No. 25-4531

In the United States Court of Appeals for the Ninth Circuit

AMY DOESCHER, STEVE DOESCHER, DANIELLE JONES, KAMRON JONES, individually and on behalf of their minor children,
Appellants,

v.

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

Appeal from a Decision of the
United States District Court for the
Eastern District of California,
Case No. 2:23-cv-02995-KJM-JDP
The Honorable Kimberly J. Mueller, District Judge

EXCERPTS OF RECORD
Volume 1 of 1

THE NICOL LAW FIRM
Jonathon D. Nicol, SB# 238944
1801 Century Park East, 24th Floor
Los Angeles, CA 90067
Telephone: 816.514.1178

Counsel for Appellants

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

AMY DOESCHER , ET AL. ,

V.

ROB BONTA , ET AL. ,

JUDGMENT IN A CIVIL CASE

CASE NO: **2:23−CV−02995−KJM−JDP**

Decision by the Court. This action came before the Court. The issues have been tried, heard or decided by the judge as follows:

IT IS ORDERED AND ADJUDGED THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE COURT'S ORDER FILED ON 6/18/2025 .

ENTERED: **June 18, 2025**

/s/ **Keith Holland**
Clerk of Court

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

Amy Doescher, et al.,

Plaintiffs,

v.

Erica Pan,

Defendant.

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

ORDER

In this action, the parents of several school-aged children are challenging a California law that prevents schools from admitting students if they cannot show they are immunized against several diseases, such as measles, polio and tetanus. The parents contend this law deprives them of their First Amendment rights because vaccination contradicts their religious beliefs. The defendant, Dr. Erica Pan, MD, who is the Director of the California Department of Public Health and State Public Health Officer,[1] moves to dismiss for lack of jurisdiction and for failure to state a claim. As explained in this order, four of the six plaintiffs' allegations suffice at this early stage

[1] Pan assumed this role in February 2025. *See* Cal. Dep't of Public Health, Meet the Director (Feb. 1, 2025), *available at* https://www.cdph.ca.gov/meet-the-director (last visited June 13, 2025). The court takes judicial notice of that fact. *See Ariz. Libertarian Party v. Reagan*, 798 F.3d 723, 727 n.3 (9th Cir. 2015) ("We may take judicial notice of official information posted on a governmental website, the accuracy of which is undisputed." (citations, quotation marks and alterations omitted)). Pan was substituted automatically in place of her predecessor as defendant when she took office. *See* Fed. R. Civ. P. 25(d).

to show the court has jurisdiction, but their legal claims are not viable. Courts have upheld similar vaccination statues against similar constitutional challenges for more than a hundred years.

I. BACKGROUND

Although California has imposed school vaccination requirements of one kind or another since the 1880s, *see, e.g.*, *Abeel v. Clark*, 84 Cal. 226, 227–28 (1890), the laws at the center of this case were originally passed in the 1960s, *see* Second Am. Compl. ¶¶ 41–4, ECF No. 35; 1961 Cal. Stat. Ch. 837.[2] Under a provision approved in 1961, children could not attend public school in California unless they were "immunized against polio-myelitis," with two exceptions. Cal. Health Code § 3380 (1961). Children were excused from immunization if they or their parents or guardian filed a "letter stating that such immunization is contrary to his or her beliefs," whether religious or otherwise. *Id.* § 3384. Nor was immunization required of those who submitted a letter from a "licensed physician to the effect that the physical condition of the [student] is such, or medical circumstances relating to the [student] are such that immunization is not considered safe." *Id.* § 3385.

Over the next forty years, the state amended the Health Code by adding immunization requirements for measles, diphtheria, pertussis (whooping cough), tetanus, mumps, rubella, *Haemophilus influenzae* type b (Hib), Hepatitis B, and Varicella (chickenpox). *See* Req. J. Not. Exs. 3–10. In the 1970s, the immunization requirements were expanded to daycares, childcare centers and similar institutions. *See id.* Exs. 5–6. Throughout this period, the exceptions for personal beliefs and medical needs remained in place; the California Legislature consistently reaffirmed its intent to make "[e]xemptions from immunizations for medical reasons or because of personal beliefs." *E.g.*, *id.* Ex. 9 (1999 Cal. Stat. Ch. 747 § 1(c)). But in 2015, two state senators introduced a bill that would remove the exception for personal beliefs. *See* 2015 Cal.

[2] A copy of the original 1961 statute and the other historical statutes cited in this order are available on the docket of this action as exhibits to the request for judicial notice at ECF No. 38-2. The court grants the request for judicial notice of those statutes. *See* Fed. R. Evid. 201(b).

Stat. Ch. 35 (S.B. 277); *see also, e.g.*, Rep. Cal. Assem. Comm. on Health (SB 277) at 2 (June 11, 2015).[3]

The legislative history of this bill, commonly cited as Senate Bill No. 277 or just "SB 277," is "extensive." *Brown v. Smith*, 24 Cal. App. 5th 1135, 1139 (2018). It includes a detailed description of its proponents' motivations, support for it, opposition to it and potential legal challenges. *Id.* According to a report from the Assembly Committee on Health prepared at the time SB 277 was under consideration, California had become the "epicenter of a measles outbreak, which spread in large part because of communities with large numbers of unvaccinated people." Rep. Cal. Assem. Comm. on Health (SB 277) at 2. Lawmakers also had come to believe that many more children were entering school without first having been vaccinated. *See id.* The bill's authors asserted that less than one percent of children had claimed an exception for personal beliefs in 2000, but more than three percent had done so in 2013. *See id.* As many as one in five children had relied on the exception in some parts of the state. *See id.*

The same legislative report emphasizes an epidemiological phenomenon known as "herd" or "community" immunity. *See id.* at 4–5. If almost everyone in a given population is immune to a disease or cannot spread it, then the small number of people who can be infected by that disease are unlikely to encounter it and so are unlikely to contract it. *See id.* In turn, the small number of people who cannot be vaccinated—whether by virtue of a compromised immune system, age or some other reason—are protected, too. *See id.* at 5. Legislators were concerned in 2015 that vaccination rates had declined too far in too many California communities, and they believed the exception for personal beliefs was contributing to the decline. *See id.* They also cited an article in the journal *Pediatrics*, which found schools with high proportions of students claiming exceptions for personal beliefs were "clustered." *See id.* These clusters could permit diseases to take root and spread more quickly. *See id.*

[3] The court takes judicial notice of this report and the other cited records of the law's legislative history, available on the docket of this action as exhibits to defendant's request for judicial notice at ECF No. 38-2. "Legislative history is properly a subject of judicial notice." *Anderson v. Holder*, 673 F.3d 1089, 1094 n.1 (9th Cir. 2012).

Controversies about vaccine laws are nearly as old as vaccines themselves. *See, e.g.*, James G. Hodge, Jr., & Lawrence O. Gostin, *School Vaccination Requirements: Historical, Social, and Legal Perspectives*, 90 Ky. L.J. 831, 844–49 (2002). In 2015, when the California Legislature was considering whether to eliminate the exception for personal beliefs, the reigning controversy appeared to legislators to have sprung from stories about vaccines and autism, fears about the ingredients used in vaccines, and worries about the safety of administering many vaccines to young children. Rep. Cal. Assem. Comm. on Health (SB 277) at 3. The supporters of SB 277 concluded these concerns were unfounded. *See id.* at 6–7. It hypothesized their rise was attributable to "the rapid growth of the Internet and social media." *Id.* at 3. It emphasized that if vaccination rates declined, children could be at risk of contracting highly infectious diseases, such as measles, which can be deadly for very young children, *see id.* at 3, 5–6, and which "is one of the first diseases to reappear when vaccination coverage rates fall," *id.* at 5.

Many people and organizations objected to SB 277 before it came up for a vote. The California Chiropractic Association, for example, argued the bill would amount to a "veto" of the "judgment of any physician who questions the status quo and believes that a patient should not receive a particular vaccine." *Id.* at 11. Many people also wrote letters to the legislature in opposition. Some pointed out that children with disabilities had federal rights to a free, public education under the Individuals with Disabilities Education Act (IDEA), regardless of what vaccinations California might require. *Id.* at 8, 11. Others argued that if there is any risk of harm from a vaccine, parents should have a choice between that risk and the risk of forgoing vaccination. *See id.* at 11.

The legislative history of SB 277 also memorializes discussions about whether courts would decide the bill ran afoul of the First Amendment or another part of the U.S. Constitution. *See* Rep. Cal. Sen. J. Comm. (SB 277) at 7–18 (Apr. 27, 2015); Rep. Cal. Assem. Comm. on Health (SB 277) at 10 (June 11, 2015). A judiciary committee's report cited the 1905 Supreme Court decision in *Jacobson*, in which the Court upheld a Massachusetts smallpox vaccination law. Rep. Cal. Sen. J. Comm. (SB 277) at 9 (Apr. 27, 2015) (quoting *Jacobson v. Massachusetts*, 197 U.S. 11 (1905)). The report quoted the Court's opinion, which held that states could rely on

their "police power" to pass "reasonable regulations" to "protect the public health and the public safety." *Id.* (quoting *Jacobson*, 197 U.S. at 25). The committee also relied on the Supreme Court's 1990 decision in *Employment Division v. Smith*, which the committee interpreted as creating a broad rule that "the free exercise clause cannot be used to challenge neutral laws of general applicability." *Id.* at 16 (citing 494 U.S. 872 (1990), *overruled in part by statute on other grounds as stated in Holt v. Hobbs*, 574 U.S. 352, 356–58 (2015)). But the committee recognized a court might instead require the state to cite both a "compelling" interest and to show the bill was "narrowly tailored" to that interest under the balancing test normally described as "strict scrutiny." *See id.* at 13, 17–18. To that end, the committee specifically found "compelling" the state's interest in ensuring "the school and community vaccination levels overall remain sufficiently high," and it memorialized its conclusion that the bill was "narrowly tailored" to that interest. *Id.* at 13.

In the end, SB 277 passed and received the Governor's approval, which meant California students and their parents could no longer object to vaccination based on their personal beliefs, but they could rely on at least four other exceptions. First, as had been true before SB 277 was passed, the law would not require children to be vaccinated if their medical condition made vaccination unsafe. *See* Cal. Health & Safety Code § 120372 (2016); *see also* 2019 Cal. Stat. Ch. 278 (S.B. 276) (amending and tightening the medical exception). Second, the law would not prevent children from attending school if they were entitled to services laid out in an individualized education program (IEP) under the federal Individuals with Disabilities Education Act (IDEA). *See id.* § 120335(h). Third, children would not need to prove vaccination if they would not receive instruction in a classroom, for example because they were attending home school. *Id.* § 120335(f). And fourth, if the Department of Public Health added new vaccines to the list of mandatory vaccines by taking administrative action, then the law would make a personal-beliefs exception for those specific vaccines until the legislature enshrined the new vaccines in the statute itself. *See id.* § 120338.

In addition to these exceptions, and independently of SB 277, California permits children in four categories—foster children, homeless children, children in military families, and migrant

children—to transfer to a new school on a temporary basis even if they do not have their immunization records and other documents on hand. The state initially made this allowance to foster children in 2003, several years before the legislature passed SB 277. *See* 2003 Cal. Stat. Ch. 862 (A.B. 490). The law allows an educational liaison for foster children to consult with a foster child and the person holding the right to make educational decisions and decide what school the foster child attends. *See id.* § 4 (adding Cal. Educ. Code § 48853.5(c)). If a transfer is agreed upon, the "new school" is required to "immediately enroll the foster child even if the foster child . . . is unable to produce records or clothing normally required for enrollment," including the medical records that show "proof of immunization history" required by the Health Code provisions discussed above. Cal. Educ. Code § 48853.5(f)(8)(B).

The state adopted a similar rule for "homeless children" in 2016. *See* Cal. Educ. Code § 48852.7; 2016 Cal. Stat. Ch. 289 (S.B. 445). That statute ensures "the homeless child has the benefit of matriculating with his or her peers in accordance with the established feeder patterns of school districts," even if the student becomes homeless or finds housing in another district. *Id.* § 48852.7(c). Homeless students "transitioning to a middle school or high school" must also be allowed "to continue to the school designated for matriculation." *Id.* § 4852.7(c)(2). And in either scenario, the new school must "immediately enroll the homeless child" even if the child cannot produce all of the paperwork and other materials that might otherwise be required of new students before they enroll, including immunization records. *Id.* § 48852.7(c)(3).

Finally, in 2018 and 2019, the legislature adopted similar allowances for children in military families and migrant families, respectively. The statutes allow these students to transition between school grade levels, including transitions between middle and high school, "in the school district of origin or the same attendance area." *Id.* §§ 48204.6(c)(1), 48204.7(c)(1). In both scenarios, the law makes clear the new school must "immediately enroll" the student even if the child cannot provide all of the paperwork and other materials that might otherwise be required of new students before they enroll, including immunization records. *Id.* §§ 48204.6(c)(3), 48204.7(c)(3).

But foster children, homeless children, children in military families, and migrant children cannot continue attending the new school indefinitely without producing immunization records. If they cannot produce those records within thirty days, or if, as it turns out, the children are not vaccinated and do not obtain immunizations by that deadline, then they cannot attend the school in person. *See* Cal. Code Regs. tit. 17, §§ 6035, 6040.

The plaintiffs in this action contend that without an exception for religious beliefs, the state's vaccination laws effectively prohibit them and their families from freely exercising their religious beliefs. They are all parents of one or more school-aged children. *See* Second Am. Compl. ¶¶ 15, 23, 32. Each parent has prayed, consulted the Bible, and participated in other study and learning, and all have come to the conclusion they cannot vaccinate their children without violating their firmly held religious convictions. *See id.* ¶¶ 19, 28, 31. The parents of the first family, Amy and Steve Doescher, would like to enroll their school-aged child in a California public school full time. *See id.* ¶ 20. Their child is currently attending a "charter school under independent study guidelines" but only "two days a week in person." *Id.* ¶ 15. Danielle and Kamron Jones also would like to enroll their four school-aged children in public school, and they attempted to enroll in a local school district in 2024, but they were turned away because they could not show proof of immunization. *See id.* ¶¶ 24, 29. Finally, Renee and Sean Patterson have one child in public school now, and they fear they may soon be forced to remove him from his school because he is not vaccinated. *Id.* ¶ 33.

Plaintiffs initially filed this case in late 2023. *See generally* Compl., ECF No. 1. After defendants moved to dismiss, the parties stipulated to an amendment of the complaint, *see* Stip. & Order, ECF No. 19, and after the amendment, the court granted a renewed motion to dismiss for lack of jurisdiction, Order (Nov. 18, 2024), ECF No. 33. The court granted the six parents' request for leave to amend to add allegations showing they had standing, but only for their claims against the Director of the California Department of Public Health. *Id.* at 5–6. The operative second amended complaint includes one claim against Director Pan in her official capacity under 42 U.S.C. § 1983 for violation of the First Amendment's Free Exercise Clause. *See id.* ¶¶ 71–99. Plaintiffs seek injunctive and declaratory relief. *See id.* ¶¶ 100–09. Director Pan now moves to

dismiss for lack of jurisdiction under Rule 12(b)(1) and for failure to state a claim under Rule 12(b)(6). *See generally* Mot., ECF No. 38; Mem., ECF No. 38-1. Plaintiffs oppose, *see generally* Opp'n, ECF No. 39, and Director Pan has filed her reply, *see generally* Reply, ECF No. 42.

After briefing was complete, another California federal district court issued an order dismissing a similar lawsuit, in which the plaintiffs, also a group of parents, challenged the same California law under the First Amendment. *See generally Royce v. Pan*, No. 23-02012, 2025 WL 834769 (S.D. Cal. Mar. 17, 2025), *appeal filed*, No. 25-2504 (9th Cir. Apr. 18, 2025). This court allowed the parties in this case to submit supplemental briefs addressing the court's decision in *Royce*, which they have done. *See generally* Pls.' Suppl. Br., ECF No. 48;[4] Def.'s Suppl. Br., ECF No. 47; Pls.' Suppl. Reply, ECF No. 51; Def.'s Suppl. Reply, ECF No. 50.

The court held a hearing on June 5, 2025. Jonathon Nicol appeared for the six parents, and Darin Wessel appeared for Director Pan.

II. JURISDICTION

As a court of limited jurisdiction, the court begins, as it must, with jurisdiction and Rule 12(b)(1). "A Rule 12(b)(1) jurisdictional attack may be facial or factual." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). Director Pan's motion is facial; she takes the plaintiffs' allegations as they are and contends those allegations do not support this court's exercise of jurisdiction. *See* Mem. 6–7. The court therefore confines its review to those allegations, does not consider information from other sources and draws reasonable inferences in favor of the six parents. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992); *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009).

"Article III of the Constitution confines the jurisdiction of federal courts to 'Cases' and 'Controversies.'" *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 378 (2024) (quoting U.S. Const. art. III, § 2). The Supreme Court has interpreted that language as requiring all plaintiffs to "demonstrate (i) that [they have] suffered or likely will suffer an injury in fact,

[4] Director Pan argues in her supplemental reply that the plaintiffs' supplemental brief exceeds the ten pages this court allowed. *See* Def.'s Suppl. Reply at 1 & n.1 The brief in question is eleven pages long. The eleventh page includes only a heading, one short sentence and a signature. The court declines to impose any sanction.

(ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief." Order (Nov. 18, 2024) at 4, ECF No. 33 (alterations in previous order) (quoting *All. for Hippocratic Med.*, 602 U.S. at 380). "The alleged injury must be 'particularized' in the sense that it affects 'the plaintiff in a personal and individual way and not be a generalized grievance.'" *Id.* at 4–5 (quoting *All. for Hippocratic Med.*, 602 U.S. at 381). "When a plaintiff seeks prospective relief, as plaintiffs do in this case, they must demonstrate the injury they fear is 'imminent' and 'certainly impending.'" *Id.* at 5 (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013)).

Four of the plaintiff parents, Amy and Steve Doescher and Danielle and Kamron Jones, allege the state's vaccination requirements have directly forced them personally to spend time and money on independent study and homeschool programs they would not otherwise have spent—and would not spend in the future—if their children attended public school. *See* Second Am. Compl. ¶¶ 17, 25–27. With the protection of an injunction or judicial declaration from this court, they allege they would enroll their children full-time in a public school. *See id.* ¶¶ 20, 24, 26. These allegations support the conclusion the Doeschers and Joneses have standing.

Director Pan contends otherwise. In her view, the costs in question are "tangential" to plaintiffs' religious beliefs and therefore "insufficient." Mem. at 6. She argues "claims based on infringement of free exercise require injury to the free exercise itself," citing the Supreme Court's decision in *McGowan v. Maryland*, 366 U.S. 420, 429 (1961), and a 2024 decision by the United States District Court for the Western District of New York, *Miller v. McDonald*, 720 F. Supp. 3d 198, 208 (W.D.N.Y. 2024).[5] *See* Mem. at 6.

The complaint in this case suffers from none of the jurisdictional faults that proved decisive in *McGowan* and *Miller*. In *McGowan*, seven employees at a department store had been indicted for selling a variety of everyday home and office supplies in violation of Maryland's "Sunday Closing Laws," which "generally proscribe[d] all labor, business and other commercial

[5] The Second Circuit affirmed the district court's order in *Miller*, but the appellants did not challenge the district court's jurisdictional analysis, and the Second Circuit did not address the jurisdictional dispute. *See* 130 F.4th 258, 261 & n.5 (2d Cir. 2025) (per curiam).

activities on Sunday." 366 U.S. at 422. At the Supreme Court, they argued among other things that the laws violated "the constitutional guarantee of freedom of religion." *Id.* at 429. Although the employees alleged they had suffered "economic injury," they did not "allege any infringement of their own religious freedoms," or of the "beliefs of the department store's present or prospective patrons." *Id.* The record was "silent" as to what the employees' religious beliefs were. *Id.* Because they could not assert the rights of some other, unidentified person, the Supreme Court rejected their free exercise claim. *See id.* at 429–30. In this case, by contrast, the Doeschers and Joneses allege their own religious beliefs are what lead them not to vaccinate their children; they are not relying on beliefs in the abstract or on beliefs held by others. Their complaint also clearly lays out the connections between their beliefs, their alleged injuries and the state's immunization requirements, as summarized above.

In *Miller*, the court focused on the defendants' authority and connections to the disputed statute. Like the parents in this case, the plaintiffs in *Miller* alleged a New York vaccination requirement deprived them of their First Amendment rights in violation of the Free Exercise Clause. 720 F. Supp. 3d at 202. And like California, New York does not permit children to attend school if they are not vaccinated against a variety of diseases; nor does New York make an exemption for personal beliefs. *See id.* at 203–04. The plaintiffs sued the state's commissioners of both health and education. *Id.* at 202. The parties and the court agreed the plaintiffs could pursue claims against the health commissioner. *See id.* at 208. But the court found the plaintiffs had no standing to pursue claims against the commissioner of education. *See id.* at 207–08. The complaint included no allegations to show the commissioner of education "ha[d] played or will play in the future any role in the actions of which [the plaintiffs] complained." *Id.* at 208. The allegations against her were based on unfounded speculation and actions by other third parties. *See id.* For these reasons, an injunction against the commissioner of education "would not redress their alleged injury," so there was no case or controversy between her and the plaintiffs, and the plaintiffs' claims against the commissioner of education were dismissed. *Id.* Director Pan, by contrast, has authority to adopt and enforce regulations implementing the state's vaccination requirements for school-aged children and is the proper defendant under the Supreme Court's

decision in *Ex Parte Young*. *See* Cal. Health & Safety Code § 120330; Second Am. Compl. ¶ 40; Order (Nov. 18, 2024), at 3–4 (citing 209 U.S. 123 (1908)). For these reasons, the Doeschers' and the Joneses' allegations permit the court to infer they have standing to assert First Amendment claims.

The third couple, the Pattersons, rely on a different theory than the Doeschers and Joneses. Unlike the Doeschers' and Joneses' children, the Pattersons' son is currently enrolled in a public school full time "where vaccinations are mandatory." *Id.* ¶ 32. And so, unlike the Doeschers and Joneses, the Pattersons do not allege they have been forced to spend time or money to replace a public education. They allege they and their son have been subjected to different harms.

One of these harms has taken the form of "hurtful comments" by "[m]embers of the public" about the Pattersons' decisions and beliefs, leading to "social stigma and exclusion." *Id.* ¶ 35. But their complaint does not describe those hurtful comments or connect them to Pan or other state officials or policies, as was true of plaintiffs' previous complaint. *See* Order (Nov. 18, 2024) at 5–6. It is possible there is some connection, but "[a]t this stage, possibilities alone do not suffice." *Id.* at 6 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 570 (2007) and *Lujan*, 504 U.S. at 561). The Pattersons' allegations about hurtful comments do not show there is a "case" or "controversy" between themselves and Pan that this court can adjudicate.

Nor can the Pattersons show they have standing by alleging they have been subjected to social stigma. As the Supreme Court has made clear, a plaintiff cannot allege simply that the government has run afoul of the Constitution, even if, by doing so, the government's actions have cast upon them a shadow of social stigma. *See All. for Hippocratic Med.*, 602 U.S. at 381–82; *Allen v. Wright*, 468 U.S. 737, 754–55 (1984). The Pattersons must allege they have suffered a concrete injury or harm, or they must offer plausible factual allegations that permit the court to infer such an injury or harm is "imminent" and "certainly impending." *Clapper*, 568 U.S. at 409 (emphasis, citations and quotation marks omitted).

Beyond the hurtful public comments, however, the Pattersons also believe the state or school district will soon enforce its school vaccination requirements, which would mean their son would "be forced to change where he attends school," leading their family to worry about

"changing social groups, leaving teams and clubs," and other similar disruptions. Second Am. Compl. ¶ 33. The Pattersons also worry about "negative, stressful, and disruptive effects" if their son is suddenly "disenrolled without warning." *Id.* ¶ 34. These allegations focus on the hardships their son would suffer if the state ultimately enforced its vaccination requirements, such as his losses of friendships and the end of his memberships in school teams and clubs, as was true of the allegations in the complaint's previous iteration. *See* Order (Nov. 18, 2024) at 5–6. And as before, it is unclear whether the Pattersons mean to pursue claims on their son's behalf. It is possible they could rely on a theory of third-party standing or act as their son's representatives, because he is a minor. *See, e.g.*, Fed. R. Civ. P. 17(c)(1)(A) (providing a "general guardian" may "sue or defend on behalf of a minor"); *Callahan v. Woods*, 658 F.2d 679, 682 & n.2 (9th Cir. 1981) (holding a father could "preserve" his daughter's religious freedom by asserting a religious objection on her behalf, "even though she may well decide later" to abandon that belief). But they do not advance arguments along these lines in their opposition, their complaint does not name their son as a plaintiff, they have not sought to be appointed as his representatives in this action, and at hearing, their counsel agreed they are not pursuing claims in this type of representative capacity.

