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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.

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

Defendant.

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

PLAINTIFFS' SUPPLEMENTAL REPLY BRIEF DISCUSSING *ROYCE V. PAN*

Date: June 5, 2025
Time: 10:00 a.m.
Place: Courtroom 3

Complaint Filed: December 22, 2023
Trial Date: None Set

I. INTRODUCTION

In its April 7, 2025 Order (ECF 46), the Court required the parties to file simultaneous supplemental reply briefs, not to exceed five pages, addressing the impact of the decision in *Royce v. Pan*, No. 3:23- CV-02012-H-BLM, 2025 WL 834769 (S.D. Cal. Mar. 17, 2025). With this brief, Plaintiffs Amy Doescher and Steve Doescher, Danielle and Kamron Jones, and Dr. Sean and Renee Patterson comply with the Court's April 7, 2025 order. For the reasons stated herein and stated in Plaintiffs' Supplemental Brief Discussing *Royce v. Pan* (ECF 48), and additional analysis stated herein, this Court should consider the *Royce* decision only for its erroneous constitutional analysis of SB 277.

II. *ROYCE* ERRED IN ITS APPLICATION OF *JACOBSON* PRECEDENT.

Defendant's supplemental brief parrots *Royce's* analysis of *Jacobson* and its lineage. But Plaintiffs' Supplemental Brief explains why such conclusion from the *Royce* court fails to consider applicable law following that 1905 decision. This summary follows.

Jacobson's holding was narrow: during a deadly pandemic, a city could mandate one vaccine shot or payment of a small fee. No constitutional considerations were made. *Zucht v. King*, 260 U.S. 174 (1922), also cited in *Royce*, was a brief decision with dated analysis that merely established vaccination mandates are within state police power and local governments may pass health laws. It did not address necessary exemptions for constitutional compliance.

Later cases in this line contained troubling statements later overruled, as exemplified by disturbing endorsement of forced sterilization in *Buck v. Bell*, 274 U.S. 200, 207 (1927). After these flawed rulings, the Supreme Court established modern substantive due process in *United States v. Carolene Products*, 304 U.S. 144 (1938), which has guided all subsequent cases on bodily autonomy and fundamental rights, implicitly restricting *Jacobson*.

Prince v. Massachusetts, 321 U.S. 158, 166-67 (1944) is inapplicable since SB 277 contains provisions to exclude unvaccinated students during disease exposures, protecting the community in ways *Prince* did not address.

As Justice Gorsuch noted, *Jacobson* predated modern constitutional frameworks and must be interpreted within current precedent. *Roman Catholic Diocese of Brooklyn v. Cuomo* (2020)

592 U.S. 14, 23 (Gorsuch, concurring).

III. *ROYCE* INCORRECTLY CONCLUDED THAT SB 277 IS NEUTRAL.

Defendant's supplemental brief about *Royce* claims that SB 277 is facially neutral. But as detailed in Plaintiffs' Supplemental Brief, *Royce* incorrectly concluded that SB 277 was generally applicable. That argument is summarized below.

Regarding SB 277's neutrality, *Royce's* analysis is flawed. A statute is not neutral or generally applicable if it favors any comparable secular activity over religious exercise. *Brooklyn*, *supra*, 141 S.Ct. 63, 67-68 (2020) (per curiam); *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 537–538 (1993). Such laws require strict scrutiny under the Free Exercise Clause. *Church of Lukumi Babalu*, *supra*, 508 U.S. at 537–538.

A law fails neutrality when it singles out religious entities for harsher treatment. *Royce* strained to justify SB 277's numerous secular exceptions while claiming general applicability.

SB 277 exempts over 30% of students statewide, including those with IEPs, home-schooled children, adults, and provides grace periods for foster, military, homeless, and undocumented children.[1] Yet religious students receive no accommodation.

Under *Tandon v. Newsom*, 141 S.Ct. 1294, 1296 (2021), comparable activities "must be judged against the asserted government interest" and "the risks posed." This Court should determine whether secular exemptions pose lesser risks than religious ones—a factual issue requiring discovery, inappropriate for dismissal at the pleading stage. SB 277's extensive secular exemptions demonstrate California's failure to prove that its measures are narrowly tailored to disease control interests. *See Harvest Rock Church, Inc. v. Newsom*, 985 F.3d 771, 772-73 (2021) (O'Scannlain, J., concurring).

IV. SB 277 INCLUDES COMPARABLE SECULAR EXEMPTIONS.

Defendant's supplemental brief contends that *Royce* correctly found that SB 277 does not contain comparable secular exemptions. Not so. SB 277 contains medical exemptions, exemptions for home-based private school and independent study programs not involving

[1] Plaintiffs' Supplemental Brief Discussing *Royce v. Pan* (ECF 48) includes judicially-noticeable citations for all statistics stated herein. They are incorporated by reference.

classroom instruction, adult student exemptions, exemptions for students with individual education programs which allow them to access independent education program ("IEP") services, and various exemptions for homeless, immigrant, foster youth, and children of active duty military.

Medical Exemptions

The *Royce* order mischaracterizes medical exemptions compared to religious exemptions in several critical ways. It incorrectly suggests doctors can readily write medical exemptions, when in reality California's laws (Senate Bills 276 and 714) have made these exemptions extremely limited, primarily for cases like active chemotherapy treatment.

