No. 25-4531

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMY DOESCHER, *et al.*,
Plaintiffs-Appellants,

v.

DR. ERICA PAN, IN HER OFFICIAL CAPACITY AS DEPARTMENT OF PUBLIC HEALTH DIRECTOR AND AS THE STATE PUBLIC HEALTH OFFICER,
Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of California
No. 2:23-cv-02995-KJM-JDP
Hon. Kimberly J. Mueller, District Judge

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INTRODUCTION

Consistent with similar state laws across the Nation, California requires students attending school in person to be immunized against certain infectious diseases. Plaintiffs filed a lawsuit challenging that requirement on free exercise grounds. In the district court, plaintiffs accepted that this case is governed by the familiar legal test set forth in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), which establishes that neutral laws of general applicability are ordinarily not subject to heightened scrutiny. Under a straightforward application of the *Smith* test, plaintiffs' challenge to California's school immunization law fails: the law is neutral and generally applicable, and it readily satisfies rational basis review.

Courts addressing recent challenges to school immunization requirements—including this Court—have held that those laws are neutral and generally applicable under *Smith*. Plaintiffs' opening brief provides no persuasive basis for departing from that body of precedent. The district court correctly applied *Smith* to dismiss plaintiffs' lawsuit.

For the first time on appeal, plaintiffs attempt to sidestep the *Smith* test. They argue that even if California's school immunization law is neutral and generally applicable, the Court should apply strict scrutiny because the law purportedly burdens their right to direct their children's religious upbringing. But plaintiffs

never raised that argument below, either before or after the Supreme Court issued its decision in *Mahmoud v. Taylor*, 606 U.S. 522 (2025). Even if this Court were to overlook plaintiffs' forfeiture and conclude that this Court should consider the argument in the first instance, plaintiffs' *Mahmoud* argument provides no basis for reversal. Among other defects in their theory, plaintiffs fail to explain why the reasoning of *Mahmoud*—which stressed the potentially coercive nature of a school district's *curriculum*—should extend to an immunization requirement that has nothing to do with what children learn in school. The district court's judgment should be affirmed.

JURISDICTIONAL STATEMENT

The district court had jurisdiction over plaintiffs' federal constitutional claims under 28 U.S.C. § 1331. The court dismissed plaintiffs' complaint with prejudice and entered judgment on June 18, 2025. ER-3. Plaintiffs timely appealed on July 16, 2025. ER-133. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Whether California's law requiring that students be immunized against certain infectious diseases is neutral and generally applicable.

2. Whether the Supreme Court's decision in *Mahmoud*, 606 U.S. 522, requires application of strict scrutiny under the circumstances of this case.

3. Whether the law is rationally related to a legitimate state interest, or, if strict scrutiny applies, whether it is narrowly tailored to serve a compelling state interest.

ADDENDUM OF STATUTORY PROVISIONS

The relevant statutory provisions are attached as an addendum to this brief.

STATEMENT OF THE CASE

A. California's School Immunization Law

California has long taken measures to prevent the spread of disease among students. As early as 1889, for example, the Legislature mandated that students be vaccinated against smallpox—a measure that the California Supreme Court upheld as a valid exercise of the State's police power. *See Abeel v. Clark*, 84 Cal. 226, 227-231 (1890); SER-19-20. In the early twentieth century, the U.S. Supreme Court upheld mandatory immunization laws against federal constitutional challenges. *See Zucht v. King*, 260 U.S. 174, 176-177 (1922); *Jacobson v. Massachusetts*, 197 U.S. 11, 25-39 (1905). These rulings helped pave the way for States to enact modern school immunization laws. The contemporary version of California's school immunization law began in the 1960s, when the Legislature required that students be immunized against polio. *See* 1961 Cal. Stat. 2117-2118; SER-21-22. Over time, the Legislature expanded the list of required immunizations based on its assessment of public health risks. *See, e.g.*, SER-23-25; SER-48.

Today, California law requires that students be immunized against ten diseases: diphtheria, hepatitis B, haemophilus influenzae type B, measles, mumps, pertussis (whooping cough), poliomyelitis, rubella, tetanus, and varicella (chickenpox). Cal. Health & Safety Code §§ 120325(a), 120335(b). All ten of these diseases pose serious health risks to children. SER-48. With the exception of tetanus, all can be spread through contact with other children. *Id.* As a general matter, students must be immunized against the ten diseases to be "unconditionally"—that is, permanently—enrolled in school. Cal. Health & Safety Code § 120335(b). This immunization requirement helps "limit[] the spread of disease" and "provide[s] an overall public health benefit" to the State. SER-54; *see also, e.g.*, SER-33 (immunization requirement promotes "herd" immunity, which "prevents sustained transmission of disease").

The law includes a medical exemption. A student "shall be exempt" from the immunization requirement if a licensed physician determines that "the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe." Cal. Health & Safety Code § 120370(a)(1); *see id.* § 120325(c). Immunization may be "contraindicated," for example, if a student has had a severe allergic reaction to a prior dose of the same vaccine. SER-106; *see also Medical vs. Nonmedical Immunization Exemptions for Child Care and School Attendance: Policy Statement*, American Academy of

Pediatrics (July 28, 2025), https://tinyurl.com/nhht9ej6. Depending on the child's condition, medical exemptions may be either temporary or permanent. Cal. Code Regs. tit. 17, §§ 6050, 6051.

Schools have also been authorized to conditionally enroll students who lack one or more of the required immunizations, with the expectation that such students come into compliance "within time periods designated by regulation." Cal. Health & Safety Code § 120340. Schools must conditionally enroll foster children, homeless students, and children of military servicemembers. Cal. Health & Safety Code § 120341(a); Cal. Educ. Code §§ 48852.7(c)(3), 49701 art. IV(C). Under any of these scenarios, conditional enrollment is temporary: students enrolled on a conditional basis have no more than 30 school days to submit their immunization records. Cal. Health & Safety Code § 120340; Cal. Code Regs. tit. 17, § 6035(d)(1).

B. Recent Amendments to the Law

Until 2016, California allowed parents to exempt their children from the immunization requirement based on the parent's personal beliefs. SER-26. Although California's law did not include a standalone religious exemption, parents with religious objections could use the personal beliefs exemption. *See* SER-76.

California's Legislature amended the law in response to a "dramatic increase" in the number of students covered by the personal beliefs exemption. SER-54; *see* ER-6 (discussing "'extensive'" legislative history of this enactment). California saw a 337 percent increase in the number of students claiming the exemption from 2000 to 2012. SER-46; *see* SER-54 (noting 25 percent increase between 2011-2012 and 2013-2014 school years). In 2015, the personal beliefs exemption covered roughly 2.4 percent of kindergarteners. SER-13; SER-145. The overall statewide rate had recently been as high as 3.15 percent. SER-46; SER-145.

Legislators observed that immunization rates "varie[d] widely across the state," and noted that low rates of immunity in particular communities can "make it difficult to control the spread of disease and make us vulnerable to having the virus re-establish itself." SER-49. In some areas of the State, exemption rates were as high as 21 percent, placing those communities "at risk for preventable diseases." SER-65. These high rates of exemption undermined "the protective effect of herd immunity." SER-49. Proponents of the bill stressed the importance of maintaining herd immunity, particularly to protect vulnerable people who cannot be vaccinated. *Id.* Legislative reports highlighted that all ten diseases for which immunizations are required "pose very real health risks to children," and that nearly all of them "can be spread by contact with other infected children." SER-48.

Legislators also expressed alarm about a measles outbreak in southern California in which nearly half of the documented cases involved people who lacked vaccination for measles. SER-49-50; SER-112. Roughly one-fifth of those infected in the outbreak had to be hospitalized. SER-112. A 95 percent immunization rate is the "approximate threshold necessary to prevent the transmission of measles," SER-149, but the statewide immunization rate for kindergarteners had fallen to less than 93 percent, with many counties reporting rates below 90 percent, *2014-2015 Kindergarten Immunization Assessment Results* 16-17, Cal. Dep't of Public Health, https://tinyurl.com/452au5du.

In response to these concerns, the Legislature enacted Senate Bill 277, which repealed the personal beliefs exemption. *See* SER-26; Cal. Health & Safety Code § 120335(g)(3). Under the law's terms, the personal beliefs exemption was gradually phased out for current students already covered by the exemption. *See* Cal. Health & Safety Code § 120335(g)(1)-(2).

SB 277 included two additional provisions at issue in this case. The bill added a provision stating that students who are homeschooled or enrolled in independent study programs need not provide proof of immunization so long as they do not "receive classroom-based instruction." Cal. Health & Safety Code § 120335(f). It also added a provision recognizing that the immunization requirement "does not prohibit a pupil who qualifies for an individualized

education program . . . from accessing any special education and related services required by his or her individualized education program." *Id.* § 120335(h).

After SB 277 eliminated the personal beliefs exemption, the number of students claiming medical exemptions more than tripled, eventually reaching one percent of all kindergarteners. SER-14; SER-103. The Legislature grew concerned that the medical exemption was being abused by "a small number of unethical physicians [who] monetized their license by selling medical exemptions for profit." SER-91. Legislators also expressed concern that high rates of medical exemptions were clustered in particular schools, "creating concentrated pockets of unvaccinated individuals" in communities where doctors were choosing to issue exemptions for children "without medically-justified contraindications." *Id.*

The Legislature responded in 2019 with Senate Bill 276, which was intended to "restore integrity to California's immunization exemption process." SER-91. SB 276 requires that doctors use a standardized medical exemption certification form that explains in detail the medical basis for the exemption. SER-31; Cal. Health & Safety Code § 120372(a). SB 276 also requires that the State monitor schools and doctors with unusually high medical exemption rates and review their records to ensure compliance with the law. SER-35-36; Cal. Health & Safety Code § 120372(c)-(d). In the first full school year after SB 276 went into effect, medical exemption rates for kindergarteners fell to 0.3 percent. SER-14; SER-103.

According to recent data, the medical exemption rate has now dropped to 0.1 percent. *Kindergarten Immunization Assessment, 2023-2024*, at 4, Cal. Dep't of Public Health, https://tinyurl.com/bdcxj9f9.

