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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF CALIFORNIA
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13

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

17 Plaintiffs,

18 v.

19 **DR. ERICA PAN, in her official capacity as**
20 **Department of Public Health Director and**
as the State Public Health Officer,

21 Defendant.
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2:23-cv-02995-KJM-JDP

**SUPPLEMENTAL REPLY BRIEF IN
SUPPORT OF MOTION TO DISMISS
PLAINTIFFS' SECOND AMENDED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Date: June 5, 2025
Time: 10:00 a.m.
Dept: 3
Judge: The Honorable Kimberly J.
Mueller
Trial Date: Not Set
Action Filed: 12/22/2023

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INTRODUCTION

Contrary to Plaintiffs’ assertions in their impermissibly oversized supplemental opposition brief,¹ there are no “subtle defects” in *Royce v. Pan*, No. 3:23-CV-02012-H-BLM, 2025 WL 834769 (S.D. Cal. Mar. 17, 2025), *appeal docketed*, No. 25-2504 (9th Cir., Apr. 18, 2025) (*Royce II*). The same rationale and result apply in this case, which should be dismissed with prejudice for failure to state a claim.

ARGUMENT

I. ROYCE II PROPERLY APPLIED JACOBSON AND ITS PROGENY

The core holding of *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905) and its progeny, cited by *Royce II*, remains intact, contrary to Plaintiffs’ suggestion. Supp. Opp. at 1:7–10, 1:20–3:11. The “right of free exercise does not relieve an individual of the obligation to comply with a ‘valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that [his or her] religion prescribes (or proscribes),’” including mandatory school vaccination laws. *Royce II*, 2025 WL 834769, at *4.

Plaintiffs cite Justice Gorsuch’s concurring opinion in *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 24 (2020) as support for their contention *Jacobson* and its progeny have been undermined. Supp. Opp. at 3:8–11. However, Plaintiffs ignore that Justice Gorsuch expressly noted that “*Jacobson* applied what would become the traditional legal test associated with the right at issue—*exactly what the Court does today*.” 592 U.S. at 24, italics added. Nothing in Justice Gorsuch’s concurring opinion undermined the core holding of *Jacobson* or its rationale in relation to mandatory vaccination laws. 592 U.S. at 24–25. Rather, Justice Gorsuch identified a significant difference between the vaccination laws at issue in *Jacobson* and Governor Cuomo’s COVID-19 restrictions on houses of worship, which “effectively sought to ban all traditional forms of worship in affected [COVID-19] ‘zones’ whenever the Governor decrees for as long as he chooses.” *Id.* Justice Gorsuch explained that in “*Jacobson*, individuals could accept the vaccine, pay the fine, or identify a basis for exemption.” 592 U.S. at 24. “The imposition on Mr. Jacobson’s claimed right to bodily integrity, thus, was avoidable and relatively

¹ The Court has discretion to strike Plaintiffs’ supplemental brief on this basis. L.R. 110.

modest. It easily survived rational basis review, and might even have survived strict scrutiny, given the opt-outs available to certain objectors.” *Id.*

In fact, Justice Gorsuch’s concurring statements in *Roman Cath. Diocese of Brooklyn v. Cuomo* support the decision in *Royce II*. Unlike the Executive Order in *Roman Cath. Diocese* that restricted attendance at religious services, California’s school vaccination laws are neutral and generally applicable. SB 277 eliminated all PBEs, regardless of the basis of the personal belief, and was therefore neutral and generally applicable. Finally, by Plaintiffs’ own admissions in their Second Amended Complaint (SAC), SB 277 has not interfered with Plaintiffs’ ability to exercise their religious beliefs against vaccination.

II. ROYCE II CORRECTLY CONCLUDED SB 277 IS NEUTRAL AND GENERALLY APPLICABLE

In an effort to claim that SB 277 was neither neutral nor generally applicable, Plaintiffs go beyond responding to the impact of *Royce II* and now raise unsupported assertions that “SB 277 exempts vast numbers of students,” claiming numbers of “over 30% statewide” and “over 50% in urban districts.” Supp. Opp. at 1:12–13, 3:26–27.² Even if Plaintiffs could support these bald assertions of the total number of students who may fall within those various categories, Plaintiffs’ argument fails because the proper focus for assessing risk is the number of unvaccinated individuals within those categories, not the overall numbers of individuals who may fall within those categories. See *Tandon v. Newsom*, 593 U.S. 61 62 (2021) (“Comparability is concerned with the risks various activities pose”); *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1178 (9th Cir. 2021) (explaining that exemption to a vaccine mandate would not be comparable to a religious exemption in terms of the risk each exemption poses to the government’s asserted interests “if that number is very small and the number of students likely to seek a religious exemption is large”); *Royce II*, 2025 WL 834769, at *8. Plaintiffs do not dispute the California

² Plaintiffs’ untimely requests for judicial notice made in footnotes of their supplemental brief should be denied.

Further, to the extent Plaintiffs identify overall percentages of students who may have some form of IEP, are home-schooled, are over the age of 18, or who may be conditionally admitted based on their status as homeless, foster, immigrant, or children of active-duty military, Supp. Opp. at 3:26–4:3, 4:10–22, those percentages do not add up to 30%.