The *Royce* court's reasoning that religious exemptions should be restricted because they might be more numerous than medical exemptions fundamentally misapplies constitutional principles. This ignores that the historical 2.7% unvaccinated rate from 2012 should be sufficient for herd immunity if vaccines work as intended. Furthermore, medical exemptions are artificially scarce due to California's restrictive approval process.

Contrary to *Royce's* claim that "SB 277 does not give state officials discretion" over medical exemptions, Health and Safety Code Section 120372(d)(3) explicitly grants CDPH extensive review powers, including authority to identify non-compliant forms, request additional information, accept exemptions at their "medical discretion," and revoke exemptions deemed inappropriate. This discretionary mechanism alone renders the law not generally applicable under *Fulton v. City of Philadelphia*, 593 U.S. 522, 533-534 (2021) and places this case squarely within *Bosarge v. Edney*, 669 F. Supp. 598 (S.D. Miss. 2023), which found vaccine mandates without religious exemptions violate Free Exercise rights when discretionary medical exemptions exist.

Home-School Exemptions

Royce illogically asserted that home-schooled exemptions differ from religious exemptions because the latter would grant unvaccinated students "full access to traditional classroom settings." This reasoning ignores epidemiological reality: unvaccinated home-schooled children still interact with schoolchildren through sports, social activities, worship services, and even some school functions. As Justices Gorsuch, Thomas, and Alito noted in

South Bay United Pentecostal Church v. Newsom, 141 S.Ct. 716, 718 (Memorandum Opinion) (2021), such distinctions fail to recognize how people actually interact in society.

SB 277 targets schoolchildren while exempting home-schooled children who participate in the same social activities and some school functions. Claiming that the small number of religiously-exempted students poses greater risk than the nearly 5% of unvaccinated home-schooled children freely socializing throughout society contradicts fundamental epidemiological principles regarding disease transmission.

Adult Student Exemptions

Royce incorrectly asserted that adult student exemptions would be "likely small" compared to potential religious exemptions, but failed to consider available data showing the opposite. Approximately 1.7% of California's K-12 students (99,654 individuals) are 18 or older and automatically exempt under Health and Safety Code 120360, while historical religious personal belief exemptions represented only 0.58% of kindergarteners (projecting to roughly 33,858 students statewide). This means the adult exemption creates three times more unvaccinated students—and thus three times the disease transmission risk—than religious exemptions would. Since 18-year-olds spread disease just as effectively as younger students, Supreme Court precedent provides no valid justification for accommodating students for this secular reason (adulthood) while denying religious accommodations.

IEP Exemptions

Massive numbers of students—over 836,000 in the 2023–24 school year—are on IEPs, which are governed by federal law. In *Doe v. San Diego Unified School District* (9th Cir. 2021) 19 F.4th 1173, 1184, n.3 (Ikuta, dissenting), the dissent suggested that federal IEP protections mean state laws like SB 277 cannot interfere, rendering the "IEP exception" immaterial to whether SB 277 is generally applicable. But this was dicta, and the *Royce* court's reliance on it was overly broad. Taken to its logical extreme, this view would permit states to craft discriminatory laws against religion while pointing to federal mandates as cover—a dangerous precedent.

Moreover, SB 277 explicitly references the IEP exception, showing that lawmakers

deliberately incorporated this major exemption, which undercuts any claim that the law is generally applicable. The record shows no indication that the *Doe* court understood the scale of this exemption—14.3% of California schoolchildren are exempt from vaccination due to IEPs alone. Altogether, SB 277 exempts over 30% of students for secular reasons while denying exemptions to the 0.58% who are religiously devout. That disparity fatally undermines any claim of neutrality or general applicability. The *Royce* court erred in concluding otherwise.

Homeless, Immigrant, Foster Youth, and Active Duty Exemptions

SB 277 provides significant exemptions for foster, homeless, undocumented, and military-connected students. As of the most recent data, these groups—excluding military due to lack of statistics—comprise approximately 10.9% of California's student population. Combined with the 20.4% exemption for students on IEPs, homeschooled, or over 18, this means that 31.3% of students are exempt from immediate vaccination requirements. In many schools, particularly in Los Angeles and the Eastern District, these populations form the majority. Although the statute nominally grants only a 30-day grace period for proof of vaccination, in practice, this window is often extended, creating an ongoing allowance for large numbers of unvaccinated students.

The *Royce* court reasoned that such grace periods did not undermine SB 277's neutrality because they were not religious exemptions. Plaintiffs respectfully disagree. When 10.9% of students are regularly unvaccinated due to secular circumstances, the disparity compared to the mere 0.58% of religiously devout students denied exemptions reveals a troubling imbalance. For instance, in a hypothetical Fresno County school, secular exemptions could leave 5.55% of students perpetually unvaccinated or up to 50% unvaccinated at the start of the school year—figures that far eclipse the religious minority. This stark contrast demonstrates that SB 277 imposes a disproportionate burden on religious exercise, contrary to principles of neutrality.

IX. CONCLUSION

For the foregoing reasons, the Court should reject the *Royce* analysis and deny the Motion to Dismiss.

Respectfully Submitted,

DATED: May 16, 2025

THE NICOL LAW FIRM

By: /s/ *Jonathon D. Nicol*

JONATHON D. NICOL

Attorneys for Plaintiffs