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1 UNITED STATES DISTRICT COURT

2 FOR THE EASTERN DISTRICT OF CALIFORNIA

3 BEFORE THE HONORABLE
 4 KIMBERLY J. MUELLER, CHIEF DISTRICT JUDGE PRESIDING

5 AMY DOESCHER, STEVE DOESCHER,) Case No: 2:23-cv-02995-KJM-JDP
 6 DANIELLE JONES, KAMRON JONES,)
 7 RENEE PATTERSON, and DR. SEAN) Motion Hearing/
 8 PATTERSON, individually and on) Scheduling Conference
 9 behalf of their minor children,)
 10 Plaintiffs,) Date: 9/13/2024
 11)
 12 v.)
 13)
 14 TOMAS ARAGON, in his official)
 capacity as Department of)
 15 Public Health Director and as)
 16 the State Public Health)
 17 officer; ROB BONTA, in his)
 18 official capacity as Attorney)
 19 General of California,)
 20 Defendants.)

21 **REPORTER'S TRANSCRIPT OF PROCEEDINGS**

22 Page 1 through 26

23 OFFICIAL REPORTER: Abigail R. Torres, CSR, RPR/RMR, FCRR
 24 CSR No. 13700
 25 United States District Court
 Eastern District of California
 501 I Street, Suite 4-100
 Sacramento, California 95814

*Proceedings recorded by mechanical stenography. Transcript
 produced by computer-aided transcription.*

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SACRAMENTO, CALIFORNIA; FRIDAY, SEPTEMBER 13, 2024; 10:59 A.M.

-oOo-

THE CLERK: Calling Civil Case No. 23-2995, *Doescher, et al., v. Aragon, et al.* This is on for defendants' motion to dismiss and scheduling conference, Your Honor.

MS. SOICHET: Does the Court have a preference if we stand at the podium or --

THE COURT: I don't have a preference. The key is that we'd be able to hear you. And, generally, parties like to equalize matters. Given the relatively few of you, either place is fine.

All right. Appearances, please, for plaintiffs.

MR. NICOL: Jonathon Nicol for plaintiffs.

THE COURT: Good morning, Mr. Nicol.

For the defense?

MR. NICOL: Good morning, Your Honor.

MS. SOICHET: Good morning, Your Honor. Emmanuelle Soichet from the California Department of Justice on behalf of defendants, Aragon and Bonta.

THE COURT: Good morning to you. Say your name one more time?

MS. SOICHET: Emmanuelle Soichet.

THE COURT: Soichet.

All right. So in this, I had issued an order alerting you to some of my questions, so let me start with you,

1 Mr. Nicol.

2 Can you clarify, who do you consider to be the
3 plaintiffs here? Just the parents or also the minor children?

4 MR. NICOL: The reason it's just the parents, suing on
5 behalf of the minor children, is from parents deciding the
6 religious habits of the children under *Wisconsin v. Yoder*, so
7 they're the ones that make the decisions about their children's
8 religious habits. And we have identified them as a plaintiff
9 suing on behalf of the children, but we would be willing to add
10 the children, if needed.

11 THE COURT: You could -- if given the chance, would
12 you amend to clarify --

13 MR. NICOL: If the --

14 THE COURT: -- if the children are also plaintiffs?
15 Or would that run afoul of what your client is requesting, to
16 the extent you can answer that question?

17 MR. NICOL: Right. I mean, if the Court required it,
18 obviously, we would do that, but we're comfortable with the
19 plaintiffs being the parents.

20 THE COURT: All right. So -- and then what exactly is
21 the injury?

22 MR. NICOL: Right. So as to the -- the parents, the
23 whole theory of liability here is that SB 277 prevents the
24 parents from exercising their religious beliefs in connection
25 with their children's educational goals. So the California

1 Constitution provides for right to education to children.
2 However, SB 277, if these parents were to actually try and have
3 their children go to any school provided for under the
4 California Constitution, they would have to forego their
5 religious beliefs, and that is a violation.

6 And so we've got three sets of parents here. One of
7 them, at least, homeschools their children, and so, you know,
8 the -- the injury that they're suffering is the time and
9 resources it takes to homeschool children. So that means
10 giving up their -- their job, their wages, and having to invest
11 in resources for homeschooling that otherwise should be covered
12 by the tax revenue that they paid to the State.

