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10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

14 **SARA ROYCE; SARAH CLARK;**  
 15 **TIFFANY BROWN; and KRISTI**  
 16 **CARAWAY,**  
 17 Plaintiffs,  
 18 v.  
 19 **ROB BONTA, in his official capacity**  
 20 **as Attorney General of California,**  
 21 Defendant.

23-CV-2012-H-BLM  
**MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF  
 MOTION TO DISMISS FIRST  
 AMENDED COMPLAINT FOR  
 INJUNCTIVE AND  
 DECLARATORY RELIEF**  
 Date: June 17, 2024  
 Time: 10:30 a.m.  
 Ctrm: 12A  
 Judge: Hon. Marilyn L. Huff  
 Trial Date: Not Set  
 Action Filed: 10/31/2023

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**TABLE OF CONTENTS**

	<b>Page</b>
Introduction .....	1
Background.....	2
A. History of Immunization Requirements in California.....	2
B. Senate Bill 277 and removal of the Personal Belief Exemption .....	4
C. Plaintiffs’ fact allegations .....	8
Statement of Case .....	8
I. Attorney General Bonta enjoys Eleventh Amendment sovereign immunity and should be dismissed from suit under Rule 12(b)(1) and 12(b)(6) .....	9
II. Plaintiffs fail to state a cognizable First Amendment claim.....	11
A. It is well settled that mandatory vaccination laws without religious exemptions do not offend the First Amendment .....	11
B. SB 277’s repeal of California’s prior personal beliefs exemption does not violate the Free Exercise Clause .....	15
1. Personal beliefs are not protected under the Free Exercise Clause.....	15
2. SB 277 is rationally related to a legitimate State interest .....	16
III. Plaintiffs’ second attempt to allege religious animus in the enactment of SB 277 fails .....	17
IV. Plaintiffs’ allegations that SB 277 treats comparable secular activity more favorably than religious exercise fail .....	20
V. SB 277 withstands strict scrutiny analysis.....	24
Conclusion.....	25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
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26  
27  
28

**TABLE OF AUTHORITIES**

**Page**

**CASES**

*Ashcroft v. Iqbal*  
556 U.S. 662 (2009).....2

*Bell Atlantic Corp. v. Twombly*  
550 U.S. 544 (2007).....2

*Bolbol v. Brown*  
120 F. Supp. 3d 1010 (N.D. Cal. 2015).....10

*Boone v. Boozman*  
217 F. Supp.2d 938 (E.D. Ark. 2002).....13

*Brown v. Smith*  
24 Cal.App.5th 1135 (2018).....13, 14

*Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*  
508 U.S. 520 (1993).....16

*Coal. to Defend Affirmative Action v. Brown*  
674 F.3d 1128 (9th Cir. 2012).....10, 14, 15

*Doe v. San Diego Unified School District*  
19 F.4th 1173 (9th Cir. 2021).....*passim*

*Does 1-6 v. Mills*  
16 F.4th 20 (1st Cir. 2021).....20

*Does 1-6 v. Mills*  
16 F.4th at 30–31 .....21

*Dr. A. v. Hochul*  
142 S. Ct. 2569 (2022).....22

*Emp't Div. v. Smith*  
494 U.S. 872 (1990).....16

*F.F. v. State*  
194 A.D.3d 80 (N.Y. App. Div. 2021) .....*passim*

1  
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**TABLE OF AUTHORITIES**  
**(continued)**

**Page**

*French v. Davidson*  
143 Cal. 658 (1904) ..... 12

*Fulton v. City of Philadelphia*  
— U.S. — (2023)..... 17, 20, 21

*Grace United Methodist Church v. City of Cheyenne*  
451 F.3d 643 (10th Cir. 2006)..... 13

*Hanzel v. Arter*  
625 F. Supp. 1259 (S.D. Ohio 1985)..... 13, 15

*Heller v. Doe by Doe*  
509 U.S. 312 (1993)..... 16

*Jacobson v. Commonwealth of Massachusetts*  
197 U.S. 11 (1905)..... 12, 16, 17, 24

*Kokkonen v. Guardian Life Ins. Co. of Am.*  
511 U.S. 375 (1994)..... 9

*Love v. State Dept. of Education*  
29 Cal.App.5th 980 (2018)..... 3, 4, 14, 15

*Maricopa County Health Dept. v. Harmon*  
750 P.2d 1364 (Ariz. 1987)..... 13

*Massachusetts Bd. of Retirement v. Murgia*  
427 U.S. 307 (1976)..... 16

*Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rts. Comm'n*  
--- U.S. --- (2018)..... 18, 20

*Milford Christian Church v. Russell-Tucker*  
No. 3:23-CV-304 (VAB), 2023 WL 8358016 (D. Conn. Dec. 1,  
2023) ..... 14

*Nat’l Audubon Soc’y, Inc. v. Davis*  
307 F.3d 835 (9th Cir. 2002)..... 10

1  
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**TABLE OF AUTHORITIES**  
**(continued)**

**Page**

*Parents for Privacy v. Barr*  
949 F.3d 1210 (9th Cir. 2020)..... 16

*Phillips v. City of New York*  
775 F.3d 538 (2nd Cir. 2015)..... 12, 13, 16, 17

*Prince v. Massachusetts*  
321 U.S. 158 (1944)..... 12, 13

*Romer v. Evans*  
517 U.S. 620 (1996)..... 16

*San Antonio Independent School Dist. v. Rodriguez*  
411 U.S. 1 (1973)..... 24

*Serrano v. Priest*  
5 Cal.3d 584 (1971) ..... 24

*Sherr v. Northport-East Northport Union Free School Dist.*  
672 F. Supp. 81 (E.D.N.Y. 1987)..... 24

*Snoeck v. Brussa*  
153 F.3d 984 (9th Cir. 1998)..... 10

*Sprewell v. Golden State Warriors*  
266 F.3d 979 (9th Cir. 2001)..... 9

*Stormans, Inc. v. Wiesman*  
794 F.3d 1064 (9th Cir. 2015)..... 16

*Tandon v. Newsom*  
\_\_ U.S. \_\_ (2021)..... 17, 22

*Torrey-Love v. State of California Dep't of Educ.*  
No. ED-CV-162410-DMG, 2017 WL 11636240 (C.D. Cal. Jan. 12,  
2017) ..... 10, 13, 15

*Vernonia School District 47J v. Acton*  
515 U.S. 646 (1995)..... 25

1  
2  
3  
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**TABLE OF AUTHORITIES**  
**(continued)**

**Page**

*Walker v. Superior Court*  
47 Cal.3d 112 (1988) ..... 12

*Warren v. Fox Family Worldwide, Inc.*  
328 F.3d 1136 (9th Cir. 2003).....9

*We The Patriots USA, Inc. v. Connecticut Off. of Early Childhood Dev.*  
76 F.4th 130 (2d Cir. 2023).....*passim*

*We The Patriots USA, Inc. v. Hochul*  
17 F.4th 266 (2d Cir. 2021).....22

*Whitlow v. California*  
203 F.Supp.3d 1079 (S.D. Cal. 2016) ..... 13, 15

*Wisconsin v. Yoder*  
406 U.S. 205 (1972) ..... 15

*Workman v. Mingo County Sch.*  
667 F. Supp.2d 679 (S.D. W. Va. 2009)..... 13

*Ex parte Young*  
209 U.S. 123 (1908).....10

*Zamani v. Carnes*  
491 F.3d 990 (9th Cir. 2007).....9

*Zucht v. King*  
260 U.S. 174 (1922).....12

**STATUTES**

United States Code, Title 20  
§ 1415(j) .....23

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
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14  
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25  
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27  
28