Instead, the Pattersons rely on a theory of their own rights as parents, citing the Supreme Court's decision in *Wisconsin v. Yoder*. *See* Opp'n at 2–3 (citing 406 U.S. 205 (1972)). In *Yoder*, the state had "charged, tried, and convicted" several parents for violating compulsory school attendance laws after they withdrew their children from public school. 406 U.S. at 207–08. The state had penalized them directly, not their children, so there undeniably was a "case" to adjudicate. The Supreme Court also made clear the parents' rights and injuries—rather than those of the children—were its focus. "It is the parents who are subject to prosecution here for failing to cause their children to attend school," it wrote, "and it is their right of free exercise, not that of their children, that must determine Wisconsin's power to impose criminal penalties on the parent." *Id.* at 230–31. Although the Supreme Court's opinion in *Yoder* leaves no doubt parents have a right "to direct the religious upbringing of their children," *id.* at 233, the Court did not consider or decide in *Yoder* what types of past or future injuries or harms can support a parent's

standing to assert a claim based on a deprivation of this parental right. From *Yoder* we know only that a prosecution, trial and conviction would suffice.

If California had prosecuted the Pattersons for refusing to vaccinate their children, then this case would be comparable to *Yoder*. The same would likely be true if the Pattersons had not been convicted, but they faced a credible threat of prosecution. *See Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298–99 (1979). But the Pattersons are not challenging a conviction or a fine, and they do not allege they are personally at risk of prosecution, as confirmed at hearing. Their jurisdictional theory is less direct: "Religious exemptions to vaccinations in the school context," they allege, "are based on a *parent's* religious beliefs because *parents* decide the religious habits of their children." Second Am. Compl. ¶ 10 (emphases in original) (citing 406 U.S. at 233). They also allege a "public education" is a "government benefit" to the parents themselves. *Id.* ¶ 13. In sum, the Pattersons' primary theory of standing is that the state's vaccine law may soon deprive them of an important benefit or right[6] based on their decisions about their son's religious upbringing. In terms of this court's jurisdiction, the Pattersons have standing only if their complaint permits this court to reach two conclusions about their claims: first, Director Pan or someone acting under her direction will imminently require the Pattersons to choose between showing proof of the required immunizations and making other educational arrangements for their son; and second, this will cause harm to Renee and Sean Patterson in a concrete and personal way.

The second of these conclusions is easier to reach than the first. Although the Pattersons' complaint does not include specific allegations illustrating the concrete harms they would suffer if they were forced to find other educational arrangements for their son, they do allege he would need to find his way to a new social circle, and new sports teams and clubs, as summarized above. *See* Second Am. Compl. ¶¶ 32–34. With the benefit of a few favorable and reasonable inferences, which the court must draw at this early stage, *see Iqbal*, 556 U.S. at 678–79, it is

[6] *See Plyler v. Doe*, 457 U.S. 202, 221 (1982) ("Public education is not a 'right' granted to individuals by the Constitution. But neither is it merely some governmental 'benefit' indistinguishable from other forms of social welfare legislation." (citation omitted)).

plausible the Pattersons, like the Doeschers and Joneses, would need to spend time and money to ensure their son has the educational and social advantages he now enjoys at his public school if he could no longer attend there.

By contrast, it is more difficult to say when, how quickly, in what form, and even whether an enforcement action is actually coming. Uncertainties about future enforcement actions are a "recurring issue" in federal courts. *Tingley v. Ferguson*, 47 F.4th 1055, 1067 (9th Cir. 2022) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)). The Supreme Court has "permitted pre-enforcement review under circumstances that render the threatened enforcement sufficiently imminent." *Driehaus*, 573 U.S. at 159. More specifically, plaintiffs must allege they have "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute," and there must be "a credible threat" of enforcement. *Id.* (quoting *Babbitt*, 442 U.S. at 298). On this final point—a "credible threat of enforcement"—the Ninth Circuit has instructed district courts to consider three factors: "(1) whether the plaintiff has a 'concrete plan' to violate the law, (2) whether the enforcement authorities have 'communicated a specific warning or threat to initiate proceedings,' and (3) whether there is a 'history of past prosecution or enforcement.'" *Tingley*, 47 F.3d at 1067 (quoting *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc)). "'Neither the mere existence of a proscriptive statute nor a generalized threat of prosecution' satisfies this test." *Id.* (quoting *Thomas*, 220 F.3d at 1139).

The Pattersons allege they intend to engage—and in fact already are engaged—in a course of conduct at odds with the state's vaccination laws: they have enrolled their child in public school without proof of his immunization. Second Am. Compl. ¶ 32. Their conduct also at least arguably implicates a constitutional interest based on their religious beliefs about vaccines. *See id.* ¶ 31. But the Pattersons do not allege any state or local authorities have warned them their son must offer proof of immunization, as plaintiffs in other cases have alleged. *See, e.g.*, First Am. Compl. ¶¶ 11, 14–18, 25, *Whitlow v. Dep't of Ed.*, No. 16-1715 (July 14, 2016), ECF No. 11; *Masseth v. Jones*, No. 21-1408, 2021 WL 6752317, at *2 (C.D. Cal. Nov. 9, 2021). They allege only that state and school district officials have issued general warnings, which they describe as

"missives." Second Am. Compl. ¶ 33. At hearing, the Pattersons' counsel did not identify any specific warnings in response to the court's questions.

The Ninth Circuit has interpreted a state's "failure to disavow enforcement of the law as weighing in favor of standing." *Tingley*, 47 F.4th at 1068 (emphasis omitted) (citing *Cal. Trucking Ass'n v. Bonta*, 996 F.3d 644, 653 (9th Cir. 2021)). The court asked Director Pan's counsel at hearing whether the director would disavow enforcement of SB 277. Counsel did not expressly disavow enforcement on the Director's behalf. He did state unambiguously, however, that the Department of Health does not have authority to enforce SB 277 against any particular student, but rather only to issue guidance and help to educate schools and the public about vaccines and vaccination requirements. Counsel's assertion contradicts statements defendants have made previously in this case. *See* Defs.' Mem. P. & A. at 7, ECF No. 21 (arguing "the statute expressly confers" enforcement authority "to the California Department of Public Health," citing Cal. Health & Safety Code § 120330). The assertion also appears to be in direct contradiction to the state's Health and Safety Code, which expressly grants the Department of Public Health authority "to adopt and enforce all regulations necessary to carry out" several statutory provisions, including the vaccination requirements in section 120338, "in consultation with the Department of Education." Cal. Health & Safety Code § 120330. The court therefore construes counsel's statement as an assurance that Director Pan does not intend to exercise any authority she has to enforce SB 277 against any particular student, including any of the plaintiffs' children in this case.

Director Pan's counsel also relayed his understanding that the Pattersons' son is a high school senior who will likely soon graduate if he has not already, suggesting similarly there is no imminent threat of enforcement. Additionally, the state's Health and Safety Code similarly implies a local enforcement effort is unlikely. Under section 120335, "the governing authority shall not unconditionally admit to any [covered school or other institution] or admit or advance any pupil to 7th grade level, unless the pupil has been immunized for his or her age as required." Cal. Health & Safety Code § 120335(g)(3). That is, it does not appear the statute requires local high schools to check their students' immunization records after students have matriculated.

Nor do the Pattersons allege state or local authorities have a history of barring students from continuing to attend the schools where they are enrolled. They cite no cases of past enforcement. In fact, they allege the state has enforced its vaccination requirements inconsistently, and they allege some California school districts are untroubled by missing vaccination records. *See* Second Am. Compl. ¶¶ 51–52. In cases about "relatively new" laws, the absence of any enforcement history might be only a minor concern, *Tingley*, 47 F.4th at 1069 (quoting *Cal. Trucking*, 996 F.3d at 653), but this is not a case about a new law. California has required students to be vaccinated for more than a hundred years. Its modern vaccination statute was passed originally in the 1960s. More than a decade has passed since the legislature eliminated the exception for personal beliefs by passing SB 277.

In sum, although the Pattersons currently are engaged in conduct at odds with the vaccine statutes they challenge, and although that conduct implicates a constitutional interest based on their religious beliefs about vaccines, it is unlikely an enforcement action is imminent: (1) unlike other plaintiffs who have made similar claims in the past, the Pattersons have not identified any specific warning about a potential enforcement action, (2) the terms of the state Health and Safety Code imply an enforcement action is unlikely, (3) no allegations and no other information in the record shows California state or local authorities have a history of enforcing the state's immunization requirements against students in the same situation as the Pattersons' son, and (4) the attorney representing the only defendant in this action, Director Pan, stated in open court that she does not intend to exercise any authority she has to enforce the state's vaccination requirements against the Pattersons or their son in particular.

For these reasons, the Doeschers and Joneses have standing to assert their First Amendment claims, but the Pattersons do not.[7]

[7] Although the court cannot exclude the possibility the Pattersons could amend or supplement their complaint to allege facts about an imminent enforcement effort, the court declines to permit such an amendment or supplement. As explained in the next section, it would be futile to permit further amendments in support of the other parents' constitutional claims. The court therefore declines to permit the Pattersons an opportunity to make additional jurisdictional allegations as well.

III. FIRST AMENDMENT

On the merits, Director Pan argues the complaint does not "state a claim upon which relief can be granted" under Federal Rule of Civil Procedure 12(b)(6). In response to that argument, the court begins by assuming the allegations in the operative second amended complaint are true, but not its legal conclusions. *Iqbal*, 556 U.S. at 678–79 (citing *Twombly*, 550 U.S. at 555). The court then determines whether those factual allegations "plausibly give rise to an entitlement to relief" under Rule 8. *Id.* at 679.

As a threshold matter, Director Pan argues it is unclear whether the six parents' decisions were a matter of their religious beliefs rather than their philosophical or other secular beliefs. *See* Mem. at 10. It is true a claim must be "rooted in religious belief" if it is "to have the protection of the Religion Clauses." *Yoder*, 406 U.S. at 215. Although it may be a "delicate question" for a court to answer, the answer is tied up with "the very concept of ordered liberty." *Id.* at 215–16. The Constitution does not permit "every person to make his own standards on matters of conduct in which society as a whole has important interests." *Id.* In *Hanzel v. Arter*, for example, the plaintiffs objected to vaccines "on the basis of their belief in 'chiropractic ethics,' a body of thought which teaches that injection of foreign substances into the body is of no benefit and can only be harmful." 625 F. Supp. 1259, 1260 (S.D. Ohio 1985). This meant they could not rely on the First Amendment's religion clauses. *Id.* at 1265. But the complaint in this case connects the parents' actions to their Christian beliefs, prayers and Bible study without ambiguity. *See* Second Am. Compl. ¶¶ 19, 29. The Doeschers and Joneses may invoke the First Amendment's Free Exercise Clause.

Although the complaint ties the parents' vaccination decisions to a constitutional protection, it does not lay out a plausible legal theory. Courts at every level have confronted similar disputes many times before. From the beginning, these challenges have fallen short, almost universally. This case is no different.

A. Courts repeatedly have upheld similar laws since the nineteenth century.

In California, constitutional litigation about vaccination laws began soon after the state passed its first compulsory child vaccination requirement for school attendance in 1888. Hodge

& Gostin, *supra*, at 851. The earliest legal challenges were not about the rights of those with specific religious convictions. At the time the first legal challenges were filed, the United States Supreme Court had not yet interpreted the First Amendment as imposing limits on what state and local governments can do; the amendment applied then only to the national government. *See Cantwell v. State of Connecticut*, 310 U.S. 296, 303 & n.3 (1940) (citing *Schneider v. State of New Jersey, Town of Irvington*, 308 U.S. 147, 159 (1939)). Most of the earliest vaccine disputes focused instead on state "police powers" and the Equal Protection Clause of the Fourteenth Amendment, which binds states expressly. *See* U.S. Const. amend. XIV § 1 ("No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."). These early cases are instructive nonetheless.

In the first reported opinion about a California vaccination law, issued in 1890, the California Supreme Court was unwilling to second guess the state legislature's judgment about "[w]hat is for the public good." *Abeel*, 84 Cal. at 230. In 1904, the state supreme court reiterated that conclusion. *See generally French v. Davidson*, 143 Cal. 658 (1904). Legislators "were of the opinion that the proper place to commence in the attempt to prevent the spread of a contagion was among the young, where they were kept together in considerable numbers in the same room for long hours each day." *Id.* at 662. "It needs no argument to show that, when it comes to preventing the spread of contagious diseases, children attending school occupy a natural class by themselves, more liable to contagion, perhaps, than any other class that we can think of." *Id.* The court had no difficulty rejecting the plaintiff's argument. Neither the Fourteenth Amendment nor "any other part of the federal Constitution interfere[s] with the power of the state to prescribe regulations to promote the health and general welfare of the people," it wrote. *Id.* The court recognized that individuals may sometimes need to make sacrifices for the general good: "Special burdens are often necessary for general benefits." *Id.* at 662 (quoting *Barbier v. Connolly*, 113 U.S. 27 (1884)).

The United States Supreme Court took up the issue the very next year, in *Jacobson*, the case cited by the California legislature when it was deciding whether to pass SB 277. *See generally* 197 U.S. 11. Like the California Supreme Court had done before, the U.S. Supreme

Court focused on "the police power" in *Jacobson*, and it underscored the states' long-recognized authority "to enact quarantine laws and 'health laws of every description,'" which went back to the early nineteenth century at least. *Id.* at 25 (quoting *Gibbons v. Ogden*, 22 U.S. 1, 203 (1824)). The Court described vaccination laws as one of the "reasonable regulations" states may pass to "protect the public health and the public safety." *Id.*

The Supreme Court also recognized a state's efforts to protect public health and safety might intrude on the preferences of an individual person. But it rejected the defendant's argument "that his liberty [was] invaded when the state subject[ed] him to fine or imprisonment for neglecting or refusing to submit to vaccination." *Id.* at 25. "[T]he liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint." *Id.* at 26. "Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy." *Id.* at 25–26 (citations and quotation marks omitted). The Court was "not prepared to hold that a minority, residing or remaining in any city or town where smallpox is prevalent, and enjoying the general protection afforded by an organized local government, may thus defy the will of its constituted authorities, acting in good faith for all, under the legislative sanction of the state." *Id.* at 37.

The story was the same a few years later in *Zucht v. King*, 260 U.S. 174 (1922). A local ordinance in San Antonio, Texas provided then "that no child or other person shall attend a public school or other place of education without having first presented a certificate of vaccination." *Id.* at 175. Officials had excluded the plaintiff, a school-aged girl, from both public and private school because she could not show she was vaccinated, and she "refused to submit to vaccination." *Id.* The U.S. Supreme Court held the issue was "settled." *Id.* at 176. "[A] state may, consistently with the federal Constitution, delegate to a municipality authority to determine under what conditions health regulations shall become operative." *Id.* The municipality could then "vest in its officials broad discretion in matters affecting the application and enforcement of a health law," and local officials could "freely" make "reasonable classification[s]" without violating the Equal Protection Clause. *Id.* at 176–77.

In the 1940s, after the Supreme Court held in *Cantwell* that states, like the federal government, are bound by the First Amendment's religion clauses, it signaled it would likely reject a religious rights challenge to a state immunization law. The issue arose in *Prince v. Massachusetts*, 321 U.S. 158 (1944), which was not about vaccines. The petitioner, a member of the Jehovah's Witnesses, had been convicted of violating a child labor prohibition. *See id.* at 161. At the Supreme Court, she contended she had simply been following the dictates of her faith when she had tasked her nine-year-old niece with selling religious magazines. *See id.* at 162–63. This violated Massachusetts child labor laws. *See id.* The Supreme Court rejected her claims, but it did not limit its reasoning to child labor laws. "Acting to guard the general interest in youth's well being," it wrote, "the state as *parens patriae* may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways." *Id.* at 166 (footnotes omitted). "[The state's] authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience." *Id.* "Thus," the Court explained, citing its decision in *Jacobson*, a parent "cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds." *Id.* (citing 197 U.S. 11). "The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death." *Id.* at 166–67.

Although these statements were dicta in that they were not strictly necessary to the Supreme Court's holding, they were reasoned and unequivocal, and "Supreme Court dicta is not to be lightly disregarded." *Laub v. U.S. Dep't of Interior*, 342 F.3d 1080, 1090 n.8 (9th Cir. 2003). After *Prince* was decided, lower courts regularly rejected religious challenges to compulsory vaccination laws. In 1964, for example, the Supreme Court of Arkansas wrote that "the great weight of authority" had confirmed "it is within the police power of the State to require that school children be vaccinated against smallpox, and that such requirement does not violate the constitutional rights of anyone, on religious grounds or otherwise." *Cude v. State*, 237 Ark. 927, 932 (1964). That conclusion was "so firmly settled that no extensive discussion [was] required." *Id.* A New York federal district court reached essentially the same conclusion in the 1980s: "[I]t has been settled law for many years that claims of religious freedom must give way in

the face of the compelling interest of society in fighting the spread of contagious diseases through mandatory inoculation programs." *Sherr v. Northport-E. Northport Union Free Sch. Dist.*, 672 F. Supp. 81, 88 (E.D.N.Y. 1987).

In the 1990s, the Supreme Court revisited application of the Free Exercise Clause in two foundational opinions. In *Employment Division v. Smith*, the Court held "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 religion prescribes (or proscribes)." 494 U.S. at 879 (citation omitted). And in *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, the Court wrote more about what it means for a law to be neutral and generally applicable. *See generally* 508 U.S. 520 (1993). First, "[t]he Free Exercise Clause protects against governmental hostility which is masked, as well as overt." *Id.* at 543. For that reason, "[o]fficial action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality. " *Id.* Second, although "[a]ll laws are selective to some extent . . . categories of selection are of paramount concern when a law has the incidental effect of burdening religious practice." *Id.* at 542. A reviewing court therefore must assure itself that the challenged law is not substantially "underinclusive" in achieving the purposes the government identifies. *See id.* at 543.

After *Smith* and *Lukumi*, lower federal courts continued to uphold school vaccine requirements. The two most frequently cited opinions are likely the Fourth and Second Circuits' decisions in *Phillips v. City of New York*, 775 F.3d 538, 543 (2d Cir. 2015) (per curiam) and *Workman v. Mingo County Board of Education*, 419 F. App'x 348, 353–54 (4th Cir. 2011) (unpublished). The two circuit courts rejected the challengers' arguments categorically: "mandatory vaccination as a condition for admission to school does not violate the Free Exercise Clause," the Second Circuit wrote, citing the Fourth. *Phillips*, 775 F.3d at 543 (citing *Workman*, 419 F. App'x at 353–54). The Supreme Court denied the plaintiffs' petitions for certiorari in both cases. *See generally* 136 S. Ct. 104 (2015); 132 S. Ct. 590 (2011).

The same statute plaintiffs challenge now, SB 277, was itself upheld after *Smith* and *Lukumi* were decided. First, in *Whitlow v. California*, a group of seventeen parents and children

and four nonprofit corporations alleged SB 277 violated the First Amendment's Free Exercise Clause, and they asked the district court to issue a preliminary injunction. *See* 203 F. Supp. 3d 1079, 1081–82 (S.D. Cal. 2016). The district court followed the Fourth and Second circuits and held "the right to free exercise does not outweigh the State's interest in public health and safety." *Id.* at 1086 (citing *Prince*, 321 U.S. 158, *Phillips*, 775 F.3d 538, and *Workman*, 419 F. App'x at 356). The district court denied the motion for a preliminary injunction, and the plaintiffs later dismissed their claims voluntarily. *See* Not. Voluntary Dismissal, *Whitlow v. California*, No. 16-1715 (S.D. Cal. Aug. 31, 2016), ECF No. 44. The California Court of Appeal twice rejected very similar claims about two years later, relying as did the district court on the cases summarized above. *See generally Love v. State Dep't of Educ.*, 29 Cal. App. 5th 980 (2018); *Brown*, 24 Cal. App. 5th 1135.

Then came the COVID-19 pandemic. California, like many other states, imposed wide-ranging and strict limits on public and private gatherings in an attempt to prevent the spread of the virus, including limits on religious gatherings. These restrictions, both in California and elsewhere, prompted many challenges rooted in the First Amendment's Free Exercise Clause, and several of those challenges reached the United States Supreme Court, which granted a number of the challengers' emergency applications for injunctions. *See generally, e.g.*, *Tandon v. Newsom*, 593 U.S. 61 (2021) (per curiam); *S. Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716 (2021); *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020) (per curiam). In *Tandon v. Newsom*, the Supreme Court wrote that its decisions in these emergency matters had made several points clear. 593 U.S. at 62. Two are relevant here. "First, government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise." *Id.* at 62. "Second, whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id.*

These holdings "arguably represented a seismic shift in Free Exercise law." *Calvary Chapel Dayton Valley v. Sisolak*, 982 F.3d 1228, 1232 (9th Cir. 2020). They prompted a rise in

free exercise challenges against school vaccination requirements. But as before, these challenges have almost all failed. In 2023, for example, the Second Circuit rejected a challenge to Connecticut's school vaccine requirement, which, like California's requirement, makes no exception specifically for those with contrary religious beliefs. *See generally We The Patriots USA, Inc. v. Conn. Off. of Early Childhood Dev.*, 76 F.4th 130 (2d Cir. 2023), *cert. denied*, 144 S. Ct. 2682 (2024). The court found the Connecticut law constitutional because it was neutral, generally applicable and rationally related to a legitimate government interest. *See generally id.* The Second Circuit relied not only on the Supreme Court's twentieth-century decisions, such as *Jacobson*, *Zucht* and *Prince*, but also the Court's more recent opinions and orders, including the pandemic-era decisions summarized above. *See id.* at 144–47 (citing *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021); *Tandon*, 593 U.S. 61; *Roman Catholic Diocese of Brooklyn*, 592 U.S. 14; and *Masterpiece Cakeshop v. Colo. C.R. Comm'n*, 584 U.S. 617 (2018)). And as reflected in the citation above, the Supreme Court did not grant certiorari.

Courts have reached the same conclusion in many other similar cases, including within the Ninth Circuit, and in no case has the Supreme Court granted certiorari or issued a stay or injunction. *See generally, e.g.*, *Miller*, 130 F.4th at 258; *Does v. Mills*, 16 F.4th 20 (1st Cir.), *application for injunctive relief denied*, 142 S. Ct. 17 (2021), *and cert. denied*, 142 S. Ct. 1112 (2022); *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173 (9th Cir. 2021), *application for injunctive relief denied*, 142 S. Ct. 1099 (2022). In fact, SB 277 itself again recently withstood a post-pandemic constitutional challenge in *Royce*, 2025 WL 834769. In that case, the district court explained in a thorough, detailed and persuasive order why California's modern vaccination law is neutral, generally applicable and rationally related to a legitimate government interest. *See id.* at *6–14.

B. The result is the same in this case.

Now, as before, and like many other school vaccination requirements that have faced legal challenges over the years, SB 277 is constitutional. The analysis boils down to three questions. First, is the law neutral toward religion? *See Lukumi*, 508 U.S. at 531. Second, is the law generally applicable? *See Fulton*, 593 U.S. at 533. And third, is the law rationally related to a

legitimate governmental purpose? *See Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1084 (9th Cir. 2015). If the answer to all three questions is "yes," then SB 277 does not violate the Free Exercise clause. With all that has been written in the many persuasive decisions and opinions cited above, the court provides only a brief discussion below, as necessary for a clear record.

First, California's school vaccination law is neutral toward religion. It makes no distinctions on the basis of religion, there are no signs of artful drafting, and its legislative history suggests no religious animus or covert targeting of religious beliefs. *See Royce*, 2025 WL 834769, at *5–7; *Whitlow*, 203 F. Supp. 3d 1086–87; *Brown*, 24 Cal. App. 5th at 1144–45. In passing SB 277, legislators cited the importance of very high vaccination rates and "herd" immunity, recent trends in falling vaccination rates, pockets of especially low rates and their perception that the broad exception for personal beliefs—not religious beliefs—was one cause behind those declines. Legislators expressly recognized SB 277 would eliminate an exception for religious beliefs by eliminating the broader exception for personal beliefs, as summarized in the background section above. But nothing in the committee reports shows lawmakers were singling religion out; rather, by discussing constitutional rights and the First Amendment, legislators sought to assure themselves they would not be passing an unconstitutional law. *See We The People*, 76 F.4th at 149–50 (rejecting similar claim for these reasons). Legislators received and weighed religious and secular objections alike from many individual people and groups. They further exhibited "solicitude for the concerns of religious objectors" by preserving a broad personal beliefs exception for any new vaccines the state health authorities might add in the future. *Id.* at 149. In this way, California's actions contrast markedly with the actions of the local governments in cases like *Masterpiece Cakeshop* and *Lukumi*. *See* 584 U.S. at 634–36 (finding law not neutral based in part on intolerant and biased comments in enforcement hearing); 508 U.S. at 536 (finding law not neutral based in part on artful drafting).

Second, California's vaccine rules are generally applicable. *See Royce*, 2025 WL 834769, at *7–13; *Whitlow*, 203 F. Supp. 3d 1086–87; *Brown*, 24 Cal. App. 5th at 1144–45. The law does make exceptions, but those exceptions are not discretionary, they are not comparable to the religious exception plaintiffs request, and they do not undermine the state's interests in public

health and safety as a religious or personal beliefs exception would. *See Royce*, 2025 WL 834769, at *7–13.

Third, California has a legitimate interest in protecting the public health and safety by increasing the number of vaccinated students in the schools within its borders. *See Royce*, 2025 WL 834769, at *13–14; *Whitlow*, 203 F. Supp. 3d 1086–87; *Brown*, 24 Cal. App. 5th at 1145.

For these reasons, SB 277 does not violate the Free Exercise Clause.