13 And so there's also other, you know, interests and
14 injuries with the time that it takes to homeschool. But then
15 setting aside from homeschooling, there are parents who are --
16 are -- that, actually, we've alleged in the Complaint there's
17 parents that, you know, have seen their children be excluded
18 from things. They're disheartened by this. You know, they're
19 paying for these public schools in their neighborhood that
20 their kids can't even go to, and so there's a loss of what
21 their children are, otherwise, entitled to under the California
22 Constitution for its educational guaranty to children.

23 You know, and there's an interesting case with one of
24 the couples, the named Doeschers. Steve Doescher is, in fact,
25 a teacher at a school, and he was able to get a religious

1 exemption. However, his child can't go to the school under SB
2 277 because there's no religious exemption for her.

3 THE COURT: All right. And is that all pled -- would
4 you say all the injury you just identified, is that in the
5 Complaint?

6 MR. NICOL: Yeah. Definitely, if you look at
7 paragraph 22, was what I was just talking about, Steve
8 Doescher. Paragraph 42 talks about watching their own children
9 be excluded from schools that their tax dollars pay for.
10 Homeschooling is alleged as to the Joneses in -- I can pull
11 that, but that's in the first, probably, 20 paragraphs. So at
12 least those are some of the basic injuries that are alleged
13 there.

14 THE COURT: But is it fair to construe the current
15 allegation is saying that plaintiffs would enroll their
16 children in a different school, in a public school, if it were
17 not for the vaccination laws?

18 MR. NICOL: Yes. So if you look at paragraphs 21, 34,
19 and 41 of the first amended complaint, each of the plaintiffs
20 wish for their children to attend schools in person free from
21 religious discrimination. And that they -- there's some more
22 details, but those are the key paragraphs for each set of the
23 parents, which says, if it were not for SB 277, then their
24 children would be attending different schools.

25 And so because of SB 277, some have homeschooled, and

1 others have worked out other part-time charter situations and
2 things like that. But, yes, that is all alleged, Your Honor.

3 THE COURT: So what's your best case? With that
4 clarification, what's your best case that the parents have
5 standing?

6 MR. NICOL: That the parents have standing?

7 THE COURT: Uh-huh. Is there a case I can look to
8 that matches up with all of that?

9 MR. NICOL: I mean, I would go back to the -- first
10 one I mentioned, *Wisconsin v. Yoder*, 406 US 205 from 1972,
11 which says "parents decide the religious habits of their
12 children." And so that includes, in this case, parents
13 deciding the children's schooling, parents deciding the
14 children's health care. That all derives from religious
15 beliefs here, and religious exemptions across the nation all
16 come from the parents' rights, so prior to SB 277, the parent
17 is the one who asserts the exemption on a religious ground in
18 favor of the child.

19 And if you look at Michigan, Pennsylvania, Arizona,
20 Washington, Mississippi, just as some examples, the parents are
21 the ones who hold the right to claim or not exercise the
22 exemption based on a religious ground.

23 THE COURT: All right. Ms. Soichet, response to what
24 you've heard?

25 MS. SOICHET: Sure, Your Honor. I mean, I think that

1 the -- the Court's question about whether all these injuries
2 that plaintiffs have cited this morning are in the complaint,
3 and I think that the answer there is no.

4 We had discussion of, you know, potential injury of
5 wages -- related to wages and time used to homeschool; that is
6 not in the Complaint, nowhere. In fact, they said that their
7 theory of liability is premised on California Constitutional
8 rights to education.

9 Again, that's nowhere in the complaint. Also, that
10 they were excluded from things, again, in violation of the
11 California Constitution; that is not in the Complaint. The
12 paragraphs that counsel has just pointed to, and I think
13 describe them as key are the paragraphs that are repeated for
14 the three parents that are quite vague, 21, and the ones -- the
15 two other allegations that are parallel to paragraph 21, and
16 that those paragraphs are so vague that they're not -- they
17 don't carry the weight of injury here.

18 So --

19 THE COURT: If plaintiffs were to amend -- if the
20 Court granted leave to amend to add the details provided during
21 hearing, would that cure standing for the parents?