C. Procedural History

Amy and Steve Doescher and two other sets of parents have religious objections to vaccinating their children. ER-109-115. They filed a lawsuit challenging California's school immunization law on free exercise grounds because the law does not provide for religious exemptions. ER-107-108. They primarily contend that the law is not generally applicable because it accommodates medical exemptions and is otherwise underinclusive, and argue that the law cannot satisfy strict scrutiny. ER-123-129. Plaintiffs sought an injunction against enforcement of the law "without providing the option for a broad religious exemption to school-required vaccination." ER-130.[1]

The district court dismissed the second amended complaint for failure to state a claim. ER-4-5; ER-35. The court first determined that two sets of plaintiffs—the Doeschers and the Joneses—have standing to sue. ER-11-14.[2] The court then

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[1] Plaintiffs sued Tomás Aragón in his official capacity as State Public Health Officer. ER-115. Dr. Erica Pan was substituted when she succeeded Aragón in that role. ER-4 n.1.

[2] The court concluded that the Pattersons lack standing. ER-14-19. Plaintiffs do not challenge that standing determination and have appealed only on behalf of the Doescher and Jones plaintiffs. *See* ER-133; Opening Br. 8.

summarized the pertinent legal background, which includes the Supreme Court's statements reaffirming the validity of vaccine mandates in *Jacobson*, *Zucht*, and *Prince v. Massachusetts*, 321 U.S. 158 (1944). ER-20-26. Applying the framework for evaluating free exercise claims described in *Employment Division v. Smith*, the court concluded that California's school immunization law is both neutral and generally applicable. On neutrality, the court held that the law is facially neutral and that nothing in its legislative history demonstrates hostility to religion. ER-27. Turning to general applicability, the court explained that California's law does not allow for individualized exemptions and does not contain secular exemptions that are comparable to the proposed religious exemption. ER-27-33; *see also* ER-33-35 (explaining why California's law is materially different from vaccine mandates in other jurisdictions that courts have enjoined). Applying rational basis review, the court held that the law is rationally related to the State's legitimate interest in protecting public health and safety. ER-27-28. The court entered judgment for the State, and plaintiffs appealed. ER-3; ER-133.

SUMMARY OF ARGUMENT

The Supreme Court has recognized the States' authority to impose compulsory immunization requirements for over a century. *See Zucht*, 260 U.S. at 175-177; *Jacobson*, 197 U.S. at 25-39. The Court has also recognized that parents' religious rights do not encompass the right to "claim freedom from compulsory

vaccination" for their children. *Prince*, 321 U.S. at 166-167. Indeed, in *Smith*, the Supreme Court observed that the Constitution "does not require" religious exemptions from ordinary "civic obligations" such as "compulsory vaccination laws." 494 U.S. at 888-889.

In recent years, courts have uniformly rejected free exercise challenges to California's school immunization law. *See Grimsby v. Pan*, No. 5:25-cv-01575, 2025 WL 2829502 (C.D. Cal. Aug. 29, 2025); *Royce v. Pan*, No. 3:23-cv-02012, 2025 WL 834769 (S.D. Cal. Mar. 17, 2025); *see also Whitlow v. California*, 203 F. Supp. 3d 1079, 1085-1087 (S.D. Cal. 2016); *Love v. State Dep't of Educ.*, 29 Cal. App. 5th 980, 996 (2018); *Brown v. Smith*, 24 Cal. App. 5th 1135, 1144-1145 (2018). And appellate courts—including this Court—have routinely rejected free exercise challenges to similar school immunization requirements. *See, e.g.*, *Miller v. McDonald*, 130 F.4th 258, 265-269 (2d Cir. 2025) (statewide school immunization statute); *We The Patriots USA, Inc. v. Conn. Off. of Early Childhood Dev.*, 76 F.4th 130, 139, 148-155 (2d Cir. 2023) (same); *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1175-1180 (9th Cir. 2021) (school district's COVID-19 immunization requirement for students over 16 years of age).[3]

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[3] On December 8, 2025, the Supreme Court granted a petition for a writ of certiorari in *Miller*, vacated the Second Circuit's decision, and remanded for further consideration in light of *Mahmoud*. *Miller*'s reasoning about how to

(continued…)

Plaintiffs fail to acknowledge this authority upholding school immunization requirements under the *Smith* test. The district court carefully applied that test and properly concluded that plaintiffs failed to state a claim based on the Free Exercise Clause. California's school immunization law is neutral as to religion—a point that plaintiffs do not dispute in this appeal. The law is also generally applicable. Its requirements are objective and categorical, providing no mechanism for discretionary exceptions on a case-by-case basis. Nor have plaintiffs alleged any exception to the immunization requirement that undermines the government's asserted interests in a way that is comparable to their proposed religious exemption. As numerous courts have held, medical exemptions advance the public health objectives of immunization laws. Medical exemptions are thus fundamentally unlike religious objections, which undermine public health objectives. Plaintiffs point to other provisions of the law that they characterize as exemptions, but none are comparable to a religious exemption that would allow students to enroll from kindergarten through high school without receiving any of the required immunizations.

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evaluate the neutrality and general applicability of school immunization laws under *Smith* remains persuasive. *See United States v. Joelson*, 7 F.3d 174, 178, n.1 (9th Cir. 1993) (opinion vacated on other grounds remains persuasive authority).

Plaintiffs also contend that the Court should bypass the *Smith* test because the law purportedly burdens their right to direct the religious upbringing of their children—an argument apparently inspired by the Supreme Court's recent decision in *Mahmoud*. But plaintiffs failed to raise this argument below and did not include allegations in their complaint that would support their *Mahmoud* theory. There is no persuasive reason to excuse plaintiffs' forfeiture and for this Court to consider the arguments for the first time on appeal. As for the merits of the argument, plaintiffs' reliance on *Mahmoud* is misplaced: unlike the curricular requirements challenged in *Mahmoud*, California's school immunization law has nothing to do with what children are taught in school. Nor does the parental-rights principle applied in *Mahmoud* compel strict scrutiny when, as here, the challenged regulation addresses substantial threats to children's health and safety.

Because the law is neutral and generally applicable—and because there is no alternative basis for applying strict scrutiny—rational basis review applies. The law easily satisfies rational basis review, and plaintiffs do not argue otherwise. Even if strict scrutiny were to apply, the law is narrowly tailored to the State's compelling interest in protecting public health by preventing the spread of infectious diseases.

STANDARD OF REVIEW

The Court reviews de novo the district court's dismissal for failure to state a claim. *Olson v. California*, 104 F.4th 66, 76 (9th Cir. 2024) (en banc).

ARGUMENT

I. CALIFORNIA'S SCHOOL IMMUNIZATION LAW IS NEUTRAL AND GENERALLY APPLICABLE

The "protections of the Free Exercise Clause" guard against a law or policy that "discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 532 (1993). But laws are "ordinarily *not* subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable." *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021) (emphasis added). Plaintiffs bear the burden to show an infringement of their rights under the Free Exercise Clause. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022).

Plaintiffs present a brief argument on what they call the "traditional free exercise analysis"—the inquiry into neutrality and general applicability that the district court applied here. Opening Br. 36; *see id.* at 36-43. Although plaintiffs no longer dispute that the law is neutral, they challenge the law's general applicability on two grounds. The district court properly rejected both arguments.

A. The Law Does Not Provide a Mechanism for Individualized Exemptions

A law is not generally applicable if it contains "a mechanism for individualized exemptions." *Fulton*, 593 U.S. at 533. This principle applies if the government retains "entirely discretionary" authority to waive a requirement on a case-by-case basis, *id.* at 536, or if officials have "broad discretion to grant exemptions on less than clear considerations," *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 688 (9th Cir. 2023) (en banc). That kind of discretionary authority undermines general applicability because it allows government officials to decide on an ad hoc basis "which reasons for not complying with the policy are worthy of solicitude." *Fulton*, 593 U.S. at 537.

The mere presence of statutory exceptions does not defeat general applicability, however, so long as the exemptions are "tied to particularized, objective criteria." *Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1081-1082 (9th Cir. 2015); *see also, e.g.*, *Doe*, 19 F.4th at 1180 (mere existence of medical exemption did not create mechanism for individualized exemptions). In *Smith*, for example, the Supreme Court held that Oregon's drug law was generally applicable even though it featured an exemption that applied when "the substance has been prescribed by a medical practitioner." 494 U.S. at 874.

California's school immunization law contains no mechanism for individualized exceptions that would cast doubt on its general applicability. The immunization requirement presumptively applies to any student under 18 attending "any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center." Cal. Health & Safety Code § 120335(b). The law's requirements are framed in objective, categorical terms, leaving government officials no discretion to waive the requirement on a case-by-case basis. And while the "law does make exceptions" to the immunization requirement by providing for medical exemptions, the district court correctly concluded that those exceptions "are not discretionary" within the meaning of *Smith* and its progeny. ER-27; *see* ER-28-29.

The medical exemption provision states that a student "shall be exempt" once the school receives a written statement from the student's doctor stating that immunization is "not considered safe" based on the "physical condition of the child" and the child's "medical circumstances." Cal. Health & Safety Code § 120370(a)(1). That written statement must be submitted on a standardized form in which the doctor explains "the medical basis for which the exemption for each individual immunization is sought" and certifies, among other things, that he or she has "conducted a physical examination and evaluation of the child consistent with the relevant standard of care." *Id.* § 120372(a)(2)(C), (F); *see also id.*

§ 120372(d)(3)(A)-(B) (incorporating the "criteria for appropriate medical exemptions" published by the American Academy of Pediatrics (AAP) and the professional standard of care). The district court was thus correct that the medical exemption turns on "objective, professional requirements" that "do not grant a discretion of the type that can show a law is not generally applicable." ER-28.

