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

15 **SARA ROYCE; SARAH CLARK;**  
 16 **TIFFANY BROWN; and KRISTI**  
 17 **CARAWAY,**  
 18 Plaintiffs,  
 19 v.  
 20 **ROB BONTA, in his official capacity**  
 21 **as Attorney General of California,**  
 22 **TOMÁS ARAGÓN, in his official**  
 23 **capacity as the State Public Health**  
 24 **Officer,**  
 25 Defendants.

23-CV-2012-H-BLM  
**MEMORANDUM OF POINTS AND**  
**AUTHORITIES IN SUPPORT OF**  
**MOTION TO DISMISS SECOND**  
**AMENDED COMPLAINT FOR**  
**INJUNCTIVE AND**  
**DECLARATORY RELIEF**  
 Date: October 21, 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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**INTRODUCTION**

Plaintiffs challenge California Senate Bill No. 277 (Cal. Stats 2015 ch. 35) (SB 277), which eliminated the personal belief exemption from California’s compulsory school vaccination law in 2015. Plaintiffs allege that requiring vaccination of their children to attend school in an institutional classroom setting infringes on their religious beliefs in violation of the First Amendment. But courts have repeatedly upheld compulsory school vaccination laws against Free Exercise challenges, and SB 277 already survived four such challenges. This Court similarly granted Attorney General Bonta’s motion to dismiss Plaintiffs’ original complaint, but with leave to amend to allow Plaintiffs an opportunity to allege additional facts to support their theories that (1) the introduction and passage of SB 277 demonstrated hostility to religion, and (2) conditional admission provisions treat secular activity more favorably than religious exercise. Order Granting Defendant’s Motion to Dismiss (Order) at 10:18–21, 14:26–28, ECF No. 15.

Plaintiffs’ Second Amended Complaint (SAC), ECF No. 32, remains deficient despite adding State Public Health Officer Tomás Aragón as a new defendant. First, it should be dismissed under Eleventh Amendment immunity as to Attorney General Bonta because he has no enforcement nexus to the laws challenged. Second, Plaintiffs’ amended allegations fail to demonstrate that the enactment of SB 277 exhibited hostility towards religion such that it should be subjected to strict scrutiny review. Third, Plaintiffs’ amended allegations fail to demonstrate that comparable secular activity is treated more favorably than religious exercise. The conditional admission of specified categories of children, who remain subject to the vaccination requirements, is not comparable. The limited exemptions for independent study and home-based private school education are not comparable. SB 277 is a neutral and generally applicable law that meets rational basis review.

Even if SB 277 were not neutral or generally applicable, it satisfies strict scrutiny. This is because SB 277 is a narrowly tailored law that carefully balanced

1 the interests of protecting the health and safety of students and the community, with  
2 students’ educational rights. Thus, while it repealed the personal belief exemption,  
3 which had become a broad loophole undermining public health, it also created  
4 limited exemptions protecting students’ right to access education.

5 Plaintiffs thus fail to allege facts sufficient to “raise a right to relief above the  
6 speculative level” to the “plausible” level. *Bell Atlantic Corp. v. Twombly*, 550  
7 U.S. 544, 556 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 679-680, (2009). Plaintiffs’  
8 Second Amended Complaint should be dismissed with prejudice.

## 9 **BACKGROUND**

### 10 **A. History of immunization requirements in California**

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

26 For the past century, states have relied on school vaccination requirements to  
27 increase vaccination rates, reduce the incidence of childhood disease, and reduce  
28 community spread of disease. *See Love v. State Dept. of Education*, 29 Cal.App.5th