22 MS. SOICHET: Your Honor, I think that the -- the
23 order -- I think the motion in the order pointed to three
24 different types of information that was missing. Right. The
25 potential injuries that the SB 277 was somehow preventing

1 the -- exercise religion. And the Court noted how that was not
2 the case because these students have not been vaccinated. Then
3 there was the question of whether plaintiffs have attempted to
4 enroll their children in schools and been denied, you know,
5 based on religious discrimination; that was not addressed by
6 plaintiffs this morning. And that, again, you know, that is --
7 that would be one theory that is -- has not been addressed.

8 And then the question is, you know, either they
9 enrolled and were denied, or they even attempted; that was a
10 third. Did they attempt to enroll their children and were
11 denied? And, again, there's no allegation here, so I don't --
12 I can't say, you know, that *Yoder* -- *Wisconsin v. Yoder*, if
13 that's the basis for saying that just having spent time and
14 money on homeschool is enough.

15 I don't think *Wisconsin v. Yoder* is going to get them
16 there and *Wisconsin v. Yoder* -- and, apologies, because this
17 was not briefed, so this is just based on my memory. But my
18 memory is that *Wisconsin v. Yoder*, you did have parents who
19 were -- you know, who were injured, and that was the basis of
20 liability.

21 But there, you had very concrete facts about students,
22 Amish boys, who I think were like 16 years old, and were being
23 forced by state law to attend secondary school against their
24 religious views. And that led to a whole host of very concrete
25 injuries and problems in the parents' mind against their

1 religious and right about leaving the Amish lifestyle after
2 they were there, I believe, not working on the farms. That
3 kind of concrete injury. And you had -- you know, real -- real
4 facts there.

5 And I, again, haven't -- we haven't looked at -- we
6 haven't briefed this, so I haven't gone back to see what the
7 complaint in Yoder said, but I don't think that you can get
8 past this -- this -- the deficiency that the Court has
9 highlighted about, Did they try to enroll their students in
10 these schools and were they denied? And is -- but for SB 277,
11 would they have?

12 And, again, going back to paragraph 21, and that
13 very -- what I was going to say was a very, you know, vague
14 paragraph that doesn't really carry the water. They're -- all
15 they're saying is that the -- that plaintiffs wish for their --
16 their students to attend public or private school in California
17 free from religious discrimination.

18 But that's not -- you know, they wish they could
19 attend. If it not for this law, it's freedom from
20 discrimination, which could mean, you know, lots of different
21 things in these parents' mind. Right. There's nothing --
22 there's no inference the Court can make that's reasonable.
23 It's a very far jump to say that that means that but for the
24 vaccination law. Right.

25 It could be that the parents have a view that, you

1 know, they want a school that supports religion in the way that
2 they do and maybe that means -- maybe that means vaccination
3 laws. But it could also mean anything from school prayer to
4 how they treat transgender students. It is just a very vague
5 statement that, again, doesn't carry. It's too attenuated to
6 create an inference in this matter --

7 THE COURT: Even if the Court agrees with that
8 reading, there's a possibility of amendment --

9 MS. SOICHET: There would --

10 THE COURT: -- which -- which could cure and might
11 make some sense, at this time. But what about the parents
12 versus the children? Do you have a --

13 MS. SOICHET: That, Your Honor -- frankly, Your Honor,
14 I'm not prepared to address between the parents or
15 plaintiffs -- parents or the students. We have seen it in past
16 cases, either way, and so I don't know necessarily. That could
17 be something that we may raise in a future motion to dismiss
18 should the Court grant leave to amend.

19 THE COURT: All right.

20 MS. SOICHET: I do have one question for Your Honor --
21 not to jump. But one request that if you were going to issue
22 an order based on standing, denying -- or, rather, granting our
23 motion to dismiss, whether you would also address the other
24 jurisdictional arguments that we made, specifically the
25 Eleventh Amendment immunity related to Attorney General Bonta.

1 THE COURT: Well, that was my next question for
2 Mr. Nicol. I don't see that the plaintiffs are pointing to any
3 statutory, regulatory provision granting the attorney general
4 the authority the plaintiffs seem to think he has.