Department of Public Health (CDPH) data that, within each category, the rate of unvaccinated students is significantly less than the rates of unvaccinated students with PBEs when SB 277 was enacted. *See* RJN No. 32. That is, the judicially noticeable student vaccination rate data gathered and tracked by the CDPH pursuant to California law shows that the 2.4% personal beliefs exemption (PBE) rate at enactment of SB 277 was significantly higher than all permanent medical exemptions and the other children lacking required immunizations falling under criteria specified in SB 277, including independent study, home-based schooling, and IEPs. *See* RJN No. 32 *and see, e.g.*, RJN Ex. 17 at 10, 13–4, and Ex. 29 at 12, 22, 34.

III. *ROYCE II* CORRECTLY CONCLUDED THAT THE SPECIFIED EXEMPTIONS AND CONDITIONAL ADMISSION PROVISIONS ARE NOT COMPARABLE TO PBEs

Plaintiffs’ supplemental opposition fails to demonstrate that the allowed exemptions and short-term conditional admission provisions are “comparable” to the collective risks presented by students with PBEs.³ First, PBEs exempted students from all vaccination requirements for the entirety of their K-12 education in institutional classroom settings, regardless of the basis for their belief. None of the other exemptions and conditional admission categories are comparable in scope, duration, and/or collective risk.

With the enactment of SB 277 and more detailed tracking of unvaccinated student rates (partial or otherwise) within various categories, the percentage of unvaccinated students falling within the exemption categories of IEPs, independent study, and home-based private schools, as well as the short-term conditional admission categories of homeless, foster youth, migrant, and recently relocated children of active-duty military, are not comparable to the 2.4% of students who had PBEs. *See*, RJN No. 32; *Royce II*, 2025 WL 834769, at *8. The collective risks are thus not comparable to students with PBEs.

³ To the extent Plaintiffs now attempt to rely on the over 18 years of age exemption for students set forth in California Health and Safety Code section 120360, it is properly rejected for the same reasons as set forth in *Royce II* (e.g., students 18 years of age will generally spend much less time within the school system than students with PBEs during their entire education), including Plaintiffs’ failure to plead it. Furthermore, the exemption in Section 120360 is inapplicable because it applies to students seeking admission to community college. *Salasguevara v. Frye*, 31 Cal.App.4th 330, 340 (Cal. App. 1995).

As analyzed by *Royce II*, the scope and duration of the exemptions and conditional admission provisions cited by Plaintiffs are not comparable to PBEs. *Royce II*, 2025 WL 834769, at *8–*13. Unlike students with PBEs who would be exempt from all vaccination requirements for the entire duration of their K-12 education regardless of the reason for the belief, permanent and temporary medical exemptions are consistent with the public health interests of the State and those exemptions are limited to the specific vaccinations which are medically contraindicated. *Id.*, at *8–*9; Cal. Code Regs., tit. 17, §§ 6050(a), 6051(a). Students with permanent and temporary medical exemptions must receive all other required vaccinations. *Id.* The other exemptions of access to IEP services, independent study not involving classroom instruction, and home-based private schools are not comparable because they do not involve unvaccinated students in an institutional classroom setting throughout the entire school day. *Royce II*, 2025 WL 834769, at *9–*11.

Conditionally admitted students are also not comparable. Unlike unvaccinated students with PBEs who remain unvaccinated throughout their entire school tenure, students who are conditionally admitted based on homeless, foster, migrant, and/or active-duty military family status may be fully vaccinated but lack proof of vaccination, may be partially but not fully vaccinated, or may simply need time to receive the required vaccinations, must be vaccinated and must have proof of vaccination within 30 days. *See Royce II*, 2025 WL 834769, at *11, citing to *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th at 1180; Cal. Code Regs. tit. 17, § 6035(d)(1). Further, the percentage of conditionally admitted students who lack required vaccinations can be reduced through education and vaccination support services. *See, e.g.*, RJN Ex. 29 at 5 and Ex. 30 at 1, 5–6 (discussing reductions in conditional admission rates through education, including education of school staff on proper reporting categorizations, and the provision of vaccination services).

Finally, Plaintiffs ignore the fact that the California Legislature continues to monitor vaccination rate data and has taken steps to address reported abuses, like strengthening requirements for permanent medical exemptions (PMEs). *Royce II*, 2025 WL 834769, at *8; RJN Ex. 12 (SB 276 (2019)).

1 Plaintiffs' arguments on comparability fail.⁴

2 **CONCLUSION**

3 In sum, Plaintiffs have not and cannot establish that the vaccine requirement contains a
4 comparable secular exception justifying strict scrutiny. *See* Mot. at 15:11–18:10. “Because SB
5 277 is neutral and generally applicable, rational basis review applies.” *Royce II*, 2025 WL
6 834769, at *13. As articulated in the moving papers, reply papers, and in *Royce II*, SB 277
7 satisfies rational basis review. ECF 38-1 at 18:11–20:14; ECF 42 at 9:3–24; *Royce II*, 2025 WL
8 834769, at *13–*14. Defendant’s Motion to Dismiss should be granted and the SAC dismissed
9 with prejudice.

10 Dated: May 16, 2025

Respectfully submitted,

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17 Supplemental Reply Brief ISO MTD Final (002).docx
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27 ⁴ Plaintiffs request for judicial notice in footnote 4 of their supplemental reply seeking
28 judicial notice of a scholarly article, and the conclusions therein, should be rejected because it is
not an official government document.

CERTIFICATE OF SERVICE

Case Name: **Doescher, et al. v Aragon et al.** Case No. **2:23-cv-02995-KJM-JDP**

I hereby certify that on May 16, 2025, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**SUPPLEMENTAL REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS
PLAINTIFFS' SECOND AMENDED COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on May 16, 2025, at San Diego, California.

C. Hernandez

Declarant



Signature

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