**TABLE OF AUTHORITIES**  
**(continued)**

	<b><u>Page</u></b>
California Education Code	
§ 48851.5 .....	23
§ 48852.7(a).....	22
§ 48852.7(c)(3) .....	22
§ 48853.5(f)(1).....	22
§ 48853.5(f)(8)(A)-(B).....	22
§ 48853.5(f)(8)(C) .....	23
§ 56026.....	6
California Health & Safety Code	
§ 120325(a).....	5, 24
§ 120325(c).....	3, 5
§ 120325(e).....	5
§ 120325 <i>et seq.</i> .....	16
§ 120330 .....	11
§ 120335(b) .....	3
§ 120335(b)(11) .....	6
§ 120335(f) .....	6, 25
§ 120335(h) .....	6
§ 120338 .....	6, 19
§ 120340 .....	11, 22
§ 120341(b) .....	22
§ 120370(a).....	7, 21, 25
§ 120370(a)(1)-(2) .....	7, 21, 25
§ 120372 .....	7
§ 120372(a).....	7
§ 120372(a)(1) .....	11
§ 120372(a)(2)(C).....	21
§ 120372(a)(2)(G).....	22
§ 120372(b) .....	11
§ 120372(c)-(d).....	7
§ 120372(d) .....	11
§ 120372(d)(3)(A) .....	21
§ 120372(d)(7)-(8) .....	11
California Statutes 1995 Regular Session, Chapter 291	
§ 1.....	3

1  
2  
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**TABLE OF AUTHORITIES**  
**(continued)**

	<b><u>Page</u></b>
California Statues 1961 Regular Session, Chapter 837	
§ 1.....	3
California Statues 1967 Regular Session, Chapter 1021	
§ 1.....	3
California Statues 1971 Regular Session, Chapter 833	
§ 1.....	3
California Statues 1977 Regular Session, Chapter 1176	
§ 2.....	3
California Statues 1979 Regular Session, Chapter 435	
§ 1.....	3
California Statues 1992 Regular Session, Chapter 1320	
§§ 1-2 .....	3
California Statues 1999 Regular Session, Chapter 747	
§§ 1-2 .....	3
California Statues 2019 Regular Session, Chapter 278	
§ 1(c)(1)-(2) .....	6
California Statues 2019, Chapter 278	
§ 1(f).....	2
§ 1(g).....	2
Individuals with Disabilities Education Act .....	5
 <b>CONSTITUTIONAL PROVISIONS</b>	
First Amendment .....	<i>passim</i>
Eleventh Amendment.....	1, 9, 11
California Constitution Article V	
§ 13.....	10

1  
2  
3  
4  
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7  
8  
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27  
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**TABLE OF AUTHORITIES**  
**(continued)**

**Page**

**COURT RULES**

Federal Rules of Civil Procedure

Rule 12(b)(1) .....	9
Rule 12(b)(6) .....	9

**OTHER AUTHORITIES**

California Code of Regulations, Title 17

§ 6035(a)(3) .....	7, 22
§ 6035(b) .....	7
§ 6035(d)(1) .....	23
§ 6050 .....	7
§ 6050(a) .....	22
§ 6051 .....	7
§ 6051(a) .....	22
§ 6060 .....	7

California Senate Bill No. 277 (Cal. Stats 2015 ch. 35) .....	1
---	---

<a href="https://www.ca.gov/archive/gov39/2018/04/02/governor-brown-announces-appointments-32/index.html">https://www.ca.gov/archive/gov39/2018/04/02/governor-brown-announces-appointments-32/index.html</a> .....	19
---	----

<a href="https://www.facebook.com/RichardPanMD/posts/10156459101775674">https://www.facebook.com/RichardPanMD/posts/10156459101775674</a> / .....	19
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**INTRODUCTION**

1  
2 Rob Bonta, in his official capacity as Attorney General of California, moves to  
3 dismiss Plaintiffs’ First Amended Complaint for injunctive and declaratory relief.  
4 Plaintiffs challenge California Senate Bill No. 277 (Cal. Stats 2015 ch. 35) (SB  
5 277), which eliminated the personal belief exemption from California’s compulsory  
6 school vaccination law in 2015. Plaintiffs allege that requiring vaccination of their  
7 children to attend school in an institutional classroom setting infringes on their  
8 religious beliefs in violation of the First Amendment. But courts have repeatedly  
9 upheld compulsory school vaccination laws against Free Exercise challenges and  
10 SB 277 has already survived three such challenges. This Court similarly granted  
11 Attorney General Bonta’s motion to dismiss Plaintiffs’ original complaint, but  
12 granted leave to amend to allow Plaintiffs an opportunity to allege additional facts  
13 to support their theories that (1) the introduction and passage of SB 277  
14 demonstrates hostility to religion, and (2) conditional admission provisions treat  
15 secular activity more favorably than religious exercise. Order Granting  
16 Defendant’s Motion to Dismiss With Leave to Amend (Order) at 10:18–21, 14:26–  
17 28, ECF No. 15.

18 Plaintiffs’ First Amended Complaint (FAC), ECF No. 16, remains deficient.  
19 First, it should be dismissed under Eleventh Amendment immunity because  
20 Attorney General Bonta has no enforcement nexus to the laws challenged. Second,  
21 Plaintiffs’ amended allegations fail to demonstrate that the enactment of SB 277  
22 exhibited hostility towards religion such that it should be subject to strict scrutiny  
23 review. Third, Plaintiffs’ amended allegations fail to demonstrate that comparable  
24 secular activity is treated more favorably than religious exercise. The conditional  
25 admission of specified categories of children, who remain subject to the vaccination  
26 requirements, is not comparable. The limited exemptions for independent study  
27 and home-based private school education also are not comparable. SB 277 is a  
28 neutral and generally applicable law that meets rational basis review.

1 Even if SB 277 were not neutral or generally applicable, it satisfies strict  
 2 scrutiny. This is because SB 277 is a narrowly tailored law that carefully balanced  
 3 the interests of protecting the health and safety of students and the community, with  
 4 students' educational rights. Thus, while it repealed the personal belief exemption,  
 5 which had become a broad loophole undermining public health, it also created  
 6 limited exemptions protecting students' right to access education.

7 For these reasons, Plaintiffs fail to allege facts sufficient to "raise a right to  
 8 relief above the speculative level" to the "plausible" level. *Bell Atlantic Corp. v.*  
 9 *Twombly*, 550 U.S. 544, 556 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 679-680,  
 10 (2009). Plaintiffs' First Amended Complaint should be dismissed with prejudice.

## 11 BACKGROUND

### 12 A. History of Immunization Requirements in California

13 As the recent COVID-19 pandemic illustrated, vaccination is one of the  
 14 greatest public health achievements in preventing death and illness due to  
 15 communicable diseases. *See* Request for Judicial Notice (RJN) Ex. 9.3.  
 16 Vaccination reduces a person's risk of infection to a disease by working with the  
 17 body's natural defenses to help it safely develop immunity to that disease. *Id.* at  
 18 9.2. While vaccination provides individual immunity, it is also critical to  
 19 developing "community immunity" or "herd immunity." *See id.* at 9.4–9.5; RJN  
 20 Ex. 19.3; Cal. Stats. 2019, ch. 278, § 1(f). This is when a significant portion of the  
 21 population has become immune to a disease, such that the transmission of disease  
 22 from person to person becomes unlikely. *See* RJN Ex. 9.4–9.5, Ex. 19.3; Cal. Stats.  
 23 2019, ch. 278, § 1(g). Herd immunity protects the health of those who are  
 24 unvaccinated (including those who are immunocompromised or too young to  
 25 receive vaccinations) and lessens the risk of outbreaks. *Id.* For highly contagious  
 26 diseases, like measles, herd immunity is reached when approximately 95 percent of  
 27 the local population is fully immunized. RJN Ex. 9.2.