Plaintiffs raise a few objections concerning the medical exemption, but none of their cursory arguments provide a basis for reversal. At the outset, plaintiffs suggest that California's medical exemption is rigorous. *See* Opening Br. 42 (asserting that it is "not true that California doctors can simply write accepted medical exemption notes," and claiming that medical exemptions are "extremely difficult to obtain"). But they fail to explain how the detailed statutory requirements for California's medical exemption could *undermine* its general applicability. On the contrary, these procedures ensure that children are medically exempted if (and only if) immunization would indeed be unsafe—promoting the Legislature's aim of restoring "integrity to California's immunization exemption process." SER-91; *see supra* pp. 8-9 (medical exemption rate for kindergarteners has fallen to 0.1 percent). As the district court recognized, these features of California's law contrast favorably with immunization laws in other jurisdictions that lack objective standards or that give government officials discretion to grant exceptions on a case-by-case basis. *See* ER-33-34 (contrasting California's law

with a Maine law that allowed medical exemptions based on a medical provider's statement that immunization "'may be medically inadvisable,'" with "no explanation required"); ER-33 (distinguishing California's law, which "uses a standardized certification and employs a strict system of review," from a Mississippi law that "granted local health officers discretion to make ad hoc, temporary exceptions to the vaccine rule").

Plaintiffs assert that the issuance of "medical exemptions is not ministerial, and instead is up to the discretion of CDPH." Opening Br. 43. But plaintiffs misunderstand how the medical exemption works. Once the doctor submits a medical exemption form that complies with statutory requirements, the student "shall" be exempt. Cal. Health & Safety Code § 120370(a)(1); *see id.* § 120372(a)(1). Neither school officials nor state public health officials have discretionary authority to deny a student's medical exemption request at this initial step of the process. The law instead mandates a *later* statewide review process that is primarily focused on schools and doctors with unusually high medical exemption rates. *Id.* § 120372(c)-(d).

Plaintiffs also take issue with that review process, claiming that it "gives State officials discretion to decide whether an individual's reasons for requesting a medical exemption are meritorious." Opening Br. 42. But the review process does not create a "a mechanism for individualized exemptions" that would defeat

general applicability. *Fulton*, 593 U.S. at 533. It instead allows the State to verify that medically exempt students meet objective medical requirements. Among other things, state officials are tasked with identifying "medical exemption forms that do not meet applicable AAP criteria for appropriate medical exemptions" and may investigate further to determine whether there is "additional information to support the medical exemption." Cal. Health & Safety Code § 120372(d)(3)(A).[4] As other courts have recognized, asking government officials to verify compliance with objective statutory requirements does not give those "officials the discretion to approve or deny exemptions on a case-by-case basis" in a way that would allow them to decide which grounds for exemption are "'worthy of solicitude.'" *Connecticut*, 76 F.4th at 151 (quoting *Fulton*, 593 U.S. at 537). Instead, as the district court observed, California's review process specifies how exemption forms must be reviewed and "against what criteria and medical guidelines they will be judged." ER-28.

The district court was correct to observe that the "only 'discretion' the statute recognizes is 'the medical discretion of the clinically trained immunization staff' to

[4] A prior version of the law also referred to medical exemption criteria developed by the U.S. Centers for Disease Control and the federal Advisory Committee on Immunization Practices, a CDC-affiliated body. *See* Opening Br. 42. Recent legislation amended the statute to refer only to AAP medical exemption criteria. *See* 2025 Cal. Legis. Serv. Ch. 105 § 29 (A.B. 144).

recognize 'contraindications or precautions' based on 'written documentation' by a surgeon or doctor." ER-28 (quoting Cal. Health & Safety Code § 120372(d)(3)(B)). Specifically, the law provides that a "clinically trained immunization staff member" employed by the State has "medical discretion" to determine as part of the review process that a doctor's assessment based on their "written documentation to support the medical exemption . . . is consistent with the relevant standard of care" even if the doctor's decision diverges from AAP criteria. Cal. Health & Safety Code § 120372(d)(3)(A)-(B). In certain instances, for example, there may be an objective medical reason why immunization would be unsafe for a particular student, even if that reason is not expressly addressed in the AAP criteria. As this provision states on its face, any exercise of discretion on the part of state officials is limited to "medical discretion," *id.*, as cabined by the official's professional training, and it is tied to the requirement that medical exemptions be granted only if consistent with the relevant standard of care. *See id.* § 120372(a)(2)(C); *see also id.* § 120372.05(c) (review panel for exemption appeals shall employ AAP guidelines "or the relevant standard of care, as applicable"). That is not the sort of "entirely discretionary" mechanism that allows state officials to determine "which reasons for not complying with the policy are worthy of solicitude." *Fulton*, 593 U.S. at 536-537.

The district court's analysis of California's medical exemption is consistent with other decisions that have considered similar arguments. The Second Circuit has explained, for example, that a vaccination requirement does not cease to be generally applicable just because it exempts an objective "category defined by medical providers' use of their professional judgment." *Connecticut*, 76 F.4th at 150-151; *see also, e.g.*, *Miller*, 130 F.4th at 268-269; *Doe*, 19 F.4th at 1180; *We The Patriots USA, Inc., v. Hochul*, 17 F.4th 266, 288-289 (2d Cir. 2021). Here, as in those other decisions, the law's medical exemption is based on "generally accepted medical standards," and plaintiffs have offered no reason to think that the exemption process allows "secularly motivated conduct [to] be impermissibly favored over religiously motivated conduct." *Hochul*, 17 F.4th at 289. To the extent that plaintiffs are suggesting the presence of *any* discretion means the law is subject to strict scrutiny, that suggestion is mistaken: this Court has held that the "mere existence of an exemption that affords some minimal governmental discretion does not destroy a law's general applicability." *Stormans*, 794 F.3d at 1082; *see also Foothills Christian Ministries v. Johnson*, 148 F.4th 1040, 1051 (9th Cir. 2025) (government's "minimal discretion in determining whether an organization operates a recreation program" did not defeat general applicability).

B. The Law Does Not Treat Comparable Secular Conduct More Favorably Than Religious Activity

A law is not generally applicable if it treats "comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 593 U.S. 61, 62 (2021). In particular, a law is not generally applicable if the government "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, 593 U.S. at 534. This Court has emphasized, however, that secular exemptions "only matter if they are 'comparable' to regulated religious conduct." *Foothills Christian Ministries*, 148 F.4th at 1052 (quoting *Tandon*, 593 U.S. at 62). Whether two activities are comparable "must be judged against the asserted government interest that justifies the regulation at issue." *Tandon*, 593 U.S. at 62. When analyzing risks to public health and safety, courts consider "not individual behaviors but instead aggregations of individual behavior." *Connecticut*, 76 F.4th at 152-153 (citing *Tandon*, 593 U.S. at 62).

The district court properly recognized that California's school vaccination law aims "to protect[] 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." ER-29; *see, e.g.*, ER-6 (discussing legislative report that "emphasize[d] an epidemiological phenomenon known as 'herd' or 'community' immunity"); ER-8 (noting legislative committee report that

"found 'compelling' the state's interest in ensuring 'the school and community vaccination levels overall remain sufficiently high'"). And the district court was correct to conclude that none of the purported secular exemptions to the law are "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." ER-27-28.

Medical exemption. The law contains only one potentially permanent (though it can also be temporary) exemption for students receiving classroom-based instruction: the medical exemption set forth in California Health and Safety Code section 120370(a). The district court correctly concluded that this exemption accords with the law's public-health goals by "exempting the few students whose health would suffer if they were vaccinated." ER-29; *see also, e.g.*, *Miller*, 130 F.4th at 267-268; *Connecticut*, 76 F.4th at 153; *Doe*, 19 F.4th at 1178.

In reaching that conclusion, the district court looked to this Court's decision in *Doe*, which analyzed a similar medical exemption provision in a school district's COVID-19 immunization requirement for students over 16 years of age. *See* ER-29. Much like the medical exemption here, the exemption in *Doe* required a doctor's certification, and it was restricted to students with recognized "contraindications or precautions" for the vaccine. 19 F.4th at 1178. The Court concluded that the district's "limited" and "rigid[]" medical exemption "serve[d]

the primary interest for imposing the mandate—protecting student 'health and safety'—and so d[id] not undermine the District's interests as a religious exemption would." *Id.* at 1178, 1180. Plaintiffs fail to acknowledge *Doe*, let alone distinguish its reasoning.

The district court also drew on the Second Circuit's analysis in *Connecticut*, 76 F.4th at 153, where the court held that a school immunization law's medical exemptions are consistent with the law's public health objectives because they allow "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." At the same time, a state legislature's choice not to create a religious exemption promotes the aim of "decreasing, to the greatest extent medically possible, the number of unvaccinated students (and, thus, the risk of acquiring vaccine-preventable diseases) in school." *Id*. As a result, "exempting a student from the vaccination requirement because of a medical condition and exempting a student who declines to be vaccinated for religious reasons are not comparable in relation to the State's interest." *Id.*

The Second Circuit recently built on that reasoning in *Miller*, 130 F.4th at 267-268, a case involving New York's school immunization law. The court reasoned that the medical exemption in that law promotes the State's interest in public health—as does the general immunization requirement—but that exempting

religious objectors from the requirement would "detract[] from that interest" by increasing the "'risk of transmission of vaccine-preventable diseases among vaccinated and unvaccinated students alike.'" *Id.* at 267 (quoting *Connecticut*, 76 F.4th at 153); *see also Spivack v. City of Philadelphia*, 109 F.4th 158, 173, 176 (3d Cir. 2024) (adopting this "common-sense distinction" between medical and religious exemptions).

Miller also explained that the two types of exemptions are "meaningfully different in scope and duration," because religious exemptions can apply indefinitely to all immunizations, whereas medical exemptions apply only to the specific immunizations that currently pose a threat to the student's health. *Miller*, 130 F.4th at 267-268. Like New York, California allows medical exemptions only to the extent that they are medically necessary for a specific immunization, and exemptions may be temporary rather than permanent. *See, e.g.*, Cal. Health & Safety Code § 120372(a)(2)(F), (G); Cal. Code Regs. tit. 17, § 6050; *Grimsby*, 2025 WL 2829502, at *5 (California's medical exemption "relates to particular immunizations" and "is usually time-limited").[5]

[5] Plaintiffs have alleged that "[m]edical exemptions are not temporary in nature," ER-117, but the statutory and regulatory provisions noted above demonstrate why that assertion is incorrect. Plaintiffs also claim that "[m]ost medical issues that would require a medical exemption are not temporary in nature," Opening Br. 17, but they provide no support for that claim.