1 980, 992 (2018) (“compulsory immunization has long been recognized as the gold  
2 standard for preventing the spread of contagious diseases”). California’s school  
3 immunization scheme was implemented in 1961, requiring immunization against  
4 polio for all students entering public or private school in California. *See* Cal. Stats.  
5 1961 Reg. Sess., ch. 837, § 1; SAC at 6 (¶ 27). The law allowed two exemptions: if  
6 a parent or guardian submitted to a school’s governing authority “a letter stating  
7 that immunization [was] contrary to” the parents’ beliefs, or if they submitted a  
8 letter from a physician stating immunization was “not considered safe” based on the  
9 child’s physical condition or medical circumstances. *Ibid.* Over the next 40 years,  
10 the Legislature expanded the list of required immunizations after careful  
11 consideration of the public health risks of these diseases, costs to the state and  
12 health system, communicability, and transmission rates. *See* Cal. Stats. 1967 Reg.  
13 Sess., ch. 1021, § 1; Cal. Stats. 1971 Reg. Sess., ch. 833, § 1; Cal. Stats. 1977 Reg.  
14 Sess., ch. 1176, § 2; Cal. Stats. 1979 Reg. Sess., ch. 435, § 1; Cal. Stats. 1992 Reg.  
15 Sess., ch. 1320, §§ 1–2; Cal. Stats. 1995 Reg. Sess., ch. 291, § 1; Cal. Stats. 1999  
16 Reg. Sess., ch. 747, §§ 1–2. The Legislature also added other institutionalized  
17 childcare settings to the law. *See* Cal. Stats. 1992 Reg. Sess., ch. 1320, § 1.  
18 Personal beliefs and medical exemptions continued. *See, e.g.*, Cal. Stats. 1999 Reg.  
19 Sess., ch. 747, § 1 (former Cal. Health & Safe. Code, § 120325, subd. (c)).

20 Over the past 25 years, the law has consistently required any student attending  
21 public or private childcare center or daycare, elementary school and high school in  
22 California to be immunized against 10 diseases: diphtheria, haemophilus influenzae  
23 type b, measles, mumps, pertussis (whooping cough), polio, rubella, tetanus,  
24 hepatitis B, and varicella (chickenpox). Cal. Health & Safe. Code § 120335(b)<sup>1</sup>;  
25 RJN Ex. 9.4. These diseases pose serious health risks to children, some life-  
26 threatening. *Id.* These diseases, except tetanus, can be spread by contact with

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

1 infected children.<sup>2</sup> *Id.*

2 **B. Senate Bill 277 and Removal of the Personal Beliefs Exemption**

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

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

25 The high rates of unvaccinated children in some local communities were  
26 particularly concerning. The Legislature reviewed evidence that vaccination rates

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 varied widely across the state, in part because research demonstrated that people  
2 with lower vaccine acceptance tend to group together in communities. RJN Ex. 9.5.  
3 Communities with low vaccination rates were more susceptible to outbreaks and  
4 made it “difficult to control the spread of disease and [made the State] vulnerable to  
5 having the virus re-establish itself.” *Id.* Studies documented clusters of schools  
6 with high rates of personal beliefs exemptions in suburbs of various California  
7 cities. *Id.* Perhaps most alarming was that “in certain geographic pockets of  
8 California, [personal belief] exemption rates [we]re 21 percent or more.” *Id.* at 9.2  
9 and Ex. 4.2.

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

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

25 The legislative intent was not strictly limited to the prevention of transmission  
26 of disease, as suggested by Paragraph 35 of the Second Amended Complaint. SAC  
27 at 6 (¶ 35). The legislative analysis for SB 277 consistently stated that “School  
28 vaccine requirements are thought to serve an important public health function . . . .”

1 RJN Ex. 4.3, 8.5, 10.4. In particular, each of the ten diseases encompassed in  
2 California’s vaccination requirement was added “after careful consideration of the  
3 public health risks of these diseases, cost to the state and health system,  
4 communicability, and rates of transmission.” RJN Exh. 10.4, *and see* 8.4  
5 (“Vaccine-preventable diseases have a costly impact, resulting in doctor’s visits,  
6 hospitalizations, and premature deaths.”).

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

20 After an initial increase in statewide school vaccination rates immediately  
21 following the passage of SB 277, immunization rates showed signs of decline. *See*  
22 RJN Ex. 17.1, 22.1. By the 2018–2019 school year, the Legislature found that 16  
23 percent of California counties had kindergarten immunization rates below 90  
24 percent. *See* RJN Ex. 19.3, Cal. Stats. 2019 Reg. Sess., ch. 278, § 1(c)(1)–(2). At  
25 the same time, in the three years immediately after the personal beliefs exemption  
26 was eliminated, the rate of medical exemptions tripled. *See* RJN Ex. 21.7. This  
27 increase in medical exemptions was associated with physicians issuing exemptions  
28 “without medically-justified contraindications” and “a small number of unethical

1 physicians” selling medical exemptions for profit. *See id.* at 21.7, 21.9.