28 For the past century, states have relied on school vaccination requirements to

1 increase vaccination rates, reduce the incidence of childhood disease, and reduce  
 2 community spread of disease. *See Love v. State Dept. of Education*, 29 Cal.App.5th  
 3 980, 992 (2018) (“compulsory immunization has long been recognized as the gold  
 4 standard for preventing the spread of contagious diseases”). California’s school  
 5 immunization scheme was implemented in 1961, requiring immunization against  
 6 polio for all students entering public or private school in California. *See* Cal. Stats.  
 7 1961 Reg. Sess., ch. 837, § 1; FAC at 5 (¶ 26). The law allowed two exemptions: if  
 8 a parent or guardian submitted to a school’s governing authority “a letter stating  
 9 that immunization [was] contrary to” the parents’ beliefs, or if they submitted a  
 10 letter from a physician stating immunization was “not considered safe” based on the  
 11 child’s physical condition or medical circumstances. *Ibid.* Over the next 40 years,  
 12 the Legislature expanded the list of required immunizations after careful  
 13 consideration of the public health risks of these diseases, costs to the state and  
 14 health system, communicability, and transmission rates. *See* Cal. Stats. 1967 Reg.  
 15 Sess., ch. 1021, § 1; Cal. Stats. 1971 Reg. Sess., ch. 833, § 1; Cal. Stats. 1977 Reg.  
 16 Sess., ch. 1176, § 2; Cal. Stats. 1979 Reg. Sess., ch. 435, § 1; Cal. Stats. 1992 Reg.  
 17 Sess., ch. 1320, §§ 1–2; Cal. Stats. 1995 Reg. Sess., ch. 291, § 1; Cal. Stats. 1999  
 18 Reg. Sess., ch. 747, §§ 1–2. The Legislature also added other institutionalized  
 19 childcare settings to the law. *See* Cal. Stats. 1992 Reg. Sess., ch. 1320, § 1.  
 20 Personal beliefs and medical exemptions continued. *See, e.g.*, Cal. Stats. 1999 Reg.  
 21 Sess., ch. 747, § 1 (former Cal. Health & Safe. Code, § 120325, subd. (c)).

22 Over the past 25 years, the law has consistently required any student attending  
 23 public or private childcare center or daycare, elementary school and high school in  
 24 California to be immunized against 10 diseases: diphtheria, haemophilus influenzae  
 25 type b, measles, mumps, pertussis (whooping cough), polio, rubella, tetanus,  
 26 hepatitis B, and varicella (chickenpox). Cal. Health & Safe. Code § 120335(b)<sup>1</sup>;

27 \_\_\_\_\_  
 28 <sup>1</sup> All further statutory references are to the California Health and Safety Code unless otherwise noted.

1 RJN Ex. 9.4. These diseases pose serious health risks to children, some life-  
2 threatening. *Id.* These diseases, except tetanus, can be spread by contact with  
3 infected children.<sup>2</sup> *Id.*

4 **B. Senate Bill 277 and removal of the Personal Belief Exemption**

5 In 2015, the State Legislature passed SB 277, which primarily removed the  
6 personal belief exemption from the school vaccination requirements. *See* RJN Ex.  
7 1.1. SB 277 was prompted by a measles outbreak in late 2014 and early 2015 that  
8 was spread in large part because of communities with large numbers of  
9 unvaccinated people. *See* RJN Ex. 4.4, 4.8, 9.2, 9.5. During that outbreak, around  
10 131 California residents contracted measles and 19 percent were hospitalized. *Id.* at  
11 9.5. A CDC report on the outbreak indicated that 45 percent of the California  
12 patients were known to be unvaccinated and 43 percent had “unknown or  
13 undocumented vaccination status.” *See* RJN Ex. 20.1; 21.8. The overwhelming  
14 majority of the vaccine-eligible but unvaccinated patients were intentionally not  
15 vaccinated due to personal beliefs; the majority were children. RJN Ex. 20.1.

16 In considering SB 277, the Legislature reviewed alarming evidence of falling  
17 vaccination levels in communities across the State, alongside a rise in personal  
18 belief exemptions submitted by parents to excuse their children from school  
19 vaccination requirements. This included a report showing that more than a quarter  
20 of California schools had measles-immunization rates below the threshold  
21 recommended by the CDC. RJN Ex. 9.5. At the same time, the number of  
22 personal-belief exemptions had tripled between 2000 and 2013—from 1 percent of  
23 kindergarteners in 2000, to 3.15 percent by 2013. *Id.* at 9.2; *see Love*, 29  
24 Cal.App.5th at 987. Legislative analysis found these trends were connected, stating  
25 that “Studies find that when belief exemptions to vaccination guidelines are  
26 permitted, vaccination rates decrease.” RJN Ex. 9.5.

27 \_\_\_\_\_  
28 <sup>2</sup> While tetanus is not communicable by contact with others, the Legislature  
included it because it is highly fatal and easily preventable by vaccination. *Id.*

1           The high rates of unvaccinated children in some local communities was  
2 particularly concerning. The Legislature reviewed evidence that vaccination rates  
3 varied widely across the state, in part because research demonstrated that people  
4 with lower vaccine acceptance tend to group together in communities. RJN Ex. 9.5.  
5 Communities with low vaccination rates were not only more susceptible to  
6 outbreaks, but made it “difficult to control the spread of disease and [made the  
7 State] vulnerable to having the virus re-establish itself.” *Id.* Studies documented  
8 clusters of schools with high rates of personal belief exemptions in suburbs of  
9 various California cities. *Id.* Perhaps most alarming was that, “in certain  
10 geographic pockets of California, [personal belief] exemption rates [we]re 21  
11 percent or more.” *Id.* at 9.2 and Ex. 4.2.

12           SB 277 drew fervent support and opposition. *See* RJN Ex. 7.8. Supporters  
13 presented removing the personal belief exemption as a means to make schools safer  
14 from outbreaks, to protect infants too young for vaccination, to protect  
15 immunocompromised students, and to protect the community at large from  
16 outbreaks. *Id.* at 7.7–7.8. Opponents raised parental rights concerns, and argued  
17 that the removal of personal belief exemptions would infringe on “mandated rights  
18 of services to students with disabilities under the federal [Individuals with  
19 Disabilities Education Act (IDEA)].” *Id.* at 7.20.

20           In adopting SB 277, the Legislature stated its intent to provide “[a] means for  
21 the eventual achievement of total immunization of appropriate age groups” for the  
22 ten childhood diseases covered within the law, as well as other diseases deemed  
23 appropriate by the California Department of Public Health. § 120325(a). It also  
24 intended the school vaccine law to include a medical exemption, and to incentivize  
25 “public health authorities to design innovative and creative programs that will  
26 promote and achieve full and timely immunization of children.” § 120325(c), (e).

27           The Legislature’s intent was not strictly limited to the prevention of  
28 transmission of disease, as suggested by Paragraph 34 of the First Amended

1 Complaint. FAC at 6 (¶ 34). The legislative analysis for SB 277 consistently stated  
2 that “School vaccine requirements are thought to serve an important public health  
3 function . . . .” RJN Ex. 4.3, 8.5, 10.4. In addition, the legislative analysis noted  
4 that each of the ten diseases encompassed in California’s vaccination requirement  
5 was added “after careful consideration of the public health risks of these diseases,  
6 cost to the state and health system, communicability, and rates of transmission.”  
7 RJN Ex. 10.4, *and see* 8.4 (“Vaccine-preventable diseases have a costly impact,  
8 resulting in doctor’s visits, hospitalizations, and premature deaths.”).

9 SB 277 removed the personal belief exemption from the school vaccination  
10 law, while keeping the medical exemption and adding two further limitations. The  
11 first was an exemption for “a student in a home-based private school or a pupil who  
12 is enrolled in an independent study program . . . *and does not receive classroom-*  
13 *based instruction.*” § 120335(f), italics added. Second, responding to opponents’  
14 concerns, the Legislature added a provision that the law “does not prohibit a pupil  
15 who qualifies for an individualized education program, pursuant to federal law and  
16 Education Code section 56026, from accessing any special education and related  
17 services required by his or her individualized education program.” § 120335(h). It  
18 also authorized the Department to add to the list of required vaccines for school  
19 entry without Legislative action, subject to the condition that any such additional  
20 immunizations must include exemptions for both medical reasons and personal  
21 beliefs. §§ 120335(b)(11); 120338.