5 Am I missing something?

6 MR. NICOL: You're right. I'm not aware of authority
7 about that.

8 THE COURT: And another Court has found he does have
9 immunity in the face of a challenge to SB 277. Agreed?

10 MR. NICOL: Agreed.

11 THE COURT: Do you find that Court's reasoning not
12 persuasive?

13 MR. NICOL: It likely is persuasive, Your Honor.

14 THE COURT: All right. Thank you. That's helpful.

15 MS. SOICHET: Your Honor, can I just jump in here
16 because --

17 THE COURT: Well --

18 MS. SOICHET: -- as much as this is all in favor of
19 my -- you know, I just want to be clear with the Court that
20 that decision, the Tory Love decision, was an agreement
21 stipulation by the parties that the AG did not have, so just
22 to -- I want to be very fully candid with the Court. That was
23 the parties' stipulation at the AG.

24 THE COURT: All right. Courts don't tend to
25 rubber-stamp stipulations based on this Court's experience.

1 Just so you know.

2 All right. So in terms of the merits here, assuming
3 that I get past standing, I don't have real questions about the
4 immunity question. So I just want to make certain I understand
5 how plaintiffs' position fits with precedent, which seems
6 pretty clear to the Court. So, for instance, looking at the
7 Supreme Court's decision in *Prince v. Massachusetts*: "The
8 right to practice religion freely does not include liberty to
9 expose the community or the child to communicable disease or,
10 the latter, to ill health or both."

11 How can I disregard that -- that statement in *Prince*
12 *V. Massachusetts*? Here, isn't there's an incidental burden
13 with the law that's mutual and generally applicable, as
14 addressed in the *Fulton* case?

15 MR. NICOL: Right. So plaintiffs contend that there
16 is -- the problem here is the interests of California and
17 preventing disease. That's not a problem. We recognize that
18 that's a totally reasonable interest of the State.

19 The concern is, the way SB 277 functions, is it
20 creates two separate categories. There are individuals who
21 have, I'll call them, secular exemptions that are provided for
22 under SB 277. That could be medical. That could be for
23 students who are homeless or immigrant children or IEP
24 programs. And then on the other side, you've got people who
25 would, otherwise, propose a religious exemption. So it's the

1 same exact activity of trying to get an exemption from
2 vaccination for whatever purpose.

3 However, as a result of SB 277, that creates a class
4 that is discriminatory against religious observance.

5 THE COURT: At least some of the categories you've
6 mentioned, it's almost a temporary allowance. Right? A
7 homeless child or a foster child shows up at a school. There's
8 a grace period to get the paperwork to follow the child.

9 MR. NICOL: Right. It's supposed to be temporary, but
10 we do allege that there are cases at least in Inland Empire
11 where it's gone at least for the whole school year. So there
12 could be folks who send their children to school under one of
13 these conditions, and then there's no follow-through because
14 there doesn't seem to be much enforcement on that.

15 So otherwise unvaccinated children, who may be in the
16 same exact health condition as a religious student, are able to
17 be a part of the student population as if they had no exemption
18 at all.

19 THE COURT: So do you disagree that here there is an
20 incidental burden placed by a law that's mutual and generally
21 applicable, just looking at the law?

22 MR. NICOL: Correct.

23 THE COURT: You do disagree.

24 What are you -- do you need the Court to assume that
25 there was legislative animus here or not?

1 MR. NICOL: At this stage, I'm not sure if we need the
2 Court to assume that. But at least that is pled in the
3 complaint, looking at some of the discussions at the time that
4 SB 277 was considered, including a specific language that the
5 drafters thought it might actually violate the free-exercise
6 clause.

7 I know that there is some other -- I mean, we're not
8 at an evidence stage, but there is some -- I don't want to say
9 testimony, but some public statements by certain legislators
10 who definitely expressed animus toward people asserting
11 religious exemptions.

12 THE COURT: Is there anything in the record now that I
13 can take account of, given the posture, that supports that? I
14 mean, considering a potential court challenge, that's not
15 animus. That's just thinking through how to write a statute.
16 Right?

17 MR. NICOL: Yeah. I'll need to find it. But like I
18 said, it is a footnote in there. But I'm not sure that the
19 Court needs to actually make a finding of animus at this time,
20 given the -- what I consider the quite, quite clear
21 discrimination from the language of -- of SB 277.

22 THE COURT: And when you say footnote in there, which
23 "there"?

24 MR. NICOL: The first amended complaint.

25 THE COURT: Got it. Okay. So to follow up with you,

1 Mr. Nicol, just thinking about the -- the nature of the law
2 here. Other Federal Appellate Courts, Second Circuit, in
3 particular, but also the Ninth Circuit, have determined that
4 medical judgments about specific patients are not the type of
5 discretionary exceptions that can show a law is not actually
6 generally applicable.