Plaintiffs' opening brief does not acknowledge this highly relevant authority. Nor do plaintiffs develop any sustained argument about the medical exemption. They assert, without any citation to plausible factual allegations or judicially noticeable information, that "[m]edical and religious exemptions" pose "identical risks to public health" because they "affect[] herd immunity and disease transmission in precisely the same way." Opening Br. 40. But plaintiffs ignore—and thus fail to rebut—the district court's reasoning rejecting their argument. As the district court explained, California's Legislature understood when enacting SB 277 that there are some students who cannot not be vaccinated for medical reasons. ER-29 (citing SER-91-95). Requiring vaccination for the remaining students—those who *can* be safely vaccinated—serves the Legislature's public health goals by promoting herd immunity. And once herd immunity is achieved, it protects all students, including those who cannot safely be vaccinated. ER-29. By contrast, allowing unvaccinated students to attend school in person based on a religious exemption would "put that student's health at greater risk" and increase the health risk for other students, and unlike medically exempt students, religiously exempt students would not be "avoiding adverse health consequences" by forgoing vaccination. *Id.* From the standpoint of public health, medical and religious

exemptions are simply "not 'comparable.'" *Id.* (internal quotation marks omitted).[6]

Homeschool provision. California's immunization requirement does not apply to students enrolled "in a home-based private school" or "independent study program," so long as the student "does not receive classroom-based instruction." Cal. Health & Safety Code § 120335(f). As the district court held, this provision is not comparable to a religious exemption because students who are not receiving classroom-based instruction "plainly differ from students who, like the plaintiffs' children, would attend school in person full time if they could under a religious exception." ER-30. This provision is consistent with the immunization law's overall scope, which is limited to students attending an "elementary or secondary school, child care center," or similar facility where children typically congregate together in close quarters. Cal. Health & Safety Code § 120335(b).

On appeal, plaintiffs fail to develop any legal argument specific to the homeschool provision. Indeed, they appear to have abandoned any argument that

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[6] One district court has held at the pleading stage that Maine's medical exemption from its school immunization law may be comparable to a religious exemption. *Fox v. Makin*, No. 2:22-cv-00251, 2023 WL 5279518, at *7 (D. Me. Aug. 16, 2023). But Maine's medical exemption applies to any student for whom vaccination "'may be'" unsafe, and according to the court, the exemption "could potentially last indefinitely, for seemingly no meaningful reason." *Id.*; *see* ER-33-34 (district court's explanation of why California's medical exemption materially differs from Maine's provision).

students subject to the homeschool provision are comparable to students who would be covered by the proposed religious exemption. *See* Opening Br. 40 (asserting that students subject to various *other* provisions pose risks that are "identical" to a religious exemption—without mentioning the homeschool provision). Because issues are preserved only if "specifically and distinctly argued in appellant's opening brief," *Moran v. Screening Pros, LLC*, 25 F.4th 722, 728 n.6 (9th Cir. 2022) (internal quotation marks omitted), this Court should decline to consider whether the homeschool provision is comparable to a religious exemption.

Even if plaintiffs had preserved such an argument, the homeschool provision would not undermine the law's general applicability. The district court correctly reasoned that homeschool and independent study students present a lower risk than allowing unvaccinated students to attend school full-time in a traditional classroom setting. *See Tandon*, 593 U.S. at 62 ("Comparability is concerned with the risks various activities pose[.]"). With the exception of tetanus, the school immunization law addresses only diseases that can be "spread by contact with other infected children." SER-48; *see* SER-49 (explaining that these diseases spread when students "physically come into contact with the infection"). Students subject to a religious exemption "could attend classroom instruction in person on a regular basis, and both they and their classmates would be at greater risk." ER-30.

By contrast, homeschool and independent study students are "much less likely to regularly come into close personal contact with large numbers of other students for many hours every weekday." *Id.* Plaintiffs appear to accept this fundamental difference. *See* Opening Br. 14 (asserting that "homeschooled children do not experience the automatic socialization available in public or private schools"). And as this Court has previously recognized, duration can be highly relevant when analyzing threats to public health and safety. In a recent free exercise case involving licensing requirements for day care facilities, the Court held that allowing an exemption for facilities with limited hours was not comparable to granting a religious exemption for facilities that operate full-time. *Foothills Christian Ministries*, 148 F.4th at 1052.

IEP provision. California's school immunization law recognizes that it "does not prohibit a pupil who qualifies for an individualized education program, pursuant to federal law and Section 56026 of the Education Code, from accessing any special education and related services required by his or her individualized education program." Cal. Health & Safety Code § 120335(h). The district court correctly concluded that this provision is not comparable to a religious exemption. ER-30-31.

Plaintiffs assert in conclusory fashion that students with "IEP status" pose a risk to public health that is "identical" to religiously exempt students. Opening Br.

40. But they fail to develop any sustained argument regarding the IEP provision. To the extent this argument is properly before the Court, it lacks merit because plaintiffs misunderstand the meaning and scope of California's IEP provision. The provision itself does not grant any exemption from the requirement that students be immunized. It instead refers to the special education services "required by" the student's IEP, stating that the immunization law "does not prohibit" students from accessing those services. Cal. Health & Safety Code § 120335(h).

As the district court explained, the law's IEP provision recognizes the important procedural protections afforded to students under the federal Individuals with Disabilities Education Act. ER-30-31. If a student's existing IEP called for that student to receive certain classroom-based services, the school could not summarily bar them from receiving those services if it discovered that the student lacked one or more required immunizations. The school would instead have to ensure that the student completed their immunizations—or follow federally required procedures to amend the IEP. *See, e.g.*, 20 U.S.C. §§ 1414(d)(3)(D), 1414(d)(3)(F), 1414(d)(4) (procedures for amendment and revision of IEPs); *id.* § 1415(j) (mandating that "the child shall remain in the then-current educational placement" pending resolution of proceedings to enforce student's IDEA rights). The IEP provision reflects these requirements, preventing schools from inadvertently violating a student's procedural rights under the IDEA or using the

State's immunization requirement to undermine those federal rights. It does not, however, exempt students from the State's immunization requirement. And as plaintiffs conceded below, the IDEA's "federal protections would likely override any conflicting state immunization requirements." ER-31; *see* ER-51.[7]

This Court's decision in *Doe* addressed a nearly identical issue. There, as here, religious objectors argued that a provision for students with IEPs was a secular exemption comparable to a religious exemption. *Doe*, 19 F.4th at 1179. The Court rejected that assertion, holding that the district's IEP provision was "not comparable to a religious exemption." *Id.* at 1179-1180. The provision instead reflected the reality that federal law imposes "certain procedural protections" that prevent a school from unilaterally changing a student's IEP. *Id.*; *see id.* at 1184 n.3 (Ikuta, J., dissenting) (agreeing that under the IDEA, a school must "follow certain procedures before it can bar students from in-person attendance"). The district's policy thus provided "temporary procedural protections to students with IEPs but d[id] not grant them a permanent exemption from the mandate." *Id.* at 1180. And

[7] The IEP provision is thus akin to provisions in other generally applicable regulations that reflect a practical limitation on a state or local government's power to regulate. *See Spivack*, 109 F.4th at 174 (policy did not apply to unionized employees whose vaccination requirements were subject to separate collective bargaining); *Stormans*, 794 F.3d at 1080 (regulation allowed pharmacies to refuse to fill prescriptions due to lack of payment; any other rule "would likely drive pharmacies out of business" (emphasis omitted).

as explained by Judge Ikuta—who agreed with the majority on this issue—the district's vaccine mandate was "not applicable to IEP students by force of federal law," reflecting a federal limitation on the district's regulatory authority that meant the Court should "not take the in-person attendance of unvaccinated IEP students into account in determining whether the School District has imposed a mandate that is generally applicable." *Id.* at 1184 n.3 (Ikuta, J., dissenting).

Plaintiffs fail to acknowledge *Doe*, and thus make no attempt to distinguish that decision or explain why the Court should not follow it here. They instead make claims about the number of students affected by the IEP provision, asserting that it covers "14.3% of schoolchildren." Opening Br. 22. That assertion highlights plaintiffs' misunderstanding of the provision. Plaintiffs appear to be referring to the approximate percentage of public-school students who had an IEP during a recent school year. *See* ER-71 & n.1 (citing official state figures). But "nothing suggests the entirety of that fourteen percent attends school without vaccination." ER-32. To the contrary, the percentage of students with IEPs who *also* lack required vaccinations is far lower. In several recent years for which data are available, the statewide percentage of kindergarten students with IEPs who lacked one or more immunizations was no more than 0.3 percent. SER-14; SER-147; SER-150; SER-152. And even that figure does not identify the number of students who subsequently completed their immunizations, or the number of

students with IEPs who attend school for specialized services on a part-time basis (rather than attending class full-time).

Conditional enrollment provision. Schools are authorized to conditionally enroll students while they complete their vaccinations. Cal. Health & Safety Code § 120340. As to certain categories of students, like foster children, schools must offer conditional enrollment. Cal. Health & Safety Code § 120341(a); Cal. Educ. Code §§ 48852.7(c)(3), 49701 art. IV(C). But none of these provisions grants students an exemption from the immunization requirement. On the contrary, the law provides that a conditionally enrolled student must present evidence "that he or she has been fully immunized," and shall do so "within time periods designated by regulation." Cal. Health & Safety Code § 120340.

For students transferring to a new school, regulations limit the conditional enrollment period to 30 school days, after which the school "shall exclude the pupil from further attendance until the parent or guardian provides documentation of compliance with the immunization requirements." Cal. Code Regs. tit. 17, § 6035(d)(1). For other students, conditional enrollment is available only if the student has a temporary medical exemption or has already "commenced receiving doses of all vaccines required for the pupil's age or grade . . . and is not currently due for any doses at the time of admission." *Id.* § 6035(a)(1). Schools have an

ongoing duty to monitor and enforce immunization requirements for conditionally enrolled students. *Id.* § 6035(b)-(c); *see* Cal. Health & Safety Code § 120375.