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

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

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

27  
28



1 hostility towards religion “as evidenced by the comments of legislators diminishing  
 2 the sincerely held religious beliefs of parents.” *Id.* at 16 (¶¶ 99–100). While those  
 3 basic allegations have not changed from the original complaint, Plaintiffs attempt to  
 4 bolster their hostility theory in Paragraphs 57 through 64 of their SAC. 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 (¶¶ 101–107).

### 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 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. SAC at 5 (¶ 21). To the extent Plaintiffs rely on the  
19 Attorney General’s general duty to enforce State law as its “chief legal officer,” the  
20 Ninth Circuit and California district courts have repeatedly held that this is  
21 insufficient. *See e.g., Bolbol v. Brown*, 120 F. Supp. 3d 1010, 1018 (N.D. Cal.  
22 2015); *Torrey-Love v. State of California Dep’t of Educ.*, No. ED-CV-162410-  
23 DMG (DTBx), 2017 WL 11636240, at \*3 (C.D. Cal. Jan. 12, 2017) (dismissing  
24 Governor and Attorney General from challenge to SB 277).

25 Plaintiffs fail to identify any actual provision in State law—including any  
26 criminal law—that confers direct enforcement authority of SB 277 to the Attorney  
27 General, because there is none. SB 277 does not include criminal law provisions  
28 and does not confer any enforcement power to the Attorney General. Rather, the

1 statute expressly confers such power to the California Department of Public Health  
 2 (CDPH). CDPH, with the consultation of the California Department of Education,  
 3 has the express authority to “adopt and enforce all regulations necessary to carry  
 4 out” the vaccine requirements. § 120330. Otherwise, enforcement of the vaccine  
 5 requirement is carried out in the first instance by local school districts, who are  
 6 statutorily responsible for collecting immunization records and requiring adherence.  
 7 *See, e.g.*, § 120340. For its part, CDPH is responsible for maintaining the  
 8 California Immunization Registry and administering the medical exemption  
 9 process, including reviewing medical exemptions submitted to the registry and  
 10 revoking improper medical exemptions. § 120372(a)(1), (b), (d). And, in the case  
 11 of physician misuse of medical exemptions, the statute directs CDPH to refer the  
 12 matter to the Medical Board of California or the Osteopathic Medical Board of  
 13 California—not the Attorney General. § 120372 (d)(7)-(8). There simply is no  
 14 criminal liability for a parent under SB 277, much less criminal liability directly  
 15 subject to Attorney General enforcement. Without such a direct connection,  
 16 Attorney General Bonta enjoys Eleventh Amendment sovereign immunity from suit  
 17 and he should be dismissed with prejudice from the Second Amended Complaint.

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

### 19 **A. It is well settled that mandatory vaccination laws without** 20 **religious exemptions do not offend the First Amendment**

21 The authority of the California Legislature to require student vaccinations to  
 22 protect the health and safety of other students and the public at large, irrespective of  
 23 their parents’ personal beliefs, is firmly embedded in our jurisprudence and  
 24 embodies a quintessential function of government to protect its people from  
 25 preventable harm. The State has an unquestionably legitimate and compelling  
 26 interest in protecting public health and safety, as recognized by the Supreme Court  
 27 in *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905), which upheld  
 28 the constitutionality of a state’s smallpox vaccination requirement and recognized

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

12 California courts reached the same conclusion. In *Walker v. Superior Court*,  
13 47 Cal.3d 112 (1988), the California Supreme Court agreed that “parents have no  
14 right to free exercise of religion at the price of a child’s life, regardless of the  
15 prohibitive or compulsive nature of the governmental infringement.” *Id.*, at 140.  
16 Similarly, in *French v. Davidson*, 143 Cal. 658 (1904), the Court upheld a  
17 municipal vaccination requirement, explaining that “the proper place to commence  
18 in the attempt to prevent the spread of a contagion was among the young, where  
19 they were kept together in considerable numbers in the same room for long hours  
20 each day . . . children attending school occupy a natural class by themselves, more  
21 liable to contagion, perhaps, than any other class that we can think of.” *Id.* at 662.

