

1 ROB BONTA
Attorney General of California
2 BENJAMIN G. DIEHL
Supervising Deputy Attorney General
3 DARIN L. WESSEL
Deputy Attorney General
4 State Bar No. 176220
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9125
7 Fax: (619) 645-2012
E-mail: Darin.Wessel@doj.ca.gov
8 *Attorneys for Defendant*
Tomás Aragón, in his official capacity as
9 *State Public Health Officer*

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

14 **SARA ROYCE; SARAH CLARK;
15 TIFFANY BROWN; and KRISTI
CARAWAY,**

16 Plaintiffs,

17 v.

18 **TOMÁS ARAGÓN, in his official
19 capacity as the State Public Health
Officer,**

20 Defendant.

23-CV-2012-H-BLM

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS
PLAINTIFFS' THIRD AMENDED
COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

Date: February 24, 2025
Time: 10:30 a.m.
Dept: 12A
Judge: The Honorable Marilyn L.
Huff
Trial Date: N/A
Action Filed: 10/31/2023

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	<u>Page</u>
Introduction.....	1
Background.....	2
A. History of immunization requirements in California	2
B. Senate Bill 277 and Removal of the Personal Beliefs Exemption.....	4
C. Plaintiffs’ fact allegations	8
Statement of Case	9
Legal Standard	9
Argument	10
I. Plaintiffs lack standing.....	10
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	14
C. Plaintiffs’ religious animus allegations fail.....	17
III. Plaintiffs’ allegations that SB 277 treats comparable secular activity more favorably than religious exercise fail.....	19
IV. SB 277 withstands strict scrutiny analysis.....	24
Conclusion	25

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

CASES

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

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

Boone v. Boozman
217 F. Supp.2d 938 (E.D. Ark. 2002) 12

Branch v. Tunnell
14 F.3d 449 (9th Cir. 1994) 10

Brown v. Smith
24 Cal.App.5th 1135 (2018)..... 13, 14, 15

Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah
508 U.S. 520 (1993) 15

Clapper v. Amnesty Int’l USA
568 U.S. 398 (2013) 10

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

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

Food & Drug Admin. v. All. for Hippocratic Med.
602 U.S. 367 (2024) 10

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

Fulton v. City of Philadelphia
593 U.S. 522 (2023) 17, 20, 21

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

Hanzel v. Arter
625 F. Supp. 1259 (S.D. Ohio 1985)..... 12, 15

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

Jacobson v. Commonwealth of Massachusetts
197 U.S. 11 (1905)*passim*

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

Lujan v. Defenders of Wildlife
504 U.S. 555 (1992) 10

Maricopa County Health Dept. v. Harmon
750 P.2d 1364 (Ariz. 1987) 12

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

Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rts. Comm'n
584 U.S. 617 (2018) 17, 19

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

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, 15, 16

Prince v. Massachusetts
321 U.S. 158 (1944) 11, 12

Romer v. Evans
517 U.S. 620 16

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

Royce v. Bonta
725 F. Supp. 3d 1126 (S.D. Cal. 2024), ECF No. 15 1

Royce v. Bonta
725 F. Supp. 3d at 1132–1140..... 14

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

Spokeo, Inc. v. Robins
578 U.S. 330 10

Sprewell v. Golden State Warriors
266 F.3d 979 (9th Cir. 2001)..... 10

Stormans, Inc. v. Wiesman
794 F.3d 1064 (9th Cir. 2015)..... 15

Tandon v. Newsom
593 U.S. 61 (2021) 17, 21

Torrey-Love v. State of California Dep't of Educ.
supra, 2017 WL 11636240..... 13, 14

*Valley Forge Christian Coll. V. Americans United for Separation of
Church & State, Inc.*
454 U.S. 464 (1982) 11

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

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

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

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

We the Patriots USA, Inc. v. Hochul
17 F.4th 266 (2d Cir. 2021) 21

Whitlow v. California
203 F.Supp.3d 1079 (S.D. Cal. 2016) 13, 14

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

Workman v. Mingo County Sch.
667 F. Supp.2d 679 (S.D. W. Va. 2009) 12, 13

Young v. Wells Fargo Bank, N.A.
717 F.3d 224 (1st Cir. 2013) 10

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

Zucht v. King
260 U.S. 174 (1922) 11

STATUTES

20 United States Code
§ 1415(j) 22

California Code of Regulations, Title 17
§ 6035(a)(3) 7, 21
§ 6035(b)..... 7
§ 6035(d)(1)..... 22
§ 6050 7
§ 6050(a)..... 21
§ 6051 7
§ 6051(a)..... 21
§ 6060 7, 8, 9
§ 6070(a)-(b)..... 23
§ 6075(a)-(b)..... 23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

	<u>Page</u>
California Education Code	
§ 48216(b).....	20
§ 48851.5	22
§ 48852.7(a).....	21
§ 48852.7(c)(3)	21
§ 48853.5(f)(1).....	21
§ 48853.5(f)(8)(A)–(B).....	21
§ 48853.5(f)(8)(C)	22
§ 51745	22
§ 51745.5	22
§ 56026	6