Given these requirements, the district court properly concluded that conditional enrollment is not comparable to a religious exemption. ER-31. As the court explained, conditional enrollment is "essentially an administrative grace period" that "differs starkly" from a religious exemption that would allow students to "attend any school, new or old, indefinitely without any vaccination, ever." *Id.* The court relied on this Court's decision in *Doe*, 19 F.4th at 1179, which analyzed a similar conditional enrollment provision. As this Court explained, "conditionally enrolled students are simply given a grace period to provide documentation proving that they have been vaccinated before they may continue with on-site education; they are not exempted from the vaccination requirement itself." *Id.* And because conditional enrollment is "both of temporary duration and of limited scope," it does not undermine "interests in student health and safety the way a religious exemption would." *Id.*; *see Foothills Christian Ministries*, 148 F.4th at 1052 (similar reasoning regarding limited duration).

Plaintiffs fail to acknowledge *Doe*'s analysis of conditional enrollment, nor do they develop any separate legal argument on this point. And their references to conditional enrollment in their statement of the case provide no persuasive reason to doubt the district court's reasoning. Plaintiffs mention the overall percentages

of homeless and foster youth in California. Opening Br. 22. As the district court pointed out, however, plaintiffs did not allege these figures in the operative complaint. ER-32. Even setting that problem aside, plaintiffs improperly assume that these overall percentages are relevant. Not all homeless and foster youth move to new schools in a given academic year. And among those who do transfer, not all will lack the required immunizations—particularly because those students would have had to be immunized to remain enrolled at their prior schools. *See, e.g.*, Cal. Code Regs. tit. 17, § 6040. Indeed, as the district court observed, conditional enrollment is likely to involve "getting the paperwork matched up with the student at the new location," ER-53, for transfer students who are *already* immunized but lack immediate access to their records. In any event, conditional enrollment is temporary, which makes it fundamentally unlike a permanent religious exemption. For all these reasons, the district court properly rejected plaintiffs' reliance on the overall statewide percentages of homeless and foster youth. ER-32-33.

Plaintiffs also claim that conditional enrollment could last for "the entire duration of the school year," which they claim is "allowed by state law." Opening Br. 20. Plaintiffs are wrong: state law does not allow students to go without proof of immunization for an entire school year. The interstate compact for military children—which is incorporated into California law—imposes a 30-day limit. Cal.

Educ. Code § 49701 art. IV(C). For foster and homeless students, "[t]he law still requires that the school obtain the student's immunization record and ensure that these students meet all immunization requirements." SER-123. For example, the law governing foster students imposes strict time limits for requesting and providing the student's records. *See* Cal. Educ. Code § 48853.5(f)(8)(C) (two business days for each step); *see also* Cal. Health & Safety Code § 120341(b) (conditional enrollment provision for foster children does "not alter the obligation of the [school] to obtain a foster child's immunization records . . . or ensure the immunization of a foster child"). Federal law requires that schools in States receiving federal grant money promptly assist homeless students with obtaining missing records or immunizations. 42 U.S.C. § 11432(g)(3)(C)(iii). Beyond these specific provisions, California law requires that student records be transmitted from the student's prior school within 10 school days of a request from the new school. Cal. Educ. Code § 49068(b). And all students transferring from schools within the United States are subject to a limit of 30 school days for conditional enrollment. Cal. Code Regs. tit. 17, § 6035(d)(1); *see id.* § 6035(c) ("Continued attendance after conditional admission is contingent upon documentation of receipt of the remaining required immunizations[.]").

Finally, plaintiffs are wrong to suggest that the law could lose its character as a law of general applicability just because school districts might sometimes fail to

uniformly comply with state requirements governing conditional enrollment. *See* Opening Br. 20-21. State law establishes that schools "shall prohibit from further attendance any pupil admitted conditionally who failed to obtain the required immunizations within the time limits allowed" in the governing regulations. Cal. Health & Safety Code § 120375(b); *see also, e.g.*, Cal. Code Regs. tit. 17, § 6035(d)(1) (after 30-day conditional enrollment period, a school "shall exclude the pupil from further attendance"). There is no plausible allegation that individual schools are violating these requirements on a scale that would make conditional enrollment comparable to plaintiffs' proposed religious exemption. Nor is there any plausible allegation that the State condones these school districts' alleged practices. On the contrary, the State has "intensified efforts to educate school staff on the proper use of conditional entrance criteria," and California has seen a decline in the number of conditional entrants since the enactment of SB 277. SER-146; *see also, e.g.*, SER-148-149; SER-151.

Other arguments. Plaintiffs gesture at several other arguments, some of which are not properly before this Court and provide no basis for reversal in any event. For example, the school immunization law does not apply to students who are 18 or older. Cal. Health & Safety Code § 120360. Plaintiffs' complaint does not mention this provision, and plaintiffs appear to have raised it for the first time in a supplemental reply brief they filed in connection with the State's motion to

dismiss. ER-64; ER-71; ER-73. On appeal, plaintiffs mention the provision only in passing, without developing any specific argument about it. *E.g.*, Opening Br. 38. The Court should decline to consider plaintiffs' fleeting reference to the age provision. *See Moran*, 25 F.4th at 728 n.6.

Even if the argument were properly before this Court, the age provision would not undermine the law's general applicability. California's immunization requirement applies to students seeking "admission" to school. Cal. Health & Safety Code § 120335(b). The age provision would not exempt a high school student who turns 18 partway through their senior year—unless they lack the required immunizations and transfer to a new school *after* turning 18. And any unvaccinated students who fall within that category will not be in school long enough to pose a risk that is comparable to allowing a religious exemption.

Plaintiffs also contend that the law is substantially underinclusive because it requires immunization in schools but "imposes no comparable restrictions on the countless other public and private venues where infectious disease transmission occurs." Opening Br. 39; *see id.* (faulting district court for limiting "its analysis solely to exemptions within SB 277's school regulations"). Plaintiffs are mistaken. For one thing, they have not plausibly alleged that these other locations and activities are comparable to attending school in person for five days a week throughout the entirety of the school year. *See* ER-30; *see also Foothills Christian*

Ministries, 148 F.4th at 1052 (activities were did not pose a comparable risk based on differing duration). Plaintiffs' argument relies on vague and conclusory allegations about nonspecific "sports and extra-curricular activities." ER-117.

Plaintiffs' theory also suffers from a basic conceptual flaw. Subject to narrow exceptions, education is compulsory for children aged 6 to 18. Cal. Educ. Code § 48200. Aside from homeschool and independent study students, nearly all children attend school in person—which means they are subject to the school immunization law. And even homeschool and independent study students would be subject to the immunization requirement if they "receive classroom-based instruction." Cal. Health & Safety Code § 120335(f). Because nearly all children are already covered by the immunization requirement, California's choice not to impose duplicative requirements for out-of-school activities does not undermine the State's public health interests. *See* ER-30 (plaintiffs failed to show that "any of these other activities are as universal as school attendance"); *cf. Connecticut*, 76 F.4th at 156 (requiring that children be immunized to attend school, rather than to participate in other activities, "is rational because only at school is attendance mandated by law"). And to the extent that plaintiffs are complaining that the law focuses on school-age children rather than adults, *see* Opening Br. 45, a law does not cease to be generally applicable merely because it applies to a particular class of people. *See Kane v. De Blasio*, 19 F.4th 152, 166 (2d Cir. 2021); *see also id.*

("[N]either the Supreme Court, our court, nor any other court of which we are aware has ever hinted that a law must apply to all people, everywhere, at all times, to be 'generally applicable.'"). The Legislature was entitled to focus this law on children attending school in person—a group that is particularly vulnerable to infectious diseases and especially likely to spread those diseases through close contact. *See, e.g.*, SER-48-49.[8]

Finally, the district court properly rejected plaintiffs' claim that the purported secular exemptions reach "as much as thirty percent of all California schoolchildren." ER-32; *see* Opening Br. 22-23 (claiming that "SB 277 exempts up to 31.3% of all California schoolchildren"). As the district court noted, plaintiffs asserted this claim for the first time in supplemental briefing. ER-32. And the district court correctly perceived that plaintiffs' 30 percent figure vastly overstates the percentage of unvaccinated students who attend class in person. ER-32-33. As discussed, plaintiffs rely on deeply flawed assumptions about the IEP

[8] Plaintiffs note that teachers and school staff may in some instances receive religious accommodations that allow them to remain unvaccinated despite school policies requiring immunization. *See, e.g.*, Opening Br. 12-13; ER-127. But in the employment context, Title VII imposes "a legally required interactive process" for religious accommodations that differs from a "religious *exemption*" and "may ultimately result in a denial of the requested accommodation." *Doe*, 19 F.4th at 1180. Indeed, plaintiffs' recognition that school employees are covered by separate immunization policies at the local level illustrates why those employees are not relevant to the comparability analysis in this appeal.

provision and the provisions for homeless and foster youth. *Supra* pp. 29-37. Similarly, the fact that a certain percentage of students are 18 years old does not mean that all (or even a significant portion) of those students are unvaccinated. *Supra* p. 38. Nor do plaintiffs adequately explain why homeschooled students or undocumented students should be included in their figure. Students who do not receive classroom-based instruction are not comparable to those who would be covered by a religious exemption, *supra* pp. 27-29, and the law features no separate exemption for undocumented students.

II. PLAINTIFFS' NEWLY ASSERTED PARENTAL-RIGHTS THEORY IS NOT A VALID BASIS FOR APPLYING STRICT SCRUTINY

Plaintiffs also contend that even if California's school immunization law is neutral and generally applicable, the district court should have applied strict scrutiny because the law purportedly "burdens [their] right to raise their children in their religious beliefs." Opening Br. 29; *see id.* at 29-36. Plaintiffs rely on the Supreme Court's recent decision in *Mahmoud*, which involved a challenge by religious parents to a school curriculum featuring "'LGBTQ+-inclusive' storybooks." 606 U.S. at 528. Plaintiffs' newly asserted parental-rights theory is not properly before this Court, but even if it were, it would not require the application of strict scrutiny.