22 After an initial increase in statewide school vaccination rates immediately  
23 following the passage of SB 277, immunization rates showed signs of decline. *See*  
24 RJN Ex. 17.1, 22.1. By the 2018–2019 school year, the Legislature found that 16  
25 percent of California counties had kindergarten immunization rates below 90  
26 percent. *See* RJN Ex. 19.3, Cal. Stats. 2019 Reg. Sess., ch. 278, § 1(c)(1)–(2). At  
27 the same time, in the three years immediately after the personal-belief exemption  
28 was eliminated, the rate of medical exemptions tripled. *See* RJN Ex. 21.7. This

1 increase in medical exemptions was associated with physicians issuing exemptions  
2 “without medically-justified contraindications” and “a small number of unethical  
3 physicians” selling medical exemptions for profit. *See id.* at 21.7, 21.9.

4 In response, the Legislature adopted SB 276 in 2019 to prevent misuse of the  
5 medical exemption. Cal. Stats. 2019 Reg. Sess., ch. 278. Among other changes,  
6 the bill enacted objective criteria and standardized requirements for medical  
7 exemption certifications, and a process for state-level review of medical exemptions  
8 in limited situations. § 120372(a), (c)-(d). In the two years after the bill’s passage,  
9 medical exemptions fell 70 percent for kindergarteners and around 75 percent for  
10 seventh graders. *See* RJN Exs. 16.3, 16.5 (from 1% to 0.3%), Ex. 23.3, 23.9.

11 Under SB 277 and subsequent statutory changes, to obtain a medical  
12 exemption, a licensed physician must state in writing that “the physical condition of  
13 the child is such, or medical circumstances relating to the child are such, that  
14 immunization is not considered safe.” § 120370(a), current §120370(a)(1)–(2).  
15 Medical exemptions may be temporary in duration or permanent, depending on the  
16 child’s condition. § 120372; Cal. Code Regs., tit. 17, §§ 6035(a)(3), 6050, 6051.  
17 Medical exemptions are limited to the specific vaccination or vaccinations that are  
18 medically contraindicated; the child must otherwise obtain all other required  
19 vaccinations. *Id.* When the medical exemption is temporary, the child must obtain  
20 the exempted vaccination within the time set forth by the attesting physician. Cal.  
21 Code Regs., tit. 17, § 6035(a)(3), (b). The school district must monitor for  
22 compliance every thirty days. *Id.*

23 Schools are required to maintain a list of all students who are not completely  
24 immunized, whether exempted or conditionally admitted. Cal. Code Regs., tit. 17,  
25 § 6060. In the event the school has good cause to believe a student who is not fully  
26 immunized against a particular communicable disease may have been exposed to  
27 the disease, the school must immediately notify the local health officer and may  
28 require exclusion of the student until the student no longer poses a health risk. *Id.*



1 hostility towards religion “as evidenced by the comments of legislators diminishing  
 2 the sincerely held religious beliefs of parents.” *Id.* at 11 (¶¶ 100–101). While those  
 3 basic allegations have not changed from the original complaint, Plaintiffs attempt to  
 4 bolster their hostility theory in Paragraphs 58 through 65 of their FAC. Finally,  
 5 they claim that SB 277’s removal of the personal beliefs exemption is not narrowly  
 6 tailored because students with allowed medical exemptions are treated differently  
 7 and pose the same contagion hazards as students who would seek exemption based  
 8 on religious beliefs. *Id.* at 16–17 (¶¶ 102–108).

### 9 LEGAL STANDARD

10 The party asserting federal subject matter jurisdiction bears the burden of  
 11 establishing its existence. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S.  
 12 375, 377 (1994). A jurisdictional challenge under Rule 12(b)(1) may be made  
 13 either on the face of the pleadings or based upon extrinsic evidence. *Warren v. Fox*  
 14 *Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003). A complaint may be  
 15 dismissed under Rule 12(b)(6) for failure to state a claim “where there is no  
 16 cognizable legal theory or an absence of sufficient facts alleged to support a  
 17 cognizable legal theory.” *Zamani v. Carnes*, 491 F.3d 990, 996 (9th Cir. 2007). In  
 18 considering if a complaint states a claim, a court must accept as true all of the  
 19 material factual allegations in it, but need not accept as true allegations that  
 20 contradict matters properly subject to judicial notice” or “are merely conclusory,  
 21 unwarranted deductions of fact, or unreasonable inferences.” *Sprewell v. Golden*  
 22 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (citation omitted).

### 23 ARGUMENT

#### 24 **I. ATTORNEY GENERAL BONTA ENJOYS ELEVENTH AMENDMENT** 25 **SOVEREIGN IMMUNITY AND SHOULD BE DISMISSED FROM SUIT UNDER** 26 **RULE 12(B)(1) AND 12(B)(6)**

27 Attorney General Bonta should be dismissed under Eleventh Amendment  
 28 sovereign immunity because he does not have any direct connection to or  
 responsibility for enforcement of any law challenged in this lawsuit. The Eleventh

1 Amendment generally bars federal lawsuits brought against a state. “It does not,  
2 however, bar actions for prospective declaratory or injunctive relief against state  
3 officers in their official capacities for their alleged violations of federal law.” *Coal.*  
4 *to Defend Affirmative Action v. Brown*, 674 F.3d 1128, 1134 (9th Cir. 2012), citing  
5 *Ex parte Young*, 209 U.S. 123, 155–56 (1908). For the *Ex parte Young* exception to  
6 apply, the official must have “some connection” with enforcement of the  
7 challenged act. *Ex parte Young*, 209 U.S. at 157; *Nat’l Audubon Soc’y, Inc. v.*  
8 *Davis*, 307 F.3d 835, 847 (9th Cir. 2002).

9 The nexus required “must be fairly direct; a generalized duty to enforce state  
10 law or general supervisory power over the persons responsible for enforcing the  
11 challenged provision will not subject an official to suit.” *Snoeck v. Brussa*, 153  
12 F.3d 984, 986 (9th Cir. 1998). The relevant inquiry then is “whether a named state  
13 official has direct authority and practical ability to enforce the challenged statute.”  
14 *Nat’l Audubon Soc’y*, 307 F.3d at 846.

15 Plaintiffs fail to plausibly allege that Attorney General Bonta has direct  
16 authority to enforce SB 277. They simply reference the Attorney General’s general  
17 constitutional duties as the state’s chief legal officer under Article V, section 13 of  
18 the California Constitution. FAC at 5 (¶ 21). They fail to allege any facts beyond  
19 their conclusory statement that Attorney General Bonta is “authorized to enforce  
20 SB 277.” *Id.* To the extent Plaintiffs rely on the Attorney General’s general duty to  
21 enforce State law as its “chief legal officer,” the Ninth Circuit and California  
22 district courts have repeatedly held that this is insufficient. *See e.g., Bolbol v.*  
23 *Brown*, 120 F. Supp. 3d 1010, 1018 (N.D. Cal. 2015); *Torrey-Love v. State of*  
24 *California Dep’t of Educ.*, No. ED-CV-162410-DMG (DTBx), 2017 WL 11636240,  
25 at \*3 (C.D. Cal. Jan. 12, 2017) (dismissing Governor and Attorney General from  
26 challenge to SB 277).

27 Plaintiffs fail to identify any actual provision in State law—including any  
28 criminal law—that confers direct enforcement authority of SB 277 to the Attorney

1 General. Nor could they. SB 277 on its face does not include criminal law  
2 provisions and does not confer any enforcement power to the Attorney General.  
3 Rather, the statute expressly confers such power to the California Department of  
4 Public Health. The Department of Public Health, with the consultation of the  
5 California Department of Education, has the express authority to “adopt and  
6 enforce all regulations necessary to carry out” the vaccine requirements. § 120330.  
7 Otherwise, enforcement of the vaccine requirement is carried out in the first  
8 instance by local school districts, who statutorily are responsible for collecting  
9 immunization records and requiring adherence. *See, e.g.*, § 120340. For its part,  
10 the Department of Public Health is responsible for maintaining the California  
11 Immunization Registry and administering the medical exemption process, including  
12 reviewing medical exemptions submitted to the registry and denying improper  
13 medical exemptions. § 120372(a)(1), (b), (d). And, in the case of physician misuse  
14 of medical exemptions, the statute directs the Department of Public Health to refer  
15 the matter to the Medical Board of California or the Osteopathic Medical Board of  
16 California—not the Attorney General. § 120372 (d)(7)-(8). There simply is no  
17 criminal liability for a parent under SB 277, much less criminal liability directly  
18 subject to Attorney General enforcement. Without such a direct connection,  
19 Attorney General Bonta enjoys Eleventh Amendment sovereign immunity from suit  
20 and the First Amended Complaint should be dismissed with prejudice.