C. The parents' contrary arguments are not persuasive.

The Doeschers and Joneses dispute this conclusion, first because SB 277 is not generally applicable in their view. They begin with the medical exception. *See* Opp'n at 13–14. They contend that exception allows state officers to make individualized and ad hoc discretionary decisions. *See id.* (citing *Fulton*, 593 U.S. 522). The statute's terms show otherwise. The medical exception is available to those whose physician or surgeon explains "the medical basis for which the exemption for each individual immunization is sought" and certifies "the physician and surgeon has conducted a physical examination and evaluation of the child consistent with the relevant standard of care and complied with all applicable requirements of this section," among multiple other specific requirements. Cal. Health & Safety Code § 120372(a)(2)(C), (F). The statute specifies who will review these submissions, how, and against what criteria and medical guidelines they will be judged. *See id.* § 120372(d). The only "discretion" the statute recognizes is "the medical discretion of the clinically trained immunization staff" to recognize "contraindications or precautions" based on "written documentation" by a surgeon or doctor. *Id.* § 120372(d)(3)(B). Multiple federal courts of appeals, including the Ninth Circuit, have held these types of objective, professional requirements do not grant a discretion of the type that can show a law is not generally applicable. *See, e.g.*, *We The Patriots*, 76 F.4th at 150–51; *We The Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 289–90 (2d Cir.), *as clarified*, 17 F.4th 368 (2d Cir. 2021) (per curiam) (collecting authority); *Stormans*, 794 F.3d at 1081–82. "Indeed, *Smith* itself specifically held that a scheme that included a type of medical exemption—by not criminalizing the use of controlled substances when prescribed by a medical practitioner—was nonetheless

generally applicable under the Free Exercise Clause." *We The Patriots*, 17 F.4th at 289–90 (citing 494 U.S. at 874).

Plaintiffs also argue the state's decision to include a medical exception shows it has treated secular objections more favorably than religious objections, which in their view undermines the state's claims about its purposes. *See* Opp'n at 14–15. This argument is unpersuasive. As summarized in the background section above, the government's interest in passing SB 277 was protecting the public health by increasing vaccination rates above the level at which the broader "community" or "herd" would cease to be immune, especially for those who could not be vaccinated. The medical exception serves this interest by exempting the few students whose health would suffer if they were vaccinated. *See, e.g.*, Rep. Cal. Assemb. Committee on Health on Sen. Bill 276 at 7–11 (2019), Req. J. Not. Ex. 15, ECF No. 38-2 (discussing vaccine safety in context of medical exception). California's law, like the Connecticut law in *We The Patriots*, "promotes the health and safety of vaccinated students by decreasing, to the greatest extent medically possible, the number of unvaccinated students (and, thus, the risk of acquiring vaccine-preventable diseases) in school." 76 F.4th at 153 (emphasis omitted). Moreover, by declining to make an exception based on personal beliefs, the state "decrease[s] the risk that unvaccinated students will acquire a vaccine-preventable disease by lowering the number of unvaccinated peers they will encounter at school." *Id.* By the same token, the medical exception "allows the small proportion of students who cannot be vaccinated for medical reasons to avoid the harms that taking a particular vaccine would inflict on them." *Id.* A student whose parents object to vaccination on religious grounds, by contrast, is not avoiding adverse health consequences by foregoing vaccination. As discussed in the legislative history of S.B. 277, the lawmakers who supported SB 277 believed in-person attendance would put that student's health at greater risk. *See, e.g.*, Rep. Cal. Assem. Comm. on Health (SB 277) at 4–6 (discussing immunity and measles outbreaks). The health of others who cannot safely be vaccinated also would also be at greater risk. *See id.* at 4–5. For these reasons, as the Ninth Circuit has held, an exemption based on a student's health and medical reasons is not "comparable" to an exemption based on personal beliefs. *See Doe*, 19 F.4th at 1178.

Plaintiffs argue similarly that California has impermissibly made exceptions to its vaccination rules for homeschooling and independent studies without making a comparable exception for religious objections. *See* Opp'n at 16. This, they argue, shows its law is not neutral and generally applicable. *See id.* But students in a homeschool or independent study program plainly differ from students who, like the plaintiffs' children, would attend school in person full time if they could under a religious exception. Children who attend homeschool or independent study are much less likely to regularly come into close personal contact with large numbers of other students for many hours every weekday. *See Royce*, 2025 WL 834769, at *9–10. Unvaccinated homeschool and independent study students are unlikely to contract infections from students in a classroom, and students in a classroom are unlikely to contract infections from them. By contrast, students whose parents object to vaccination on religious or philosophical grounds could attend classroom instruction in person on a regular basis, and both they and their classmates would be at greater risk. *See, e.g.*, Rep. Cal. Assem. Comm. on Health (SB 277) at 5. The exception for students in a homeschool or independent study program is not comparable to the religious exception plaintiffs seek.

Plaintiffs attack the homeschool and independent study exception from a different angle in their supplemental briefing. Even homeschooled children, they argue, "socialize with schoolchildren, participate in sports leagues, patronize arcades, and attend worship services with schoolchildren." Pls.' Suppl. Br. at 5. The law would be more neutral, they suggest, if it also "required children to be vaccinated before participating in youth sports leagues, attending movies, and going to summer camp." *Id.* But plaintiffs offer no reason to believe any of these other activities are as universal as school attendance, nor that they bring so many children together into the same rooms for many hours every weekday for many years.

Plaintiffs' brief reference to the exception for students with an IEP is similarly unpersuasive. "[I]n-person attendance by unvaccinated students with an IEP is not comparable to in-person attendance by students with religious objections to vaccination because federal law—the IDEA—requires that a school follow certain procedures before it can bar students [with IEPs] from in-person attendance." *Doe*, 19 F.4th at 1179 (citation and quotation marks omitted); *see*

also Royce, 2025 WL 834769, at *10 (reaching same conclusion in reliance on *Doe*). At hearing, plaintiffs' counsel acknowledged federal protections would likely override any conflicting state immunization requirements but emphasized how SB 277 makes an express exemption. The court cannot agree SB 277 falls short of being generally applicable under *Smith* just because it carves out an exception for those with federal statutory rights. *See, e.g.*, Rep. Cal. Assem. Comm. on Health (SB 277) at 8 (discussing IEPs and the IDEA).

Plaintiffs also contend "there is no way to reconcile" California's claim that it is simply attempting to protect the public health and safety with the state's decision to permit several categories of students to attend school temporarily, without first producing their immunization records. Opp'n at 16. As summarized in the background section above, state law makes allowances for foster children, homeless children, migrant children and children in military families. If students in these categories transfer from an old school to a new school, they must be admitted to the new school even if they cannot immediately produce their immunization records. And if their medical records cannot be located within thirty days, then they must submit to vaccination within a few days' grace period. A student's conditional admission to a new school for a short time does "not raise a serious question concerning the mandate's general applicability." *Doe*, 19 F.4th at 1179. The extra time is essentially an administrative grace period—a few weeks to find the missing paperwork. By contrast, under the exception plaintiffs seek, students whose parents object to vaccination on religious grounds could attend any school, new or old, indefinitely without any vaccination, ever. In short, the permanent religious exception plaintiffs seek differs starkly from the temporary exceptions they point to.

Plaintiffs hypothesize in their supplemental brief that the number of students with missing paperwork might actually be quite high, but as they conceded at hearing, their argument is pure unsupported hypothesis. *See* Pls.' Suppl. Br. at 7 (urging court to "conceive of a school in Fresno County" with specific characteristics). Arguments about hypotheticals and possibilities do not suffice in response to a motion to dismiss for failure to state a claim. *See Twombly*, 550 U.S. at 570.

Finally, plaintiffs argue in their supplemental brief that the exceptions to the state's vaccination requirement actually are quite broad, reaching as much as thirty percent of all California schoolchildren, whereas only a "tiny" sliver of the population—one percent or less—previously relied on the personal beliefs exception. *See* Pls.' Suppl. Br. at 3–5 & nn. 1–4. The pleadings include no allegations about these statistics; nor do plaintiffs' principal briefs. The court assumes for present purposes it would be appropriate to consider plaintiffs' citations despite their absence from previous briefing. The court also assumes without deciding that it could either take judicial notice of the cited statistics, Fed. R. Evid. 201(b)(2), as the district court did in *Royce*, 2025 WL 834769, at *8, or consider those statistics after a further amendment to the complaint, *see* Fed. R. Civ. P. 15(a)(2). Even then, the cited statistics would not show any exceptions "swallow the rule," as plaintiffs contend they do. Pls.' Suppl. Br. at 3.

It is unclear at the outset how plaintiffs reached their thirty-percent estimate. By the court's calculation, the sources they cite add up to only about twenty percent, not thirty. *See* Pls.' Suppl. Br. at 4 nn.1–3; Def.'s Suppl. Reply at 2 n.2. It also seems a simple addition of each category would likely count at least some students more than once, as counsel agreed at hearing. A student can both have an IEP and attend a homeschool or independent study program. Adding the percentages of students in those categories would double-count students in both.

More fundamentally, however, plaintiffs' argument relies on the dubious assumption that the various exceptions to SB 277 are equivalent to the hypothetical exception they seek. Fourteen percent of California schoolchildren might indeed have an IEP, for example, but nothing suggests the entirety of that fourteen percent attends school without vaccination. It might be that only one percent or a tenth of a percent are not vaccinated; plaintiffs do not offer any relevant allegations or judicially noticeable information. Compare this to the students who would take advantage of a personal beliefs exception. By definition, all of those students would attend school without vaccination. So even if the number of students claiming an exception for personal beliefs is low, it might still be higher, even much higher, than the number of students who refuse vaccination on the basis of the IEP exception. As Director Pan argues succinctly and persuasively in her supplemental reply, "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." Def.'s Suppl. Reply at 2. In short, the cited statistics do not support plaintiffs' case. To be sure, they may not support the defense case, either. In any event, the court does not rely on those statistics to conclude the complaint does not state a claim.

D. SB 277 is unlike vaccination requirements other courts have enjoined.

In only a few cases have courts concluded that First Amendment challenges to vaccination rules were viable. Plaintiffs cite some of these cases in their opposition. *See* Opp'n at 15–17. None is comparable or persuasive.

In some of the cases, the government had provided broad discretionary exceptions. In Mississippi, for example, a state law permitted people to claim a temporary exception from the state's vaccination law based on the opinion of a local health officer that the exception "will not cause undue risk to the child, the school or the community." *See Bosarge v. Edney*, 669 F. Supp. 3d 598, 610 (S.D. Miss. 2023) (quoting Miss. Code Ann. § 41-23-37). That is, the law granted local health officers discretion to make ad hoc, temporary exceptions to the vaccine rule. The district court applied the tried-and-true rule that when an otherwise neutral and generally applicable state law imposes an incidental burden on religion, courts strictly scrutinize that law if it nevertheless gives officials discretion to make exceptions from one person to the next. *See id.* at 617 (citing *Fulton*, 593 U.S. at 535–38). The state's attorney general conceded the state's law would not withstand strict scrutiny, and the court found the plaintiffs were likely to succeed on the merits of their claim; the plaintiffs ultimately were entitled to a preliminary injunction. *See id.* at 617, 619–20. California, by contrast, uses a standardized certification and employs a strict system of review, as summarized above, and as laid out in state law. *See* Cal. Health & Safety Code § 120372; *see also* 2019 Cal. Stat. Ch. 278 (S.B. 276) (amending and tightening the medical exception).

The Maine law in *Fox v. Makin* also provided broad exceptions. *See* No. 22-00251, 2023 WL 5279518, at *7–10 (D. Me. Aug. 16, 2023). First, it made an exception for any students who could produce a "written statement" from any doctor, nurse practitioner or physician assistant who thought immunization "may be medically inadvisable"—no explanation required—and thus

imposed none of the documentation and certification requirements of the California law, as summarized above. *See id.* at *7; Me. Rev. Stat. Ann. tit. 20-A, § 6355(2). The Maine law also included an exception for any students whose parents offered a "written assurance" the child "will be immunized within 90 days," without any of the follow-up requirements imposed in California's statute, as summarized above. 2023 WL 5279518, at *7; Me. Rev. Stat. Ann. tit. 20-A, § 6355(1). Given the breadth of these exceptions and how they operated in combination, the district court found it plausible to infer the plaintiffs might ultimately show the exceptions undermined the state's interest in public health, so the court applied strict scrutiny and denied the state's motion to dismiss. *See* 2023 WL 5279518, at *9–10.

Another similar example is found in the district court's decision in *UnifySCC v. Cody*, No. 22-01019, 2022 WL 2357068 (N.D. Cal. June 30, 2022). The plaintiffs sought a preliminary injunction against a county's requirement that its employees be vaccinated against COVID-19. *See id.* at *1. For the most part, the requirement was neutral, but the county had created a system of exemptions that was not neutral. *See id.* at *2–3, 10–12. The county permitted its employees to forego a COVID-19 vaccination if they objected based on a religious belief or if they had a disability or medical condition. *See id.* at *2. The county then categorized jobs based on the risk of COVID transmission. *See id.* Exempt employees could work in low-risk and medium-risk jobs if they wore a mask and were tested for COVID-19. *Id.* But the county did not allow exempt employees to work in high-risk jobs. *See id.* at *3. It offered to help them find jobs in lower-risk positions, but it gave preference to employees with disabilities or medical exceptions. *See id.* In other words, employees who had obtained a religious exemption and who were working in high-risk jobs were sent to the back of the line if they wanted a transfer. *See id.* at *10. That aspect of the county's policy was subject to strict scrutiny and, ultimately, the court preliminarily enjoined it. *See id.* at *10–13. No allegations in this case show California has similarly singled out those with religious beliefs, only to then put them at a disadvantage.

Other vaccine requirements have come under closer scrutiny based on their practical and perhaps unintended effects. In *Bacon v. Woodward*, for example, a group of firefighters challenged a city proclamation that required them to be vaccinated against COVID-19. *See*

104 F.4th 744, 747 (9th Cir. 2024). According to the complaint, the city had terminated them for refusing to be vaccinated, but then filled the vacant positions with private ambulance contractors and firefighters from other nearby fire departments. *See id.* at 748–49. The city said it had done this to stop the spread of COVID-19, but according to the plaintiffs, the replacements were not themselves subject to any mandatory vaccination requirements. *See id.* For that reason, it was plausible to infer the firefighters could ultimately show the city had "undermined its asserted interest," which could in turn show its policy was not actually neutral, generally applicable and not narrowly tailored to its interests—and therefore unconstitutional. *See id.* at 752. Here the complaint makes no plausible claims of similar unintended consequences.

In sum, unlike the laws and regulations that triggered strict scrutiny in *Borsarge*, *Fox*, *Bacon*, *UnifySCC* and other cases, California's school vaccine requirement does not permit state officials to make ad hoc, discretionary or unfair exceptions on a case-by-case basis. No allegations in the complaint show its practical consequences are at odds with the state's asserted interest of protecting the public health and safety. Plaintiffs have had two opportunities to amend their complaint in response to motions to dismiss, but have not been able to state claims for relief. In addition, as summarized above, California's school vaccination laws have been challenged many times before, in each instance without success. The court therefore declines to permit any further amendments to the complaint. *See Royce*, 2025 WL 834769, at *14 (dismissing without leave to amend for similar reasons).

IV. CONCLUSION

The motion to dismiss is **granted without leave to amend**. The Clerk's Office is directed to **close the case**.

IT IS SO ORDERED.

DATED: June 17, 2025.

SENIOR UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
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AMY DOESCHER, ET AL., Plaintiff, v. TOMAS ARAGON, in his official capacity as Department of Public Health Director and as the State Public Health Officer, et al., Defendants.	Docket No. 23-CV-2995 Sacramento, California June 5, 2025 10:05 a.m. Re: Motion to dismiss

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE KIMBERLY J. MUELLER
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: THE NICOL LAW FIRM by
MR. JONATHON DAVID NICOL
1801 Century Park East
24th Floor
Los Angeles, CA 90067

For the Defendant: CALIFORNIA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL by
MR. DARIN LEE WESSEL
600 Broadway Avenue, Suite 600
San Diego, CA 92101

Reported by: JENNIFER COULTHARD, CSR, RMR, CRR, CRC
United States District Court
Official Court Stenographer
501 I Street, Suite 4-200
Sacramento, California 95814
Jennifer_Coulthard@Yahoo.com
(530)537-9312

Proceedings reported via mechanical steno - transcript produced via computer-aided transcription.

PROCEEDINGS

SACRAMENTO, CALIFORNIA - THURSDAY, JUNE 5, 2025 - 10:05 a.m.

P R O C E E D I N G S

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(In open court:)

THE CLERK: Calling civil case Number 23-2995, Doescher, et al. versus Aragon, et al., on for defendant's motion to dismiss.

THE COURT: All right. Appearances, please, for plaintiffs.

MR. NICOL: Good morning, Your Honor; Jonathon Nicol for plaintiffs.

THE COURT: Good morning, Mr. Nicol.

And for the defense?

MR. WESSEL: Good morning, Your Honor; Darin Wessel for the defendants.

THE COURT: Good morning to you.

This is on for the motion to dismiss. I do have several questions. I want to make certain I'm comprehending what you're saying and ask some questions along the way.

So I'm prepared to grant judicial notice as requested. I don't think there's any serious dispute about taking notice of the historical statutes, the 1961 statute, other statutes. Do I have that right? No real dispute there, Mr. Nicol?

MR. NICOL: That's correct, Your Honor.

THE COURT: Mr. Wessel?

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MR. WESSEL: Correct.

THE COURT: All right.

I see the other request for notice regarding data underlying arguments made in a supplemental brief, but we'll get to that.

So here plaintiffs' claim is that without an exception, a religious exception to the vaccine requirements, SB 277 interferes with the free exercise of their religion and in this case, with relief, the parents would enroll or maintain their children enrolled in public school.

So far right, Mr. Nicol?

MR. NICOL: Yes, Your Honor.

THE COURT: The defense makes a facial attack on jurisdiction saying the infringement claim requires injury to the free exercise itself. And so let me start with the jurisdictional question. Plaintiffs do need to allege concrete injury or harm or imminent -- imminent likelihood of harm.

Do plaintiffs concede that that can't be based on -- harm can't be based on social stigma given the Supreme Court precedent, Mr. Nicol?

MR. NICOL: Do we concede that it cannot be based on social stigma?

THE COURT: Yeah, on stigma alone, correct.

MR. NICOL: I believe we cited a case on that. Yes, I do believe we had one stating that stigma would be sufficient,

but that's --

THE COURT: How do you deal with the *Hippocratic Medicine* case and the *Allen v. Wright* cases out of the Supreme Court?

MR. NICOL: Yes, Your Honor. The social stigma is probably the least compelling of my client's standing. We focus more on the economic injuries and particularly those and so social stigma is a part of our argument, but I agree that it's not the strongest.

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

So on the -- the impact of imminent enforcement -- I mean, I know there's a question about imminence, but if the requirement were enforced against the Pattersons, at least, their son would need to change schools.

MR. NICOL: Yes, that's correct.

THE COURT: Now, here the son is not the plaintiff, so there's no reliance on third-party standing or no guardian ad litem status, right?

MR. NICOL: That's correct.

THE COURT: And so it's parental rights alone that the Pattersons are proceeding on -- correct? -- Mr. Nicol?

MR. NICOL: Yes. Proceeding on the basis that parents -- there's plenty of law stating that the parents at this age, the children are allowed to assert the rights of their children's medical and educational interests.

PROCEEDINGS

THE COURT: In terms of the injury, though, this case is not like the *Yoder* case, the U.S. Supreme Court's *Yoder* case, because there's no prosecution trial conviction.

MR. NICOL: Correct. None of that has happened.

THE COURT: All right.

So the theory is, the law may deprive the Pattersons soon of their parental benefit or right based on their decisions about their son's religious upbringing?

MR. NICOL: Well, that's part of it, but, on top of that is that there -- and I think I bolded this in our opposition brief -- that they've got a choice to make between freely exercising their religion, including the choices that they want their children to make religiously or having their children go and participate in public school, and so they're unable to actually exercise their rights to religion in the context of that SB 277.

THE COURT: All right. So I need to think about is enforcement imminent and is their harm concrete personally. There's nothing to suggest imminent enforcement; enforcement is on the door step, right?

MR. NICOL: It's hard to say. There are allegations, particularly as to the Pattersons that there's some threats that have been made either -- I recall -- perhaps it must have been by the school or somebody related to that, but the actual injuries that have occurred already particularly are the

economic outlay and then, on top of that, the social stigma, which we've addressed, but there is a risk that at any moment somebody may actually have to change schools or make some change if it's asserted.

THE COURT: And the record allows me to conclude there's already been expenditure of time and money?

MR. NICOL: Yes. Yeah. That's expressly alleged in the complaint.

THE COURT: All right.

Mr. Wessel, on that point?

It's at least possible that all the parents here, not just the Pattersons, but all the parents either have or would need to spend time and money to find an equivalent educational opportunity; with the Pattersons, equivalent to what the son is now receiving. Do you concede that?

MR. WESSEL: No, because I don't think that equivalency is measured by whether it's in person in either a public school setting or a private school setting. They have not alleged that the education that they are receiving is in any way inadequate.

Further, to the extent they claim that there are additional expenses, we believe that would be secondary and not directly related to the impact of SB 277 because they have been able to exercise their First Amendment religious rights and not have their children vaccinated.

As to the Pattersons' son, as we noted in our moving papers, he is 17 and presumably graduating this year, so I think that's attenuated there themselves and they would have no injury because, for some reason, the school district allowed their son to attend high school.

THE COURT: Mr. Nicol, is that a fair conclusion that the Pattersons' son graduates this year?

MR. NICOL: I'm actually not aware of that. It could be. I just don't have an answer to that.

Could I respond to something Mr. Wessel said?

THE COURT: Sure.

MR. NICOL: He did state that we haven't alleged that there's an inadequate level of education or experience that the plaintiffs' children are experiencing. In fact, we did allege that. The Doecher's child, I understand, is only allowed to go two days a week in person based on her current educational setup and we allege that that is inferior just if you're counting days to the exposure that one would have going to school five days a week in person with the attendant social and other interactions that occur in person versus two days. She's missing out on that.

THE COURT: Yeah, I understand that argument and allegation.

Let me focus down on the credible threat question in the context of jurisdiction. And I'm looking at the factors

the Ninth Circuit says I must consider, the *Tingley v. Ferguson* factors.

First, plaintiffs have a concrete plan to violate the law. That -- that's not in dispute. The defendants are violating the law -- right? -- Mr. Wessel?

MR. WESSEL: I don't understand your question, that the defendants are violating the law?

THE COURT: I'm sorry. I meant the plaintiffs. If I said defendants, I mean plaintiffs.

MR. WESSEL: I don't think there's any indication that plaintiffs are actually violating the law. They have not had their children vaccinated, which is within their rights. It's not -- they've not alleged that they have secreted their children into the public school system or private school system without some basis. They don't allege -- to the extent the Pattersons' son is attending high school, they don't allege how it is that he is attending, whether it's under some other exemption.

THE COURT: So you're saying the violation needs to be overt, obvious and not -- you're suggesting any violation now is covert?

MR. WESSEL: That they at least have not alleged that they've attempted to enroll their children in school and have been rejected because they are unvaccinated. They have not alleged that they have requested a religious exemption and have

been rejected. I think it would be fair, at least for purposes of the motion-to-dismiss stage, for the Court to assume that if plaintiffs sought to be admitted into either a private or public school that they would be -- that they would not be admitted based on their unvaccinated status.

THE COURT: So on this point, Mr. Nicol, I didn't think I'd have to spend time on this one, but your response to what Mr. Wessel has said about the first of the *Tingley* factors?

MR. NICOL: Yes, Your Honor.

I'm looking back at the second amended complaint and in 32 and 33, paragraph 34, it discusses how their son is currently attending public school, that he isn't vaccinated, so that would be a violation under SB 277 because there's no way for him to get a religious exemption; it just doesn't exist, and so he's attending without being vaccinated and the school and the state have distributed these missives stating that that's not allowed, so that's where the imminence comes from, because they're thinking at any moment someone could bring an enforcement against them and exclude him from the school.

THE COURT: So let me just ask about the second factor, that is that the defendants have communicated a specific warning or threat. Now, here I don't think there's any specific warning or threat, but the case law suggests that if defendants don't disavow any intent to enforce, that that --

the Court should consider that. And here the defense has not disavowed any plans to enforce SB 277 -- right? -- Mr. Wessel?

MR. WESSEL: There has been no express disavowel.

I can represent to the Court that under the vaccine laws, the Department of Public Health does not have the ability to enforce, that it is the local schools who are responsible for confirming the vaccination status and making the determination whether the students have been vaccinated can be either conditionally admitted or must be excluded from admission because they have not been vaccinated.

THE COURT: Is it your representation that the named defendants have no power to enforce?

MR. WESSEL: Under current California law, there is no enforcement mechanism for the Department of Public Health and the director to enforce the mandatory vaccination laws.

THE COURT: So no basis for even communicating a warning or threat?

MR. WESSEL: Correct.

THE COURT: On that point as to the named defendants, Mr. Nicol?

MR. NICOL: I don't think there's anything stopping the Department from sending a letter to a school district stating that they should double check students and their vaccination statuses.

THE COURT: All right. On the third factor, history

of past enforcement, nothing in the record before the Court or of which the Court is aware allows it to conclude there's been any history of enforcement of a vaccine law, let alone SB 277, in more than a hundred years. Is that fair, Mr. Nicol?