22 Since *Jacobson*, *Zucht*, *Prince*, *Abeel*, and *French*, *supra*, federal and state  
23 courts have repeatedly upheld mandatory vaccination laws over constitutional  
24 challenges. *See. e.g., Phillips v. City of New York*, 775 F.3d 538, 543 (2nd Cir.  
25 2015); *Workman v. Mingo County Sch.*, 667 F. Supp.2d 679, 690-691 (S.D. W. Va.  
26 2009); *Boone v. Boozman*, 217 F. Supp.2d 938, 956 (E.D. Ark. 2002); *Hanzel v.*  
27 *Arter*, 625 F. Supp. 1259 (S.D. Ohio 1985); *Maricopa County Health Dept. v.*  
28 *Harmon*, 750 P.2d 1364 (Ariz. 1987).

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

19 In *Torrey-Love v. State of California Dep't of Educ.*, *supra*, 2017 WL  
20 11636240, at \*3–\*4, the Central District dismissed, with prejudice, the plaintiffs’  
21 substantive due process and equal protection challenges to SB 277. The *Torrey-*  
22 *Love* court rejected plaintiffs’ theories that SB 277 violated rights to refuse medical  
23 treatment and asserted rights to education. *Id.*

24 In *Brown v. Smith*, 24 Cal.App.5th 1135, 1144–45 (2018) the appellate court  
25 rejected claims that SB 277 violated California’s constitutional freedom of religion  
26 clause. The court relied on federal authority in reaching its conclusion and further  
27 reasoned that, even if it applied strict scrutiny, SB 277 still survived. *Id.* at 1145.

28 Finally, in *Love v. State Dep't of Educ.*, 29 Cal.App.5th 980, 988–995 (2018),

1 the court rejected additional constitutional challenges to SB 277. *Love* followed  
2 *Brown* and rejected the plaintiffs’ free exercise claim, as well. *Id.* at 996.

3       Significantly, these decisions have been relied upon and reaffirmed in recent  
4 challenges to other states’ vaccination laws repealing religious exemptions. *See We*  
5 *The Patriots USA, Inc. v. Connecticut Off. of Early Childhood Dev.*, 76 F.4th 130,  
6 137, 147–148 (2d Cir. 2023), *cert. denied* 2024 WL 3089546 (*We The Patriots*)  
7 (upholding dismissal of a Free Exercise challenge to a Connecticut law that  
8 repealed the state’s religious exemption to vaccination requirements); *F.F. v. State*,  
9 194 A.D.3d 80, 87–88 (N.Y. App. Div. 2021) (upholding New York’s repeal of its  
10 specific religious belief exemption); *Milford Christian Church v. Russell-Tucker*,  
11 No. 3:23-CV-304 (VAB), 2023 WL 8358016, at \*11 (D. Conn. Dec. 1, 2023)  
12 (dismissing challenge to related Connecticut law); *see also Doe v. San Diego*  
13 *Unified School District*, 19 F.4th 1173 (9th Cir. 2021) (upholding school district’s  
14 COVID-19 vaccine mandate). Nothing in this lawsuit upsets the seminal decisions  
15 discussed above.

