proof of residency or citizenship, allowing undocumented and unvaccinated migrant students to enroll in school.

c. Military Families: Section 48204.6(c)(3) of the Education Code provides that to “ensure that the pupil who is a child of a military family has the benefit of matriculating with his or her peers in accordance with the established feeder patterns of school districts...[t]he new school shall immediately enroll the pupil who is a child of a military family even if the child...is unable to produce...records normally required for enrollment...including, but not limited to, records or other proof of immunization history...”

58. Notably, none of these statutory provisions require students to provide proof of vaccination within a certain time period.

59. Many schools have allowed foster children, homeless children, and migrant students to enroll in school unvaccinated for the entire duration of the school year, as allowed by state law.

60. The state does not require school districts to disenroll students if they do not provide proof of vaccination within thirty days. There are circumstances when school districts, including schools in the Inland Empire of California, spend the entire school year trying to ensure that such students are compliant.

61. The state is primarily interested in ensuring the districts are making a good faith effort to ensure compliance.

62. The rolling admission of foster youth, homeless students, migrants, and military families pose a risk of spreading disease. The moment one of these unvaccinated students steps foot on campus, they present the same health and safety risks as an unvaccinated religious student. There is no evidence to suggest that an unvaccinated student is immune from contracting or spreading disease for ten days or thirty days.

63. Indeed, if anything, children living in homeless circumstances or shelters are more likely to be exposed to the kinds of conditions that would spread disease than children living in stable, religious homes.

64. California has one of the highest rates of children in foster care than any other state.

65. Homelessness and immigration have steadily increased in California over the past decade. The average rate of students experiencing homelessness in California is around 4%, with some regions like Monterey and Santa Barbara experiencing rates above 10%. Scientific studies have shown that migrant students and students experiencing homelessness or living in foster homes are at increased risk of spreading disease due to a multitude of factors, including lack of access to hygiene and healthcare facilities.

66. Thus, migrant children, homeless children, and children living in foster homes are a greater contagion hazard than unvaccinated students with religious exemptions.

67. California also mandates vaccines that are not necessary. For instance, chickenpox is a mild disease and complications in children are rare. Chickenpox vaccination also increases the risk of shingles in adults, which is a more dangerous disease and comes with a higher risk of complications.

68. Tetanus is not person-to-person transmissible, and Hepatitis B immunity wanes by the time the students are teenagers.

69. Strikingly, when deliberating SB 277, the California State Senate’s Judiciary committee admitted that repealing the PBE “effectively repeals any possible religious exemptions” and *might conflict with the Free Exercise Clause*.<sup>4</sup>

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<sup>4</sup> See Senate Judiciary Committee Hearing, April 27, 2015, at page 16, available at: [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201520160SB277#](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB277#) (accessed November 13, 2023).

1        70. The mass vaccination of California parents, with the COVID-19 vaccine,  
2 since 2021, has translated into more parents becoming aware of and submitting religious  
3 exemptions for vaccines in response to workplace vaccine mandates, under the 1964 Civil  
4 Rights Act. This has created a dichotomy where they are able to continue with work  
5 without being vaccinated due to their sincerely held religious beliefs, but their children are  
6 not afforded the same exemption to attend public or private school in California.

7        71. California has school vaccination rates that are higher than the national  
8 average for each disease required for school entrance.<sup>5</sup> Research confirms that herd  
9 immunity is achieved against contagious diseases when vaccinations rates reach 80% to  
10 95%.<sup>6</sup> If the small group of devoted vaccination objectors could exercise religious  
11 exemptions to school-required vaccinations, infection rates would not rise with any  
12 statistical significance. Thus, there can be no overriding governmental interest that justifies  
13 the infringement on religious belief.

14        72. California is unable to establish that students with religious exemptions to  
15 vaccinations present a higher risk compared to those with secular exemptions.

16        73. SB 277 is further irrational considering that those vaccinated against certain  
17 diseases, such as Measles, can still develop infections. These students are allowed to go  
18 home and congregate with unvaccinated family members or family members who no  
19 longer have immunity or have waning immunity.