MR. NICOL: What does the Court mean by "enforcement" exactly?

THE COURT: Is there a history of past enforcement as contemplated by *Tingley*? *Tingley* puts that out there as a factor.

MR. NICOL: Well, I mean, SB 277 is less than 100 years old, it's more recent than that, and --

THE COURT: Fair enough, but so narrow it to 277, but vaccine laws have been around for a long time and so it also seems of note that there's no indication of enforcement in all of that time.

MR. NICOL: It's hard to understand then why the laws exist if they're not to be enforced, and plaintiffs can have standing pre-enforcement so long as they are stating that they intend or are actually not complying with the order or the law.

THE COURT: I understand that. I'm just trying to think in a disciplined way about the *Tingley* factors.

Well, let's just -- for sake of argument, because I do have questions assuming I reach the merits, just -- I'll resolve the jurisdictional question. Anything more to say about jurisdiction before we move on to the merits?

MR. WESSEL: I think on the last -- the Court's last point, the -- there is no enforcement like in *Jacobson* where there was a monetary fine.

The Department of Public Health does issue to school districts over time guidance, education on how the mandatory vaccination laws are to be implemented according to the Department's interpretation of those laws. It's then up to the school districts to actually make those determinations and enforce the vaccination laws in terms of admissions to schools.

THE COURT: All right. And that's consistent with what you've said previously with a little more detail.

MR. WESSEL: Correct.

THE COURT: Understood.

All right. Anything further on jurisdiction, Mr. Nicol?

MR. NICOL: Just that my clients are operating under the specter of enforcement. They appreciate the risk.

THE COURT: I understand that argument.

All right. On the merits -- and the question of whether or not plaintiffs have a plausible claim, there's quite a lot of case law here that can help inform the Court's answer to that question, both pre- and post-SB 277. Vaccine requirements are pretty regularly upheld, and it appears the courts in California look to out-of-circuit precedent, the *Phillips* case out of the Second and Fourth out of *Workman*. And

so, for example, it's the Southern District that's the most persuasive decision, *Whitlaw* out of the Southern District relying on those two circuit decisions, *Love* and *Brown*, the California Court of Appeal in 2018 relying on those. Those are pre-COVID.

The Court is also looking at cases since COVID, taking account of the Supreme Court's case in *Tandon v. Newsom* clarifying several key points, some seeing that case as modifying the law.

The cases that seem most current and relevant here include the Ninth Circuit's case in *Doe v. San Diego* where there was a school district mandate, 2021, and then the *Royce* case, which the parties have briefed, the very recent decision out of the Southern District by Judge Huff in *Royce v. Bonta*.

So just -- I think I've mentioned the key cases, and there's been no Supreme Court review, and so this -- there may be an emerging question here yet to be resolved, but if I'm looking at *Doe v. San Diego*, *Royce v. Bonta*, taking account of *Tandon v. Newsom*, agreed those are the key cases, Mr. Nicol?

MR. NICOL: Agreed partially with a suggestion that rather than narrowing it to vaccine cases, it should be an analysis of free exercise framework, and that's how we get to the *Brooklyn Diocese* matter.

THE COURT: I understand that argument.

MR. NICOL: But I do agree those cases are the focused

ones.

THE COURT: All right. Mr. Wessel?

MR. WESSEL: I would just add to that list the two Second Circuit decisions in *Miller v. McDonald*, 130 F.4d at 258 and the *We the Patriots* case, which we cited in our briefs at 76 F.4d, 130.

THE COURT: I do see your briefing on those.

So I want to just work through the plaintiffs' arguments, so -- because you make, I think, about six arguments attacking the statute as not providing for a generally applicable scheme. So medical exceptions you say allow for ad hoc discretionary decisions, notwithstanding the statutes terms. I mean, pretty -- you know, pretty careful, detailed procedure for the reaching of a decision about a medical exception.

And I don't know that there's great case law here. I've heard you talk about free exercise generally, but I'm not seeing that you're pointing to a case that has accepted your argument on medical exceptions allowing for ad hoc discretionary decisions. Do I have that right, Mr. Nicol?

MR. NICOL: That's right. There's not a case on it. We rely on the text of the statute.

THE COURT: All right.

So now I'm looking at that, and think I'm clear on that language.

The argument that the medical exception favors secular over religious, fair to say the Ninth Circuit in *Doe v. San Diego* signals it does not accept that argument; is that fair, Mr. Nicol? "An exemption based on a student's health and medical reasons is not comparable to an exemption based on personal belief."

MR. NICOL: I think what's missing from the analysis in that case is an analysis of the discretionary nature of SB 277's medical exemption framework.

THE COURT: Ah. So the two arguments collapse into one?

MR. NICOL: Correct.

THE COURT: All right.

Anything to say so far, Mr. Wessel, on these? I'm really trying to make certain I understand what the plaintiffs are arguing. But anything to say based on that -- medical exception allows ad hoc discretionary decisions -- that you haven't already briefed?

MR. WESSEL: We -- I think we've briefed that sufficiently.

THE COURT: All right.

The home school and individual study argument, I've read what you've provided, including in the supplemental briefing, Mr. Nicol, so I understand you disagree strenuously with the district court in *Royce*?

MR. NICOL: Correct, yeah.

THE COURT: So I think I understand, I mean, your argument that to have some equivalency the statute would have to require vaccines before sports, camps ...

MR. NICOL: Exactly.

THE COURT: And you point to Justice Gorsuch's observation in a Supreme Court case. I understand that argument. I'm thinking about it.

On the IEPs -- this is a case where federal law operates in a way that the State can't avoid or modify, so isn't the IEP really in a different column, Mr. Nicol, students subject to an IEP?

MR. NICOL: Right. There's that preemption concept that's in the *Doe v. San Diego* matter. That was a dicta discussion, but I understand even if we take that out, there are all these other categories.

THE COURT: All right.

MR. NICOL: And I guess I would say on top of that -- this is in the briefing, but SB 277 made the IEP exception express in it.

THE COURT: Did it have a choice?

MR. NICOL: Well, maybe they didn't have to at all, but what that leads to is the size of that exception. You know, we cite 840,000 students who could be under an IEP and the large amount of potential unvaccinated students who could

be in the general population.

THE COURT: I'm getting to that, the way I'm thinking about the data that the plaintiffs cite in the supplemental brief.

So on the temporary exemption for homeless, migrant and military -- students of military families, that -- the temporary exception allows for a few, several weeks at most; is that fair, Mr. Nicol?

MR. NICOL: That's what the language of the statute says, but, in practice, it seems to be as defense counsel maybe has just indicated, not enforced.

THE COURT: But then also plaintiffs make, at best, a hypothetical argument about missing paperwork, I mean, speculating about a school in Fresno County, so it's speculation.

MR. NICOL: Hypothetical.

THE COURT: Anything to say about the temporary exemption, Mr. Wessel?

MR. WESSEL: The conditional admission provisions, I think they are also not comparable because the -- as we pointed out, the Department of Public Health, both vaccine services and education can be provided to resolve the unvaccinated status of those students.

Second of all, the first premise is faulty that they are unvaccinated in the first place. To the extent they're

transferring from other schools, they may well have already had vaccinations.

THE COURT: And don't have the paperwork?

MR. WESSEL: Correct.

THE COURT: So part of this is to allow for getting the paperwork matched up with the student at the new location.

MR. WESSEL: Right.

THE COURT: I understand that.

MR. WESSEL: And it's also yet another of the -- I think just on a broader picture, like conditional admissions, medical exemptions, they all have objective criteria that can be met. Personal beliefs are personal beliefs. There's no objective criteria that can be applied.

If, taking plaintiffs' argument that the legislature should have provided a religious exemption, which is not required under *Phillips*, again, there would be no way to enforce to make sure that only those who take advantage of that exception are actually based on religious beliefs because, as the Court knows, we can't evaluate the basis of the religious beliefs, so they are completely different categories.

MR. NICOL: And that's exactly where the constitutional issue lies.

THE COURT: Understood.

I don't think I have to think about sincerity of belief. Here the plaintiffs allege that they have a sincere

belief, and the Court takes that at face value.

So on the data that the plaintiffs cite in the supplemental brief, I just -- I don't know that the -- even if I take notice of the sources the plaintiff cites, I don't know that I can reach conclusions that will inform my decision here, given what's before the Court, because I'm -- you know, I have to double check the calculations. I'm not certain that 30 percent is quite right; it doesn't account for possible overlap among populations, it assumes equivalency. So your record is made, but my inclination is not to -- not to rely on that data.

MR. NICOL: I understand that, Your Honor.

We were careful to cite only to government sources, California Government sources primarily. And even if the numbers -- I do acknowledge there could be overlap and we are assuming the worst case in many of these cases, but, again, the -- what was noticed was a 0.58 percent of religious exemptions prior to SB 277, so less than 1 percent. And what we've calculated is about a 30 percent express exemption in SB 277. So even if we're off by 99 percent, the existing exemptions in SB 277 are still going to be much greater than the preexisting .58 percent and the point being that there -- and that's where the problem lies. I mean, you've got these existing categories that allow several populations of students to be free from vaccination, which -- I mean, the goal here is to minimize risk and minimize spread of disease and, on its

face, it sounds like, again, even if our numbers are on the higher end, if we take a very, very small number of it, it's still going to be a greater risk than everyone who wants to exercise a religious exemption.

THE COURT: Mr. Wessel, on that point, if the Court took account only of the .58 percent figure?

MR. WESSEL: If the Court judicially notices that CDPH report, which I think would be fair, as it's consistent with our request for judicial notice of the similar CDPH reports and data, the problem with the .58 percent is that Assembly Bill 2109, which was enacted prior to SB 277, in the Governor's signing order he directed the Department of Public Health to specifically allow for a separate personal belief exemption with a form that the parents could check stating based on religious beliefs so that they would not have to obtain the verification that they had consulted a health practitioner and received information on vaccinations.

The effective date of that was January 1 of 2014 so that there was only the one data report. And the department in there explains that the total personal belief exemption rate was 2.54 percent at the time and that in private schools there was still a 5.33 percent. There's nothing to indicate that the total number of parents exercising the option to check that box on that form had equalized.

If we had more years of data, then I think we would be

in a different situation, but even if the Court assumes that data as correct, the number of students claiming that religious belief, according to that data, was 2,764. In comparison, medical exemptions were only 1,034, permanent medical exemptions, so that's -- religious exemptions, even under that scenario, would be 2.7 times greater than the medical exemptions and so, therefore, would still not be comparable in terms of overall risk, which the *Tandon* court tells us that that's the way that we are supposed to measure this, not individual student-on-student risk.

THE COURT: All right. So just so I'm clear -- I heard all that. I understand the basic argument. Are those details laid out in your brief?

MR. WESSEL: That --

THE COURT: You're drawing on the data plaintiffs cite and --

MR. WESSEL: Correct.

THE COURT: Okay. So this may be the first time you're hearing this. Anything to say in response to that analysis, Mr. Nicol?

MR. NICOL: The first thing I would say is because of the lack of data since 2014 or '15, sounds like an issue ripe for discovery. That's my first reaction to it.

The second is medical exemptions is one of several categories and you -- the Court talked about six categories and

so even if there's only 2,700 or, rather -- I can't remember what the number was -- 1,300 medical exemptions, that doesn't say anything about students over 18 or home-schooled or the homeless or any of these other categories. There's many other categories. And when you stack those up, if we're comparing risk, even if we take as true the number that was just provided, it's still much less than the express categories of exemption that are already allowed under SB 277 for secular purposes.

THE COURT: All right. If I think I need to get to the bottom of this for the purposes of resolving the motion to dismiss, I may give a chance for some additional briefing. I'm inclined to think I don't need it, but if I change my mind upon reflection, I'll let you know.

I've seen the other cases that the plaintiff in particular cites out of Mississippi, Maine, a Northern District case, the *Cody* case and *Bacon v. Woodward*, so I have to think about whether or not those cases are analogous.

My only other question before I ask if you have any argument that we haven't covered that's not addressed by what we just covered or by the briefing, is leave to amend exhausted at this point? Let's say, for sake of argument, I grant the motion to dismiss. Any reason to allow further leave to amend at this point, Mr. Nicol, or is it -- is the matter resolved at the district court level for now?

MR. NICOL: That is a tough question, Your Honor. You know, as a plaintiff, I always like to keep trying. Is it exhausted? Again, my mindset is very focused on this needing to go to discovery to get answers to many of the questions you're asking today, so --

THE COURT: But those are on the merits --

MR. NICOL: Right.

THE COURT: -- not jurisdiction, for example, right?

And then -- yeah, merits, I understand; does the complaint open the gates to discovery.

MR. NICOL: Right.

THE COURT: All right. I'll think about that.

So anything further, Mr. Nicol? It's the defense motion, so I'll allow Mr. Wessel to wrap up, but anything further you think not covered by the briefing or that we haven't just reviewed?

MR. NICOL: No. I think we've exhausted it.

Thank you.

THE COURT: All right.

All right. Mr. Wessel?

MR. WESSEL: I would just overall note that it was the elimination of a personal beliefs exemption. There was no specific religious exemption even under the modified AB 2109, and so it was neutral on its face in terms of the elimination of the exemption.

PROCEEDINGS

THE COURT: I understood that argument, the PBEs.

MR. WESSEL: Yeah.

THE COURT: Yes.

All right. All right. The matter is submitted. Thank you very much.

MR. WESSEL: Thank you.

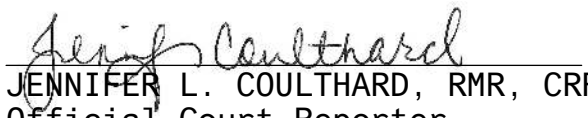
MR. NICOL: Thank you, Your Honor.

THE CLERK: Court is adjourned.

(Concluded at 10:44 a.m.)

C E R T I F I C A T E

I certify that the foregoing is a true and correct transcript of the record of proceedings in the above-entitled matter.



JENNIFER L. COULTHARD, RMR, CRR
Official Court Reporter

August 25, 2025
DATE

THE NICOL LAW FIRM
Jonathon D. Nicol, State Bar No. 238944
1801 Century Park East, 24th Floor
Los Angeles, CA 90067
Telephone: 816-514-1178
Facsimile: 816-327-2752
Email: jdn@nicolfirm.com

Attorneys for Plaintiffs

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

THE NICOL LAW FIRM
Jonathon D. Nicol, State Bar No. 238944
1801 Century Park East, 24th Floor
Los Angeles, CA 90067
Telephone: 816-514-1178
Facsimile: 816-327-2752
Email: jdn@nicolfirm.com

Attorneys for Plaintiffs

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 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 briefs, not to exceed 10 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.

A close examination of *Royce* reveals subtle defects. First, *Royce's* reliance on *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905) and its progeny is misplaced. A careful review of authority reveals how the Supreme Court has limited or eroded *Jacobson* during the last 120 years. Second, and most significantly, it is expected that this case, like *Royce*, will turn on whether SB 277 is a law of general applicability, *i.e.*, whether it was neutral to religion. *Royce* got this wrong. SB 277 exempts vast numbers of students – over 30% statewide, and over 50% in urban districts like Los Angeles. Carve-outs exist for Special Education students, those with medical issues, homeless students, children of military, those over the age of majority, undocumented students, and foster youth. Given these vast exceptions, it's hard to claim with a straight face that the tiny numbers of religiously devout students – 0.58% – would "break the bank" – and it's impossible to claim that SB 277 doesn't inexplicably single out the religious.

For these reasons and additional analysis stated herein, the *Royce* order should be considered by this Court only for what that court got *wrong* about SB 277's unconstitutionality.

II. *ROYCE* MISAPPLIED *JACOBSON* AND ITS PROGENY.

Royce over-relies on *Jacobson* and its progeny. While this Court cannot ignore *Jacobson*, it must harmonize it with subsequent binding precedents.

As a threshold matter, the *Jacobson* holding was quite narrow. There, the Court ruled only that during a horrible pandemic involving a deadly disease, a city could mandate one vaccine shot, unless a person opted to pay a small fee. That is the entirety of the *Jacobson* holding.

The next case in this line of precedent, *Zucht v. King*, 260 U.S. 174 (1922), also relied on in *Royce*. *Zucht* was a very short (three-page) decision that manifested a dated analysis style, which constitutional scholars would deem deficient and conclusory by modern standards. *Zucht*'s

somewhat strange holding was twofold: (1) mandating vaccination is within a state's police power; and (2) local governments may pass health laws. Crucially: *Zucht* did not consider what offramps must exist to make the exercise of police power constitutional. Such issues (like religious exemptions, or exemptions for military children forced to travel to a new jurisdiction) were simply not before the Court. Indeed, the *Zucht* court noted that the substantive issues required a writ of certiorari and were thus not properly before it. *Id.* at 177. So again: a careful reading of the authority on which *Royce* relies show that such reliance was misplaced.

The next holdings in the *Jacobson/Zucht* line of cases featured impudent statements that have been directly overruled. Such statements in the next cases in the *Jacobson/Zucht* line that purport to take *Jacobson* to its logical conclusion – discomfit any serious modern constitutional scholar. For example:

> It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, **society** can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. *Jacobson v. Massachusetts*, 197 U. S. 11, 25 S.Ct. 358, 49 L. Ed. 643, 3 Ann. Cas. 765. Three generations of imbeciles are enough. *Buck v. Bell* (1927) 274 U.S. 200, 207.

Shortly after the shortcomings of that era and after cases like *Buck*, the Supreme Court propounded its modern concept of substantive due process in *United States v. Carolene Products*, 304 U.S. 144 (1938). The Court has applied the *Carolene* formulation in all cases ever since that involve bodily autonomy, medical decisions, and/or fundamental rights like religious exercise. That line of cases, well-developed and obviously still vital, must be read as having partially restricted *Jacobson* and its progeny, or else those concepts would be rendered nugatory.

Nor does *Prince v. Massachusetts*, 321 U.S. 158, 166-67 (1944) apply. It held: "The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death." But SB 277 provides that if there is an exposure at school, the unvaccinated student will be removed from the classroom: "If there is good cause to believe that a child has been exposed to a disease listed in subdivision (b) of

Section 120335 and the child's documentary proof of immunization status does not show proof of immunization against that disease, that child may be temporarily excluded from the school or institution until the local health officer is satisfied that the child is no longer at risk of developing or transmitting the disease." Health & Safety Code § 120370(b). Thus, unlike the situation in *Prince*, SB 277 has safeguards in place to protect the community from communicable disease if an exposure includes a student claiming religious freedom, making the Supreme Court's ruling in *Prince* wholly distinguishable from the present circumstances.

In sum, as Justice Gorsuch recently noted, *Jacobson* and its progeny pre-dated modern constitutional formulations and absolutely must be confined to the conventions in modern precedent. *Roman Catholic Diocese of Brooklyn v. Cuomo* (2020) 592 U.S. 14, 23 (Gorsuch, concurring).

III. *ROYCE* INCORRECTLY CONCLUDED SB 277 WAS GENERALLY APPLICABLE.

On the most crucial specific issue – whether SB 277 imposes selective burdens on religion, or whether it is generally applicable – *Royce*'s analysis is defective. A court cannot deem a statute neutral and generally applicable if it treats *any* comparable secular activity more favorably than 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 a statute therefore triggers strict scrutiny under the Free Exercise Clause. *Id.* Some precedent refers to this as "the neutrality test." *E.g., Loffman v. California Department of Education* (9th Cir. 2024) 119 F.4th 1147, 1170.

A law fails the neutrality test when it "single[s] out" religious entities "for especially harsh treatment"). *Id.* (citations omitted). *Royce* really stretched to conclude that the many secular exceptions to SB 277 were logical – and, that despite these many exceptions – some of which swallow the rule – that SB 277 was generally applicable.

Royce's conclusion on this matter was troubling, because SB 277 exempts over 30% of schoolchildren statewide. Yet mysteriously, religious students lack a carveout. SB 277 features

total exemptions for students with an Individualized Education Plan ("IEP"),[1] home-schooled children,[2] and those 18 or over.[3] It also contains grace-period exemptions for foster children, military children, homeless children, and undocumented children. Yet the tiny numbers of the religiously devout receive no such consideration.[4]

Under *Tandon v. Newsom*, 141 S.Ct. 1294 (2021), "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." 141 S.Ct. at 1296 (*citing Brooklyn*, 141 S.Ct. at 67). And in making these comparisons, the Court "is concerned with the risks" posed. *Id*.

While *Royce* attempted to draw a distinction between each of SB 277's many exemptions

[1] 14.3% of schoolchildren. In 2023-2024, California had 5,837,690 students in California public schools per the California Department of Education. Of those, 836,846 were on an IEP. *See Fingertip Facts on Education in California*, available at: https://www.cde.ca.gov/ds/ad/ceffingertipfacts.asp and *2023-24 Special Education Enrollment by Program Setting*, available at https://dq.cde.ca.gov/dataquest/DQCensus/SPEDEnr.aspx?cds=00&agglevel=State&year=2023-24. As official government documents, they are subject to judicial notice, which Plaintiffs hereby request. *See* Fed. R. Evid. 201(b)(2); *U.S. ex rel. Modglin v. DJO Global Inc.*, 48 F. Supp. 3d 1362, 1381 (C.D. Cal. 2014) (courts can judicially notice "'[p]ublic records and government documents available from reliable sources on the Internet,' such as websites run by governmental agencies."; *Gilbrook v. City of Westminster*, 177 F.3d 839, 858 (9th Cir. 1999) ("A trial court may presume that public records are authentic and trustworthy")*; see also, e.g.*, *In the Matter of Lisse* (7th Cir. 2018) 905 F.3d 495, 497; *Carroll v. Dutra* (9th Cir. 2014) 564 Fed.Appx. 327, 328.

[2] 4.4% of schoolchildren. *See United States Census Bureau: Phase 4.0 Cycle 03 Household Pulse Survey: March 5 - April 1, Education Table, Table 1 (236,113 California children homeschooled)*, available at https://www.census.gov/data/tables/2024/demo/hhp/cycle03.html. As an official government document, this is subject to judicial notice, which Plaintiffs hereby request. *See* Fed. R. Evid. 201(b)(2); *U.S. ex rel. Modglin, supra,* 48 F. Supp. 3d at 1381; *Gilbrook, supra,* 177 F.3d at 858*; see also, e.g.*, *In the Matter of Lisse, supra,* 905 F.3d at 497; *Carroll, supra,* 564 Fed.Appx. at 328.

[3] 1.7% of K-12 students. S*ee 2023-24 K-12 Enrollment by Age Group and Grade*, available at https://dq.cde.ca.gov/dataquest/dqcensus/EnrAgeGrd.aspx?cds=00&agglevel=state&year=2023-24. As an official government document, this is subject to judicial notice, which Plaintiffs hereby request. *See* Fed. R. Evid. 201(b)(2); *U.S. ex rel. Modglin, supra,* 48 F. Supp. 3d at 1381; *Gilbrook, supra,* 177 F.3d at 858*; see also, e.g.*, *In the Matter of Lisse, supra,* 905 F.3d at 497; *Carroll, supra,* 564 Fed.Appx. at 328.

[4] As of the last date that California still offered a religious Personal Belief Exemption ("PBE"), only 0.58% of kindergarteners claimed a religious basis for a PBE. As the Court is aware, proving genuinely held religious beliefs is much more difficult. *See Conditional admission, religious exemption type, and nonmedical vaccine exemptions in California before and after a state policy change (Table 1)*, available at https://pmc.ncbi.nlm.nih.gov/articles/PMC7153733/ and *2014- 2015 Kindergarten Immunization Assessment Results, California Department Of Public Health, Immunization Branch*, available at https://eziz.org/assets/docs/shotsforschool/2014-15CAKindergartenImmunizationAssessment.pdf As official government documents, these are subject to judicial notice, which Plaintiffs hereby request. *See* Fed. R. Evid. 201(b)(2); *U.S. ex rel. Modglin, supra,* 48 F. Supp. 3d at 1381; *Gilbrook, supra,* 177 F.3d at 858*; see also, e.g.*, *In the Matter of Lisse, supra,* 905 F.3d at 497; *Carroll, supra,* 564 Fed.Appx. at 328.

(which exempt over 30% of schoolchildren for secular reasons), to conduct a proper analysis this Court needs to consider at what point the vast exemptions for the categories above credibly pose a lesser risk than extending the same exemption to the tiny numbers of religiously devout. That is a fact issue requiring discovery, and it cannot be disposed of during the pleading stage. The "vast array of secular" exemptions to SB 277 mean that "California has not come close to showing that its measures are narrowly tailored to th[e] interest" of controlling the spread of disease. *See Harvest Rock Church, Inc. v. Newsom*, 985 F.3d 771, 772-73 (2021) (concurrence of J. O'Scannlain).

IV. *ROYCE* ERRED IN DISTINGUISHING THE HOME-SCHOOL EXEMPTION.

Royce opined that the home-schooled exemption is not comparable to a religious-based exemption because students enrolled in a home-based private school or an independent-study program without classroom instruction do not inherently pose the same level of risk as students with religious exemptions who would be granted full access to traditional classroom settings. (*Royce* at 19:8-20:20.) This defies logic. The threat the Court is considering is the spread of disease. Unvaccinated home-schooled children still socialize with schoolchildren, participate in sports leagues, patronize arcades, and attend worship services with schoolchildren. The Supreme Court has mocked the *Royce* approach as ignorant of both sociology and epidemiology. "Never mind that scores might pack into train stations or wait in long checkout lines." *See South Bay United Pentecostal Church v. Newsom*, 141 S.Ct. 716, 718 (Memorandum Opinion) (2021) (statement of Gorsuch, Thomas, and Alito).