16       *F.F.* is also significant because the court rejected assertions that comments by  
17 legislators representing less than three percent of the voting body demonstrated  
18 religious animus. *F.F. v. State*, 194 A.D.3d at 86. The court further found that  
19 comments critical of parents who may be abusing the repealed religious belief  
20 exemption did not demonstrate religious animus—it displayed a concern that  
21 individuals with non-religious beliefs were the abusers and that various individuals  
22 with secular based anti-vaccine objections to vaccination were exploiting the state’s  
23 religious beliefs exemption. *Id.* at 87. The court concluded that the statute  
24 repealing the exemption was a law of general applicability because “the sole  
25 purpose of the repeal is to make the vaccine requirement generally applicable to the  
26 public at large in order to achieve herd immunity.” *Id.* at 88. The court thus  
27 concluded that given the state’s significant public health concern, the repeal of New  
28

1 York’s religious exemption provision was supported by rational basis and did not  
2 violate the Free Exercise Clause. *Id.*

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

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

10 **1. Personal beliefs are not protected under the Free Exercise**  
11 **Clause**

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

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

25 Even presuming some of the Plaintiffs’ objections can be characterized as  
26 religious, rather than as personal subjective beliefs, Plaintiffs’ assertion that strict  
27 scrutiny is the applicable standard of review for their claims is wrong. SAC at 17  
28 (¶ 107). “The right to exercise one’s religion freely . . . ‘does not relieve an

1 individual of the obligation to comply with a valid and neutral law of general  
2 applicability on the ground that the law proscribes (or prescribes) conduct that  
3 [one’s] religion prescribes (or proscribes).” *Stormans, Inc. v. Wiesman*, 794 F.3d  
4 1064, 1075 (9th Cir. 2015) (quoting *Emp’t Div. v. Smith*, 494 U.S. 872, 879  
5 (1990)). “[A] law that is neutral and of general applicability need not be justified  
6 by a compelling governmental interest even if the law has the incidental effect of  
7 burdening a particular religious practice.” *Church of the Lukumi Babalu Aye, Inc.*  
8 *v. City of Hialeah*, 508 U.S. 520, 531 (1993).

9 SB 277 is neutral and of general applicability; it applies to all children in  
10 public and private schools and childcare facilities. *See* § 120325 *et seq.* Thus,  
11 rational basis review is the correct level of scrutiny. *See also Phillips*, 775 F.3d at  
12 543, fn.5 (finding that “no court appears ever to have held” that *Jacobson* now  
13 demands strict scrutiny); *Parents for Privacy v. Barr*, 949 F.3d 1210, 1234 (9th Cir.  
14 2020) (courts look to both the text and the actual operation of a law to determine  
15 whether it is neutral and generally applicable).

16 “[T]he rational-basis standard . . . employs a relatively relaxed standard.”  
17 *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 314 (1976). A law is  
18 upheld “so long as it bears a rational relation to some legitimate end.” *Romer v.*  
19 *Evans*, 517 U.S. 620, 631(1996). “[C]ourts are compelled . . . to accept a  
20 legislature’s generalizations even when there is an imperfect fit between means and  
21 ends.” *Heller v. Doe by Doe*, 509 U.S. 312, 321 (1993). “[A] legislative choice is  
22 not subject to courtroom fact[-]finding and may be based on rational speculation  
23 unsupported by evidence or empirical data . . . . A statute is presumed constitutional  
24 . . . and [t]he burden is on the one attacking the legislative arrangement to negate  
25 every conceivable basis which might support it.” *Id.* at 320–21.

26 Plaintiffs cannot plausibly assert their claims because it is well-established that  
27 immunization laws, such as SB 277, are rationally related to legitimate state  
28 interests. The U.S. Supreme Court, the California Supreme Court, and numerous

1 other federal and state courts have uniformly held that state immunization laws  
 2 serve a rational, if not a compelling, state interest in protecting the public from the  
 3 spread of communicable diseases. This interest was recognized by the U.S.  
 4 Supreme Court in *Jacobson* over 110 years ago and is consistently affirmed today.  
 5 *See, e.g., Phillips*, 775 F.3d at 542.

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

### 15 **III. PLAINTIFFS’ ATTEMPT TO ALLEGE RELIGIOUS ANIMUS IN THE** 16 **ENACTMENT OF SB 277 FAILS**

17 Plaintiffs again rely on *Tandon v. Newsom*, \_\_ U.S. \_\_, 141 S.Ct. 1294, 1296  
 18 (2021) and *Fulton v. City of Philadelphia*, \_\_ U.S. \_\_, 141 S.Ct. 1868, 1877 (2023)  
 19 and their conclusory allegations of religious animus and differential treatment as a  
 20 means of shifting analysis of SB 277 from rational basis review to strict scrutiny.  
 21 SAC at 16–17 (¶¶ 97–107). However, the analysis in *We The Patriots* and *F.F.*  
 22 shows that *Tandon* and *Fulton* are inapplicable here, and Plaintiffs’ claims fail even  
 23 with the additional allegations set forth in the SAC.