A. Plaintiffs Forfeited This Argument

To begin with, the Court should decline to address this argument on the merits because plaintiffs failed to raise it below. Generally speaking, "arguments not raised in the district court will not be considered for the first time on appeal." *In re Mortg. Elec. Registration Sys., Inc.*, 754 F.3d 772, 780 (9th Cir. 2014); *see, e.g.*, *Alaska Dep't of Nat. Res. v. United States*, 816 F.3d 580, 586 (9th Cir. 2016) (declining to address argument where party "failed to assert that argument below in opposition to the . . . motion to dismiss"). Although "an exception to the waiver rule exists for intervening changes in the law," *Big Horn Cnty. Elec. Co-op., Inc. v. Adams*, 219 F.3d 944, 953 (9th Cir. 2000), plaintiffs' opening brief makes no attempt to explain why that exception should apply here. The Court should decline to excuse plaintiffs' forfeiture.

The Supreme Court issued its decision in *Mahmoud* a few days after the district court granted the State's motion to dismiss plaintiffs' claims. *See* ER-35. But *Mahmoud* did not invent the parental-rights theory that plaintiffs are now asserting. In plaintiffs' view, *Mahmoud* "reaffirmed" that theory. Opening Br. 30. *Mahmoud* drew its reasoning from *Wisconsin v. Yoder*, 406 U.S. 205, 207 (1972), a decision in which the Supreme Court applied heightened scrutiny in evaluating a challenge by Amish parents to a compulsory school-attendance law. The Court concluded the law "substantially interfere[d] with the religious development" of

Amish children and then "searchingly examine[d]" the State's asserted interest. *Id.* at 218. In *Mahmoud*, the Supreme Court held that strict scrutiny applied because it concluded that the school district's curriculum imposed a burden of "same character as that imposed in *Yoder*." *Mahmoud*, 606 U.S. at 564; *see id.* at 543 (*Mahmoud* plaintiffs "relied heavily" on *Yoder*), 565 n.14 ("the burden imposed here is of the exact same character as that in *Yoder*").

Here, as in *Mahmoud*, plaintiffs were aware of *Yoder* and its potential application to their claims. Plaintiffs quoted *Yoder* in their complaint, invoking it for the proposition that parents "have the right to 'direct the religious upbringing of their children.'" ER-123-124 (quoting *Yoder*, 406 U.S. at 233); *see also* ER-109. Yet when plaintiffs opposed the State's motion to dismiss, they did not argue that the parental-rights principle articulated in *Yoder* required the district court to apply strict scrutiny. *See* ER-79-105. Nor did plaintiffs assert a parental rights argument under *Yoder* in their supplemental briefing. *See* ER-60-78. Plaintiffs instead cited *Yoder* for a different and unrelated purpose: to support their standing arguments. ER-86-87; *see also* ER-40 (colloquy at motion-to-dismiss hearing regarding *Yoder*'s impact on standing).

Plaintiffs also failed to alert the district court to *Mahmoud*'s potential impact on this case. They did not ask the district court to defer its ruling on the State's motion to dismiss until the Supreme Court issued its decision in *Mahmoud*.

Plaintiffs' counsel did not even mention *Mahmoud* at the June 2025 hearing on the State's motion. *See* ER-37-59. Nor did plaintiffs move for reconsideration of the district court's ruling once *Mahmoud* was decided, even though intervening changes in law may sometimes be a basis for reconsideration. *See, e.g.*, *Kona Enters., Inc. v. Est. of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000).

Plaintiffs' parental-rights argument was available—both before and after *Mahmoud* was decided—yet they failed to timely assert it in the district court. The argument is forfeited, and there is no reason why this Court should address it in the first instance given that this is "a court of review, not first view." *Roth v. Foris Ventures, LLC*, 86 F.4th 832, 838 (9th Cir. 2023) (internal quotation marks omitted).

B. In Any Event, the Argument Lacks Merit

Even if plaintiffs' argument were properly before the Court, it would not warrant the application of strict scrutiny. Plaintiffs argue that the immunization law burdens their right to direct their children's religious development in a way that is "comparable to" but "far more severe than the burden identified in *Mahmoud*." Opening Br. 32, 34. Plaintiffs' argument fails for three independent reasons. First, California's school immunization law has nothing to do with the kind of curricular requirements that were central to the Court's analysis in *Mahmoud*. Second, because California's law addresses substantial threats to health

and safety, the rule articulated in *Yoder* and reaffirmed in *Mahmoud* does not require strict scrutiny. And third, plaintiffs' complaint did not adequately allege a claim that would justify strict scrutiny under *Mahmoud* (or *Yoder*).[9]

First, as a sister court recently recognized, "*Mahmoud*'s reasoning principally relates to curricular requirements." *Doe No.1 v. Bethel Loc. Sch. Dist. Bd. of Educ.*, No. 23-3740, 2025 WL 2453836, at *7 n.3 (6th Cir. Aug. 26, 2025). In *Mahmoud*, the Supreme Court held that a school district burdened parental free exercise rights where it subjected "young children" to "unmistakably normative" books that "explicitly contradict[ed] their parents' religious views" and encouraged teachers "to reprimand any children who disagree[d]" or "express[ed] a degree of religious confusion." 606 U.S. at 550, 555-556 & n.8. The Court stressed "the potentially coercive nature of classroom instruction," explaining that the books "impose[d] upon children a set of values and beliefs" and exerted "psychological pressure to conform to their specific viewpoints." *Id.* at 554 (internal quotation

[9] In *Smith*, 494 U.S. at 881-882, the Supreme Court alluded to "a hybrid situation" in which heightened scrutiny might apply if free exercise rights are affected "in conjunction with other constitutional protections." But the Supreme Court has never squarely endorsed that "hybrid rights" theory, and this Court has expressed doubt about its legal validity. *See, e.g.*, *Parents for Priv. v. Barr*, 949 F.3d 1210, 1236-1237 (9th Cir. 2020). Although plaintiffs' complaint alluded to scenarios in which "the interests of parenthood are combined with a free exercise claim," ER-123-124 (internal quotation marks omitted), they did not make that argument when opposing the State's motion to dismiss, and they do not assert a hybrid rights argument on appeal.

marks omitted). And the Court determined that the specific burdens imposed by the "educational requirement or curricular feature[s] at issue" were of a "special character" that substantially interfered with the religious development of the parents' children. *Id.* at 550, 565.

California's school immunization law is not remotely similar. It has nothing to do with curriculum, books, or any other aspect of classroom instruction with the "potentially coercive" features discussed in *Mahmoud*. The law challenged here sets certain requirements for enrolling in school but has no impact on what students will be taught once they are on campus. *See* Cal. Health & Safety Code §§ 120325 et seq. Among other things, it requires that a student be immunized "prior to his or her first admission" to a given school, *id.* § 120335(b), *before* the student has formed a relationship with any teacher or other school authority figure. For that reason, the law does not exert "psychological pressure to conform to . . . specific viewpoints" in a way that is comparable to the practices at issue in *Mahmoud*. 606 U.S. at 554 (internal quotation marks omitted). And unlike the disputed curriculum in *Mahmoud*, the immunization requirement is not limited to "young children," who may be particularly susceptible to the views of "authority figures," *id.*; the requirement generally applies to all students under 18. *See* Cal. Health & Safety Code §§ 120335(b), 120360.

Properly understood, *Mahmoud* does not "stand[] for the broad proposition that strict scrutiny is automatically triggered when a school does not allow religious students to opt out of any school policy that interferes with their religious development, including general operational policies that involve no instruction." *Bethel Loc. Sch. Dist.*, 2025 WL 2453836, at *7 n.3. To construe *Mahmoud* otherwise would lead to untenable results. For example, many schools have policies barring students from engaging in unlawful drug use at school. *See, e.g.*, Cal. Educ. Code § 48900(c)(1); *cf. Morse v. Frederick*, 551 U.S. 393, 407-408 (2007). Under plaintiffs' understanding of *Mahmoud*, a parent would have a right to opt a child out of those policies to use illegal drugs for religious reasons. *See, e.g.*, Opening Br. 33 (suggesting that faith should never "bend[] to secular pressure"). But under the Supreme Court's precedent, the parent himself or herself would have no right to engage in the same form of religiously inspired drug use. *See, e.g.*, *Smith*, 494 U.S. at 890. Plaintiffs provide no logical reason why the Free Exercise Clause would distinguish between parents and children in that way.

Second, the parental-rights theory applied in *Mahmoud* and *Yoder* does not mandate strict scrutiny where the challenged regulation addresses substantial threats to the health and safety of children and the public at large. The Court emphasized in *Mahmoud*, 606 U.S. at 557-558, that its holding followed from *Yoder*. In reaching its conclusion, *Yoder* emphasized that school attendance would

"substantially interfer[e] with the religious development of [an] Amish child" by "exposing [him] to worldly influences in terms of attitudes, goals, and values contrary to beliefs." *Id.* at 218. The Court stressed, however, that the challenged law did not implicate "any harm to the physical or mental health of the child or to the public safety, peace, order, or welfare." *Id.* at 230. The Court reaffirmed the settled principle that the Free Exercise Clause allows "governmental regulation of certain overt acts prompted by religious beliefs or principles," when the "conduct or actions so regulated . . . pose[] some substantial threat to public safety, peace or order." *Id.* (internal quotation marks omitted).

To illustrate that principle, the Supreme Court invoked cases recognizing the authority of States to impose mandatory immunization policies. *Yoder*, 406 U.S. at 230 & n.20 (citing *Prince*, 321 U.S. 158, and *Jacobson*, 197 U.S. 11). Justice White underscored that point in his concurring opinion, noting that if the case had involved "a substantial threat to public safety, peace, or order," the Court's "analysis under the Free Exercise Clause would be substantially different." *Id.* at 239 n.1 (White, J., concurring) (citing *Prince* and *Jacobson*). As the Supreme Court explained in *Prince*, "neither rights of religion nor rights of parenthood are beyond limitation," and a parent's right to free exercise "does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death." 321 U.S. at 166-167.