SB 277 would be more a law of general applicability if it required children to be vaccinated before participating in youth sports leagues, attending movies, and going to summer camp. However, instead the drafters chose to target schoolchildren, yet exempt home-schooled children who participate in all the above activities – and who are also allowed to participate in many activities at school.

Thus, to conclude that tiny numbers of religiously devout students attending school without vaccinations would pose a greater risk to society is to willfully ignore all that is known in

epidemiology about the spread of disease. Almost 5% of school-aged children can remain vaccination-free, and socialize at will.

V. *ROYCE* ERRED IN DISTINGUISHING THE ADULT-STUDENT EXEMPTION.

Royce posits that the number of unvaccinated students that qualify for an exemption for being 18 or over "is likely small in comparison to the number of unvaccinated students that would qualify for a religious belief exemption." (*Royce* Order at page 22, line 9 to page 23, line 16.) But the *Royce* court did not consider available judicially noticeable facts confirming the opposite, in some cases, documents created by the defendants themselves.

Detailed herein via footnote 3, 1.7% of California's total K-12 student population is 18 or over. That is 99,654 students. On the other hand, stated in footnote 4, religious exemptions for PBEs totaled just 0.58% of kindergarteners, or 2,973 students. Applying that percentage to the overall student body would yield 33,858 students – only a third of the 18 or over population that is already automatically exempted under Health and Safety code 120360.

On this point alone, the Court is presented with a secular exemption that produces three times the number of unvaccinated students, and thus three times the risk. (And it's not as if 18-year-olds don't spread disease.). Under the Supreme Court's precedent on this topic, there is no valid reason to favor students for a secular reason (adulthood) and deny accommodation for the religious.

VI. *ROYCE* ERRED IN DISTINGUISHING THE TEMPORARY EXEMPTION FOR FOSTER, MILITARY, HOMELESS, AND UNDOCUMENTED SCHOOLCHILDREN.

SB 277 also has a huge carve-out for foster, military, homeless, and undocumented schoolchildren. As of 2018 (the last data available), approximately 250,000 undocumented children ages 3-17 are enrolled in California public schools (4.2% of the total student population).[5] As of 2021-2022 (the last data available), there were 106,340 foster students

[5] *See Attorney General Becerra Issues Guidance to K-12 Schools on Privacy and Equal Rights of All Students*, available at https://www.oag.ca.gov/news/press-releases/attorney-general-becerra-issues-guidance-k-12-schools-privacy-and-equal-rights. As an official government document, this is subject to judicial notice, which Plaintiffs hereby request. *See* Fed. R. Evid. 201(b)(2); *U.S. ex rel. Modglin, supra,* (continued…)

statewide (1.8% of the total student population).[6] And homeless students totaled 286,853 statewide (4.9% of the total student population).[7] Students who are undocumented, foster, or homeless (not counting military-connected students due to lack of data) total 10.9% of California's total student population. Adding this percentage to the 20.4% exemption for IEP, homeschooled, or over 18 students means that SB 277 exempts **31.3%** of all California schoolchildren. In some schools in Los Angeles and in the Eastern District, these groups together make up the *majority* of students. SB 277 allows such students a grace period of thirty days in theory (and often much longer in fact) to submit proof of vaccination to the school district.

Royce posited that this grace period for huge numbers of students did not make SB 277 flunk the neutrality test, because a grace period is not the same as a religious exemption. Plaintiffs must respectfully disagree, because the numbers for the former are so large, that they will always dwarf the latter. The Court need not be a mathematician or an epidemiologist to conclude that a rolling 30-day grace period for 10.9% of the total student population guarantees that there will always be large numbers of unvaccinated students in schools for secular reasons. These numbers far outweigh the risk compared to the tiny numbers of devout religious students and evince an inexplicable hostility to religion.

For example, conceive a school in Fresno County where 37% of potential students are undocumented, 7% are fostered, 5% are homeless, and 1% are military students. Because of the transitory nature of these students, they will enroll at various times over the nine-month school year. Assuming enrollments are evenly distributed, 5.55% of all students will always be

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48 F. Supp. 3d at 1381; *Gilbrook, supra,* 177 F.3d at 858*; see also, e.g.*, *In the Matter of Lisse, supra,* 905 F.3d at 497; *Carroll, supra,* 564 Fed.Appx. at 328.

[6] *See Foster Youth Enrollment by School Type Data*, available at https://www.cde.ca.gov/ds/ad/filesfyce.asp. As an official government document, this is subject to judicial notice, which Plaintiffs hereby request. *See* Fed. R. Evid. 201(b)(2); *U.S. ex rel. Modglin, supra,* 48 F. Supp. 3d at 1381; *Gilbrook, supra,* 177 F.3d at 858*; see also, e.g.*, *In the Matter of Lisse, supra,* 905 F.3d at 497; *Carroll, supra,* 564 Fed.Appx. at 328.

[7] *See 2023-24 Homeless Student Enrollment by Dwelling Type*, available at https://dq.cde.ca.gov/dataquest/DQCensus/HmlsEnrByDT.aspx?agglevel=State&cds=00&year=2023-24. As an official government document, this is subject to judicial notice, which Plaintiffs hereby request. *See* Fed. R. Evid. 201(b)(2); *U.S. ex rel. Modglin, supra,* 48 F. Supp. 3d at 1381; *Gilbrook, supra,* 177 F.3d at 858*; see also, e.g.*, *In the Matter of Lisse, supra,* 905 F.3d at 497; *Carroll, supra,* 564 Fed.Appx. at 328.

unvaccinated. This will always be greater than the ~0.58% of religiously devout students seeking an exemption. Assuming these students all enroll at once, say at the beginning of the school year (which is not how it works for these groups), then 50% of the students will be unvaccinated during the start of Fall instruction, again dwarfing the religious numbers.

To say this paradigm is neutral to religious students beggars belief.

VII. *ROYCE* ERRED IN DISTINGUISHING THE IEP EXEMPTION.

Massive numbers of children in schools are on Individualized Education Plans, or IEPs. *Royce* cited *Doe v. San Diego Unified School District* (9th Cir. 2021) 19 F.4th 1173, 1184, n.3 (Ikuta, dissenting) for the premise that because the Supremacy Clause means state laws like SB 277 cannot affect the federal laws that provide for IEPs, the "IEP exception" to SB 277 is immaterial for determining whether SB 277 is generally applicable. As a threshold matter, this was dicta in *Doe v. San Diego Unified.* As another threshold matter, the *Royce* court stated the premise in an exceedingly broad way. If the *Royce* rule was taken to its logical conclusion, one need not get too imaginative to conceive of situations where states could craft laws that discriminate against the religious, ignoring and then blaming "federal law" for exceptions.

But the Court should also distinguish the dicta in *Doe v. San Diego Unified* for two other reasons: (1) SB 277 made this exception explicit. In other words, the drafters (in considering how to make SB 277 a law of general applicability) actually referred to and incorporated this gaping federal exception. Since the intent of the drafters matters, the explicit mention of this loophole one can drive a truck through should guide the Court on just how generalized SB 277 really is.

And that segues to the other reason why the Court should carefully re-examine *Royce*'s determination on this point: (2) Nothing in the record indicated that the *Doe* court grasped the sheer size of this exception. 836,846 students in the 2023-24 school year had an IEP.[8] There

[8] *See 2023-24 Special Education Enrollment by Program Setting*, available at https://dq.cde.ca.gov/dataquest/DQCensus/SPEDEnr.aspx?cds=00&agglevel=State&year=2023-24. As an official government document, this is subject to judicial notice, which Plaintiffs hereby request. *See* Fed. R. Evid. 201(b)(2); *U.S. ex rel. Modglin, supra,* 48 F. Supp. 3d at 1381; *Gilbrook, supra,* 177 F.3d at 858; *see also, e.g.*, *In the Matter of Lisse, supra,* 905 F.3d at 497; *Carroll, supra,* 564 Fed.Appx. at 328.

were 5,837,690 students in school total.[9] So by this exception alone, 14.3% of schoolchildren are exempt from vaccination.

In sum, SB 277 exempts over 30% of schoolchildren for secular reasons, yet refuses to exempt the 0.58% of religiously devout schoolchildren. Such a law cannot be considered "generally applicable." *Royce* erred in coming to that conclusion.

VIII. *ROYCE* ERRED IN EQUATING MEDICAL EXEMPTIONS WITH RELIGIOUS EXEMPTIONS.

The *Royce* order contains several problematic assertions regarding medical exemptions as compared to religious exemptions.

The order (15:14) incorrectly states that doctors can simply write accepted medical-exemption notes. In reality, California law was updated after 2020 via Senate Bills 276 and 714, making medical exemptions extremely difficult to obtain except in very limited circumstances such as active chemotherapy treatment.

The *Royce* court's argument (16:19) that "California's medical exemption is not comparable to a religious-belief exemption because the number of students that have a medical exemption is much smaller than the number of students likely to seek a religious exemption" is flawed reasoning. This implies religious freedoms should be restricted based solely on the potential *number* of exemptions rather than *constitutional* principles – that cannot be and is not the case.

The historical 2.7% unvaccinated rate from 2012 should be sufficient for herd immunity if vaccines are effective, which undermines the argument for restricting religious beliefs. The comparison between medical and religious exemptions is fundamentally misguided since medical exemptions are artificially low due to the extremely strict approval process and high rejection rate by CDPH.

[9] *See 2023-24 K-12 Enrollment by Age Group and Grade,* available at: https://dq.cde.ca.gov/dataquest/dqcensus/EnrAgeGrd.aspx?cds=00&agglevel=state&year=2023-24 and *Fingertip Facts on Education in California*, available at: https://www.cde.ca.gov/ds/ad/ceffingertipfacts.asp. As official government documents, these are subject to judicial notice, which Plaintiffs hereby request. *See* Fed. R. Evid. 201(b)(2); *U.S. ex rel. Modglin, supra,* 48 F. Supp. 3d at 1381; *Gilbrook, supra,* 177 F.3d at 858*; see also, e.g.*, *In the Matter of Lisse, supra,* 905 F.3d at 497; *Carroll, supra,* 564 Fed.Appx. at 328.

Finally, the *Royce* order incorrectly claims (at 18) that "SB 277 does not give state officials discretion to decide whether an individual's reasons for requesting a medical exemption are meritorious." This directly contradicts the actual language of the law following the 2019 updates, which explicitly grant CDPH extensive review powers. The actual language in Health and Safety Code Section 120372(d)(3) clearly shows that:

1. CDPH identifies medical exemption forms that do not meet CDC, ACIP, or AAP criteria.
2. CDPH can contact physicians for additional information.
3. CDPH may accept exemptions based on other contraindications at CDPH's "medical discretion."
4. The State Public Health Officer or designee can revoke medical exemptions deemed inappropriate.

The *Royce* court thus puts misplaced weight in the "shall be exempt" language of SB 277 when in fact other language of SB 277 expressly confirms that issuing medical exemptions is not ministerial, and instead is up to the discretion of CDPH.

Statistical evidence of revoked exemptions further demonstrates that CDPH actively reviews and exercises discretion over medical exemption requests, contradicting the *Royce* court's characterization of the process as objective and physician-determined. Such a discretionary mechanism is sufficient on its own to render a law not generally applicable. *Fulton v. City of Philadelphia*, 593 U.S. 522, 533-534 (2021) (a law is not generally applicable if it "'invites' the government to consider the particular reasons for a person's conduct by providing a 'mechanism for individualized exemptions,'" (brackets and citation omitted)). And this context confirms that Plaintiffs' case falls within *Bosarge v. Edney*, 669 F. Supp. 598 (S.D. Miss. 2023), which held that vaccine mandates are not generally applicable under the Free Exercise Clause where they provide discretionary exemptions for medical reasons but not religious ones. That is exactly SB 277's structure and that is exactly why SB 277 should be found violative of Plaintiffs' religious rights.

IX. CONCLUSION

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

Respectfully Submitted,

DATED: April 25, 2025

THE NICOL LAW FIRM

By: /s/ *Jonathon D. Nicol*

JONATHON D. NICOL

Attorneys for Plaintiffs

THE NICOL LAW FIRM
Jonathon D. Nicol, State Bar No. 238944
1801 Century Park East, 24th Floor
Los Angeles, CA 90067
Telephone: 816-514-1178
Facsimile: 816-327-2752
Email: jdn@nicolfirm.com

Attorneys for Plaintiffs

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.

Defendant.

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

PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Date: April 17, 2025
Time: 10:00 a.m.
Place: Courtroom 3

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

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I. INTRODUCTION

Plaintiffs Amy Doescher and Steve Doescher ("Doeschers"), Danielle and Kamron Jones ("Joneses"), and Dr. Sean and Renee Patterson ("Pattersons") (collectively "Plaintiffs") hereby oppose Defendant Tomás Aragón's ("Defendant") Motion to Dismiss ("Motion"). The Motion should be denied for the following reasons:

First, Plaintiffs adequately allege standing. They maintain devout, sincere religious beliefs that prohibit them from vaccinating themselves or their children such that their children cannot attend school in California free from SB 277's religious discrimination. Plaintiffs have suffered the types of constitutional injuries required to show standing and which may be redressed by a favorable outcome of this dispute.

Second, Plaintiffs state a claim for relief under the First Amendment. Recent and historic Supreme Court precedent conclusively establishes the Free Exercise Clause claim, which alleges sufficient burdens on Plaintiffs' religious beliefs resulting from SB 277. The challenged law is neither neutral nor generally applicable and thus fails to meet the requirements of strict scrutiny.

Third, Defendant attempts to support the Motion with evidence outside the pleadings, but the proffered materials do not fall within the strict guidelines for judicial notice, and so should be rejected by the Court.

Fourth, if the Court determines that Plaintiffs' claims require any clarification, then leave to amend should be granted, consistent with the liberal federal policy regarding the same.

II. LEGAL STANDARD

When deciding 12(b) motions, the Court "must accept as true all the factual allegations in the complaint." *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 164 (1993). At the 12(b) stage, federal courts may not dismiss a complaint unless "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002) (citation and internal quotation marks omitted). This standard is especially liberal when applied to the constitutional claims alleged in this action, which are governed by Rule 8; all that is required is a "short and plain statement" of the plaintiff's claims. *Wong v. U.S.*, 373 F.3d 952, 957 (9th Cir.

2004) (citing Fed.R.Civ.P. 8(a)(2)). The Court "must consider whether, construing the allegations of the complaint in the light most favorable to the plaintiff, it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Zimmerman v. City of Oakland*, 255 F.3d 734, 737 (9th Cir. 2001) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). The district court must "assume the truthfulness of the material facts alleged in the complaint" and must construe "all inferences reasonably drawn from these facts . . . in favor of the responding party." *See Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009); *Doe v. United States*, 419 F.3d 1058, 1062 (9th Cir. 2005). Thus, no matter how improbable the facts alleged are, they must be accepted as true for purposes of the motion. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007).

III. ARGUMENT

A. Plaintiffs Allege Sufficient Standing.

The Second Amended Complaint ("SAC") establishes Plaintiffs' standing to sue for relief under the Free Exercise Clause. To have standing, "[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). An injury in fact is "'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Id*. at 339 (*quoting Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)).

Free Exercise Clause authorities provide further insight about standing in such cases. 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. 507, 516 (2022) (emphasis added). In *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972), members of the Old Order Amish and Conservative Amish Mennonite Church were convicted under Wisconsin law for refusing to send their children to public school past the eighth grade. The Supreme Court ruled that the parents had standing to assert Free Exercise Clause claims because the compulsory school attendance law

directly conflicted with their religious beliefs and practices. The Court held that the law substantially burdened the parents' free exercise of religion, establishing a precedent for religious exemptions from generally applicable laws.

Recent Court of Appeals decisions emphasize that a court cannot substitute its judgment for the validity of a plaintiff's religious beliefs. *See Does v. Board of Regents of the University of Colorado*, 100 F.4th 1251, 1271 (10th Cir. 2024) (inquiries into the sincerity of a plaintiff's religious beliefs were precisely the sort of "trolling through a person's religious beliefs" that courts disallow); *Ringhofer v Mayo Clinic*, 102 F.4th 894, 900 (8th Cir. 2024 (in context of employer judging an employee's religious objections, "[r]eligious beliefs do not need to be 'acceptable, logical, consistent, or comprehensible to others'" quoting *Thomas v. Review Bd. of Ind. Empl. Sec. Div.*, 450 U.S. 707, 714 (1981)); *Luck v. Landmark Medical of Michigan*, 103 F.4th 1241, 1244 (6th Cir. 2024) (district courts lack any basis to demand that a plaintiff explain its religious beliefs because "[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds" quoting *Hernandez v. Comm'r of Internal Revenue*, 490 U.S. 680, 699 (1989)).[1]

Further, where, as here, a government policy with exemptions vests "unbridled discretion in a government official over whether to permit or deny" First Amendment protected activity, one who is subject to the law or policy may challenge it facially without the necessity of first applying for, and being denied that same exemption. *City of Lakewood v. Plain Dealer Publ'n Co.*, 486 U.S. 750, 755-56 (1988); *see also East Brooks Books, Inc. v. Shelby Cnty. Tenn.*, 588 F.3d 360, 369 (6th Cir. 2009) (finding that plaintiff had standing based on the suppression of his future protected speech even where his license was not actually revoked); *Faith Baptist Church v. Waterford Twp.*, 522 Fed. Appx. 322 (6th Cir. 2013) (mere threat of potential prosecution was sufficient to establish that the claim was ripe and standing existed).

Plaintiffs have demonstrated concrete and particularized injuries directly traceable to SB

[1] Similarly, a recent Title VII opinion from the Seventh Circuit emphasizes that: "The fact that an accommodation request also invokes or, as here, even turns upon secular considerations, does not negate its religious nature" and that "a religious objection to a workplace requirement may incorporate both religious and secular reasons." *Dottenwhy v. Aspirus, Inc.*, 108 F.4th 1005, 1009 (7th Cir. 2024).

277, establishing standing under well-established Supreme Court precedent. The Motion's characterization of Plaintiffs' injuries as merely "moral or ideological objections" fundamentally misapprehends both the nature of the alleged harms and the applicable legal standard for religious exercise claims.

1. Plaintiffs Have Suffered Concrete Economic Injuries.

Each plaintiff has demonstrated specific economic injuries directly resulting from SB 277's lack of religious accommodation. The Doescher family incurs approximately $10,000 annually in independent-study costs they would not face but for SB 277's restrictions. SAC ¶ 17. The Jones family spends $4,300 per year on homeschooling expenses specifically due to their inability to access public education under SB 277. SAC ¶ 25. Danielle Jones has suffered substantial lost wages and forgone professional opportunities due to the necessity of homeschooling her children. SAC ¶ 25. These tangible economic injuries go well beyond "moral or ideological objections" and constitute the type of concrete harm routinely recognized as sufficient for standing. *See Thomas, supra,* 450 U.S. 707 (1981) (finding standing based on economic burden resulting from religious exercise). Applying *Thomas,* the Supreme Court precedent on the subject, it's clear the plaintiffs have standing based on the economic injuries they've incurred from exercising their beliefs.

2. Plaintiffs Have Suffered Educational and Social Injuries.

The Motion's assertion that "there are no allegations that their children's education is inferior" grossly mischaracterizes Plaintiffs' allegations. Plaintiffs have *specifically* alleged that: A.D. is restricted to just two days per week of in-person instruction, severely limiting educational and social development opportunities (SAC ¶ 15) and A.D. suffers stigma from fellow classmates who wonder why she is not allowed to attend the full menu of school and school activities (SAC ¶ 16), with limited opportunities for building friendships, academic colleagues, and other social connections otherwise available to students in California's traditional school systems (SAC ¶ 18); the Jones children have been explicitly denied enrollment in public school, forcing them into a more limited homeschool environment that is inferior to public education and its built-in opportunities for socialization (SAC ¶¶ 24-27); and C.P. faces imminent threat of disenrollment

via unequivocal and pointed missives stating clearly that children who do not meet the vaccination mandate will not be allowed to attend school, creating ongoing psychological harm and educational instability, including fearing imminent enforcement of SB 277 against C.P. and his family and the downstream effects of moving schools, communities, changing social groups, leaving teams and clubs, etc. (SAC ¶¶ 32-34), in addition to loss of friendships, suffering negative attention, and ostracism (SAC ¶¶ 35 and 36). These educational injuries are not mere inconveniences but represent substantial burdens on Plaintiffs' fundamental rights to both religious exercise under the First Amendment and to education under the California constitution.

3. SB 277 Directly Causes Concrete Social and Psychological Harms.

The SAC pleads multiple forms of stigma, which are injuries directly attributable to SB 277. A.D. faces social isolation and stigma from peers questioning her limited school attendance due to SB 277 (SAC ¶ 16); the Patterson family has lost friendships and faced public hostility specifically due to their religious-based opposition to SB 277 (SAC ¶ 35); and all Plaintiff families face ongoing societal stigma and discrimination directly resulting from the state's refusal to accommodate their religious beliefs (SAC ¶ 37). These social and psychological injuries constitute cognizable harms for standing purposes – particularly when accompanied with Plaintiffs' other concrete harms. *See Allen v. Wright*, 468 U.S. 737, 755 (1984) (recognizing stigmatic injury can confer standing when coupled with other concrete harms).

4. Defendant Misapplies *McGowan* and *Miller*.

The Defendant's reliance on *McGowan v. State of Md.*, 366 U.S. 420, 429 (1961) and *Miller v. McDonald*, 720 F.Supp.3d 198, 208 (W.D.N.Y. 2024) is misplaced. Unlike those cases, where the plaintiffs failed to show direct impact from the challenged laws, here SB 277 directly forces Plaintiffs to choose between (SAC ¶¶ 4, 13, 20, 29, 34, 77):

Violating their sincere religious beliefs;

or

Accepting inferior educational opportunities and incurring substantial educational, economic, social, and psychological burdens.

This state-imposed Sophie's choice between religious exercise and access to public

education constitutes precisely the type of injury that confers constitutional standing. *See Sherbert v. Verner*, 374 U.S. 398 (1963) (finding standing where law forced choice between religious practice and government benefit).

5. Traceability and Redressability Are Direct and Clear.

The allegations contained in the SAC are sufficient on their face to establish traceability and redressability. By seeking injunctive and declaratory relief against Defendant – the original enforcement authority of SB 277 – Plaintiffs' injuries are traceable to Defendant, and a favorable outcome in this case would redress Plaintiffs' harm.

The Defendant's suggestion that Plaintiffs' injuries stem from "their own independent decisions" rather than SB 277 ignores the direct causal chain alleged in the SAC. This is a circular reasoning, inappropriate for a constitutional case. It's akin to arguing in a 4th Amendment case that the decision to place evidence in a car trunk was a litigant's "own, independent decision" – it's not the point.

Plaintiffs pleaded that SB 277 creates a substantial burden on their ability to engage in their religious practices because it does. Specifically, Plaintiffs aver that their "unwavering sincere religious beliefs… prohibit them from vaccinating themselves or their children, and this commitment has come at a considerable cost. California's [vaccine] mandate…places Plaintiffs' children at a disadvantage, depriving them of educational access enjoyed by their secular counterparts." SAC ¶¶ 4, 13, 20, 29, 34, 77. Each alleged injury—whether economic, educational, or social—flows directly from SB 277's restriction on Plaintiffs' free exercise of religion. For example, the Doeschers would enroll A.D. in full-time public school but for SB 277. SAC ¶ 20. However, because A.D. has not received all required vaccines, A.D. is unable to enroll in public or private school and interact with her friends, whom she is permitted to attend church with and interact with frequently outside of church. SAC ¶ 20. The Jones family attempted to enroll their children in public school but were explicitly rejected due to SB 277. SAC ¶ 24. The Pattersons face imminent enforcement of SB 277 against C.P. SAC ¶ 33. Should Plaintiffs' religious practices be freely exercised following this suit, then all of Plaintiffs' SB 277 educational denials or threats would be solved.

Critical here is the simple fact that certain vaccines violate many people's religious beliefs, and thus such families are forced to either abandon their religion or face tough consequences and injuries. That direct causation distinguishes Plaintiffs' case from *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024), where the plaintiffs could not demonstrate that their alleged injuries stemmed from the challenged action.

Plaintiffs have established concrete injuries from SB 277's lack of religious accommodation, including economic burdens, educational deprivations, and social stigma. These injuries began when SB 277 took effect and persist today. The SAC establishes standing under Supreme Court precedent and religious liberty principles; thus the Motion should be denied.

B. Plaintiffs State a Claim For Relief Under the First Amendment.

The Free Exercise Clause provides that "Congress shall make no law . . . prohibiting the free exercise [of religion.]" U.S. CONST. amend. I. The Free Exercise Clause applies equally to the federal government and to the states. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

1. Recent Supreme Court Precedent Conclusively Establishes Plaintiffs' First Amendment Claim.

Defendant cites to a handful of outdated cases from 2016 and 2018 that involved SB 277. Motion, pp. 8-9. But after those decisions came a watershed Supreme Court opinion in 2020, *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020) ("*Brooklyn*"), which changed the rules for cases like these, and which makes clear that Plaintiffs state a valid claim for relief under the First Amendment.