24 To fail the neutrality prong based on an asserted religious animus, “it is not  
 25 enough for a law to simply *affect* religious practice; the law or the process of its  
 26 enactment must demonstrate ‘hostility’ to religion.” *We The Patriots*, 76 F.4th at  
 27 145, citing *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rts. Comm’n*, \_\_ U.S. \_\_, 138  
 28 S. Ct. 1719, 1729 (2018). “Factors relevant to the assessment of governmental

1 neutrality include ‘the historical background of the decision under challenge, the  
2 specific series of events leading to the enactment or official policy in question, and  
3 the legislative or administrative history, including contemporaneous statements  
4 made by members of the decisionmaking body.’” *Masterpiece Cakeshop, Ltd.*, at  
5 138 S. Ct. 1731.<sup>3</sup>

6 *We The Patriots* and *F.F.* rejected assertions of religious animus based on the  
7 fact that there was legislative debate over religious beliefs and the removal of  
8 preexisting religion-based exemptions. *We The Patriots*, 76 F.4th at 148–149; *F.F.*,  
9 194 A.D.3d at 86–88. Here, the legislative history for SB 277 shows respectful and  
10 considered debate over the removal of California’s personal beliefs exemption, with  
11 a recognition that removal of California’s neutral personal beliefs exemption would  
12 incidentally impact the subset personal belief exemptions based on religion. *See*,  
13 *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  
14 show differential treatment. *Id.* Instead, it shows the removal of California’s  
15 personal beliefs exemption applied equally to all Californians who may have any  
16 personal beliefs against vaccination, regardless of whether those beliefs may be  
17 religious in nature. *Id.* It further shows an intent to narrowly tailor impact of the  
18 removal of the personal beliefs exemption by limiting it to the ten specified  
19 mandatory vaccinations and by adding a provision that if CDPH updates the list to  
20 include any new mandatory vaccinations, those vaccinations must include personal  
21 belief exemption. RJN Ex. 7.17–7.18; § 120338.

22 Plaintiffs’ new allegations at paragraphs 57 through 62, and their continuation  
23 of the same allegations of purported statements by Senator Richard Pan and Maral

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. SAC at 16 (¶ 99, 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 Farsi, Governor Brown’s Deputy Director of Legislative and Inter-Governmental  
 2 Affairs, fail to demonstrate hostility towards religion. Neither statement ascribed to  
 3 Senator Pan or Maral Farsi, as alleged in the SAC, state anything about religion or  
 4 religious beliefs. SAC at 10 (¶¶ 59–60). Further, judicially noticeable matter  
 5 demonstrates that the statements ascribed to Senator Pan and Maral Farsi occurred  
 6 well after the passage of SB 277, and therefore have no connection sufficient to  
 7 demonstrate hostility to religion in the passage of SB 277. RJN Exs. 24–26.<sup>5</sup> Nor  
 8 do Plaintiffs adequately allege how statements by one state senator and a deputy  
 9 director in the governor’s office after SB 277’s passage resulted in a bill that was  
 10 passed based on religious animus. In the absence of allegations showing actual  
 11 religious animus in connection with the enactment of SB 277, Plaintiffs conclusory  
 12 allegations do not overcome the express legislative history showing that the  
 13 Legislature was considerate of all personal belief exemption proponents in  
 14 evaluating elimination of the personal belief exemption. *See, e.g.*, RJN Exs. 7.9–  
 15 7.22, 9.7–9.12.