In the decades since *Yoder*, the Supreme Court, this Court, and other appellate courts have reaffirmed that *Yoder*'s parental-rights principle does not require courts to apply strict scrutiny when the challenged regulation addresses threats to health and safety. *See, e.g.*, *Parham v. J.R.*, 442 U.S. 584, 603 (1979) (citing *Yoder* and *Prince* for the rule that "a state is not without constitutional control over parental discretion in dealing with children when their physical or mental health is jeopardized"); *Sweaney v. Ada Cnty.*, 119 F.3d 1385, 1391-1392 (9th Cir. 1997) (to same effect); *Brown*, 24 Cal. App. 5th at 1145 (applying this principle in rejecting a challenge California's school vaccination law).

Because plaintiffs fail to acknowledge this limit on *Yoder*'s holding, they make no attempt to explain why the limit should not apply here. In *Mahmoud*, the Supreme Court emphasized that *Yoder* should be treated "like any other precedent," which means that it should not be "confined . . . to its facts," but may also be "distinguished . . . when appropriate." *Mahmoud*, 606 U.S. at 558. As discussed above, *supra* pp. 5-7, 22-23, California's school immunization law protects "public safety, peace [and] order" in the face of the "substantial threat" posed by infectious diseases, *Yoder*, 406 U.S. at 230. As a result, the parental-rights principle articulated in *Yoder* and reaffirmed in *Mahmoud* does not require strict scrutiny in this case.

Third, even if the rule applied in *Yoder* and *Mahmoud* could be understood to extend to the school immunization context, plaintiffs' allegations are insufficient. As discussed, plaintiffs' complaint cites *Yoder*. ER-109; ER-123-124; *see supra* p. 43. But because plaintiffs never developed this parental-rights theory in the district court, their complaint fails to allege facts that, if proven, would show that California's school immunization law "'substantially interfere[es] with the religious development' of [plaintiffs'] children" in a manner that would require the Court to apply strict scrutiny. *Mahmoud*, 606 U.S. at 546 (quoting *Yoder*, 406 U.S. at 218). Plaintiffs' opening brief illustrates this deficiency. They assert that *Mahmoud* requires a "fact-intensive inquiry," Opening Br. 31, but this part of their opening brief is almost entirely devoid of citations to the operative complaint. The few allegations to which they *do* refer are from the preliminary section of the complaint, which alleges very different injuries for purposes of standing. *See* Opening Br. 32-33 (citing ER-109-113); *see also, e.g.*, ER-110 (alleging "stigma," financial costs, and "inadequate socialization").

III. THE LAW SATISFIES ANY APPLICABLE STANDARD OF SCRUTINY

Because the law is neutral and generally applicable, and because there is no alternative basis for strict scrutiny, rational basis review applies. The law easily satisfies rational basis review, and plaintiffs do not argue otherwise. Even if strict

scrutiny were to apply, the law is narrowly tailored to the State's compelling interest in protecting public health by preventing the spread of infectious diseases.

1. Plaintiffs make no argument that California's school immunization law lacks a rational relationship to a legitimate state interest. They have thus waived any contention that the law fails to satisfy rational basis review. *See Moran*, 25 F.4th at 728 n.6. In any event, California's school immunization law readily satisfies that "forgiving standard." *Foothills Christian Ministries*, 148 F.4th at 1052. The State has "a legitimate interest in protecting the public health and safety by increasing the number of vaccinated students in the schools within its borders." ER-28. Courts have long recognized the legitimacy of this interest. *See, e.g.*, *Health Freedom Def. Fund, Inc. v. Carvalho*, 148 F.4th 1020, 1033 (9th Cir. 2025) (en banc) (recognizing school district's "legitimate interest in protecting the health and safety of its employees and students"). The district court was right to conclude that the law bears a rational relationship to that interest. *See* ER-28.

2. The State also argued below that the law would satisfy strict scrutiny. SER-5-7. The district court did not reach that argument. *See* ER-28. If this Court were to do so, however, it should affirm on the alternative ground that the law is narrowly tailored to serve a compelling state interest.

Although plaintiffs now appear to dispute whether the State has a compelling interest in protecting public health by preventing the spread of infectious diseases,

see Opening Br. 43-44, they conceded in their complaint that the State has a "healthcare interest in promoting childhood vaccination." ER-126. And with good reason: the Supreme Court has repeatedly recognized a governmental interest in preventing the spread of infectious diseases. *See, e.g.*, *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 18 (2020); *Zucht*, 260 U.S. at 176-177; *see also Jacobson*, 197 U.S. at 26 (recognizing States' authority to take appropriate action "essential to the safety, health, peace, good order, and morals of the community") (internal quotation marks omitted).

The law is narrowly tailored to serve that compelling interest. *See Brown*, 24 Cal. App. 5th at 1145 (even if strict scrutiny applies, California's school vaccination law satisfies that standard). The list of required immunizations is limited to "serious conditions that pose very real health risks to children." SER-48. And the narrow scope of the medical exemption—alongside the law's other restrictions, *e.g.*, provisions governing conditional enrollment—reflects the State's commitment to achieving and maintaining herd immunity for the protection of public health. The State repealed the personal beliefs exemption in response to evidence showing that a sharp rise in the use of the exemption was threatening the protective effect of widespread immunity. *Supra* pp. 5-7. Later, when the Legislature became aware that the medical exemption was being misused, it amended the law to toughen the exemption's requirements and enhance state

oversight. *Supra* pp. 8-9. Plaintiffs' discussion of the law's other provisions is flawed for the reasons already addressed. *Supra* pp. 22-41.

Finally, plaintiffs' list of purported alternatives (at Opening Br. 46) fails to adequately describe what those proposals would entail. Plaintiffs thus fail to explain why adopting any of those measures would allow California to maintain herd immunity while allowing a religious exemption. Several of plaintiffs' proposals would appear to involve waiting until *after* an outbreak has already occurred before taking action. *See, e.g.*, Opening Br. 46 (suggesting "creating separate cohorts or designated areas for not-fully-vaccinated students during outbreaks"). But the law aims to prevent outbreaks from happening in the first place. The Legislature enacted SB 277 because it recognized that when "large numbers of children do not receive some or all of the required vaccinations," it becomes "difficult to control the spread of disease" and may result "in the reemergence of vaccine preventable diseases." SER-49. Plaintiffs' other proposals likewise misunderstand the law and its statutory history. For example, the law already features a provision for students enrolled in independent study programs. *Supra* pp. 27-29. School policies already restrict outside visitors. *See, e.g.*, *Volunteers and Visitors*, San Francisco Unified Sch. Dist. (Aug. 5, 2024), https://tinyurl.com/nxr5hhsv. And a prior version of the law required parents invoking the personal beliefs exemption to be educated about "the benefits and

risks of the immunization and the health risks of the specified diseases to the person and to the community." SER-46. Yet that educational requirement proved insufficient, leading to unacceptably high exemption rates that placed California "communities at risk for the rapid spread of entirely preventable diseases." *Id.*

CONCLUSION

The district court's judgment should be affirmed.

Dated: December 10, 2025

Respectfully submitted,

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STATUTORY ADDENDUM

California Health & Safety Code § 120325

In enacting this chapter, but excluding Section 120380, and in enacting Sections 120400, 120405, 120410, and 120415, it is the intent of the Legislature to provide:

(a) A means for the eventual achievement of total immunization of appropriate age groups against the following childhood diseases:

(1) Diphtheria.

(2) Hepatitis B.

(3) Haemophilus influenzae type b.

(4) Measles.

(5) Mumps.

(6) Pertussis (whooping cough).

(7) Poliomyelitis.

(8) Rubella.

(9) Tetanus.

(10) Varicella (chickenpox).

(11) Any other disease deemed appropriate by the department, taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians.

(b) That the persons required to be immunized be allowed to obtain immunizations from whatever medical source they so desire, subject only to the condition that the immunization be performed in accordance with the regulations of the department and that a record of the immunization is made in accordance with the regulations.

(c) Exemptions from immunization for medical reasons.

(d) For the keeping of adequate records of immunization so that health departments, schools, and other institutions, parents or guardians, and the persons immunized will be able to ascertain that a child is fully or only partially immunized, and so that appropriate public agencies will be able to ascertain the immunization needs of groups of children in schools or other institutions.

(e) Incentives to public health authorities to design innovative and creative programs that will promote and achieve full and timely immunization of children.

California Health & Safety Code § 120335

(a) As used in this chapter, "governing authority" means the governing board of each school district or the authority of each other private or public institution responsible for the operation and control of the institution or the principal or administrator of each school or institution.

(b) The governing authority shall not unconditionally admit any person as a pupil of any private or public elementary or secondary school, child care center, day

nursery, nursery school, family day care home, or development center, unless, prior to his or her first admission to that institution, he or she has been fully immunized. The following are the diseases for which immunizations shall be documented:

(1) Diphtheria.

(2) Haemophilus influenzae type b.

(3) Measles.

(4) Mumps.

(5) Pertussis (whooping cough).

(6) Poliomyelitis.

(7) Rubella.

(8) Tetanus.

(9) Hepatitis B.

(10) Varicella (chickenpox).

(11) Any other disease deemed appropriate by the department, taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians.

(c) Notwithstanding subdivision (b), full immunization against hepatitis B shall not be a condition by which the governing authority shall admit or advance any pupil to the 7th grade level of any private or public elementary or secondary school.

(d) The governing authority shall not unconditionally admit or advance any pupil to the 7th grade level of any private or public elementary or secondary school unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age.

(e) The department may specify the immunizing agents that may be utilized and the manner in which immunizations are administered.

(f) This section does not apply to a pupil in a home-based private school or a pupil who is enrolled in an independent study program pursuant to Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 of the Education Code and does not receive classroom-based instruction.

(g)

(1) A pupil who, prior to January 1, 2016, submitted a letter or affidavit on file at a private or public elementary or secondary school, child day care center, day nursery, nursery school, family day care home, or development center stating beliefs opposed to immunization shall be allowed enrollment to any private or public elementary or secondary school, child day care

center, day nursery, nursery school, family day care home, or development center within the state until the pupil enrolls in the next grade span.

(2) For purposes of this subdivision, "grade span" means each of the following:

(A) Birth to preschool.

(B) Kindergarten and grades 1 to 6, inclusive, including transitional kindergarten.