In *Brooklyn*, the Supreme Court analyzed whether the First Amendment's guarantee of free exercise of religion was violated by New York Governor Andrew Cuomo's COVID-19 pandemic executive order imposing capacity limits on attendance at religious services in areas with high infection rates. *Id*. at 16. The Roman Catholic Diocese of Brooklyn and two synagogues challenged the order, arguing that the restrictions violated the Free Exercise Clause and discriminated against houses of worship by imposing more stringent restrictions on religious services than those imposed on other secular gatherings, such as for businesses deemed "essential." *Id*. at 16-17.

The Supreme Court ultimately granted an injunction blocking the enforcement of the restrictions against the Diocese and the synagogues. The Court held Cuomo's order was *not* neutral and generally applicable because it treated churches harsher than secular entities like acupuncture facilities, bike shops, and liquor stores. *Id*. at 16-17. The opinion emphasized that the order's restrictions treated religious institutions less favorably than comparable secular activities, thereby imposing an undue burden on the free exercise of religion. *Id*. at 16-17.

The concurring opinion explained that the majority had rejected Cuomo's argument that the executive order did not discriminate against religion because some secular businesses like movie theaters were treated equally or more harshly:

> "[U]nder this Court's precedents, it does not suffice for a State to point out that, as compared to houses of worship, *some* secular businesses are subject to similarly severe or even more severe restrictions …. Rather, once a State creates a favored class of business, as New York has done in this case, the State must justify why houses of worship are excluded from that favored class."

Id. at 29 (emphasis in original).

The Supreme Court has consistently applied *Brooklyn* since its publication, reversing all lower court orders denying injunctive relief to religious persons and entities during the COVID-19 pandemic. *See, e.g., Harvest Rock Church v. Newsom*, 141 S. Ct. 889 (2020); *Robinson v. Murphy*, 141 S. Ct. 972 (2020); *High Plains Harvest Church v. Polis,* 141 S. Ct. 527 (2021); *S. Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716 (2021); *Tandon v. Newsom*, 141 S. Ct. 1294 (2021).

The *Brooklyn* decision fundamentally altered Free Exercise Clause jurisprudence across America. The Ninth Circuit described *Brooklyn* a "seismic shift in Free Exercise law." *Calvary Chapel Dayton Valley v. Sisolak,* 982 F.3d 1288, 1233 (9th Cir. 2021). It has since applied *Brooklyn* and its new Free Exercise Clause framework, granting an injunction against California's COVID-19 restrictions on indoor religious gatherings. *So. Bay United Pentecostal Church v. Newsom*, 985 F.3d 1128, 1151-52 (9th Cir. 2021). The Ninth Circuit also granted a similar injunction in *Harvest Rock Church, Inc. v. Newsom*, 985 F.3d. 711 (9th Cir. 2020).

Setting aside for a moment the profound weight of *Brooklyn* and its support of Plaintiffs' claims, the other authorities cited by Defendant do not support dismissal. Plaintiffs address each

decision in the order they appear in the Motion, but they all pre-date *Brooklyn*:

- *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905): Defendant cites *Jacobson* for the proposition that mandatory vaccination does not violate the First Amendment. Motion, p. 7, line 20. But *Jacobson* was not a First Amendment case. *Jacobson* did not address the free exercise of religion because, at the time it was decided, the Free Exercise Clause of the First Amendment had not yet been held to bind the states. *See Cantwell v. Connecticut*, 310 U.S. 296, 303, (1940).

Notably, the Supreme Court refused to apply *Jacobson* in *Brooklyn*. *See Brooklyn*, *supra*, 141 S. Ct. at 66-67. Justice Gorsuch went so far as to dispatch *Jacobson's* applicability in the First Amendment context: "Even if judges may impose emergency restrictions on rights that some have found hiding in the Constitution's penumbras, it does not follow that the same fate should befall the textually explicit right to religious exercise." *Id*. at 70-71.

Moreover, SB 277 is far more extreme than the vaccine law challenged in *Jacobson*. In *Jacobson*, individuals were required to receive one vaccination during an active and deadly outbreak, pay a *de mininis* fine, or identify a basis for exemption. *Jacobson*, *supra*, 197 U.S. at 14. That law was attacked yet sustained on pre-modern Fourteenth Amendment grounds, specifically given the minimal fine and opt-outs available to objectors. *Id*. at 36, 38–39.

By contrast, with SB 277, California mandates 16 vaccinations for school attendance, thereby banning religious objectors from entering California public and private schools indefinitely, while at the same time permitting secular objectors to remain in school. "Nothing in *Jacobson* purported to address, let alone approve, such serious and long-lasting intrusions into settled constitutional rights." *Brooklyn*, *supra*, 141 S. Ct. at 70–71. The *Jacobson* decision, by its own substance and by way of *Brooklyn's* critique, does not support dismissal.

A Ninth Circuit opinion from June further limits *Jacobson*. *In Health Freedom Defense Fund Inc. v. Carvalho*, No. 22-55908 (9th Cir. June 7, 2024), the Court vacated a district court's order dismissing plaintiffs' action alleging that the COVID-19 vaccination policy of the Los Angeles Unified School District ("LAUSD")—which required employees to get the COVID-19 vaccination or lose their jobs—interfered with their fundamental right to refuse medical

treatment. The Ninth Circuit concluded that the district court had stretched *Jacobson* beyond its public-health rationale when it found that LAUSD's policy passed the rational-basis test set forth in 1905. The Ninth Circuit noted too that *Jacobson* was decided before modern due process jurisprudence and thus does not apply broadly to every vaccine claim.

- *Zucht v. King*, 260 U.S. 174 (1922) and *Prince v. Massachusetts*, 321 U.S. 158 (1944): Defendant cites these cases as examples of the Supreme Court following the *Jacobson* decision to uphold compulsory vaccination. Motion, p. 7, line 26 to p. 8, line 6. Again, these were not First Amendment challenges, and *Prince* was actually a child-labor matter. Further, these cases arose when minimal vaccines were required during deadly outbreaks – far different from the panel of vaccines required under SB 277. To the extent that Defendant will argue these cases stand for more than their narrowed holdings, Defendant is wrong. These cases too have been narrowed by subsequent precedent, and must of course be harmonized with it.

- *Walker v. Superior Court*, 47 Cal.3d 112 (1988): Defendant relies on this decision to claim that parents have "no right to free exercise of religion at the price of a child's life…" Motion, p. 8, line 7. *Walker* involved a child who died from untreated meningitis as a result of her mother's reliance on spiritual means in treating the child's illness. *Walker*, *supra*, 47 Cal.3d at 119. The mother sought a dismissal of her *criminal* prosecution for voluntary manslaughter and felony child abuse, arguing that because a child-support statute provided an exemption from prosecution for prayer in lieu of treatment, she was also exempt from prosecution for felony child abuse. *Id*. at 124. The Supreme Court rejected the defendant's contention, concluding that the two statutory schemes could not be construed together because the fiscal objectives of the child support statute were manifestly different from the specific purpose of the felony child abuse statute, i.e., to protect children from harm. *Id*.

This case is vastly different. Defendant has not alleged, and cannot prove (at this phase or ever) that the illnesses targeted by SB 277 risk children's lives in the same way that a child who already has meningitis and needs treatment. Moreover, the *Walker* decision should not apply to this matter given *Walker* involved a creative but unsuccessful criminal defense. Further, *Walker*

is narrowly limited to interpreting two specific penal code statutes and should not be expanded to this civil arena.[2]

Phillips v. City of New York, 775 F.3d 538 (2d Cir. 2015), *Workman*, and *Boone* are the only cases cited in the Motion that involve challenges to school-mandated vaccination under the Free Exercise Clause. *Phillips v. City of New York*, F.3d 538, 543-44 (2nd Cir. 2015); *Workman*, *supra*, 667 F.Supp.2d at 690-91; *Boone*, *supra*, 217 F.Supp.2d at 956. Notwithstanding, the meager analysis in these decisions is inapposite because they rely on *Zucht*, *Prince*, and *Jacobson* – cases that did not involve the First Amendment.

And, critically: ALL SB 277 cases cited by Defendant pre-date *Brooklyn*, which is telling. Attorneys are under an affirmative duty to apprise the Court of all valid, modern precedent, a principle that defense counsel violates. *See, e.g., Transamerica Leasing, Inc v. Compania Anonima Venezolana de Navegacion*, 93 F.3d 675, 675-76 (9th Cir. 1996) (the duty "is an important one, especially in the district courts, where its faithful observance by attorneys assures that judges are not the victims of lawyers hiding the legal ball"); Cal. Rules Prof. Conduct, Rule 5-200(B) (counsel shall not mislead the court regarding the law).

Both *Whitlow v. California*, F.Supp.3d 1070, 1085-86 (S.D. Cal. 2016) and *Brown v. Smith*, 24 Cal.App.5th 1135, 1144-45 (2018) were premised on dated or irrelevant precedent when analyzing SB 277 under the Free Exercise Clause, and now are equally unrepresentative of the current state of the law. Those decisions did not create or interpret any First Amendment law. The other SB 277 cases were premised on the right to public education, bodily autonomy, and parental rights, but they did not specifically and fully argue the religious rights. In light of the subsequent *Brooklyn* decision applying a new constitutional framework, all of these SB 277

[2] Other decisions cited in the Motion should not apply here because they were not decided on Free Exercise grounds. *See French v. Davidson*, 143 Cal. 658 (1904) (mandatory vaccinations for school children challenged on Fourteenth Amendment grounds); *Workman v. Mingo County Sch.*, 667 F. Supp. 2d 679 (S.D. W.Va. 2009) (mandatory vaccination challenged on due process, equal protection, and Free Exercise grounds); *Boone v. Boozman*, 217 F. Supp. 2d 938 (E.D. Ark. 2002) (mandatory vaccinations challenged under the Establishment Clause, Due Process Clause, and Free Exercise Clause); *Hanzel v. Arter*, 625 F. Supp. 1259 (S.D. Ohio 1985) (holding that mandatory vaccination does not fall under the protection of the Establishment Clause); *Maricopa County Health Dept. v. Harmon*, 750 P.2d 1364 (Ariz. 1987) (holding that the state's health department did not violate the right to public education in Arizona's Constitution).

opinions are without import, and this Court must apply *Brooklyn* to conclude that Plaintiffs have stated a Free Exercise Clause claim under the First Amendment.

2. Plaintiffs Allege Sufficient Burdens On Their Religion Beliefs.

Defendant contends that Plaintiffs fail to identify *any* religious belief burdened by SB 277. Motion, p. 10. Instead of a religious belief, Defendant claims that Plaintiffs only allege anti-vaccination personal beliefs which do not fall under First Amendment protection. Motion, p. 11, line 14 (emphasis in original). Defendant refers to "subjectively held" personal beliefs as not being protected under the Free Exercise Clause. Motion, p. 10, ln. 10. The implication here is that Plaintiffs' alleged beliefs are not religious and instead are merely "philosophical" or "personal" and so do not deserve First Amendment protection. The Court cannot countenance Defendant's dismissiveness, which is not grounded in law or human decency. Factually, this is not the case. Plaintiffs are members of churches, however small, that do not believe in vaccines.

But any belief that is "sincerely held" and "rooted in religious belief" is entitled to protection under the Free Exercise Clause. *Malik v. Brown*, 16 F.3d 330, 333 (9th Cir. 1994). "Religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Review Bd. of Indiana Emp't Sec. Div.*, 450 U.S. 707, 714 (1981). It bears repeating the standard that the Court "must" follow when deciding the Motion: all factual allegations in the SAC are to be accepted as true. *Leatherman*, *supra*, 507 U.S. at 164. With that lens engaged, a review of the SAC's religious belief allegations confirms that Plaintiffs satisfy their burden of showing how SB 277 offends their religious beliefs.

The Doeschers are active church members who tithe monthly and participate in medical missions, with Steve leading a youth ministry at Church of the Foothills in Cameron Park. After extensive prayer and Biblical consultation, the Doeschers developed a firm religious conviction against vaccinating their children. SAC, ¶ 19.

Following God's calling to start their own church fifteen years ago, the Joneses merged with The Rock Worship Center and became its lead pastors, where they have served for ten years while tithing monthly. After extensive prayer and Biblical consultation about health decisions, they developed a firm religious conviction against vaccinating their children. SAC, ¶ 28.

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. In 2003 and 2004 in Sacramento, the Pattersons and their fellow church members protested vaccine legislation seeking to discriminate against religious rights. This protest arose from God telling Dr. Patterson that this is *his* fight. The Pattersons prayed extensively and consulted the Bible when deciding to vaccinate their children, and they arrived at the firm religious conviction that they must not vaccinate. SAC, ¶ 31.

Contrary to Defendant's conclusory statements, the foregoing allegations more than adequately set forth Plaintiffs' sincerely held religious beliefs, which interdict Plaintiffs from vaccinating their minor children under SB 277. The recent Court of Appeals decisions from this year confirm that the Court cannot substitute its own judgment about a plaintiff's religious beliefs by probing the "validity" of such beliefs. *See, supra, Section III, Argument, A. Plaintiffs Allege Sufficient Standing (Does, supra,* 100 F.4th at 1271; *Ringhofer, supra,* 102 F.4th at 900; *Luck, supra,* 103 F.4th at 1244). Plaintiffs' allegations are not mere "labels," "conclusions," or a "formulaic recitation" of elements; instead, the detailed allegations state the religious sources of Plaintiffs' particular religious beliefs about what goes into their children's bodies, and why SB 277, absent religious accommodation, is unconstitutional. Defendant is free to develop the record on Summary Judgment. However, this is a Motion to Dismiss. Neither the Defendant nor the Court inquires into the sincerity of Plaintiffs' religious beliefs. Instead, the Court takes as true the allegations set forth in the SAC about all of the Plaintiffs' religious beliefs. Without question, those convictions as pleaded are the type protected by the Free Exercise Clause.

3. SB 277 Is Neither Neutral Nor Generally Applicable.

Defendant erroneously claims that rational-basis review is the appropriate level of scrutiny because SB 277 is a neutral law of general applicability. Motion, p. 10. SB 277 is neither neutral nor generally applicable for the following reasons.

First, SB 277 is not generally applicable because it invites "the government to consider the particular reasons for a persons' conduct by providing a mechanism for individualized

exemptions." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021). SB 277 is not generally applicable under *Fulton* and related authorities because SB 277 permits discretionary medical exemptions but prohibits the assessment of religious exemptions. SAC, ¶¶ 87-88. The "mere existence of a discretionary mechanism" for exemptions can trigger strict scrutiny, "regardless of the actual exercise." *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 687–88 (9th Cir. 2023) (*en banc*) (quoting *Lukumi*, *supra*, 508 U.S. at 546). 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. 507, 516 (2022) (emphasis added). In other words, California has determined that religious objections are not worthy of "solicitude," but that secular medical exemptions are.

Second, a law is not neutral when it is intolerant of religious beliefs or when it restricts practices because of their religious nature. *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 533 (1993) ("*Lukumi*"). "The Free Exercise Clause protects against governmental hostility which is masked, as well as overt." *Id.* at 534. "Relevant evidence includes, among other things, the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements by members of the decision-making body." *Id.* at 540 (internal citations omitted).

California passed SB 277 even though the Senate Judiciary Committee raised Free Exercise concerns. SAC, ¶ 55. SB 277 also undermines its stated purpose of reducing transmission because it broadened protections for individuals requesting medical exemptions while preventing religious exemptions – even though personal belief exemption ("PBE") were declining prior to SB 277's enforcement. The events and circumstantial evidence surrounding SB 277's creation demonstrate that SB 277 is not neutral under *Lukumi.*

Third, SB 277 fails both the neutrality and general applicability tests under *Brooklyn* and *Tandon*. A regulation is not neutral and generally applicable where it "treat[s] *any* comparable

secular activity more favorably than religious exercise." *Tandon*, *supra*, 593 U.S. at 62 (emphasis in original) (citing *Brooklyn*, *supra*, 141 S. Ct. at 67-68). And "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Tandon,* 593 U.S. at 62 (citing *Brooklyn*, *supra*, 141 S. Ct. at 67). Moreover, a law lacks general applicability when "it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, *supra*, 141 S. Ct. at 1877.

The Third, Sixth, and Eleventh Circuits have held that laws that provided secular, but not religious, exemptions for conduct that undermined the law's objectives in similar ways were not generally applicable. *See Fraternal Order of Police v. City of Newark*, 170 F.3d 359, 364-67 (3rd Cir. 1999) (holding that a police department's no-beard policy was not generally applicable because it provided medical exemptions and prohibited religious exemptions); *Monclova Christian Academy v. 10 Toledo-Lucas Health Dept.*, 984 F.3d 477, 482 (6th Cir. 2020) (holding that a county public health order closing all schools, including religious schools, was not generally applicable because it permitted various secular businesses to remain open); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1232-35 (11th Cir. 2004) (finding a zoning ordinance lacking in general applicability for permitting nightclubs, but not synagogues, in a business district). The Iowa Supreme Court employed the same approach. *See Mitchell County v. Zimmerman*, 810 N.W.2d 1, 15-18 (Iowa 2012) (holding a law prohibiting the use of tire studs on highways lacked general applicability because it permitted school buses to use them but prohibited a Mennonite farmer from using them for religious reasons).

In *U.S. Navy Seals 1-26 v. Biden*, the Fifth Circuit Court of Appeals concluded that the processing and granting of medical exceptions and refusal to accept religious exceptions to the COVID-19 vaccine rendered the policy invalid under both the Religious Freedom Restoration Act of 1993 and the First Amendment. 27 F.4th 336, 350-53 (5th Cir. 2022). In June 2022, the Northern District of California held that prioritizing employees with medical exemptions over religious exemptions to the COVID-19 vaccine for consideration for vacant positions was not neutral. *UnifySCC v. Cody*, No. 22-CV-01019-BLF, 2022 WL 2357068, at *10-11 (N.D. Cal.

June 30, 2022). These precedents counsel that SB 277 also is not neutral.

Recently, a Mississippi district court held that strict scrutiny was appropriate when reviewing Mississippi's mandatory school-vaccination law. *Bosarge v. Edney*, No. 1:22CV233-HSO-BWR, ECF 87 (S.D. Miss. August 29, 2023). The Court reasoned that because "Mississippi officials could consider secular exemptions, particularly medical exemptions," but could not consider religious exemptions, the law could not be neutral or generally applicable. *Bosarge v. Edney*, No. 1:22CV233-HSO-BWR, ECF 77 at p. 22 (S.D. Miss. April 18, 2023) (citing *Fulton*, *supra*, 141 S. Ct. at 1877); *see also Dahl v. Bd. of Trustees of Western Michigan Univ.*, 15 F.4th 728, 733-735 (6th Cir. 2021) (holding that a university's requirement that student-athletes be vaccinated against COVID-19 was not neutral or generally applicable because the requirement provided a "mechanism for individualized exemptions" with the university retaining discretion to extend exemptions in whole or in part); *Thoms v. Maricopa Cnty. Cmty. Coll. Dist.*, No. CV-21-01781-PHX-SPL, 2021 WL 5162538, at *9-11 (D. Ariz. Nov. 5, 2021) (holding that a university's policy was not generally applicable when it provided exceptions to its vaccine policies to other students for non-religious reasons but not to plaintiffs for religious reasons).

Here, SB 277 precludes exemptions for religious adherents but exempts immigrant and homeless children, students with medical exemptions, and students enrolled in an independent student program ("IEP").[3] There is no way to reconcile these exemptions with the Constitution, case precedent, or common sense. SB 277 is incongruent with California's interest in "protecting the health and safety of students and the community." Motion, p. 1, line 14. At this stage, "California is unable to establish that students with religious exemptions to vaccinations present a higher risk compared to those with secular exemptions." SAC, ¶ 58.

Defendant's *passim* reliance on *We The Patriots USA, Inc. v. Connecticut Off. of Early Childhood Dev.*, 76 F.4th 130 (2d Cir. 2023) is misplaced. There, Connecticut's amended statute

[3] Critically: approximately 15% of public-school students have an IEP and are thus exempt from vaccine requirements. https://nces.ed.gov/programs/coe/indicator/cgg/students-with-disabilities. As an official government website, it is subject to judicial notice, which Plaintiffs hereby request. *See* Fed. R. Evid. 201(b)(2); *see*, *e.g.*, *In the Matter of Lisse* (7th Cir. 2018) 905 F.3d 495, 497; *Carroll v. Dutra* (9th Cir. 2014) 564 Fed.Appx. 327, 328. Contrast that 15% with the tiny number of students who have stepped forward in cases like this to assert their deeply-held religious convictions.

allowed unvaccinated students to attend school *only* with a medical exemption. *Id.* at 155. In the 2019-2020 school year, "more than ten times as many students had religious exemptions than medical exemptions." *Id.* By contrast, California permits exemptions for several secular categories. SAC, ¶¶ 46-48. Indeed, in *Fox v. Makin*, with similar facts as here, the court noted that Maine's statute was distinguishable from Connecticut's because it "continues to permit multiple non-religious exemptions, including a 90-day grace period for non-religious students, a medical exemption, and the IEP sunset provision…while restricting religious exemptions that may pose comparable risks." No. 2:22-CV-00251-GZS, 2023 WL 5279518, at *9 (D. Me. Aug. 16, 2023). The court also noted that Connecticut's medical exemption process was more stringent because it required a certification from a physician and supporting documents. *Id.* The *Fox* court therefore declined to dismiss plaintiffs' Free Exercise claim. *Id.* at *10.

Plaintiffs have pleaded sufficient facts under Rule 8 to state a claim for relief under the Free Exercise Clause. At the very least, Plaintiffs' allegations raise serious questions regarding the thoroughness of the medical exemption process and the statistical differences in rates of medical and religious exemptions – issues ripe for post-pleading discovery – rendering dismissal inappropriate at this stage.

4. SB 277 Fails Strict Scrutiny.

Though it is unnecessary for this Court to address strict scrutiny, Plaintiffs have alleged that SB 277 is not narrowly tailored to advance a compelling government interest.

"A government policy can survive strict scrutiny only if it advances interests of the highest order and is narrowly tailored to achieve those interests." *Fulton*, *supra*, 141 S. Ct. at 1881 (internal citations and quotation marks omitted). Strict scrutiny applies "regardless of whether any exceptions have been given, because it 'invite[s] the government to decide which reasons for not complying with the policy are worthy of solicitude…" *Id.* at 1879. A law burdening religious exercise is subject to "the most rigorous of scrutiny" unless it is both neutral and generally applicable. *Fellowship*, *supra*, 82 F.4th at 690 (en banc) (quoting *Lukumi*, *supra*, 508 U.S. at 546). Strict scrutiny in the Free Exercise Clause context "is not watered down; it really means what it says." *Tandon*, *supra*, 593 U.S. at 65 (per curiam) (quotations omitted).

Thus, on strict-scrutiny review, "only those interests of the highest order and those not otherwise served can over-balance legitimate claims to the free exercise of religion." *Bowen v. Roy*, 476 U.S. 693, 728 (1986) (O'Connor, J., concurring). Put differently, if strict scrutiny applies, limits on religious practice are unconstitutional absent a "showing that [the limitation] is essential to accomplish an *overriding* governmental interest." *United States v. Lee*, 455 U.S. 252, 257 (1982) (emphasis added). Strict scrutiny also requires that a law inhibiting religious belief or practice go only as far as necessary to further the government interest. States cannot "justify an inroad on religious liberty" without first "showing that it is the least restrictive means of achieving some compelling state interest." *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 718 (1981).

California's interest in ensuring that school children are vaccinated to prevent the spread of contagious disease is compelling only in the abstract: "a law cannot be regarded as protecting an interest of the highest order…when it leaves appreciable damage to that supposedly vital interest unprohibited." *Lukumi*, *supra*, 508 U.S. at 547 (internal citations and quotation marks omitted). While California has an interest in protecting public health and safety, Defendant offers "no compelling reason why it has a particular interest in denying an exception [to these particular Plaintiffs] while making them available to others." *Fulton*, *supra*, 141 S. Ct. at 1882.

California permits both pre-existing and future medical exemptions to its mandatory school-vaccination law. SAC, ¶¶ 46-48. The state even allows exemptions for students who are homeless, immigrants, or who qualify for an IEP. SAC, ¶¶ 50-54. As shown above in footnote 3, this probably means that SB 277 exempts about 20% of students for secular reasons.[4]

Yet, SB 277 refuses to permit religious exemptions. Defendant asserts that homeless, immigrant, and IEP students are of no import because those students should provide proof of vaccination within 30 school days of enrollment. This is meaningless because California does not require school districts to disenroll students (and there is no mechanism for doing so) if a student does not provide proof of vaccination within thirty days. SAC, ¶ 52. Indeed, there are circumstances when school districts, including schools in the Inland Empire of California, spend

[4] In addition to the 15% of students who have IEPs, another 3% of students are homeless. https://www.cde.ca.gov/ds/sg/homelessyouth.asp.

the entire school year trying to ensure that such students are compliant, all the while allowing those children to attend school. SAC, ¶ 52.[5]

With such broad accommodations for secular reasons, there is no way to conclude that this is anything other than hostility toward the religious, and that SB 277 is not narrowly tailored. The secular exemptions allows unvaccinated students to attend school for at least six weeks and likely permanently, without being vaccinated, exposing classmates and staff. This knocks out the purported logical/tailored underpinnings of SB 277. But California has no compelling interest in rejecting religious exemptions because the medical exemption (and other exemptions) leave "appreciable damage to [the government's] supposedly vital interest unprohibited." *Lukumi*, *supra*, 508 U.S. at 547.