16 The legislative history demonstrates that SB 277 was introduced in the wake  
 17 of the 2015 measles outbreak in California and reports from the CDC that there  
 18 were more measles outbreaks in January of 2015 than any one month in the 20  
 19 years prior. RJN at Exs. 4.2, 5.5. SB 277’s author’s statement further identified  
 20 concerns over the significant rise in personal belief exemptions—a 337 percent  
 21 increase between 2000 and 2012—with some areas of California having PBE rates  
 22 as high as 21%, “which places our communities at risk for preventable disease.” *Id.*  
 23 These are all neutral grounds concerned with public health and addressing low  
 24 vaccination rates. There is no demonstrable religious animus behind the

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 introduction and passage of SB 277, especially when SB 277 passed by margins of  
 2 over 60%. *See* RJN Ex. 2 (vote of 25 to 11 in Senate and 46 to 31 in Assembly).  
 3 Plaintiffs’ conclusory assertions that the statements “*diminish* the sincerely held  
 4 religious beliefs of parents across California” are insufficient. SAC at 10 (¶ 61).  
 5 That does not satisfy the requirement to show hostility towards religion and  
 6 religious beliefs in the enactment of a law. *We The Patriots*, 76 F.4th at 145;  
 7 *Masterpiece Cakeshop*, 138 S. Ct. at 1729; and *see Doe v. San Diego Unified Sch.*  
 8 *Dist.*, 19 F.4th 1173, 1177 (9th Cir. 2021). Plaintiffs’ religious animus allegations  
 9 fail.

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

12 Plaintiffs rely on *Fulton* for their allegation that SB 277 treats comparable  
 13 secular activity more favorably, thereby shifting analysis from rational basis review  
 14 to strict scrutiny. SAC at 16–17 (¶¶ 98, 101–107). Plaintiffs continue to rely on  
 15 assertions that SB 277’s medical exemption entails individualized discretionary  
 16 review, thus warranting strict scrutiny. *Id.* at 17 (¶¶ 104–107). Plaintiffs also  
 17 continue to rely on provisions allowing conditional admission of migrant students,  
 18 homeless children, foster youth and children of military families to support their  
 19 assertion of comparable secular activity being treated more favorably. *Id.* at 8–9  
 20 (¶¶ 42–50). However, even with their additional allegations, Plaintiffs fail to  
 21 establish grounds for strict scrutiny. SB 277 treated all personal beliefs, religious  
 22 or otherwise, the same in eliminating California’s allowance of PBEs to vaccination  
 23 in their entirety. *Does 1-6 v. Mills*, 16 F.4th 20, 30 (1st Cir. 2021), cert. den. 142 S.  
 24 Ct. 1112 (2022) (“The state legislature removed both religious and philosophical  
 25 exemptions from mandatory vaccination requirements, and thus did not single out  
 26 religion alone.”) Further, the proffered secular medical exemption and conditional  
 27 admissions are not comparable.  
 28

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

17 As recognized in *Doe v. San Diego Unified Sch. Dist.*, allowing for medical  
18 exemptions based on medically contraindicated conditions “serves the primary  
19 interest for imposing the mandate—protecting student ‘health and safety’—and so  
20 does not undermine the [state’s] interests as a [PBE] would.” *Doe v. San Diego*  
21 *Unified Sch. Dist.*, 19 F.4th at 11778, citing in part to *Fulton*, 141 S. Ct. at 1877  
22 (“A law . . . lacks general applicability if it prohibits religious conduct while  
23 permitting secular conduct that undermines the government’s asserted interests in a  
24 similar way”); *Does 1-6 v. Mills*, 16 F.4th at 30–31 (exempting from vaccination  
25 only those whose health would be endangered by vaccination did not undermine  
26 state’s interest in requiring healthcare worker vaccination for COVID-19); *We The*  
27 *Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 282, 285, 289–290 (2d Cir. 2021) *cert.*  
28 *den. sub. nom. Dr. A. v. Hochul*, 142 S. Ct. 2569 (2022) (medical exemption did not