(C) Grades 7 to 12, inclusive.

(3) Except as provided in this subdivision, on and after July 1, 2016, the governing authority shall not unconditionally admit to any of those institutions specified in this subdivision for the first time, or admit or advance any pupil to 7th grade level, unless the pupil has been immunized for his or her age as required by this section.

(h) This section does not prohibit a pupil who qualifies for an individualized education program, pursuant to federal law and Section 56026 of the Education Code, from accessing any special education and related services required by his or her individualized education program.

California Health & Safety Code § 12040

A person who has not been fully immunized against one or more of the diseases listed in Section 120335 may be admitted by the governing authority on condition that within time periods designated by regulation of the department he or she presents evidence that he or she has been fully immunized against all of these diseases.

California Health & Safety Code § 120370

(a)

(1) Prior to January 1, 2021, if the parent or guardian files with the governing authority a written statement by a licensed physician and surgeon to the effect that the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe, indicating the specific nature and probable duration of the medical condition or circumstances, including, but not limited to, family medical history, for which the physician and surgeon does not recommend immunization, that child shall be exempt from the requirements of this chapter, except for Section 120380, and exempt from Sections 120400, 120405, 120410, and 120415 to the extent indicated by the physician and surgeon's statement.

(2) Commencing January 1, 2020, a child who has a medical exemption issued before January 1, 2020, shall be allowed continued enrollment to any public or private elementary or secondary school, child care center, day nursery, nursery school, family day care home, or developmental center within the state until the child enrolls in the next grade span.

For purposes of this subdivision, "grade span" means each of the following:

(A) Birth to preschool, inclusive.

(B) Kindergarten and grades 1 to 6, inclusive, including transitional kindergarten.

(C) Grades 7 to 12, inclusive.

(3) Except as provided in this subdivision, on and after July 1, 2021, the governing authority shall not unconditionally admit or readmit to any of those institutions specified in this subdivision, or admit or advance any pupil to 7th grade level, unless the pupil has been immunized pursuant to Section 120335 or the parent or guardian files a medical exemption form that complies with Section 120372.

(b) 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.

California Health & Safety Code § 120372

(a)

(1) By January 1, 2021, the department shall develop and make available for use by licensed physicians and surgeons an electronic, standardized, statewide medical exemption certification form that shall be transmitted directly to the department's California Immunization Registry (CAIR) established pursuant to Section 120440. Pursuant to Section 120375, the form shall be printed, signed, and submitted directly to the school or institution at which the child will attend, submitted directly to the governing authority of the school or institution, or submitted to that governing authority through the CAIR where applicable. Notwithstanding Section 120370, commencing January 1, 2021, the standardized form shall be the only documentation of a medical exemption that the governing authority may accept.

(2) At a minimum, the form shall require all of the following information:

(A) The name, California medical license number, business address, and telephone number of the physician and surgeon who issued the

medical exemption, and of the primary care physician of the child, if different from the physician and surgeon who issued the medical exemption.

(B) The name of the child for whom the exemption is sought, the name and address of the child's parent or guardian, and the name and address of the child's school or other institution.

(C) A statement certifying that 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.

(D) Whether the physician and surgeon who issued the medical exemption is the child's primary care physician. If the issuing physician and surgeon is not the child's primary care physician, the issuing physician and surgeon shall also provide an explanation as to why the issuing physician and not the primary care physician is filling out the medical exemption form.

(E) How long the physician and surgeon has been treating the child.

(F) A description of the medical basis for which the exemption for each individual immunization is sought. Each specific immunization shall be listed separately and space on the form shall be provided to

allow for the inclusion of descriptive information for each immunization for which the exemption is sought.

(G) Whether the medical exemption is permanent or temporary, including the date upon which a temporary medical exemption will expire. A temporary exemption shall not exceed one year. All medical exemptions shall not extend beyond the grade span, as defined in Section 120370.

(H) An authorization for the department to contact the issuing physician and surgeon for purposes of this section and for the release of records related to the medical exemption to the department, the Medical Board of California, and the Osteopathic Medical Board of California.

(I) A certification by the issuing physician and surgeon that the statements and information contained in the form are true, accurate, and complete.

(3) An issuing physician and surgeon shall not charge for either of the following:

(A) Filling out a medical exemption form pursuant to this section.

(B) A physical examination related to the renewal of a temporary medical exemption.

(b) Commencing January 1, 2021, if a parent or guardian requests a licensed physician and surgeon to submit a medical exemption for the parent's or guardian's child, the physician and surgeon shall inform the parent or guardian of the requirements of this section. If the parent or guardian consents, the physician and surgeon shall examine the child and submit a completed medical exemption certification form to the department. A medical exemption certification form may be submitted to the department at any time.

(c) By January 1, 2021, the department shall create a standardized system to monitor immunization levels in schools and institutions as specified in Sections 120375 and 120440, and to monitor patterns of unusually high exemption form submissions by a particular physician and surgeon.

(d)

(1) The department, at a minimum, shall annually review immunization reports from all schools and institutions in order to identify medical exemption forms submitted to the department and under this section that will be subject to paragraph (2).

(2) A clinically trained immunization department staff member, who is either a physician and surgeon or a registered nurse, shall review all medical exemptions from any of the following:

(A) Schools or institutions subject to Section 120375 with an overall immunization rate of less than 95 percent.

(B) Physicians and surgeons who have submitted five or more medical exemptions in a calendar year beginning January 1, 2020.

(C) Schools or institutions subject to Section 120375 that do not provide reports of vaccination rates to the department.

(3)

(A) The department shall identify those medical exemption forms that do not meet applicable AAP criteria for appropriate medical exemptions. The department may contact the primary care physician and surgeon or issuing physician and surgeon to request additional information to support the medical exemption.

(B) Notwithstanding subparagraph (A), the department, based on the medical discretion of the clinically trained immunization staff member, may accept a medical exemption that is based on other contraindications or precautions, including consideration of family medical history, if the issuing physician and surgeon provides written documentation to support the medical exemption that is consistent with the relevant standard of care.

(C) A medical exemption that the reviewing immunization department staff member determines to be inappropriate or otherwise invalid under subparagraphs (A) and (B) shall also be reviewed by the State Public Health Officer or a physician and surgeon from the department's immunization program designated by the State Public Health Officer. Pursuant to this review, the State Public Health Officer or physician and surgeon designee may revoke the medical exemption.

(4) Medical exemptions issued prior to January 1, 2020, shall not be revoked unless the exemption was issued by a physician or surgeon that has been subject to disciplinary action by the Medical Board of California or the Osteopathic Medical Board of California.

(5) The department shall notify the parent or guardian, issuing physician and surgeon, the school or institution, and the local public health officer with jurisdiction over the school or institution of a denial or revocation under this subdivision.

(6) If a medical exemption is revoked pursuant to this subdivision, the child shall continue in attendance. However, within 30 calendar days of the revocation, the child shall commence the immunization schedule required for conditional admittance under Chapter 4 (commencing with Section 6000)

of Division 1 of Title 17 of the California Code of Regulations in order to remain in attendance, unless an appeal is filed pursuant to Section 120372.05 within that 30-day time period, in which case the child shall continue in attendance and shall not be required to otherwise comply with immunization requirements unless and until the revocation is upheld on appeal.

(7)

(A) If the department determines that a physician's and surgeon's practice is contributing to a public health risk in one or more communities, the department shall report the physician and surgeon to the Medical Board of California or the Osteopathic Medical Board of California, as appropriate. The department shall not accept a medical exemption form from the physician and surgeon until the physician and surgeon demonstrates to the department that the public health risk no longer exists, but in no event shall the physician and surgeon be barred from submitting these forms for less than two years.

(B) If there is a pending accusation against a physician and surgeon with the Medical Board of California or the Osteopathic Medical Board of California relating to immunization standards of care, the department shall not accept a medical exemption form from the

physician and surgeon unless and until the accusation is resolved in favor of the physician and surgeon.

(C) If a physician and surgeon licensed with the Medical Board of California or the Osteopathic Medical Board of California is on probation for action relating to immunization standards of care, the department and governing authority shall not accept a medical exemption form from the physician and surgeon unless and until the probation has been terminated.

(8) The department shall notify the Medical Board of California or the Osteopathic Medical Board of California, as appropriate, of any physician and surgeon who has five or more medical exemption forms in a calendar year that are revoked pursuant to this subdivision.

(9) Notwithstanding any other provision of this section, a clinically trained immunization program staff member who is a physician and surgeon or a registered nurse may review any exemption in the CAIR or other state database as necessary to protect public health.

(e) The department, the Medical Board of California, and the Osteopathic Medical Board of California shall enter into a memorandum of understanding or similar agreement to ensure compliance with the requirements of this section.

(f) In administering this section, the department and the independent expert review panel created pursuant to Section 120372.05 shall comply with all applicable state and federal privacy and confidentiality laws. The department may disclose information submitted in the medical exemption form in accordance with Section 120440, and may disclose information submitted pursuant to this chapter to the independent expert review panel for the purpose of evaluating appeals.

(g) The department shall establish the process and guidelines for review of medical exemptions pursuant to this section. The department shall communicate the process to providers and post this information on the department's website.

(h) If the department or the California Health and Human Services Agency determines that contracts are required to implement or administer this section, the department may award these contracts on a single-source or sole-source basis. The contracts are not subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code, Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code, or Sections 4800 to 5180, inclusive, of the State Administrative Manual as they relate to approval of information technology projects or approval of increases in the duration or costs of information technology projects.

(i) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of

the Government Code), the department may implement and administer this section through provider bulletins, or similar instructions, without taking regulatory action.

(j) For purposes of administering this section, the department and the California Health and Human Services Agency appeals process shall be exempt from the rulemaking and administrative adjudication provisions in the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

STATEMENT OF RELATED CASES

The following related cases are pending: *Royce v. Pan*, No. 25-2504; *We The Patriots v. Ventura Unified School District*, No. 25-5239; and *Grimsby v. Pan*, No. 25-6100.

CERTIFICATE OF COMPLIANCE

9th Cir. Case Number: 25-4531

I am the attorney or self-represented party.

This brief contains 12,104 words, including 0 words manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

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