Similarly, the *Bosarge* decision found that because Mississippi affords a discretionary medical exemption process by statute, it must similarly afford a religious accommodation process and that not having a religious accommodation process, where it affords a secular one, is unconstitutional. *Bosarge v. Edney*, No. 1:22CV233-HSO-BWR, ECF 87 at p. 1 (S.D. Miss. April 18, 2023) (citing *Fulton*, *supra*, 141 S. Ct. at 1876).

For related reasons, Defendant falters on the narrowly tailored prong of this test. As the Supreme Court recently put it with respect to the government's "interest in reducing the spread of COVID," "[w]here the government permits other activities to proceed with precautions, it must show that the religious exercise at issue is more dangerous than those activities even when the same precautions are applied." *Tandon*, *supra*, 141 S. Ct. at 1297.

In June 2024, in *Bacon v. Woodward*, 104 F.4th 744, 751 (9th Cir. 2024), the Ninth Circuit reversed a Washington district court's dismissal of a lawsuit by firefighters who claim that their Free Exercise Clause rights were infringed by the City of Spokane refusing to accommodate their religious objections to the Covid vaccine. The majority said in part:

> The Complaint alleges that, once unvaccinated firefighters were terminated, Spokane would turn to firefighters from neighboring fire departments to fill the gaps left by the firefighters' departure even though those fire departments granted

[5] IEP students can be federally exempt from showing proof of vaccination under the Individuals with Disabilities Education Act which ensures that students with disabilities receive a Free Appropriate Public Education.

> religious accommodations to their employees. In other words, Spokane implemented a vaccine policy from which it exempted certain firefighters based on a secular criterion—being a member of a neighboring department—while holding firefighters who objected to vaccination on purely religious grounds to a higher standard. The Free Exercise Clause prohibits governments from "treat[ing] comparable secular groups more favorably."

Defendant simply cannot show that an unvaccinated religious adherent undermines Defendant's asserted interests any more than an unvaccinated student with a medical exemption. The case begins and ends here. It is both constitutionally and logically deficient to burden the religiously devout while exempting others. At this stage, Defendant cannot demonstrate how and why Defendant's interests demand more severe intervention than "the vast majority of States" that have employed a less restrictive approach. *Holt v. Hobbs*, 574 U.S. 352, 368 (2015).

C. Defendant Improperly Supports The Motion With Outside Evidence.

Generally, a court cannot consider evidence outside the pleadings without converting a motion to dismiss into one for summary judgment, because a motion to dismiss tests the sufficiency of a plaintiff's claims based on the face of the pleadings. *United States v. Ritchie*, 342 F.3d 903, 907–08 (9th Cir. 2003). Here, Defendant seeks to introduce outside evidence via various requests for judicial notice ("RJN") for statutes and bills, reports, news articles, a press release, and a handbook. By doing so, Defendant rather egregiously attempts to have a trial on the science at the 12(b) phase of this proceeding. The Court, at this stage, must accept Plaintiffs' factual allegations as true. *Leatherman*, *supra*, 507 U.S. at 164. Plaintiffs have concurrently filed their Objections To Defendant's RJN. Plaintiffs request that the Court sustain those objections.

D. To Clarify Any Issues, Leave to Amend Should Be Granted.

If the Court determines that Plaintiffs' claims must be distilled or refined in any way, then leave to amend should be granted, consistent with the liberal federal policy regarding the same. *See* Fed.R.Civ.P. 15(a)(2) and (b)(1); *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) ("a district court should grant leave to amend . . . unless it determines that the pleading could not possibly be cured by the allegation of other facts"); *McQuillion v. Schwarzenegger*, 369 F.3d 1091, 1099 (9th Cir. 2004) (same). Plaintiffs' claims should proceed, in any event. But, if needed, they should be granted the option to amend.

IV. CONCLUSION

For the foregoing reasons, the Court should deny the Motion.

Respectfully Submitted,

DATED: February 24, 2025

THE NICOL LAW FIRM

By: /s/ *Jonathon D. Nicol*

JONATHON D. NICOL

Attorneys for Plaintiffs

THE NICOL LAW FIRM
Jonathon D. Nicol, State Bar No. 238944
1801 Century Park East, 24th Floor
Los Angeles, CA 90067
Telephone: 816-514-1178
Facsimile: 816-327-2752
Email: jdn@nicolfirm.com

Attorneys for Plaintiffs

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.

Defendant.

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

SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

JURY DEMANDED

[42 U.S.C. § 1983]

COMPLAINT

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

INTRODUCTION

1. This action challenges the constitutionality of Senate Bill (SB) 277[1] under the Free Exercise Clause.

2. SB 277 eliminated the option for parents to object to vaccinations required to attend public or private school on personal grounds, including based on their religious convictions. The absence of a rational, let alone compelling, justification for removing religious exemptions to school-required vaccinations raises constitutional questions, especially when religiously exempt students do not pose a greater risk than secularly exempt students.

3. California stands out as one of a handful of states denying religious students the benefits of private or public education. A recent decision by a United States District Court found that Mississippi's compulsory-vaccination law (a law similar to SB 277) violated the Free Exercise Clause by excluding religious exemptions.[2] The 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.[3]

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[1] Codified at Cal. Health & Saf. Code §§ 120325-120375.

[2] *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.

[3] *In re LePage*, 18 P.3d 1177 (Wyo. 2001).

4. Plaintiffs hold unwavering, sincere religious beliefs that prohibit them from vaccinating themselves or their children. 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 and socialization enjoyed by their secular counterparts. This unconstitutional mandate has injured the Plaintiffs in many ways, as set forth in detail below.

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 Defendant 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 Defendant resides 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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PARTIES

A. Plaintiffs

10. Religious exemptions to vaccinations in the school context are based on a *parent's* religious beliefs because *parents* decide the religious habits of their children. *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972). Courts do not involve themselves with getting between parents and children. In all states that have directly considered the issue (including, without limitation, Washington, Michigan, Pennsylvania, Arizona, and Mississippi), courts have ruled that the religious objections of the familial unit, as expressed by the parents, are determinative.

11. Furthermore, parents make their child's educational decisions. And of course, parents make their child's healthcare decisions – including whether to be vaccinated or not.

12. Plaintiffs' children are all entitled to benefit from the fundamental right to education provided for by the California constitution.

13. Each of Plaintiffs has suffered a concrete and actual injury in fact, experiencing a real and present harm, due to the Defendant's actions. Those harms have included substantial burdens – just because Plaintiffs exercise their religious beliefs – including financial burdens, the inability to use and enjoy a government benefit (public education), changes in behavior (including foregoing employment opportunities because of the need to homeschool their children), and societal stigma that has caused real psychological manifestations. There can be no doubt here that Defendant is treating comparable secular activity and secular students (many classes who Defendant allows to attend school unvaccinated) more favorably than those who choose to exercise their religious beliefs, with concrete and actual injuries to Plaintiffs.

Amy and Steve Doescher

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

15. The Doeschers are parents of one school-aged child: A.D. (16-years-old). A.D. received some vaccinations earlier in life, but the Doeschers do not plan to vaccinate her further. A.D. attends a charter school under independent-study guidelines. A.D. is exempt from SB 277 and attends the charter school two days a week in person. 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. A.D.'s charter school does not support socialization, as A.D. may only attend school for two days a week, then go home to complete homework.

16. A.D. is caught in between a rock and a hard place. Her sincere religious beliefs prevent her from being vaccinated. And her school prevents her from having the typical interactions with children that "normal" children get. This has caused much stigma for A.D., as children wonder why she is not allowed to attend the full menu of school and school activities. And the sad truth is, the only answer is her religious beliefs are not accommodated.

17. As a result, A.D. must engage in outside activities such as gymnastics to make up for the socialization shortcomings caused by SB 277. The Doeschers spend approximately $10,000.00 per year on independent-study costs, such costs that they would not otherwise have to incur if California offered a religious exemption for A.D. herself or for the Doeschers to secure a religious exemption on A.D.'s behalf.

18. The Doeschers and A.D. also suffer injury by way of the inadequate socialization inherent to independent study, with limited opportunities for building friendships, academic colleagues, and other social connections otherwise available to students in California's traditional school systems.

19. The Doeschers attend District Church in El Dorado Hills, California. Both of the Doeschers have gone on medical mission trips. The Doeschers tithe monthly. Steve Doescher leads a junior high ministry youth group at Church of the Foothills in Cameron Park, California. 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.

20. The Doeschers wish for A.D. to attend public school in California, in-person, five days a week, free from religious discrimination. But in order for the Doeschers' wish to come true, they would have to forego exercising their religious freedom and instead submit to SB 277's vaccination requirements, which currently lack a religious exemption. The Doeschers would in fact enroll A.D. in full-time public school if it were not for the state's vaccination laws. However, because A.D. has not received all required vaccines, A.D. is unable to enroll in public or private school and interact with her friends, whom she is permitted to attend church with and interact with frequently outside of church.

21. 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. There is no reason for California to treat children more poorly than it treats adults.

Danielle and Kamron Jones

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

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

24. The Joneses attempted to enroll all of their children in public school via the Napa Valley Unified School District, including K.J. in public high school as recently as May 2024. All of the Joneses' children's enrollments were rejected for failing to show proof of having all required immunizations in accordance with SB 277. As a result, the Joneses have been forced to homeschool their children.

25. The Joneses spend approximately $4,300.00 per year on homeschooling costs for their children, costs they would not otherwise have to incur if California offered a religious exemption for the Joneses' children themselves or for the Joneses to secure religious exemptions on their children's behalf. Danielle Jones also has lost significant wages and has had to forego professional opportunities due to having to homeschool her children. Indeed, SB 277 does not force the non-religious to forego employment to home school, just the religious.

26. In addition to the financial burden and loss that homeschooling brings, the Joneses must sacrifice significant time and resources to find socialization options for their children, such as extracurricular activities. Homeschooled children like the Joneses' are not automatically socialized as they would be in public or private school, so they must seek out socialization options for their children that are outside of schooling.

27. Therefore, everyone in the family has been injured. The family has suffered financially, losing out on benefits and rights (a public education) that are protected by California law, and extended to all other families, save the ones with religious beliefs like theirs. The children have been injured, not just financially, but in losing the tremendous benefits of a public education and being able to socialize in that way with their peers. Their education and their educational experience have been inferior to that which occurs in public school. And Danielle Jones has lost out on significant wages and professional opportunities, all so she and her children can remain faithful to their sincerely held religious beliefs. No one should have to do that.

28. The Joneses have a long history of deep involvement in their religion. About 15 years ago, the Joneses founded their own Christian church due to a sense of duty and being called by God. After starting their church, the pastor of The Rock Worship Center suggested that the two churches merge, which they did. Soon after merging, the pastor of The Rock Worship Center retired, and the Joneses took over as lead pastors. The Joneses have been lead pastors for ten years. The Joneses tithe every

month. 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. 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.

29. The Joneses wish for their children to attend public school free from religious discrimination. But in order for the Joneses' wish to come true, they would have to forego exercising their religious freedom and instead submit to SB 277's vaccination requirements, which currently lack a religious exemption. The Joneses would in fact enroll their children in public school if it were not for the state's vaccination laws. The Joneses would like their children to attend public school, but the schools will not accept their children without the necessary vaccinations. Receiving the required vaccinations would be violative of the Joneses' religious beliefs.

Renee Patterson and Dr. Sean Patterson

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

31. 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 a parable about blood pressed from grapes, likened the human cardiovascular system to the rivers in the parable, and expressed the belief that vaccines violate biblical principles. 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. 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.

32. The Pattersons are parents to a 17-year-old school-aged child, C.P. C.P. is not vaccinated with no plans for future vaccinations. C.P. currently attends public school where vaccinations are mandatory.

33. Yet every day, the Pattersons and C.P. fear imminent enforcement of SB 277 which would result in C.P.'s disenrollment. The school district and the state have distributed unequivocal and pointed missives stating clearly that children who do not meet the vaccination mandate will not be allowed to attend school. The Pattersons and C.P. fear that because SB 277 discriminates against their religious beliefs, C.P. may soon be forced to change where he attends school – and thus lives in fear of the significant downstream effects of moving schools, changing social groups, leaving teams and clubs, etc.

34. The Pattersons wish for C.P. to attend public or private school in California free from religious discrimination, and free from the Pattersons' and C.P's constant fear that C.P. will be disenrolled without warning and with negative, stressful, and disruptive effects on them.

35. The Pattersons have been disheartened by watching C.P. be excluded from the schools that are funded by their tax dollars. They and C.P. have lost friendships, been spoken to inappropriately, and been treated unfairly. Members of the public have directed hurtful comments at the Pattersons and C.P., accusing them of endangering others due to their unvaccinated status. This treatment arises directly from the Pattersons' opposition to SB 277. SB 277 has isolated the Patterson family within the community, leading to social stigma and exclusion.

36. For the Pattersons, C.P.'s loss of friendships and suffering negative attention are not merely an injury to C.P. but to them as parents as well. Watching C.P. struggle with loneliness and rejection deeply affects the Pattersons' emotional well-being and undermines their efforts to provide a nurturing environment. They grieve alongside C.P., feeling the pain of strained or broken relationships as a personal failure or injustice. This

emotional toll compounds the burden the family already bears due to their principled opposition to SB 277 and the resulting ostracism.

Burdens on All Plaintiffs

37. SB 277 unconstitutionally burdens Plaintiffs because it forces them to forego their religious beliefs in order for their children to receive a public or private education and at the same time they suffer financial burdens, the inability to use and enjoy a government benefit (public education), changes in behavior (including foregoing employment opportunities because of the need to homeschool their children), and societal stigma.

38. The inability to exercise religious practices constitutes an injury. Even indirect restrictions on religious exercise are considered an injury if they burden the practice of religion, as SB 277 does. *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 533 (1993); *Sherbert v. Verner*, 374 U.S. 398 (1963).

39. SB 277 prevents Plaintiffs from giving their children the same educational opportunities as non-secular students, resulting in actual and concrete injuries to them and their children. There is no legal reason to force religious people – who *cannot* comply with the vaccination requirements due to their sincerely held beliefs – to be treated differently, or to bear great financial expense, which are constitutional violations.

B. Defendant

40. 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. He guides and instructs school districts on the state's vaccination requirements, and how religious beliefs offer no succor.

FACTUAL ALLEGATIONS

General Background of Compulsory Childhood Vaccination in California

41. In 1960, the California Legislature began vaccination requirements for school-age children, including a limited religious exemption for members of recognized denominations relying on prayer for healing.

42. California required vaccines for school entry in 1961, including a single polio vaccination, and introduced a personal belief exemption (PBE) allowing parents to exempt children based on religious or spiritual beliefs.

43. Throughout the 1970s and 1990s, the state expanded vaccination requirements to include multiple diseases, with all requirements allowing for a PBE based on sincerely held religious beliefs

44. In 2012, AB 2109 mandated PBEs be signed by a doctor, with Governor Brown directing the California Department of Public Health to maintain religious exemption alternatives.

45. By 2014, only 2.5% of students held PBEs, with just 0.7% completely unvaccinated, and most students being partially vaccinated.

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

46. In 2015, the California Legislature passed SB 277, which abolished the PBE, thereby removing parents' ability to decline school-required vaccinations based on their sincerely held religious beliefs. Nonetheless, SB 277 includes several exemptions to school vaccination requirements, including:

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

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

48. Federal law may require the implementation of IEPs, but that does not give California justification to discriminate against students with religious exemptions. In a similar lawsuit filed in the Northern District of California, Santa Clara County tried to justify prioritizing medical exemptions to the COVID-19 vaccine over religious ones by citing 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 contention and enjoined the practice, stating, "under the Supremacy Clause, the edicts of the federal Constitution trump any obligation to comply with federal or state statutory or regulatory requirements." *Id*.

49. 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.

50. 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…"

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

51. Defendant has allowed many schools to permit 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. There is no valid legal reason to treat devout religious students differently from, say, homeless children.

52. The state does not uniformly force 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.

53. 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.

54. 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. California has one of the highest rates of children in foster care than any other state. 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. Thus, migrant children, homeless children, and children living in foster homes are a greater contagion hazard than unvaccinated students with religious exemptions.

55. 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***.[4]

[4] See Senate Judiciary Committee Hearing, April 27, 2015, at page 16, available at: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB277# (accessed December 7, 2024).

56. A dichotomy exists parents are able to continue with work without being vaccinated under an exemption due to their sincerely held religious beliefs, but their children are not afforded the same exemption to attend public or private school in California.

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

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

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

60. A significant number of individuals are also anergic to vaccines, meaning they can never mount antibodies no matter how protected they are by vaccines. Thus, there is no evidence to suggest that a ban on religious exemptions is justified considering

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[5] *See* American Academy of Pediatrics, *Child Vaccination Across America*, available at: https://downloads.aap.org/AAP/Vaccine/index.html (accessed December 7, 2024).

[6] See Carrie MacMillan, *Herd Immunity: Will We Ever Get There?*, Yale Medicine, May 21, 2021, available at: https://www.yalemedicine.org/news/herd-immunity (accessed December 7, 2024).

a significant number of non-immune students are congregating with each other including those who are anergic and those who no longer have immunity.

61. California is one of only five states that does not offer a religious exemption from compulsory school-vaccination laws. [7]

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

63. Arkansas previously had a limited religious exemption to school-required vaccinations similar to that allowed in California in 1960. In *Boone v. Boozman*, 217 F. Supp. 2d 938 (E.D. Ark. 2002), a mother who possessed religious objections unrecognized by the Arkansas statute challenged the limited religious exemption on First Amendment grounds. *Boone*, *supra*, 217 F. Supp. 2d at 951. The court held that the limitation of the statutory exemption to a "recognized church or religious denomination" violated the Free Exercise Clause. *Id*.

64. More recently, in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021) (*per curiam*), the U.S. Supreme Court ruled that a law is not neutral and generally applicable, and thus

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[7] *See* National Conference of State Legislatures, *States With Religious and Philosophical Exemptions From School Immunization Requirements*, last updated August 3, 2023, available at: https://www.ncsl.org/health/states-with-religious-and-philosophical-exemptions-from-school-immunization-requirements (accessed December 7, 2024).

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).

65. 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.

66. The Supreme Court employed similar reasoning in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 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.

67. Most recently, in *Bosarge, supra,* (Para. 3, fn. 2), 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.

68. 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.)

69. 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.

70. Notably, after constitutional challenges to the University of California's and the California State University's lack of religious exemptions to vaccinations, both education systems this year implemented a religious exemption protocol.

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

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

72. 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).

73. Parents have the right to "direct the religious upbringing of their children" and "when the interests of parenthood are combined with a free exercise claim […] more than merely a 'reasonable relation to some purpose within the competency of the State' is

required to sustain the validity of the State's requirement under the First Amendment." *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972).

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

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

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

77. Plaintiffs' sincerely held religious beliefs, which prohibit them from vaccinating their minor children, have been unconstitutionally burdened by California. SB 277 unconstitutionally burdens Plaintiffs because it forces them to forego their religious beliefs for their children to receive a public or private education. California has pitted Plaintiffs' consciences and creeds against educating their children. Nevertheless, Plaintiffs' children cannot obtain a formal education and everything that comes with it (socialization, network effects, etc.) without violating their religious convictions.

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

79. The Free Exercise Clause 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*.

80. 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 in perpetuity, as is the case in some California school districts.

81. California has made an unconstitutional value judgment that secular motivations for opting out of compulsory immunization are permitted, but that religious motivations are not. While California may have a general healthcare interest in promoting childhood immunization, the 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. 507 (2022); 2022 WL 2295034; 2022 U.S. LEXIS 3218 (emphasis added).

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

83. For multiple reasons, California's SB 277 is neither neutral nor generally applicable. Government regulations "are not neutral and generally applicable, and therefore trigger strict scrutiny under the free exercise clause of the First Amendment,

whenever they treat any comparable secular activity more favorably than religious exercise." *Tandon*, 141 S. Ct. at 1296. *See also Thoms v. Maricopa Cnty. Cmty. Coll. Dist.*, No. CV-21-01781-PHX-SPL, at *16 (D. Ariz. Nov. 5, 2021) (concluding that a college's COVID-19 vaccine policy was not generally applicable, triggering strict scrutiny under the First Amendment, because "Plaintiffs presented evidence . . . that Defendant has made at least one exception" to the policy).

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

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

86. Even if California could show that it did not target religious conduct for intentional exclusion (it cannot), its mandatory immunization regulations invoke heightened scrutiny because the statute fails the general-applicability test. A law "lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Id*. While California may have a general healthcare interest in promoting childhood vaccination, its interest is not so extraordinary as to prohibit an exemption for secular reasons, which poses a

similar contagion hazard as a hypothetical religious exemption. Further, California does not prohibit unvaccinated children from attending camp, visiting public libraries or museums, or from interacting with their peers in any other way. Nor does California require that adult faculty, staff members, or school visitors provide proof of immunization. Indeed, the plaintiffs include a schoolteacher, from the same household as one of his unvaccinated children – who was able to obtain a work religious exemption – while the state simultaneously denies his children the fundamental right to an education at that same school.

87. California's vaccination laws fail the general applicability test on additional, alternative grounds because the medical exemption system provides for individualized discretionary review. "The creation of a formal mechanism for granting exceptions renders a policy not generally applicable . . . ." *Id*. at 1879. In such instances, the government may not refuse to extend the possibility for an exemption "to cases of religious hardship without compelling reason." *Id*. at 1872.

88. Because its medical-exemption process provides for discretionary review at multiple levels, California's SB 277 fails the general-applicability test. California has instituted a system of customized review – delegated first to private physicians and second to the clinical staff at CDPH "with expertise in immunization" – who at each level conduct individualized review of every exemption in order to make a determination.

89. Therefore, for multiple reasons, California's SB 277 invokes heightened judicial scrutiny. California's SB 277 cannot withstand strict scrutiny because it is not narrowly tailored. In the context of government regulations targeting infectious disease, "narrow tailoring requires the government to show that measures less restrictive of the First Amendment activity could not address its interest" in reducing disease. *Tandon*, 141 S. Ct. at 1296-97. Where utilization of such less restrictive means is required, the government "may no more create an underinclusive statute, one that fails truly to promote its purported compelling interest, than it may create an overinclusive statute, one that

encompasses more protected conduct than necessary to achieve its goal." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 578 (1993).

90. Regarding under-inclusivity, where the government permits secular activities, such as a medical exemption, "it must show that the religious exercise at issue is more dangerous." *Tandon*, 141 S. Ct. at 1297. When a law is over-inclusive, its "broad scope . . . is unnecessary to serve the interest, and the statute fails for that reason." *Lukumi*, 508 U.S. at 578.

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

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

93. SB 277 is also under-inclusive because children possessing a religious exemption for school-required vaccinations would pose no greater threat than their secular peers with a medical exemption. Moreover, the immunization requirements do not apply to adults who are employed in California's school system, or to school visitors.

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

95. Given that California boasts one of the highest school vaccination rates in the country, allowing a religious exemption for a handful of students, just as secular

medical exceptions are permitted, would constitute an actual attempt at narrow tailoring. Because California's SB 277 is simultaneously too narrow and too broad to fulfill the government interests in supposedly attempts to accomplish, the regulation lacks the narrow tailoring necessary to survive strict scrutiny review. Accordingly, the presence of a vaccination medical exemption and the intentional removal of the PBE, and thereby a religious exemption through SB 277, has violated and continues to violate Plaintiffs' rights to free exercise of religion.

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

97. Absent injunctive and declaratory relief prohibiting Defendant from enforcing the unconstitutional aspects of SB 277, Plaintiffs will continue to be harmed.

98. Plaintiffs are entitled to a declaration that Defendant violated their First Amendment rights to free exercise of religion and an injunction against Defendant's actions as they relate to SB 277.

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

INJUNCTIVE RELIEF ALLEGATIONS

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

101. 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.

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

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

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

105. Accordingly, injunctive relief is appropriate.

DECLARATORY RELIEF ALLEGATIONS

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

107. Plaintiffs are entitled to a declaratory judgment pursuant to 28 U.S.C. § 2201. An actual and substantial controversy exists between Plaintiffs and Defendant 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.

108. 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.

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

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 Defendant from enforcing SB 277.

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

A. A preliminary and permanent injunction prohibiting Defendant, his agents, servants, employees, and any other persons acting on his 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: December 9, 2024

THE NICOL LAW FIRM

By: /s/ *Jonathon D. Nicol*
JONATHON D. NICOL
Counsel for Plaintiffs

JURY DEMAND

Plaintiffs demand trial by jury.

Respectfully submitted,

DATED: December 9, 2024

THE NICOL LAW FIRM

By: /s/ *Jonathon D. Nicol*
JONATHON D. NICOL
Counsel for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF EASTERN DISTRICT OF CALIFORNIA

Form 1. Notice of Appeal from a Judgment or Order of a United States District Court

U.S. District Court case number: 2:23-cv-02995-KJM-JDP

Notice is hereby given that the appellant(s) listed below hereby appeal(s) to the United States Court of Appeals for the Ninth Circuit.