1 undermine state’s interest; medical exemption not rendered discretionary where  
2 statute relied on accepted medical standards); *Tandon v. Newsom*, 141 S. Ct. at  
3 1296 (“[W]hether two activities are comparable for purposes of the Free Exercise  
4 Clause must be judged against the asserted government interest that justifies the  
5 regulation at issue”). Finally, medical exemptions are not comparable to PBEs  
6 because medical exemptions may be of limited duration. § 120372(a)(2)(G); Cal.  
7 Code Regs., tit. 17, § 6035(a)(3). Medical exemptions only exempt the specific  
8 vaccination or vaccinations that are medically contraindicated—all other  
9 vaccinations are still required. Cal. Code Regs., tit. 17, §§ 6050(a), 6051(a). By  
10 comparison, PBEs would apply to all vaccinations and for the student’s entire  
11 education. *See Doe v. San Diego Unified Sch. Dist.*, 19 F.4th at 1178. They are not  
12 comparable.

13 Plaintiffs’ SAC has no additional facts showing the conditional admission of  
14 homeless, immigrant, foster youth and military children treats secular activity more  
15 favorably than religious exercise. These are not exemptions from the mandatory  
16 vaccination requirements, nor are they comparable. SAC at 8–9 (¶¶ 42–50). First,  
17 the provisions governing homeless, immigrant and foster youth contemplate that  
18 the children will remain in their school of origin where they would already have  
19 been immunized prior to admission, unless otherwise exempted. *See* Cal. Edu.  
20 Code §§ 48852.7(a), 48853.5(f)(1). It is only when the child seeks to move schools  
21 that the provisions allow for conditional admission pending the school obtaining, or  
22 the child providing, proof of vaccination status or otherwise completing the  
23 required vaccinations. *See* §§ 120340, 120341(b); Cal. Edu. Code §§  
24 48852.7(c)(3), 48853.5(f)(8)(A)–(B). School officials are required to contact the  
25 child’s school of origin within *two* business days to obtain copies of the child’s  
26 records, including vaccination records. Cal. Edu. Code § 48853.5(f)(8)(C).  
27 Similarly, school districts have liaisons whose duties include assisting with  
28

1 arranging for medical services where any required vaccinations can be obtained.  
2 *See* Cal. Edu. Code § 48851.5.

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

14 Plaintiffs’ conclusory assertions about independent study and IEPs similarly  
15 fail. SAC at 6–7 (¶¶ 39–40). First, federal law requires implementation of IEPs.  
16 *See* 20 U.S.C. § 1415(j); *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th at 1179.  
17 State law was thus required to accommodate access to IEP services. Second,  
18 students engaged in independent study *without classroom instruction* or specifically  
19 accessing federally mandated IEP services are not necessarily placed in an  
20 institutionalized classroom setting where they interact with multiple students over  
21 the entire school day. Thus, allowing access to independent study and federally  
22 mandated IEP services does not pose the same risks as PBEs which would allow  
23 full access to the classroom setting. It “is unlikely that the ‘risk’ to the  
24 government’s asserted interest posed by this provision would qualify as  
25 ‘comparable’ to the risk posed by” PBEs. *Doe v. San Diego Unified Sch. Dist.*, 19  
26 F.4th at 1180. Plaintiffs offer no allegations otherwise.

27 Hence, Plaintiffs’ claim fails as a matter of law because the Legislature’s  
28 removal of the personal beliefs exemption in SB 277 is rationally related to a

1 legitimate, if not a compelling, state interest in protecting the health and safety of  
2 public school students and the general public.

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

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

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

20 In enacting SB 277, the Legislature expressed its intent “to provide . . . [a]  
21 means for the eventual achievement of total immunization of appropriate age  
22 groups” against these childhood diseases. § 120325(a). In so doing, the Legislature  
23 understood that “[p]rotecting the individual and the community from communicable  
24 diseases . . . is a core function of public health.” RJN Ex. 7.7. Moreover, the  
25 enactment of SB 277 was a reasoned response to escalating numbers of  
26 unvaccinated children and outbreaks of dangerous communicable diseases. *Id.* at  
27 Exs. 9.2, 12.5, 13.7-13.8. This is the same overarching goal and interest found  
28 valid in *We The Patriots* at 156 and *F.F.* at 88.

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

14 SB 277 withstands constitutional scrutiny.

15 **CONCLUSION**

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

19 Dated: August 23, 2024

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