20        74. A significant number of individuals are also anergic to vaccines, meaning they  
21 can never mount antibodies no matter how protected they are by vaccines. Thus, there is  
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23 <sup>5</sup> See American Academy of Pediatrics, *Child Vaccination Across America*, available at:  
24 <https://downloads.aap.org/AAP/Vaccine/index.html> (accessed November 13, 2023).

25 <sup>6</sup> See Carrie MacMillan, *Herd Immunity: Will We Ever Get There?*, Yale Medicine, May  
26 21, 2021, available at: <https://www.yalemedicine.org/news/herd-immunity> (accessed  
27 November 13, 2023).  
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1 no evidence to suggest that a ban on religious exemptions is justified considering a  
2 significant number of non-immune students are congregating with each other including  
3 those who are anergic and those who no longer have immunity.

4 75. California is one of only five states that does not offer a religious exemption  
5 from compulsory school-vaccination laws.<sup>7</sup>

6 76. In 2001, in the matter *In re LePage*, 18 P.3d 1177 (Wyo. 2001), the Supreme  
7 Court of Wyoming held that the state Department of Health was not authorized to inquire  
8 about the sincerity of a mother's religious beliefs when determining whether her daughter  
9 was exempt from a public school immunization requirement. The Supreme Court of  
10 Wyoming held that the Department of Health is required to grant an exemption upon the  
11 submission of a written objection and does not allow the Department of Health to make an  
12 inquiry into the sincerity of the requestor's religious beliefs. In reversing the lower court,  
13 the court balanced a valid state interest in protecting schoolchildren from disease with the  
14 relatively low number of requests for exemption and its confidence in parents to make  
15 decisions in the best interest of their children's physical and spiritual health.

16 77. Arkansas previously had a limited religious exemption to school-required  
17 vaccinations similar to that allowed in California in 1960. In *Boone v. Boozman*, 217 F.  
18 Supp. 2d 938 (E.D. Ark. 2002), a mother who possessed religious objections unrecognized  
19 by the Arkansas statute challenged the limited religious exemption on First Amendment  
20 grounds. *Boone, supra*, 217 F. Supp. 2d at 951. The court held that the limitation of the  
21 statutory exemption to a "recognized church or religious denomination" violated the Free  
22 Exercise Clause. *Id.* Arkansas soon thereafter enacted a comprehensive religious  
23 exemption for school-required vaccinations, which remains the law today.

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26 <sup>7</sup> See National Conference of State Legislatures, *States With Religious and Philosophical*  
27 *Exemptions From School Immunization Requirements*, last updated August 3, 2023,  
28 available at: [https://www.ncsl.org/health/states-with-religious-and-philosophical-](https://www.ncsl.org/health/states-with-religious-and-philosophical-exemptions-from-school-immunization-requirements)  
[exemptions-from-school-immunization-requirements](https://www.ncsl.org/health/states-with-religious-and-philosophical-exemptions-from-school-immunization-requirements) (accessed November 13, 2023).

78. More recently, in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021) (*per curiam*), the U.S. Supreme Court went even further than *Boone*'s rationale and ruled that a law is not neutral and generally applicable, and thus invokes strict scrutiny, if it treats "any comparable secular activity more favorably than religious exercise." *Id.* at 1296 (emphasis in original). See, e.g., *Fulton v. City of Phila.*, 141 S. Ct. 1868, 1877 (2021) (lack of general applicability alone triggered strict scrutiny review); *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1729 (2018) (non-neutrality alone invoked strict scrutiny).

79. In *Tandon*, California regulations intended to slow the spread of COVID-19 limited religious gatherings, but treated comparable secular activities – such as getting haircuts and retail shopping – more favorably. *Id.* at 1297. *Tandon* is controlling precedent, and one of the primary bases of Plaintiffs' case.

80. The Supreme Court employed similar reasoning in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. \_\_\_, 141 S. Ct. 63 (2020), holding that a New York regulation that prohibited religious gatherings but permitted similar secular conduct violated the First Amendment where the secular and religious activities in question presented comparable contagion risks. *Id.* at 67.