## 21 **II. PLAINTIFFS FAIL TO STATE A COGNIZABLE FIRST AMENDMENT CLAIM**

### 22 **A. It is well settled that mandatory vaccination laws without** 23 **religious exemptions do not offend the First Amendment**

24 The authority of the California Legislature to require student vaccinations to  
25 protect the health and safety of other students and the public at large, irrespective of  
26 their parents’ personal beliefs, is firmly embedded in our jurisprudence and  
27 embodies a quintessential function of government to protect its people from  
28 preventable harm. The State has an unquestionably legitimate and compelling

1 interest in protecting public health and safety, as recognized by the Supreme Court  
2 in *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905), which upheld  
3 the constitutionality of a state’s smallpox vaccination requirement and recognized  
4 state’s ability to make vaccination a pre-condition to enter or remain in public  
5 schools. *Id.* at 32. Following *Jacobson*, the Supreme Court reiterated that “it is  
6 within the police power of a state to provide for compulsory vaccination” in *Zucht*  
7 *v. King*, 260 U.S. 174, 175–177 (1922). The Supreme Court further held in *Prince*  
8 *v. Massachusetts*, 321 U.S. 158 (1944), that “neither the rights of religion nor rights  
9 of parenthood are beyond limitation,” and both can be interfered with when  
10 necessary to protect a child. *Id.*, at 166. In so holding, it reaffirmed that a parent  
11 “cannot claim freedom from compulsory vaccination for the child more than for  
12 himself on religious grounds. The right to practice religion freely does not include  
13 liberty to expose the community or the child to communicable disease or the latter  
14 to ill health or death.” *Id.*

15 California courts reached the same conclusion. In *Walker v. Superior Court*,  
16 47 Cal.3d 112 (1988), the California Supreme Court agreed that “parents have no  
17 right to free exercise of religion at the price of a child’s life, regardless of the  
18 prohibitive or compulsive nature of the governmental infringement.” *Id.*, at 140,  
19 citing *Jacobson* and *Prince*. Similarly, in *French v. Davidson*, 143 Cal. 658 (1904),  
20 the Court upheld a municipal vaccination requirement, explaining that “the proper  
21 place to commence in the attempt to prevent the spread of a contagion was among  
22 the young, where they were kept together in considerable numbers in the same  
23 room for long hours each day . . . children attending school occupy a natural class  
24 by themselves, more liable to contagion, perhaps, than any other class that we can  
25 think of.” *Id.* at 662.

26 Since *Jacobson*, *Zucht*, *Prince*, *Abeel*, and *French*, *supra*, federal and state  
27 courts have repeatedly upheld mandatory vaccination laws over constitutional  
28 challenges, frequently citing *Jacobson*. *See. e.g., Phillips v. City of New York*, 775

1 F.3d 538, 543 (2nd Cir. 2015); *Workman v. Mingo County Sch.*, 667 F. Supp.2d  
2 679, 690-691 (S.D. W. Va. 2009); *Boone v. Boozman*, 217 F. Supp.2d 938, 956  
3 (E.D. Ark. 2002); *Hanzel v. Arter*, 625 F. Supp. 1259 (S.D. Ohio 1985); *Maricopa*  
4 *County Health Dept. v. Harmon*, 750 P.2d 1364 (Ariz. 1987).

5 In California, district and state courts previously rejected First Amendment  
6 Free Exercise claims against SB 277 in four cases. First, in *Whitlow v. California*,  
7 203 F.Supp.3d 1079, 1085–86 (S.D. Cal. 2016), the district court found that the  
8 plaintiffs were unlikely to prevail on their free exercise arguments against SB 277.  
9 The *Whitlow* plaintiffs alleged that SB 277 violated the Free Exercise Clause of the  
10 First Amendment by (1) failing to provide a religious exemption to the vaccination  
11 mandate; (2) forcing parents to choose between faith dictates and their children’s  
12 education; and (3) offering secular exemptions (medical, home schooling and  
13 Individual Education Plan (IEP)) while failing to provide a religious exemption. *Id.*  
14 Relying on *Workman*, *Phillips*, and *Prince*, the court reasoned that plaintiffs were  
15 unlikely to prevail on their first two arguments: because the right to free exercise  
16 does not outweigh the state’s interest in public health and safety, mandatory  
17 vaccination as a condition to school admission does not violate the Free Exercise  
18 Clause. *Id.* at 1086. The court also rejected plaintiffs’ secular exemption argument  
19 because a majority of the Circuit Courts of Appeal refused to find that providing a  
20 secular exemption necessarily requires a religious exemption. *Id.* at 1086–87,  
21 citing *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 651  
22 (10th Cir. 2006).

23 In *Torrey-Love v. State of California Dep't of Educ.*, *supra*, 2017 WL  
24 11636240, at \*3–\*4, the Central District dismissed, with prejudice, the  
25 plaintiffs’ substantive due process and equal protection challenges to SB 277. The  
26 *Torrey-Love* court rejected plaintiffs’ theories that SB 277 violated rights to refuse  
27 medical treatment and asserted rights to education. *Id.*

28 In *Brown v. Smith*, 24 Cal.App.5th 1135, 1144–45 (2018) the appellate court

1 rejected claims that SB 277 violated California’s constitutional freedom of religion  
2 clause. The court relied on federal authority in reaching its conclusion and further  
3 reasoned that, even if it applied strict scrutiny, SB 277 still survived. *Id.* at 1145.

4 Finally, the court in *Love v. State Dep’t of Educ.*, 29 Cal.App.5th 980, 988–  
5 995 (2018) rejected additional constitutional challenges to SB 277. *Love* followed  
6 the rationale in *Brown* and rejected the plaintiffs’ free exercise claim, as well. *Id.* at  
7 996.

8 Significantly, these decisions have been relied upon and reaffirmed in recent  
9 challenges to other states’ vaccination laws repealing religious exemptions. *See We*  
10 *The Patriots USA, Inc. v. Connecticut Off. of Early Childhood Dev.*, 76 F.4th 130,  
11 137, 147–148 (2d Cir. 2023), *petition for cert. filed*, (upholding dismissal of a Free  
12 Exercise challenge to a Connecticut law that repealed the state’s religious  
13 exemption to vaccination requirements); *F.F. v. State*, 194 A.D.3d 80, 87–88 (N.Y.  
14 App. Div. 2021) (upholding New York’s repeal of its specific religious belief  
15 exemption); *Milford Christian Church v. Russell-Tucker*, No. 3:23-CV-304 (VAB),  
16 2023 WL 8358016, at \*11 (D. Conn. Dec. 1, 2023) (dismissing challenge to related  
17 Connecticut law); *see also Doe v. San Diego Unified School District*, 19 F.4th 1173  
18 (9th Cir. 2021) (upholding school district’s COVID-19 vaccine mandate). Nothing  
19 in this lawsuit upsets the seminal decisions discussed above.