7 Do you agree that that's the principle that's been
8 articulated by at least the Second and the Ninth Circuits?

9 MR. NICOL: I agree with that, yes.

10 THE COURT: And why is that not -- why is that
11 principle not a problem for you?

12 MR. NICOL: I'm sorry. Could you ask that again?

13 THE COURT: There's not the type of -- the law doesn't
14 provide the kind of broad discretion, doesn't delegate
15 discretion in a way that would be problematic. Agreed?

16 MR. NICOL: Right. We did set forth several reasons
17 why it's not neutral and not generally applicable in the motion
18 or, rather, opposition, about pages 13 to 14.

19 The first was based on the discretionary nature of the
20 medical exemptions, but there are some others. One citing,
21 *Church of Lukumi Babalu*, talking about about how -- it's just a
22 clear restriction on religious practices, you know.

23 And, here, we actually -- I'm reminded now. It's
24 complaint paragraph 69, saying that California passed SB 277,
25 even though the senate judiciary committee was openly aware of

1 free-exercise concerns. And SB 277, it actually undermines its
2 stated purpose of reducing transmission because it expanded
3 secular exemptions, and at the same time, reduced, you know,
4 the very few religious exemptions.

5 On top of that -- I know we haven't talked about it
6 yet -- but the Brooklyn diocese matter there and *Tandon*
7 *v. Newsom*, both cited in the papers -- says that SB -- supports
8 the position that SB 277 fails both neutrality and general
9 applicability. Because the regulation is not neutral and
10 generally applicable when it treats any comparable secular
11 activity more favorably than religious exercise.

12 And, again, that goes back to what I said at the
13 beginning, where these are not even comparable activities.
14 They're the same activities. Students trying -- or parents on
15 behalf of students trying to get exemptions from the
16 vaccination.

17 THE COURT: But you weren't saying that -- has any
18 Court accepted a challenge to 277?

19 MR. NICOL: Not yet. Not yet. And very similar to
20 this was the case that I cited to a few times from Mississippi.
21 *Bosarge v. Edney*, that's on page 15 of the opposition, and that
22 is pretty much an identical situation.

23 THE COURT: All right. Well, any response,
24 Ms. Soichet, to what you've just heard? And I have a few
25 questions for you about the record here.

1 MS. SOICHET: Yes, Your Honor. So I'll start by
2 noting that some -- some of the cases that the Court cited and
3 asked about at the very start of this discussion about the
4 merits really go to the fact that immunization and compulsory
5 school vaccination has been the gold standard for protecting
6 health for students in -- you know, across the States for over
7 100 years.

8 And you have a number of these cases going back that
9 we've cited, that the Court's aware of, and there is no -- you
10 know, there is no precedent here. This law in particular has
11 been challenged so many times. Nothing has stuck.

12 In response to specific arguments that counsel made, I
13 won't go through everything, but I will just note a few things.

14 THE COURT: Why don't you focus on the expansion of
15 secular exceptions argument, and -- and if you have anything to
16 say about the irony that the father was able to obtain an
17 exception.

18 MS. SOICHET: Sorry. I'm a little -- when the Court
19 is saying -- when Your Honor is saying the expansion of the --

20 THE COURT: That's an argument Mr. Nicol just made.
21 That at the same time that it eliminated religious exceptions,
22 the legislature expanded secular exceptions. That's the
23 argument he's making. I'd be interested on hearing your
24 focused response to that.

25 MS. SOICHET: And I guess I'm not really understanding

1 that argument because what the -- what SB 277 did was remove
2 what became -- what had become -- and it's in the record. It's
3 in our -- the background section of our brief and supported by
4 the legislative -- the committee reports that we include in our
5 RJN, is that -- at the time that SB 277 was passed, it was
6 passed in response to a measles outbreak in 2014 and '15. And
7 that was found to be caused by and spread by mostly
8 unvaccinated -- I think it's upwards of 90 percent of the
9 people --

10 THE COURT: I understand all that.

11 MS. SOICHET: But what I was getting to, Your Honor,
12 to get through all the preliminaries is that --

13 THE COURT: You would not agree it expands secular
14 exceptions --

15 MS. SOICHET: That it didn't expand -- yeah. Sorry.
16 Thank you. Is that at the time, what the legislature had found
17 is that the personal belief exemption had been turned into a
18 massive loophole. And so what the legislature was, in fact,
19 doing was removing -- maybe it was just one -- what -- you
20 know, maybe had just a few words of the personal belief
21 exemption, but in practice was actually a very large loophole.