81. Most recently, in *Bosarge et al. v. Edney et al.*, United States District Court for the Southern District of Mississippi, Case No. 1:22-cv-00233-HSO-BWR, the plaintiffs contended that Mississippi's mandatory vaccine statute requiring students to be vaccinated in order to attend public and private Mississippi schools violated their rights under the Free Exercise Clause. The plaintiffs' minor children were unvaccinated due to their parents' religious beliefs. The plaintiffs claimed that due to Mississippi's compulsory vaccination law, their children had not been allowed to enroll at public or private schools in the State of Mississippi.

82. The *Bosarge* court granted both summary judgment and a permanent injunction in favor of the plaintiffs:

“Because Mississippi affords a discretionary medical exemption process by statute, it must similarly afford a religious accommodation process. *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021). For these reasons, and those set forth in the Court’s preliminary injunction order (Dkt. 77), [Mississippi’s compulsory vaccination law] is DECLARED unconstitutional as applied to Plaintiffs, who have sincerely held religious beliefs about vaccination.” (Dkt. 87.)

The *Bosarge* court permanently enjoined the defendants from enforcing Mississippi’s compulsory vaccination law unless they provided an option for requesting a religious exemption. (Dkt. 87.)

83. While California forbids even *submitting* a religious exemption for school-required vaccinations at school enrollment, California has granted tens of thousands of medical exemptions over the past several decades. California employers, colleges, and universities also have granted thousands of religious exemptions during this same time period. At no time have any of these exemptions caused a disease outbreak. This is similar to deeming shopping to be a “necessity” but simultaneously prohibiting church attendance.

### **FIRST CLAIM FOR RELIEF**

#### **42 U.S.C. § 1983 – VIOLATION OF PLAINTIFFS’ FIRST AMENDMENT FREE EXERCISE RIGHTS WITH RESPECT TO PLAINTIFFS’ SINCERELY HELD RELIGIOUS BELIEFS**

84. Plaintiffs incorporate the allegations in the foregoing paragraphs as if set forth fully herein.

85. The First Amendment of the U.S. Constitution provides that: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” The Fourteenth Amendment applied the First Amendment to the states. *Cantwell v. Connecticut*, 310 U.S. 296 (1940).



1           86. Parents have the right to “direct the religious upbringing of their children” and  
2 “when the interests of parenthood are combined with a free exercise claim [...] more than  
3 merely a ‘reasonable relation to some purpose within the competency of the State’ is  
4 required to sustain the validity of the State’s requirement under the First Amendment.”  
5 *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972).

6           87. The Supreme Court has repeatedly recognized that “[t]he free exercise of  
7 religion means, first and foremost, the right to believe and profess whatever religious  
8 doctrine one desires.” *Employment Div. v. Smith*, 494 U.S. 872, 877 (1990).

9           88. “In applying the Free Exercise Clause, courts may not inquire into the truth,  
10 validity, or reasonableness of a claimant’s religious beliefs.” *Hobbie v. Unemployment*  
11 *Appeals Comm’n*, 480 U.S. 136, 144 n.9, (1987). The “guarantee of free exercise is not  
12 limited to beliefs which are shared by all of the members of a religious sect.” *Thomas v.*  
13 *Review Bd. of Ind. Emp’t Sec. Div.*, 450 U.S. 707, 715-16 (1981).

14           89. Courts should not inquire into the validity or plausibility of a person’s beliefs;  
15 instead, the task is to determine whether “the beliefs professed [] are sincerely held and  
16 whether they are, in [a believer’s] own scheme of things, religious.” *United States v.*  
17 *Seeger*, 380 U.S. 163, 185 (1965).

18           90. Plaintiffs’ sincerely held religious beliefs, which prohibit them from  
19 vaccinating their minor children, have been unconstitutionally burdened by California. SB  
20 277 unconstitutionally burdens Plaintiffs because it forces them to forego their religious  
21 beliefs for their children to receive a public or private education.

22           91. California has pitted Plaintiffs’ consciences and creeds against educating their  
23 children, the latter which is also, incidentally, a fundamental right under the California  
24 Constitution. Nevertheless, Plaintiffs’ children cannot obtain a formal education and  
25 everything that comes with it (socialization, network effects, etc.) without violating their  
26 religious convictions.