Date case was first filed in U.S. District Court: 12/22/23

Date of judgment or order you are appealing: 06/18/2025

Docket entry number of judgment or order you are appealing: 54

Fee paid for appeal? *(appeal fees are paid at the U.S. District Court)*

◉ Yes ○ No ○ IFP was granted by U.S. District Court

List all Appellants *(List **each** party filing the appeal. Do not use "et al." or other abbreviations.)*

AMY DOESCHER, STEVE DOESCHER, DANIELLE JONES, KAMRON JONES, individually and on behalf of their minor children

Is this a cross-appeal? ○ Yes ◉ No

If yes, what is the first appeal case number? N/A

Was there a previous appeal in this case? ○ Yes ◉ No

If yes, what is the prior appeal case number? N/A

Your mailing address (if pro se):

City: State: Zip Code:

Prisoner Inmate or A Number (if applicable):

Signature Jonathan D. Mark **Date** Jul 15, 2025

Complete and file with the attached representation statement in the U.S. District Court

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 6. Representation Statement

Instructions for this form: http://www.ca9.uscourts.gov/forms/form06instructions.pdf

Appellant(s) *(List **each** party filing the appeal, do not use "et al." or other abbreviations.)*

Name(s) of party/parties:

AMY DOESCHER, STEVE DOESCHER, DANIELLE JONES, KAMRON JONES, individually and on behalf of their minor children

Name(s) of counsel (if any):

JONATHON D. NICOL

Address: 1801 Century Park East, 24th Floor, Los Angeles, California 90067

Telephone number(s): 816-514-1178

Email(s): jdn@nicolfirm.com

Is counsel registered for Electronic Filing in the 9th Circuit? ◉ Yes ○ No

---

Appellee(s) *(List only the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.)*

Name(s) of party/parties:

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

Name(s) of counsel (if any):

DARIN L. WESSEL

Address: 600 West Broadway, Suite 1800, San Diego, California 92101

Telephone number(s): 619-738-9125

Email(s): Darin.Wessel@doj.ca.gov

To list additional parties and/or counsel, use next page.

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Continued list of parties and counsel: *(attach additional pages as necessary)*

Appellants

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Is counsel registered for Electronic Filing in the 9th Circuit? ○ Yes ○ No

Appellees

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

U.S. District Court
Eastern District of California - Live System (Sacramento)
CIVIL DOCKET FOR CASE #: 2:23-cv-02995-KJM-JDP

Doescher et al v. Aragon et al
Assigned to: Senior District Judg Kimberly J. Mueller
Referred to: Magistrate Judge Jeremy D. Peterson
Case in other court: US Court of Appeals, 25-04531
Cause: 42:1983 Civil Rights Act

Date Filed: 12/22/2023
Date Terminated: 06/18/2025
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Amy Doescher

represented by **Jonathon David Nicol**
The Nicol Law Firm
1801 Century Park East
24th Floor
Los Angeles, CA 90067
816-514-1178
Email: jdn@nicolfirm.com
ATTORNEY TO BE NOTICED

Plaintiff

Steve Doescher

represented by **Jonathon David Nicol**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Danielle Jones

represented by **Jonathon David Nicol**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Kamron Jones

represented by **Jonathon David Nicol**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Renee Patterson

represented by **Jonathon David Nicol**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Sean Patterson
Dr.

represented by **Jonathon David Nicol**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Tomas Aragon
in his official capacity as Department of Public Health Director and as the State Public Health Officer
TERMINATED: 06/18/2025

represented by **Darin Lee Wessel**
California Department of Justice
Office of the Attorney General
600 W. Broadway
Suite 1800
San Diego, CA 92101
619-738-9125
Fax: 619-645-2581
Email: darin.wessel@doj.ca.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jessica Coffin Butterick
California Department of Justice
Office of the Attorney General
300 S Spring Street
Suite 1702
Los Angeles, CA 90013
213-269-6278
Email: jessica.butterick@doj.ca.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Darrell Warren Spence
California Office Of The Attorney General
Civil, Health, Education and Welfare Section
1300 I Street, Suite 125
PO Box 944255
Sacramento, CA 94244
916-210-6089
Email: darrell.spence@doj.ca.gov
ATTORNEY TO BE NOTICED

Emmanuelle S. Soichet
California Attorney General's Office
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
415-703-5974
Fax: 415-703-1234
Email: emmanuelle.soichet@doj.ca.gov
TERMINATED: 11/18/2024

Defendant

Rob Bonta
in his official capacity as Attorney General of California

represented by **Darin Lee Wessel**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jessica Coffin Butterick
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Darrell Warren Spence
(See above for address)
ATTORNEY TO BE NOTICED

Emmanuelle S. Soichet
(See above for address)
TERMINATED: 11/18/2024

Defendant

Erica Pan
in her official capacity as Department of Public Health Director and as the State Public Health Officer

Date Filed	#	Docket Text
12/22/2023	1	COMPLAINT against Tomas Aragon, and Rob Bonta by Plaintiffs. Attorney Nicol, Jonathon David added. (Nicol, Jonathon) (Entered: 12/22/2023)
12/22/2023	2	CIVIL COVER SHEET filed by Plaintiffs. (Nicol, Jonathon) (Entered: 12/22/2023)
12/22/2023		PAYMENT for Civil Case filing fee in the amount of $ 405, receipt number BCAEDC-11257901. (Nicol, Jonathon) (Entered: 12/22/2023)
12/22/2023	3	SUMMONS ISSUED as to *Tomas Aragon, Rob Bonta* with answer to complaint due within *21* days. Attorney *Jonathon David Nicol* *The Nicol Law Firm* *1801 Century Park East, 24th Floor* *Los Angeles, CA 90067*. (Mena-Sanchez, L) (Entered: 12/22/2023)
12/22/2023	4	CIVIL NEW CASE DOCUMENTS ISSUED; Initial Scheduling Conference SET for 4/25/2024 at 02:30 PM in Courtroom 3 (KJM) before Chief District Judge Kimberly J. Mueller. (Attachments: # 1 Standing Order, # 2 Consent Form, # 3 VDRP) (Mena-Sanchez, L) (Entered: 12/22/2023)
01/23/2024	5	SUMMONS RETURNED EXECUTED: Tomas Aragon served on 1/16/2024. (Nicol, Jonathon) Modified on 1/25/2024 (Mena-Sanchez, L). (Entered: 01/23/2024)
01/23/2024	6	SUMMONS RETURNED EXECUTED: Rob Bonta served on 1/16/2024. (Nicol, Jonathon) (Entered: 01/23/2024)
01/24/2024	7	MINUTE ORDER issued by Deputy Clerk J. Donati for Chief District Judge Kimberly J. Mueller on 1/24/2024: The court has determined that it inadvertently served the incorrect text version of the Order Setting Status (Pretrial Scheduling) Conference when this case was first opened. The text of the order that should have been served is attached here. To the extent the substantive provisions of this order conflict with the previously issued order, this order controls. Counsel should carefully review this version of the order and note changes applicable to future events in this case. By providing a copy of the correct text of the order, the court is not setting any new dates or changing and dates previously set. SO ORDERED. (Donati, J) (Entered: 01/24/2024)
01/29/2024	8	[DISREGARD - WRONG CASE NUMBER AND EVENT - COUNSEL TO REFILE] Stipulation and Proposed Order Setting Briefing Schedule on Motion to Dismiss by Rob Bonta. Attorney Soichet, Emmanuelle S. added. (Attachments: # 1 Proposed Order) (Soichet, Emmanuelle) Modified on 1/30/2024 (Benson, A.). (Entered: 01/29/2024)
01/30/2024	9	STIPULATION and PROPOSED ORDER to Set Briefing Schedule on Intended Motion to Dismiss by Rob Bonta. (Attachments: # 1 Proposed Order)(Soichet, Emmanuelle)

		Modified on 2/6/2024 (Benson, A.). (Entered: 01/30/2024)
02/07/2024	10	ORDER signed by Chief District Judge Kimberly J. Mueller on 2/6/2 ORDERING that the following briefing schedule shall govern Defendants' intended motion to dismiss the Complaint: Defendants' deadline to file a motion to dismiss or other responsive pleading to the Complaint: 3/15/24; Plaintiffs' deadline to file an opposition to the motion to dismiss: 5/15/24; Defendants' deadline to file a reply in support of the motion to dismiss: 6/7/24; and Proposed hearing date, if the Court finds that a hearing is necessary: 7/12/24. (Kastilahn, A) (Entered: 02/07/2024)
02/13/2024	11	MINUTE ORDER issued by Courtroom Deputy C. Schultz for Chief District Judge Kimberly J. Mueller on 2/13/2024: In light of the 2/7/2024 Order, ECF No. 10 , the Status (Pretrial Scheduling) Conference set for 4/25/2024 is RESET for 7/11/2024 at 2:30 PM before Chief District Judge Kimberly J. Mueller, with the filing of a Joint Status Report due fourteen (14) days prior. The July hearing will proceed by video conferencing through the *Zoom* application. The Courtroom Deputy will provide counsel with the hearing access information no less than 24 hours before the hearing. (Text Only Entry)(Schultz, C) (Entered: 02/13/2024)
03/15/2024	12	MOTION to DISMISS by Tomas Aragon, Rob Bonta. Motion Hearing set for 7/12/2024 at 10:00 AM in Courtroom 3 (KJM) before Chief District Judge Kimberly J. Mueller (Attachments: # 1 Memorandum)(Soichet, Emmanuelle) Modified on 3/18/2024 (Benson, A.). (Entered: 03/15/2024)
03/15/2024	13	REQUEST for JUDICIAL NOTICE by Tomas Aragon, Rob Bonta re 12 Motion to Dismiss. (Attachments: # 1 Exhibits 1 through 8, # 2 Declaration of Emmanuelle S. Soichet)(Soichet, Emmanuelle) Modified on 3/18/2024 (Benson, A.). (Entered: 03/15/2024)
03/15/2024	14	NOTICE of UNAVAILABILITY of COUNSEL by Tomas Aragon, Rob Bonta. (Soichet, Emmanuelle) Modified on 3/18/2024 (Benson, A.). (Entered: 03/15/2024)
03/15/2024	15	NOTICE of RELATED CASE(S) by Tomas Aragon, Rob Bonta. (Soichet, Emmanuelle) (Entered: 03/15/2024)
03/20/2024	16	MINUTE ORDER issued by Courtroom Deputy C. Schultz for Chief District Judge Kimberly J. Mueller on 3/20/2024: On the court's own motion, the Status (Pretrial Scheduling) Conference set for 7/11/2024 is RESET for 7/12/2024 at 10:00 AM in Courtroom 3 before Chief District Judge Kimberly J. Mueller, with the filing of a Joint Status Report due fourteen (14) days prior. (Text Only Entry) (Schultz, C) (Entered: 03/20/2024)
04/03/2024	17	ORDER signed by Chief District Judge Kimberly J. Mueller on 4/3/24 DECLINING to issue any order of related cases re 15 Notice. (Woodson, A) (Entered: 04/03/2024)
05/17/2024	18	STIPULATION and PROPOSED ORDER for allowing plaintiff to file first amended complaint by Amy Doescher, Steve Doescher, Danielle Jones, Kamron Jones, Renee Patterson, Sean Patterson. (Attachments: # 1 Exhibit first amended complaint)(Nicol, Jonathon) (Entered: 05/17/2024)
05/31/2024	19	ORDER signed by Chief District Judge Kimberly J. Mueller on 5/30/24 GRANTING plaintiffs leave to amend to file their First Amended Complaint, a copy of which is attached to 18 the Stipulation as Exhibit "A". Defendants' motion to dismiss the First Amended Complaint shall be due on or before 6/28/24. Plaintiffs' opposition to motion to dismiss shall be due on or before 8/16/24 and defendants' reply brief shall be due on or before 8/30/24. Defendants' motion to dismiss shall be heard on 9/13/24. All discovery is STAYED until the Court issues a ruling on Defendants' motion to dismiss (or, alternatively, the parties will request that the Court reschedule the scheduling conference to a date at

		least 21 days after the hearing on Defendants' motion to dismiss). The First Amended Complaint is DEEMED filed as of the date this Order is transmitted via the CM/ECF system. All discovery is STAYED until the Court issues a ruling on Defendants' motion to dismiss, if any. The motion hearing set for 7/12/24 is VACATED. The Status (Pretrial Scheduling) Conference is RESET for 9/13/24, at 10:00 AM in Courtroom 3, with the filing of a Joint Status Report due 14 days prior. (Kastilahn, A) (Entered: 05/31/2024)
06/20/2024	20	NOTICE of APPEARANCE by Darrell Warren Spence on behalf of Tomas Aragon, Rob Bonta. Attorney Spence, Darrell Warren added. (Spence, Darrell) (Entered: 06/20/2024)
06/28/2024	21	MEMORANDUM OF POINTS and AUTHORITIES by Tomas Aragon, Rob Bonta. (Attachments: # 1 Notice of Defendants Motion and Motion to Dismiss, # 2 Request for Judicial Notice , # 3 Declaration of Emmanuelle S. Soichet, # 4 Proof of Service) (Soichet, Emmanuelle) Modified on 7/1/2024 (Nair, C). (Entered: 06/28/2024)
08/16/2024	22	OPPOSITION by Plaintiffs Amy Doescher, Steve Doescher, Danielle Jones, Kamron Jones, Renee Patterson, Sean Patterson to 21 Memorandum,. (Nicol, Jonathon) (Entered: 08/16/2024)
08/16/2024	23	OBJECTIONS by Plaintiffs Amy Doescher, Steve Doescher, Danielle Jones, Kamron Jones, Renee Patterson, Sean Patterson to 21 Memorandum,. (Nicol, Jonathon) (Entered: 08/16/2024)
08/30/2024	24	NOTICE of APPEARANCE by Jessica Coffin Butterick on behalf of Tomas Aragon, Rob Bonta. Attorney Butterick, Jessica Coffin added. (Butterick, Jessica) (Entered: 08/30/2024)
08/30/2024	25	REPLY to 22 Opposition by Tomas Aragon, Rob Bonta . (Butterick, Jessica) Modified on 9/3/2024 (Licea Chavez, V). (Entered: 08/30/2024)
08/30/2024	26	MOTION to CONTINUE Status Conference by Rob Bonta. (Soichet, Emmanuelle) Modified on 9/3/2024 (Licea Chavez, V). (Entered: 08/30/2024)
09/05/2024	27	ORDER signed by Chief District Judge Kimberly J. Mueller on 9/4/2024 DIRECTING the Plaintiffs to discuss and answer questions about their jurisdictional allegations and constitutional standing at the hearing set for 9/13/2024. (Mendez Licea, O) (Entered: 09/05/2024)
09/12/2024	28	JOINT STATUS REPORT by Amy Doescher et al. (Nicol, Jonathon) Modified on 9/13/2024 (Nair, C). (Entered: 09/12/2024)
09/12/2024	29	MINUTE ORDER issued by Courtroom Deputy C. Schultz for Chief District Judge Kimberly J. Mueller on 9/12/2024: On the court's own motion, the hearing as to Defendants' Motion to Dismiss, 12 , and the Status (Pretrial Scheduling) Conference set for 9/13/2024 10:00 AM is ADVANCED on the same date for 9:30 AM in Courtroom 3 before Chief District Judge Kimberly J. Mueller. (Text Only Entry) (Schultz, C) (Docket Text Modified on 9/12/2024 by C. Schultz: ECF No. "26" corrected to ECF No. "12".) (Entered: 09/12/2024)
09/13/2024	30	MINUTES for MOTION HEARING and SCHEDULING CONFERENCE held before Chief District Judge Kimberly J. Mueller on 9/13/2024. Plaintiffs' counsel, Jonathon Nicol, present. Defendants' counsel, Emmanuelle Soichet, present. After hearing oral argument as to 12 Defendant's Motion to Dismiss, the court SUBMITTED the Motion. A written order will issue. The Court deferred the scheduling conference until after the Motion to Dismiss is resolved. Court Reporter: A. Torres. (Text Only Entry) (Francel, M.) (Entered: 09/13/2024)

09/16/2024	31	TRANSCRIPT REQUEST for Motion to Dismiss held on 9/13/2024. Court Reporter Abigail Torres. (Torres, A) (Main Document 31 replaced on 9/19/2024) (Torres, A). (Entered: 09/16/2024)
09/20/2024	32	TRANSCRIPT of Motion Hearing and Scheduling Conference held on 9/13/24, before Senior District Judge Kimberly J. Mueller, filed by Court Reporter Abigail Torres, Phone number 916-930-4116 E-mail a.torres.reporting@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 10/11/2024. Redacted Transcript Deadline set for 10/21/2024. Release of Transcript Restriction set for 12/19/2024. (Torres, A) (Entered: 09/20/2024)
11/18/2024	33	ORDER signed by Senior District Judge Kimberly J. Mueller on 11/15/2024 DISMISSING the claims against Bonta without prejudice to refiling in a court with jurisdiction and GRANTING 12 Motion to Dismiss with leave to amend. Within 21 days an amended complaint must be filed. (Woodson, A) (Entered: 11/18/2024)
11/18/2024	34	DESIGNATION of COUNSEL terminating Emmannuel Soichet and adding Darin Wessel by Tomas Aragon, Rob Bonta. Attorney Wessel, Darin Lee added. (Wessel, Darin) Modified on 11/19/2024 (Benson, A.). (Entered: 11/18/2024)
12/09/2024	35	SECOND AMENDED COMPLAINT against Tomas Aragon by All Plaintiffs. (Nicol, Jonathon) Modified on 12/10/2024 (Benson, A.). (Entered: 12/09/2024)
12/19/2024	36	STIPULATION and PROPOSED ORDER to set briefing schedule on Motion to Dismiss by Tomas Aragon. (Attachments: # 1 Proposed Order, # 2 Proof of Service) (Wessel, Darin) Modified on 1/6/2025 (AJB). (Entered: 12/19/2024)
01/07/2025	37	ORDER signed by Senior District Judge Kimberly J. Mueller on 1/7/2025 SETTING briefing schedule as follows: Defendant's deadline to file a motion to dismiss or other responsive pleading to the Second Amended Complaint is 1/27/2025; Plaintiffs' deadline to file an opposition to the motion to dismiss is 2/24/2025; Defendant's deadline to file a reply in support of the motion to dismiss is 3/10/2025; Defendant's motion to dismiss is hereby set for hearing on 4/17/2025, 10:00 a.m., in Courtroom 3. (Deputy Clerk KEZ) (Entered: 01/07/2025)
01/27/2025	38	MOTION to DISMISS by Tomas Aragon. Motion Hearing set for 4/17/2025 at 10:00 AM in Courtroom 3 (KJM) before Senior District Judge Kimberly J. Mueller. (Attachments: # 1 Memorandum of Points and Authorities, # 2 Request for Judicial Notice, # 3 Proof of Service)(Wessel, Darin) (Entered: 01/27/2025)
02/24/2025	39	OPPOSITION by Amy Doescher et al to 38 Motion to Dismiss. (Nicol, Jonathon) Modified on 2/26/2025 (AMW). (Entered: 02/24/2025)
02/24/2025	40	OBJECTIONS to 38 -2 Request for Judicial Notice by Amy Doescher et al. (Nicol, Jonathon) Modified on 2/26/2025 (AMW). (Entered: 02/24/2025)
03/07/2025	41	MINUTE ORDER issued by Courtroom Deputy for Senior District Judge Kimberly J. Mueller on 3/7/2025: On the court's own motion, the 4/17/2025 Hearing on Defendant's Motion to Dismiss is ADVANCED to the same day at 9:00 am in Courtroom 3 before Senior District Judge Kimberly J. Mueller. (Text Only Entry) (Deputy Clerk MCF) (Entered: 03/07/2025)
03/10/2025	42	REPLY by Tomas Aragon to 39 Opposition to Motion to Dismiss. (Wessel, Darin) Modified on 3/11/2025 (AJB). (Entered: 03/10/2025)

03/12/2025	43	ORDER signed by Senior District Judge Kimberly J. Mueller on 3/11/2025 ORDERING the parties to be prepared, at the hearing on 4/17/2025, to discuss whether they believe this court can or should stay this action under the first-to-file rule, whether they believe this action can or should be transferred, nor whether this court should reserve a decision on defendant's motion to dismiss pending the Southern District court's order in Royce. (Deputy Clerk KEZ) (Entered: 03/12/2025)
03/21/2025	44	NOTICE OF SUPPLEMENTAL AUTHORITY by Tomas Aragon. (Wessel, Darin) (Entered: 03/21/2025)
04/03/2025	45	STIPULATION and PROPOSED ORDER to: (1) Substitute Proper Defendant; (2) Set Supplemental Briefing Schedule; and (3) Continue Hearing on Defendant's Motion to Dismiss by Tomas Aragon. (Attachments: # 1 Proposed Order, # 2 Proof of Service) (Wessel, Darin) Modified on 4/4/2025 (AJB). (Entered: 04/03/2025)
04/07/2025	46	ORDER signed by Senior District Judge Kimberly J. Mueller on 4/7/2025 SETTING deadlines as follows: The Parties have until 4/25/2025 to file simultaneous supplemental briefs, not to exceed 10 pages, addressing the impact of the decision in Royce; The Parties have until 5/16/2025 to file simultaneous supplemental reply briefs, not to exceed 5 pages, responding to the supplemental arguments and CONTINUING the Motion to Dismiss Hearing to 6/5/2025 at 10:00 AM in Courtroom 3 (KJM) before Senior District Judge Kimberly J. Mueller. (Deputy Clerk OML) (Entered: 04/07/2025)
04/25/2025	47	SUPPLEMENTAL BRIEF by Tomas Aragon in support of 38 Motion to Dismiss. (Wessel, Darin) Modified on 4/28/2025 (RRB). (Entered: 04/25/2025)
04/25/2025	48	SUPPLEMENTAL BRIEF by Amy Doescher, et al re 39 Opposition to Motion. (Nicol, Jonathon) Modified on 4/28/2025 (RRB). (Entered: 04/25/2025)
05/16/2025	49	[DISREGARD] SUPPLEMENT by Tomas Aragon re 38 Motion to Dismiss. (Wessel, Darin) Modified on 5/16/2025 (RRB). (Entered: 05/16/2025)
05/16/2025	50	SUPPLEMENTAL Reply Brief by Tomas Aragon re 38 Motion to Dismiss. (Wessel, Darin) Modified on 5/16/2025 (RRB). (Entered: 05/16/2025)
05/16/2025	51	SUPPLEMENTAL Reply Brief by Plaintiff Amy Doescher, et al. (Nicol, Jonathon) Modified on 5/16/2025 (RRB). (Entered: 05/16/2025)
06/05/2025	52	MINUTES for MOTION HEARING held before Senior District Judge Kimberly J. Mueller on 6/5/2025: Plaintiffs Counsel, Jonathon Nicol, present. Defendants Counsel, Darin Wessel, present. The court heard argument as to Defendant's Motion to Dismiss, ECF 38 as stated on the record. Matter submitted, Order to Issue. Court Reporter: J. Coulthard. (Text Only Entry) (Deputy Clerk MCF) (Entered: 06/05/2025)
06/18/2025	53	ORDER signed by Senior District Judge Kimberly J. Mueller on 6/17/2025 GRANTING 38 Motion to Dismiss without leave to amend. The Clerk's Office is directed to close the case. CASE CLOSED. (Deputy Clerk LMS) (Entered: 06/18/2025)
06/18/2025	54	JUDGMENT dated *6/18/2025* pursuant to order signed by Senior District Judge Kimberly J. Mueller on 6/18/2025. (Deputy Clerk LMS) (Entered: 06/18/2025)
07/16/2025	55	NOTICE of APPEAL by Amy Doescher, Steve Doescher, Danielle Jones, Kamron Jones as to 54 Judgment. (Filing fee $ 605, receipt number ACAEDC-12340622) (Nicol, Jonathon) (Entered: 07/16/2025)
07/18/2025	56	APPEAL PROCESSED to Ninth Circuit re 55 Notice of Appeal filed by Danielle Jones, Steve Doescher, Amy Doescher, Kamron Jones. Notice of Appeal filed *7/16/2025*, Complaint filed *12/22/2023* and Appealed Order / Judgment filed *6/18/2025*. Court

		Reporter: *J. Coulthard*. *Fee Status: Paid on 7/16/2025 in the amount of $605.00* (Attachments: # 1 Appeal Information) (Deputy Clerk KEZ) (Entered: 07/18/2025)
07/24/2025	57	USCA CASE NUMBER 25-4531 for 55 Notice of Appeal filed by Danielle Jones, Steve Doescher, Amy Doescher, Kamron Jones. (Deputy Clerk VLC) (Entered: 07/24/2025)
07/27/2025	58	TRANSCRIPT REQUEST by Amy Doescher, et al for proceedings held on 6/5/2025 before Judge Mueller re 55 Notice of Appeal. Court Reporter Jennifer Coulthard. (Nicol, Jonathon) Modified on 7/30/2025 (RRB). (Entered: 07/27/2025)
09/05/2025	59	TRANSCRIPT of Proceedings MOTION TO DISMISS held on 6/5/2025, before Senior District Judge Kimberly J. Mueller, filed by Jennifer Coulthard, Phone number 530-537-9312 E-mail Jennifer_Coulthard@Yahoo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 9/26/2025. Redacted Transcript Deadline set for 10/6/2025. Release of Transcript Restriction set for 12/4/2025. (Deputy Clerk jc) (Entered: 09/05/2025)

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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system:

EXCERPTS OF RECORD
VOLUME 1 OF 1

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ *Jonathon D. Nicol*
Jonathon D. Nicol