20 *F.F.* is also significant because the court rejected assertions that comments by  
21 legislators representing less than three percent of the voting body demonstrated  
22 religious animus. *F.F. v. State*, 194 A.D.3d at 86. The court further found that  
23 comments critical of parents who may be abusing the repealed religious belief  
24 exemption provision did not demonstrate religious animus because it actually  
25 displayed a concern that it was individuals with non-religious beliefs who were the  
26 abusers and that various anti-vaxxers with secular based objections to vaccination  
27 were exploiting the state’s religious beliefs exemption. *Id.* at 87. The court  
28 concluded that the statute repealing the exemption was a law of general

1 applicability because “the sole purpose of the repeal is to make the vaccine  
 2 requirement generally applicable to the public at large in order to achieve herd  
 3 immunity.” *Id.* at 88. The court thus concluded that given the state’s significant  
 4 public health concern, the repeal of New York’s religious exemption provision was  
 5 supported by rational basis and did not violate the Free Exercise Clause. *Id.*

6 **B. SB 277’s repeal of California’s prior personal beliefs exemption**  
 7 **does not violate the Free Exercise Clause**

8 Here, Plaintiffs’ claims continue to fail for the same reasons articulated by the  
 9 courts in *Whitlow*, *Brown*, *Torrey-Love*, *Love*, *We The Patriots*, and *F.F.* Indeed,  
 10 the conclusion is more compelling in relation to SB 277, which repealed a personal  
 11 beliefs exemption, as compared to the specific religion based exemptions repealed  
 12 in *We The Patriots* and *F.F.*

13 **1. Personal beliefs are not protected under the Free Exercise**  
 14 **Clause**

15 The Free Exercise Clause does not protect subjectively held personal beliefs  
 16 against mandatory vaccination laws. In *Wisconsin v. Yoder*, 406 U.S. 205 (1972)  
 17 (*Yoder*), our Supreme Court held that “*philosophical and personal . . . belief[s]*  
 18 *[do] not rise to the demands of the Religion Clauses.*” *Id.*, at 216 (italics added).  
 19 In *Hanzel*, plaintiffs objected to the immunization of their children because they  
 20 believed that the injection of foreign substances into the body is of no benefit and  
 21 can only be harmful. *Hanzel*, 625 F.Supp. at 1260. The *Hanzel* court disagreed,  
 22 stating, “[a]s made clear by the Supreme Court in *Yoder*, philosophical beliefs do  
 23 not receive the same deference in our legal system as do religious beliefs, even  
 24 when the aspirations flowing from each such set of beliefs coincide.” *Id.* at 1265.  
 25 Here SB 277 eliminated a personal beliefs exemption. Because SB 277 eliminated  
 26 a personal beliefs exemption, it does not violate the First Amendment’ Free  
 27 Exercise Clause.  
 28

1                   **2. SB 277 is rationally related to a legitimate State interest**

2           Even presuming some of the Plaintiffs’ objections can be characterized as  
 3 religious, rather than as personal subjective beliefs, Plaintiffs’ assertion that strict  
 4 scrutiny is the applicable standard of review for their claims is wrong. FAC at 17  
 5 (¶ 108). “The right to exercise one’s religion freely . . . ‘does not relieve an  
 6 individual of the obligation to comply with a valid and neutral law of general  
 7 applicability on the ground that the law proscribes (or prescribes) conduct that  
 8 [one’s] religion prescribes (or proscribes).’” *Stormans, Inc. v. Wiesman*, 794 F.3d  
 9 1064, 1075 (9th Cir. 2015) (quoting *Emp’t Div. v. Smith*, 494 U.S. 872, 879  
 10 (1990)). “[A] law that is neutral and of general applicability need not be justified  
 11 by a compelling governmental interest even if the law has the incidental effect of  
 12 burdening a particular religious practice.” *Church of the Lukumi Babalu Aye, Inc.*  
 13 *v. City of Hialeah*, 508 U.S. 520, 531 (1993).

14           SB 277 is neutral and of general applicability; it applies to all children in  
 15 public and private schools and childcare facilities. *See* § 120325 *et seq.* Thus,  
 16 rational basis review is the correct level of scrutiny. *See also Phillips*, 775 F.3d at  
 17 543, fn.5 (finding that “no court appears ever to have held” that *Jacobson* now  
 18 demands strict scrutiny); *Parents for Privacy v. Barr*, 949 F.3d 1210, 1234 (9th Cir.  
 19 2020) (courts look to both the text and the actual operation of a law to determine  
 20 whether it is neutral and generally applicable).

21           “[T]he rational-basis standard . . . employs a relatively relaxed standard.”  
 22 *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 314 (1976). A law is  
 23 upheld “so long as it bears a rational relation to some legitimate end.” *Romer v.*  
 24 *Evans*, 517 U.S. 620, 631(1996). “[C]ourts are compelled . . . to accept a  
 25 legislature’s generalizations even when there is an imperfect fit between means and  
 26 ends.” *Heller v. Doe by Doe*, 509 U.S. 312, 321 (1993). “[A] legislative choice is  
 27 not subject to courtroom fact[-]finding and may be based on rational speculation  
 28 unsupported by evidence or empirical data . . . . A statute is presumed constitutional

1 . . . and [t]he burden is on the one attacking the legislative arrangement to negate  
2 every conceivable basis which might support it.” *Id.* at 320–21.

3 Plaintiffs cannot plausibly assert their claims because it is well-established that  
4 immunization laws, such as SB 277, are rationally related to legitimate state  
5 interests. The U.S. Supreme Court, the California Supreme Court, and numerous  
6 other federal and state courts have uniformly held that state immunization laws  
7 serve a rational, if not a compelling, state interest in protecting the public from the  
8 spread of communicable diseases. This interest was recognized by the U.S.  
9 Supreme Court in *Jacobson* over 110 years ago and is consistently affirmed today.  
10 *See, e.g., Phillips*, 775 F.3d at 542.

11 SB 277 is rationally related to a legitimate state interest of protecting the  
12 public from the spread of debilitating, and potentially fatal, diseases, as its  
13 legislative history confirms: “Vaccine coverage at the community level is vitally  
14 important for people too young to receive immunizations and [for] those unable to  
15 receive immunizations due to medical reasons.” RJN Ex. 7.6. “[W]hen belief  
16 exemptions to vaccination guidelines are permitted, vaccination rates decrease.” *Id.*  
17 at Ex. 9.5. “Given the highly contagious nature of [these] diseases . . . vaccination  
18 rates of up to 95% are necessary to preserve herd immunity and prevent future  
19 outbreaks.” *Id.* at Ex. 7.5.

20 **III. PLAINTIFFS’ SECOND ATTEMPT TO ALLEGE RELIGIOUS ANIMUS IN THE**  
21 **ENACTMENT OF SB 277 FAILS**

22 Plaintiffs again rely on *Tandon v. Newsom*, \_\_ U.S. \_\_, 141 S.Ct. 1294, 1296  
23 (2021) and *Fulton v. City of Philadelphia*, \_\_ U.S. \_\_, 141 S.Ct. 1868, 1877 (2023)  
24 and their conclusory allegations of religious animus and differential treatment as a  
25 means of shifting analysis of SB 277 from rational basis review to strict scrutiny.  
26 FAC at 16–17 (¶¶ 98–107). However, the analysis in *We The Patriots* and *F.F.*  
27 shows that *Tandon* and *Fulton* are inapplicable here, and Plaintiffs claims fail even  
28 with the additional allegations set forth in the FAC.

1 To fail the neutrality prong based on an asserted religious animus, “it is not  
 2 enough for a law to simply *affect* religious practice; the law or the process of its  
 3 enactment must demonstrate ‘hostility’ to religion.” *We The Patriots USA, Inc. v.*  
 4 *Connecticut Off. of Early Childhood Dev.*, 76 F.4th 130, 145 (2d Cir. 2023) (*We*  
 5 *The Patriots*), citing *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rts. Comm’n*, —  
 6 U.S. —, 138 S. Ct. 1719, 1729, 201 L.Ed.2d 35 (2018). “Factors relevant to the  
 7 assessment of governmental neutrality include ‘the historical background of the  
 8 decision under challenge, the specific series of events leading to the enactment or  
 9 official policy in question, and the legislative or administrative history, including  
 10 contemporaneous statements made by members of the decisionmaking body.’”  
 11 *Masterpiece Cakeshop, Ltd.*, at 138 S. Ct. 1731.<sup>3</sup>

12 *We The Patriots* and *F.F.* rejected assertions of religious animus based on the  
 13 fact that there was legislative debate over religious beliefs and the removal of  
 14 preexisting religion based exemptions. *We The Patriots*, 76 F.4th at 148–149; *F.F.*,  
 15 194 A.D.3d at 86–88. Here, the legislative history for SB 277 shows respectful and  
 16 considered debate over the removal of California’s personal beliefs exemption, with  
 17 a recognition that removal of California’s neutral personal beliefs exemption would  
 18 incidentally impact the subset personal belief exemptions based on religion. *See*,  
 19 *e.g.*, RJN Exs. 7.3, 7.7–7.13, 7.16–7.18. It shows no animosity. *Id.*<sup>4</sup> Nor does it  
 20 show differential treatment. *Id.* Instead, it shows the removal of California’s  
 21 personal beliefs exemption applied equally to all Californians who may have any  
 22 personal beliefs against vaccination, regardless of whether those beliefs may be  
 23 religious in nature. *Id.* It further shows an intent to narrowly tailor impact of the

24 \_\_\_\_\_  
 25 <sup>3</sup> Plaintiffs’ religious animus contention places the legislative history of SB  
 277 directly in issue.