22 And so it was removing a large, you know, category of
23 people who were taking these exemptions and narrowly slicing
24 and carving out a few ways that would -- nonetheless, that
25 people would still have exemptions. So, yes, maybe it got rid

1 of one, and maybe you could say that it created some carve-outs
2 but if --

3 THE COURT: The carve-outs being the temporary --
4 would you say all the carve-outs refer only to these temporary
5 allowances: homeless, foster, IEPs. There're the IEPs.

6 MS. SOICHET: There're IEPs. There's also the
7 *Wisconsin v. Yoder*. There's also, Your Honor, the
8 homeschool/independent study which is an important -- that was
9 a very important thing in front of the legislature. That was
10 one of the things that, you know, in the committee they added
11 that.

12 THE COURT: But there's no grace period applicable to
13 anyone if the exception is purely based -- the request for an
14 exception is purely based on religion; right?

15 MS. SOICHET: Right.

16 THE COURT: Uh-huh. All right. In terms of the
17 statistics the State provides, I can't really reach those
18 without converting to summary judgment; right?

19 MS. SOICHET: I'm sorry. Can you just repeat what
20 you -- sorry.

21 THE COURT: You provide statistics about the number of
22 people who have relied on exceptions. I can't consider that
23 kind of evidence on this motion unless I convert to summary
24 judgment.

25 Do you agree?

1 MS. SOICHET: Our position is that you don't need to
2 convert it to summary judgment. That these are judicially
3 noticeable public records. These are official records. I
4 think those are, specifically, immunization -- annual
5 immunization summaries that are posted by the California
6 Department of Public Health and have been for a number of
7 years.

8 It is on -- publicly available. These are reports
9 that are -- may be presented to the legislature, I believe, and
10 that are posted online for the public. They were not, like,
11 created for this litigation. They are official records. And
12 we cite a number of cases in our request for judicial notice,
13 noting that official records of that type are proper for -- to
14 be noticed.

15 THE COURT: Including the merits, the details, the --
16 not just the existence of the records?

17 MS. SOICHET: Yes.

18 THE COURT: So if I don't consider the statistics, is
19 the result any different here?

20 MS. SOICHET: No, Your Honor. And I will just note,
21 you know, I think that the standards of the -- the *Tandon v.*
22 *Newsom* framework that the Supreme Court kind of adopted in the
23 COVID cases, a lot of those cases came out from motions for
24 preliminary injunction.

25 And so they are kind of factual. Right. There's no,

1 sort of, getting around when you ask about what is a comparable
2 risk. But that's why we think that you can, nonetheless, rely
3 on these noticeable documents. But, otherwise, we think that
4 even just on the face, these are not comparable. Right?

5 And you look at -- so, for instance, plaintiffs were
6 discussing their -- their opposition. That they, in their
7 opposition, they were -- you know, they, essentially, just in
8 their opposition on neutrality or general applicability, they
9 really just focus on the medical exemption. And the Courts
10 in -- there are a number of courts.

11 And Your Honor noted that Second District -- the
12 Second Circuit and the Ninth Circuit have ruled on medical
13 exemptions, so has the First Circuit in the *Does 1 through 6 v.*
14 *Mills* case. In all those cases, they were looking at the face
15 of the -- of the law that was at issue. And that's the same
16 thing here.

17 And that is because you have an objective criteria
18 that is a standard for that exemption. And I would just note
19 that if you compare our medical exemption to the medical
20 exemption in those three cases, I would say that ours is by far
21 even more objective, and that is because the legislature has
22 taken great pains to make -- to tie the medical exemption to
23 very clear criteria in standards of care, based on the fact
24 that practice has seen doctors take advantage of more looser
25 standards.

1 And so I would say that Doe -- *Does 1 through 6 v.*
2 *Mills, Doe v. San Diego Unified*, as well as the *We the Patriots*
3 cases all support, that you don't even need to go to our
4 documents that we -- our RJNs, but you can just look at the
5 face of this.