92. Further, A.D., and other independent study students exempt from SB 277, can attend charter schools in person two days a week unvaccinated, yet are not permitted to attend school outside of the independent study framework in person more than two days a week because of not being fully vaccinated.

93. Diseases do not know what day of the week it is.

94. The Free Exercise Clause of the First Amendment protects against “indirect coercion or penalties on the free exercise of religion, not just outright prohibitions.” *Carson v. Makin*, 142 S. Ct. 1987 (2022) (quoting *Lyng v. Northwest Indian Cemetery Protective Assn.*, 485 U. S. 439, 450 (1988)). “In particular, we have repeatedly held that a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits.” *Id.*

95. However, California families with secular, medical motivations for declining compulsory immunization can be exempted from the same requirements. Children who are homeless, or who come from foster or military families, can also be exempted from the same requirements.

96. California has made an unconstitutional value judgment that secular motivations for opting out of compulsory immunization are permitted, but that religious motivations are not.

97. While California may have a general healthcare interest in promoting childhood immunization, the First Amendment’s Free Exercise Clause prohibits the government from enacting non-neutral and non-generally applicable legislation unless it is narrowly tailored to a compelling government interest. The Free Exercise Clause “protects not only the right to harbor religious beliefs inwardly and secretly. It does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of (*or abstention from*) physical acts.” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. \_\_\_\_ (2022); 2022 WL 2295034; 2022 U.S. LEXIS 3218 (emphasis added).

1           98. A government policy will not qualify as neutral if it is “specifically directed  
2 at . . . religious practice.” *Id.* at \*27. A policy can fail this test if it “discriminate[s] on its  
3 face,” or if a religious exercise is otherwise its “object.” *Id.*

4           99. For multiple reasons, California’s SB 277 is neither neutral nor generally  
5 applicable. Government regulations “are not neutral and generally applicable, and  
6 therefore trigger strict scrutiny under the free exercise clause of the First Amendment,  
7 whenever they treat any comparable secular activity more favorably than religious  
8 exercise.” *Tandon*, 141 S. Ct. at 1296. *See also Thoms v. Maricopa Cnty. Cmty. Coll.*  
9 *Dist.*, No. CV-21-01781-PHX-SPL, at \*16 (D. Ariz. Nov. 5, 2021) (concluding that a  
10 college’s COVID-19 vaccine policy was not generally applicable, triggering strict scrutiny  
11 under the First Amendment, because “Plaintiffs presented evidence . . . that Defendant has  
12 made at least one exception” to the policy).

13           100. Whether two activities are comparable for purposes of the Free Exercise  
14 clause depends on “the asserted government interest that justifies the regulation at issue.”  
15 *Id.* Here, with regard to regulating the conduct of its secular and religious citizens, the  
16 government holds the same interest in preventing disease. Further, the secular and religious  
17 activities at issue are not only comparable, but they are also exactly the same (seeking  
18 exemption from compulsory vaccination).

19           101. Additionally, the government “fails to act neutrally when it proceeds in a  
20 manner intolerant of religious beliefs or restricts practices because of their religious  
21 nature.” *Fulton, supra*, 141 S. Ct. at 1877 (citations omitted). California’s elevation of  
22 secular objections above religious objections is not the result of random happenstance, but  
23 rather of deliberate exclusion. The California Legislature intentionally erased a pre-  
24 existing personal belief exemption for school-required vaccinations, thereby removing a  
25 religious exemption option, and in close temporal proximity enacted a medical exemption  
26 to SB 277.

1           102. Even if California could show that it did not target religious conduct for  
2 intentional exclusion (it cannot), its mandatory immunization regulations invoke  
3 heightened scrutiny because the statute fails the general-applicability test.