26 <sup>4</sup> Plaintiffs’ additional reliance on CDPH’s updated FAQs to assert religious  
 27 animus fails. FAC at 16 (¶ 100, n. 6). First, CDPH’s updated FAQs were issued  
 28 after SB 277 took effect and therefore cannot demonstrate animus in SB 277’s  
 enactment. *See* RJN Ex. 18.1. Second, CDPH’s updated FAQs demonstrates that  
 SB 277’s removal of personal beliefs exemption applied equally to all Californians  
 and made no distinction between secular or religious beliefs. *Id.*

1 removal of the personal beliefs exemption by limiting it to the ten specified  
 2 mandatory vaccinations and by adding a provision that if CDPH updates the list to  
 3 include any new mandatory vaccinations, those vaccinations must include personal  
 4 belief exemptions. RJN Ex. 7.17–7.18; § 120338.

5 Plaintiffs’ new allegations at paragraphs 58, 59, and 62 through 64, and their  
 6 continuation of the same allegations of purported statements by Senator Richard  
 7 Pan and Maral Farsi, Governor Brown’s Deputy Director of Legislative and Inter-  
 8 Governmental Affairs, fail to demonstrate hostility towards religion. Neither  
 9 statement ascribed to Senator Pan or Maral Farsi, as referenced in the First  
 10 Amended Complaint, state anything about religion or religious beliefs. FAC at 10  
 11 (¶¶ 60–61). Further, judicially noticeable matter demonstrates that the statements  
 12 ascribed to Senator Pan and Maral Farsi occurred well after the passage of SB 277,  
 13 and therefore have no connection sufficient to demonstrate hostility to religion in  
 14 the passage of SB 277. RJN Exs. 24–26.<sup>5</sup> Nor do Plaintiffs adequately allege how  
 15 statements by one state senator and a deputy director in the governor’s office after  
 16 SB 277’s passage result in a bill that was passed based on religious animus. In the  
 17 absence of allegations showing actual religious animus in connection with the  
 18 enactment of SB 277, Plaintiffs conclusory allegations do not overcome the express  
 19 legislative history showing that the Legislature was considerate of all personal  
 20 belief exemption proponents in evaluating elimination of the personal beliefs  
 21 exemption. *See, e.g.*, RJN Exs. 7.9–7.22, 9.7–9.12.

22 The legislative history demonstrates that SB 277 was introduced in the wake  
 23 of the 2015 measles outbreak in California and reports from the CDC that there  
 24 were more measles outbreaks in January of 2015 than any one month in the 20

25 <sup>5</sup> SB 277 was passed in 2016. The proffered statements by Senator Pan were  
 26 in 2019. *See* <https://www.facebook.com/RichardPanMD/posts/10156459101775674/>. Likewise,  
 27 Maral Farsi was appointed as Governor Brown’s Deputy Director of Legislative  
 28 and Inter-Governmental Affairs in April of 2018, well after the passage of SB 277.  
*See* <https://www.ca.gov/archive/gov39/2018/04/02/governor-brown-announces-appointments-32/index.html>.

1 years prior. RJN at Exs. 4.2, 5.5. SB 277’s author’s statement further identified  
 2 concerns over the significant rise in PBEs—a 337 percent increase between 2000  
 3 and 2012—with some areas of California having PBE rates as high as 21%, “which  
 4 places our communities at risk for preventable disease.” *Id.* These are all neutral  
 5 grounds concerned with public health and addressing low vaccination rates. There  
 6 is no demonstrable religious animus behind the introduction and passage of SB 277,  
 7 especially when SB 277 passed by margins of over 60%. *See* RJN Ex. 2 (vote of 25  
 8 to 11 in Senate and 46 to 31 in Assembly). Plaintiffs conclusory assertions that the  
 9 statements “*diminish* the sincerely held religious beliefs of parents across  
 10 California” are insufficient. FAC at 10 (¶ 62). That does not satisfy the  
 11 requirement to show hostility towards religion and religious beliefs in the  
 12 enactment of a law. *We The Patriots*, 76 F.4th at 145; *Masterpiece Cakeshop*, 138  
 13 S. Ct. at 1729; *and see Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1177  
 14 (9th Cir. 2021). Plaintiffs’ religious animus allegations fail.

15 **IV. PLAINTIFFS’ ALLEGATIONS THAT SB 277 TREATS COMPARABLE**  
 16 **SECULAR ACTIVITY MORE FAVORABLY THAN RELIGIOUS EXERCISE FAIL**

17 Plaintiffs rely on *Fulton* for their allegation that SB 277 treats comparable  
 18 secular activity more favorably, thereby shifting analysis from rational basis review  
 19 to strict scrutiny. FAC at 16–17 (¶¶ 99, 102–108). Plaintiffs continue to rely on  
 20 assertions that SB 277’s medical exemption entails individualized discretionary  
 21 review, thus warranting strict scrutiny. *Id.* at 17 (¶¶ 105–107). Plaintiffs also  
 22 continue to rely on provisions allowing conditional admission of migrant students,  
 23 homeless children, foster youth and children of military families to support their  
 24 assertion of comparable secular activity being treated more favorably. *Id.* at 8–9  
 25 (¶¶ 43–51). However, even with their additional allegations, Plaintiffs fail to  
 26 establish grounds for strict scrutiny. SB 277 treated all personal beliefs, religious  
 27 or otherwise, the same in eliminating California’s allowance of PBEs to vaccination  
 28 in their entirety. *Does 1-6 v. Mills*, 16 F.4th 20, 30 (1st Cir. 2021), cert. den. 142 S.

1 Ct. 1112 (2022) (“The state legislature removed both religious and philosophical  
2 exemptions from mandatory vaccination requirements, and thus did not single out  
3 religion alone.”) Further, the proffered secular medical exemption and conditional  
4 admissions are not comparable.

5 On medical exemptions, the analysis in *We The Patriots* rejecting assertions of  
6 individualized determinations applies equally to California’s medical exemption.  
7 The *We The Patriots* Court reasoned that the use of “shall be exempt” in the  
8 medical exemption language made the exemptions mandatory upon a showing of  
9 that the requirements for a medical exemption have been met, and therefore there is  
10 no individualized determination because the exemption must be granted. *We The*  
11 *Patriots*, 76 F.4th at 150–151. Here, California’s medical exemption provision  
12 contains similar “shall be exempt” language which makes the exemption mandatory  
13 upon the presentation of a physician’s written statement attesting to the basis for the  
14 medical exemption. RJN Ex. 1.4; § 120370(a), current § 120370(a)(1). Further,  
15 medical exemptions and the California Department of Public Health’s review of  
16 those exemptions follow established medical standards of care and related vaccine  
17 contraindication criteria established by the Centers for Disease Control’s Advisory  
18 Committee on Immunization and the American Academy of Pediatrics. §  
19 120372(a)(2)(C) and (d)(3)(A). There simply are no individualized determinations  
20 under California’s medical exemption provision.