6 THE COURT: All right. I understand that argument.
7 Just final question, and then I'd take wrap-up.

8 Just back on this issue of some exceptions. Does the
9 State's providing for some students to attend new schools
10 without proof undermine its interest in increasing vaccination
11 rates?

12 MS. SOICHET: Absolutely not, Your Honor. As Your
13 Honor has noted, there is -- it is a temporary, conditional --
14 so, first of all, it's a temporary, conditional enrollment. It
15 is not some sort of open-ended enrollment. And disputes
16 plaintiffs', you know, unsupported allegation in the complaint,
17 this is, again, still a facial challenge to a law.

18 And the law -- the regulations that we cite in our
19 motion make clear that it's temporary. And that's once the
20 temporary grace period ends, schools, you know, should be
21 disenrolling children. So that's the first thing I'll note.

22 The second is that, you know, a lot of these are based
23 on transfers of students. Right. The waiting for the records
24 to come either because they are homeless and they had to move,
25 or because they're military families, or all of these are

1 transient, right, or the foster youth. If they're moving
2 foster home, they might need to go to a different school. And
3 so all of the -- all of those protections -- sorry, Your Honor.
4 I just lost my train of thought. But all of that is -- those
5 students were coming from somewhere else, necessarily. Right.

6 So it doesn't mean that just because they are entering
7 a school without their papers, that they necessarily weren't
8 vaccinated. It's not --

9 THE COURT: And the IEPs?

10 MS. SOICHET: The IEP -- the IEP provision provides
11 that you cannot -- you cannot refuse to provide IEP services
12 for a student who is unvaccinated. But on the face, it's
13 not -- that's limited to the IEP services.

14 THE COURT: All right. I have no further questions.

15 I know this is on for scheduling too. I think I
16 should resolve this motion before we schedule -- I have your
17 positions on that.

18 Is there anything further you want me to know at this
19 point? I've asked all the questions. We've had a pretty
20 thorough discussion.

21 Anything further, Mr. Nicol?

22 MR. NICOL: Yes. Just one thing I want to highlight.
23 In terms of what you were talking about with the statistics,
24 obviously, we're standing on our objections to that. But
25 there's an allegation in the complaint that, 72, California is

1 unable to establish that students with religious exemptions to
2 vaccinations present a higher risk compared to those with
3 secular exemptions.

4 That's really what the heart of this is about.
5 There's two different categories. You've got a bunch of folks
6 who are being excluded from schools under the California
7 Constitution. And there's no factual basis for that.

8 THE COURT: All right. Any final word, Ms. Soichet?

9 MS. SOICHET: Yes, Your Honor. Just quickly to
10 respond on paragraph 72 and the risk that their whole case
11 boils down to, that there's no difference between one student
12 or not.

13 That actually -- I would just, you know, direct the
14 Court back to our brief and to the *We The Patriots* case, which
15 clarifies that it's not about one student versus another, but
16 it's about the aggregate risk that that whole exemption
17 creates. So that's the first point.

18 And the second is just your earlier question about the
19 irony, you know, about -- the vaccination requirements would
20 prohibit a student versus an adult. There is no requirement
21 that all adults visiting a school be vaccinated, as plaintiffs
22 have noted. And that is because, again, we're talking about a
23 regime where attendance in schools is mandatory in California.
24 And, you know, various of these cases have described how -- I
25 think *Patriots* is pretty clear in its analysis when it comes to

1 the compelling interest, that that is where the State's
2 interest and where its power lies is in the students who are
3 being required to sit in schools. And those are those who
4 we're most worried about.

5 THE COURT: All right. Thank you. I have what I
6 need. The matter is submitted.

7 MR. NICOL: Thank you, Your Honor.

8 MS. SOICHET: Thank you, Your Honor.

9 (The proceedings were adjourned at 11:33 a.m.)

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11 **C E R T I F I C A T E**

12 I, Abigail R. Torres, certify that I am a duly
13 qualified and acting Official Court Reporter for the United
14 States District Court; that the foregoing is a true and
15 accurate transcript of the proceedings as taken by me in the
above-entitled matter on September 13, 2024, and that the
format used complies with the rules and requirements of the
United States Judicial Conference.

16 Dated: September 17, 2024
17 /s/ Abigail R. Torres

18 Abigail R. Torres, RPR/RMR, FCRR
19 CSR No. 13700
20 U.S. Official District Court Reporter
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