4           103. A law “lacks general applicability if it prohibits religious conduct while  
5 permitting secular conduct that undermines the government’s asserted interests in a similar  
6 way.” *Id.* While California may have a general healthcare interest in promoting childhood  
7 vaccination, its interest is not so extraordinary as to prohibit an exemption for secular  
8 reasons, which poses a similar contagion hazard as a hypothetical religious exemption.  
9 Further, California does not prohibit unvaccinated children from attending camp, visiting  
10 public libraries or museums, or from interacting with their peers in any other way. Nor  
11 does California require that adult faculty, staff members, or school visitors provide proof  
12 of immunization. Indeed, the plaintiffs include a schoolteacher, from the same household  
13 as one of his unvaccinated children – who was able to obtain a work religious exemption  
14 – while the state simultaneously denies his children the fundamental right to an education  
15 at that same school.

16           104. California’s vaccination laws fail the general applicability test on additional,  
17 alternative grounds because the medical exemption system provides for individualized  
18 discretionary review. “The creation of a formal mechanism for granting exceptions renders  
19 a policy not generally applicable . . . .” *Id.* at 1879.

20           105. In such instances, the government may not refuse to extend the possibility for  
21 an exemption “to cases of religious hardship without compelling reason.” *Id.* at 1872.

22           106. Because its medical-exemption process provides for discretionary review at  
23 multiple levels, California’s SB 277 fails the general-applicability test. California has  
24 instituted a system of customized review – delegated first to private physicians and second  
25 to the clinical staff at CDPH “with expertise in immunization” – who at each level conduct  
26 individualized review of every exemption in order to make a determination.  
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1           107. Therefore, for multiple reasons, California’s SB 277 invokes heightened  
2 judicial scrutiny.

3           108. California’s SB 277 cannot withstand strict scrutiny because it is not narrowly  
4 tailored. In the context of government regulations targeting infectious disease, “narrow  
5 tailoring requires the government to show that measures less restrictive of the First  
6 Amendment activity could not address its interest” in reducing disease. *Tandon*, 141 S. Ct.  
7 at 1296-97. Where utilization of such less restrictive means is required, the government  
8 “may no more create an underinclusive statute, one that fails truly to promote its purported  
9 compelling interest, than it may create an overinclusive statute, one that encompasses more  
10 protected conduct than necessary to achieve its goal.” *Church of the Lukumi Babalu Aye,*  
11 *Inc. v. City of Hialeah*, 508 U.S. 520, 578 (1993).

12           109. Regarding under-inclusivity, where the government permits secular activities,  
13 such as a medical exemption, “it must show that the religious exercise at issue is more  
14 dangerous.” *Tandon*, 141 S. Ct. at 1297.

15           110. When a law is over-inclusive, its “broad scope . . . is unnecessary to serve the  
16 interest, and the statute fails for that reason.” *Lukumi*, 508 U.S. at 578.

17           111. California’s SB 277 cannot withstand heightened scrutiny because it is both  
18 over-inclusive and under-inclusive relative to the state interests it purportedly attempts to  
19 achieve. Instead of regulating with the surgical precision necessary to avoid conflict with  
20 its citizens’ free exercise rights, California has deployed a blunt legislative hammer and, in  
21 one stroke, obliterated every possibility for religious observance.

22           112. California’s compulsory-immunization scheme is under-inclusive because it  
23 only applies to children in a school setting. The mandate does not apply to non-school  
24 attending children (who regularly and unavoidably interact with their peers) nor to adults  
25 in the state, who comprise over 77% of California’s population.

26           113. SB 277 is also under-inclusive because children possessing a religious  
27 exemption for school-required vaccinations would pose no greater threat than their secular  
28

1 peers with a medical exemption. Moreover, the immunization requirements do not apply  
2 to adults who are employed in California's school system, or to school visitors.

3 114. Further, the existence of a religious exemption to vaccinations for attending  
4 school would have an immaterial impact on the number of individuals vaccinated in  
5 California overall given that it does not apply to adults. Nor would the existence of a  
6 religious exemption materially impact the overall percentage of vaccinated school children.

7 115. Given that California boasts one of the highest school vaccination rates in the  
8 country, allowing a religious exemption for a handful of students, just as secular medical  
9 exceptions are permitted, would constitute an actual attempt at narrow tailoring.