21 As recognized in *Doe v. San Diego Unified Sch. Dist.*, allowing for medical  
22 exemptions based on medically contraindicated conditions “serves the primary  
23 interest for imposing the mandate—protecting student ‘health and safety’—and so  
24 does not undermine the [state’s] interests as a [PBE] would.” *Doe v. San Diego*  
25 *Unified Sch. Dist.*, 19 F.4th at 11778, citing in part to *Fulton*, 141 S. Ct. at 1877  
26 (“A law . . . lacks general applicability if it prohibits religious conduct while  
27 permitting secular conduct that undermines the government’s asserted interests in a  
28 similar way”); *Does 1-6 v. Mills*, 16 F.4th at 30–31 (exempting from vaccination

1 only those whose health would be endangered by vaccination did not undermine  
2 state’s interest in requiring healthcare worker vaccination for COVID-19); *We The*  
3 *Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 282, 285, 289–290 (2d Cir. 2021) cert.  
4 den. sub. nom. *Dr. A. v. Hochul*, 142 S. Ct. 2569 (2022) (medical exemption did not  
5 undermine state’s interest; medical exemption not rendered discretionary where  
6 statute relied on accepted medical standards); *Tandon v. Newsom*, — U.S. —, 141  
7 S. Ct. 1294, 1296 (2021) (“[W]hether two activities are comparable for purposes of  
8 the Free Exercise Clause must be judged against the asserted government interest  
9 that justifies the regulation at issue”). Finally, medical exemptions are not  
10 comparable to PBEs because medical exemptions may be of limited duration. §  
11 120372(a)(2)(G); Cal. Code Regs., tit. 17, § 6035(a)(3). Medical exemptions only  
12 exempt the specific vaccination or vaccinations that are medically  
13 contraindicated—all other vaccinations are still required. Cal. Code Regs., tit. 17,  
14 §§ 6050(a), 6051(a). By comparison, PBEs would apply to all vaccination and for  
15 the student’s entire education. *See Doe v. San Diego Unified Sch. Dist.*, 19 F.4th at  
16 1178. They are not comparable.

17 Plaintiffs’ conclusory allegations of purported exemptions for homeless,  
18 immigrant, foster youth and military children fail because these are not exemptions  
19 from the mandatory vaccination requirements, nor are they comparable. First, the  
20 provisions governing homeless, immigrant and foster youth contemplate that the  
21 children will be remaining in their school of origin where they would already have  
22 been immunized prior to admission, unless otherwise exempted. *See* Cal. Edu.  
23 Code §§ 48852.7(a), 48853.5(f)(1). It is only when the child seeks to move schools  
24 that the provisions allow for conditional admission pending the school obtaining or  
25 the child providing proof of vaccination status or otherwise completing the required  
26 vaccinations. *See* §§ 120340, 120341(b); Cal. Edu. Code §§ 48852.7(c)(3),  
27 48853.5(f)(8)(A)–(B). School officials are required to contact the child’s school of  
28 origin within *two* business days to obtain copies of the child’s records, including

1 vaccination records. Cal. Edu. Code § 48853.5(f)(8)(C). Similarly, school districts  
2 have liaisons whose duties include assisting with arranging for medical services  
3 where any required vaccinations can be obtained. *See* Cal. Edu. Code § 48851.5.

4       These provisions for temporary admission recognize that homeless, foster, and  
5 immigrant youth often lack access to vaccination records due to their current  
6 circumstances, or may otherwise need a limited period of time to complete  
7 mandatory vaccinations. Under regulations governing conditional admissions,  
8 conditionally admitted students are provided 30 days to either provide their records  
9 of immunization or to obtain the required immunizations. Cal. Code Regs., tit. 17,  
10 § 6035(d)(1). Conditional admissions for a short period of time do “not raise a  
11 serious question concerning the mandate’s general applicability.” *Doe v. San Diego*  
12 *Unified Sch. Dist.*, 19 F.4th 1173, 1179 (9th Cir. 2021) (analyzing school district’s  
13 mandatory COVID-19 vaccination requirement allowing conditional admission for  
14 a limited period under specified circumstances).

15       Plaintiffs’ conclusory independent study and IEP assertions similarly fail.  
16 FAC at 6–7 (¶¶ 38–39). First, federal law requires implementation of IEPs. *See* 20  
17 U.S.C. § 1415(j); *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th at 1179. State law  
18 was thus required to accommodate access to IEP services. Second, students  
19 engaged in independent study without classroom instruction or specifically  
20 accessing federally mandated IEP services are not necessarily placed in an  
21 institutionalized classroom setting where they interact with multiple students over  
22 the entire school day. Thus, allowing access to independent study and federally  
23 mandated IEP services does not pose the same risks as PBEs which would allow  
24 full access to the classroom setting. It “is unlikely that the ‘risk’ to the  
25 government’s asserted interest posed by this provision would qualify as  
26 ‘comparable’ to the risk posed by” PBEs. *Doe v. San Diego Unified Sch. Dist.*, 19  
27 F.4th at 1180. Plaintiffs offer no allegations otherwise.  
28

1 Hence, Plaintiffs’ claim fails as a matter of law because the Legislature’s  
 2 removal of the personal beliefs exemption in SB 277 is rationally related to a  
 3 legitimate, if not a compelling, state interest in protecting the health and safety of  
 4 public school students and the general public.

5 **V. SB 277 WITHSTANDS STRICT SCRUTINY ANALYSIS**

6 Even if the Court presumes strict scrutiny applies, SB 277 withstands the  
 7 analysis. Strict scrutiny review is a two-prong test. First, the State “bears the  
 8 burden of establishing . . . that it has a [c]ompelling interest which justifies the  
 9 law.” *Serrano v. Priest*, 5 Cal.3d 584, 597 (1971). Second, the State must  
 10 demonstrate that the law “is ‘tailored’ narrowly to serve legitimate objectives and  
 11 that it has selected the ‘less drastic means’ for effectuating its objectives.” *San*  
 12 *Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 17 (1973). The State  
 13 satisfies both of these burdens.

14 As discussed in detail above, *Jacobson* and its progeny have unequivocally  
 15 held that immunization laws are justified because they serve a compelling state  
 16 interest in protecting public health and safety. *Jacobson*, 197 U.S. at 35 (“the  
 17 legislature has the right to pass laws which, according to the common belief of the  
 18 people, are adapted to prevent the spread of contagious diseases”); *see also Sherr v.*  
 19 *Northport-East Northport Union Free School Dist.*, 672 F. Supp. 81, 88 (E.D.N.Y.  
 20 1987) (holding there is a “compelling interest . . . in fighting the spread of  
 21 contagious diseases through mandatory inoculation programs”).

22 In enacting SB 277, the Legislature expressed its intent “to provide . . . [a]  
 23 means for the eventual achievement of total immunization of appropriate age  
 24 groups” against these childhood diseases. § 120325(a). In so doing, the Legislature  
 25 understood that “[p]rotecting the individual and the community from communicable  
 26 diseases . . . is a core function of public health.” RJN Ex. 7.7. Moreover, the  
 27 enactment of SB 277 was a reasoned response to escalating numbers of  
 28 unvaccinated children and outbreaks of dangerous communicable diseases. *Id.* at

1 Exs. 9.2, 12.5, 13.7-13.8. This is the same overarching goal and interest found  
2 valid in *We The Patriots* at 156 and *F.F.* at 88.

3 SB 277 is narrowly tailored to serve this compelling interest. It does not  
4 mandate vaccination for all contagious diseases, but only those that the Legislature  
5 determined are “very serious” and that “pose very real health risks to children.” *See*  
6 RJN Ex. 11.4. It contains appropriate but limited exemptions for children with  
7 medical conditions that would make vaccination unsafe. RJN Ex. 1.4; § 120370(a),  
8 current § 120370(a)(1)–(2). The law provides an exception for children who are  
9 homeschooled or enrolled in independent study programs that do not involve  
10 communal classroom settings. § 120335(f). SB 277 also provides an exception  
11 related to students who receive individualized education services. *Id.* at (h). Thus,  
12 California’s mandatory vaccination requirement is narrowly directed to institutional  
13 settings of public and private schools and daycare facilities where the State has a  
14 compelling interest in protect all children who attend those institutions. *See* RJN  
15 Ex. 7.3, 7.6–7.8; *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995).

16 SB 277 withstands constitutional scrutiny.

17 **CONCLUSION**

18 For the reasons set forth above, Plaintiffs’ cause of action for violation of the  
19 Free Exercise Clause of the First Amendment fails to state a claim. The motion to  
20 dismiss should be granted without leave to amend.

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Respectfully submitted,

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