10 116. Because California's SB 277 is simultaneously too narrow and too broad to  
11 fulfill the government interests in supposedly attempts to accomplish, the regulation lacks  
12 the narrow tailoring necessary to survive strict scrutiny review.

13 117. Accordingly, the presence of a vaccination medical exemption and the  
14 intentional removal of the PBE, and thereby a religious exemption through SB 277, has  
15 violated and continues to violate Plaintiffs' rights to free exercise of religion under the First  
16 Amendment.

17 118. "The loss of First Amendment freedoms, for even minimal periods of time  
18 unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).  
19 Because of Defendants' actions, Plaintiffs have suffered and continue to suffer irreparable  
20 harm.

21 119. Absent injunctive and declaratory relief prohibiting Defendants from  
22 enforcing the unconstitutional aspects of SB 277, Plaintiffs will continue to be harmed.

23 120. Plaintiffs are entitled to a declaration that Defendants violated their First  
24 Amendment rights to free exercise of religion and an injunction against Defendants'  
25 actions as they relate to SB 277.

26 121. Additionally, Plaintiffs are entitled to the reasonable costs of this lawsuit,  
27 including their reasonable attorneys' fees.

**INJUNCTIVE RELIEF ALLEGATIONS**

122. Plaintiffs incorporate the allegations in the foregoing paragraphs as if set forth fully herein.

123. Plaintiffs allege that both on its face and as applied, SB 277 violates their First Amendment rights and their right to be free from unlawful statutes.

124. Plaintiffs are being and will continue to be irreparably harmed unless this Court enjoins Defendants from enforcing SB 277.

125. Plaintiffs have no plain, speedy, and adequate remedy at law to prevent Defendants from enforcing SB 277.

126. If not enjoined by this Court, Defendants will continue to implement and enforce SB 277 in violation of Plaintiffs' constitutional rights.

127. Accordingly, injunctive relief is appropriate.

**DECLARATORY RELIEF ALLEGATIONS**

128. Plaintiffs incorporate the allegations in the foregoing paragraphs as if set forth fully herein.

129. Plaintiffs are entitled to a declaratory judgment pursuant to 28 U.S.C. § 2201. An actual and substantial controversy exists between Plaintiffs and Defendants as to their legal rights and duties with respect to whether SB 277, which allows for secular but not religious exemptions to school-required vaccinations, violates the United States Constitution.

130. The case is presently justiciable because SB 277 and the absence of any religious exemption to school-required vaccination to the same applies to Plaintiffs and their children, who are currently harmed by being excluded from school.

131. Declaratory relief is therefore appropriate to resolve this controversy.

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**PRAYER**

Pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, it is appropriate and proper that a declaratory judgment be issued by this Court, declaring that SB 277 is unconstitutional. Pursuant to 28 U.S.C. § 2202 and Fed. R. Civ. P. 65, it is appropriate and hereby requested that the Court issue preliminary and permanent injunctions prohibiting Defendants from enforcing SB 277.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment against Defendants and provide Plaintiffs with the following relief:

- A. A preliminary and permanent injunction prohibiting Defendants, their agents, servants, employees, and any other persons acting on their behalf from implementing and enforcing SB 277 without providing the option for a broad religious exemption to school-required vaccination;
- B. Declare that SB 277 is unconstitutional on its face without a broad religious exemption to school-required vaccination;
- C. Declare that SB 277 is unconstitutional as applied to Plaintiffs insofar as enforcing it violates Plaintiffs' First Amendment right to free exercise of religion;
- D. Grant Plaintiffs reasonable attorneys' fees and costs under 42 U.S.C. § 1988 and any other applicable authority; and
- E. For any such other and further relief as the Court deems equitable and just under the circumstances.

Respectfully submitted,

DATED: May 17, 2024

**THE NICOL LAW FIRM**

By: /s/ Jonathon D. Nicol  
JONATHON D. NICOL

Counsel for Plaintiffs

1           Plaintiffs demand trial by jury.

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3  
4       DATED: May 17, 2024

Respectfully submitted,

**THE NICOL LAW FIRM**

5           By: /s/ Jonathon D. Nicol  
              JONATHON D. NICOL

6                       Counsel for Plaintiffs  
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