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<u>Page</u>
California Health & Safety Code	
§ 120325, subd. (c)	3
§ 120325(a)	5, 24
§ 120325(c)	5
§ 120325(e)	5
§ 120335(b)	4
§ 120335(f)	6, 25
§ 120335(b)(11)	6
§ 120338	6, 18
§ 120340	21
§ 120341(b)	21
§ 120357(a)	7
§ 120357(b)	23
§ 120357(c)	23
§ 120370(a)	7, 20, 25
§ 120370(a)(1)	7, 20, 25
§ 120370(a)(2)	7, 25
§ 120372	7
§ 120372(a)	7
§ 120372(b)	7
§ 120372(c)	7
§ 120372(a)(2)(c)	20
§ 120372(a)(2)(g)	21
§ 120372(d)(3)(a)	20
§ 120475	23
California Statutes 1961 Regular Session, Chapter 837	
§ 1	3
California Statutes 1967 Regular Session, Chapter 1021	
§ 1	3
California Statutes 1971 Regular Session, chapter 833	
§ 1	3
California Statutes 1977 Regular Session, Chapter 1176	
§ 2	3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

	<u>Page</u>
California Statutes 1979 Regular Session, Chapter 435	
§ 1	3
California Statutes 1992 Regular Session, Chapter 1320	
§ 1	3
§ 2	3
California Statutes 1995 Regular Session, Chapter 291	
§ 1	3
California Statutes 1999 Regular Session, Chapter 747	
§ 1	3
§ 2	3
California Statutes 2019 Regular Session, Chapter 278.....	7
California Statutes 2019 Regular Session, Chapter 278	
§ 1(c)(1)	6
§ 1(c)(2)	6
California Statutes 2019, Chapter 278	
§ 1(f)	2
§ 1(g).....	2, 3
Free Exercise Clause.....	<i>passim</i>
Individuals with Disabilities Education Act.....	5
Federal Rule of Civil Procedure	
§ 12(b)(6).....	9
CONSTITUTIONAL PROVISIONS	
First Amendment	1, 9, 10, 11, 12
OTHER AUTHORITIES	
California Senate Bill No. 277 (Cal. Stats 2015 ch. 35)	1

INTRODUCTION

1
2 Plaintiffs challenge California Senate Bill No. 277’s (Cal. Stats 2015 ch. 35)
3 (SB 277) elimination of the personal belief exemption (PBE) from California’s
4 compulsory school vaccination law. Plaintiffs allege that requiring vaccination of
5 their children to attend school in an institutional classroom setting infringes on their
6 religious beliefs in violation of the First Amendment. However, courts have
7 repeatedly upheld compulsory school vaccination laws against Free Exercise
8 challenges and SB 277 already survived four such challenges. This Court similarly
9 granted Attorney General Bonta’s motion to dismiss Plaintiffs’ original and second
10 amended complaints, but with leave to amend to allege additional facts to support
11 their theories that (1) the introduction and passage of SB 277 demonstrated hostility
12 to religion and (2) that specified exemptions and conditional admission provisions
13 treat secular activity more favorably than religious exercise. *See Royce v. Bonta*,
14 725 F. Supp. 3d 1126, 1140 (S.D. Cal. 2024), ECF No. 15 at 14:26–28; Order
15 Granting Plaintiffs Leave to File A Third Amended Complaint and Dismissing
16 Defendant Rob Bonta on Immunity Grounds, ECF No. 43 at 2:10–17.

17 Plaintiffs’ Third Amended Complaint (3AC), ECF No. 48, remains deficient
18 and fails to state a claim. Initially, Plaintiffs lack standing. Additionally, Plaintiffs’
19 amended allegations: (1) fail to state a cognizable First Amendment Free Exercise
20 Clause injury; (2) fail to demonstrate religious hostility in the enactment of SB 277
21 such that it should be subjected to strict scrutiny review; and (3) fail to demonstrate
22 that comparable secular activity is treated more favorably than religious exercise
23 when all PBEs were eliminated. Further, medical exemptions are not comparable.
24 The limited exemptions allowing access to individualized education program (IEP)
25 services, independent study, and home-based private school education are not
26 comparable in scope or risk. The conditional admission of specified categories of
27 children, who remain subject to vaccination requirements, also is not comparable.
28 The numbers of unvaccinated students accessing such services are not comparable

1 to the previously allowed PBEs. SB 277 remains a neutral and generally applicable
2 law that meets rational basis review.

3 Even if SB 277 were not neutral or generally applicable, it satisfies strict
4 scrutiny. This is because SB 277 is a narrowly tailored law that carefully balances
5 the State’s interest in protecting the health and safety of students, community
6 welfare, and students’ educational rights. Thus, while SB 277 repealed PBEs,
7 which had become a broad loophole undermining public health, it also created
8 limited exemptions and conditional admission provisions which protect student
9 access education.

10 Plaintiffs thus fail to allege facts sufficient to “raise a right to relief above the
11 speculative level” to the “plausible” level. *Bell Atlantic Corp. v. Twombly*, 550
12 U.S. 544, 556 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 679-680, (2009). Plaintiffs’
13 3AC should be dismissed with prejudice.

14 BACKGROUND

15 A. History of immunization requirements in California

16 Vaccination remains one of the greatest public health achievements in
17 preventing death and illness due to communicable and easily preventable diseases.
18 *See* Request for Judicial Notice (RJN) Ex. 9.3. Vaccination reduces a person’s risk
19 of infection to a disease by working with the body’s natural defenses to help it
20 safely develop immunity to that disease. *Id.* at 9.2. While vaccination provides
21 individual immunity, it is also critical to developing “community immunity” or
22 “herd immunity.” *See id.* at 9.4–9.5; RJN Ex. 19.3; Cal. Stats. 2019, ch. 278, § 1(f).
23 This is when a significant portion of the population has become immune to a
24 disease, such that the transmission of disease from person to person becomes
25 unlikely. *See* RJN Ex. 9.4–9.5, Ex. 19.3; Cal. Stats. 2019, ch. 278, § 1(g).
26 Community immunity protects the health of those who cannot be vaccinated (e.g.
27 those who are immunocompromised or too young to receive vaccinations) because
28 the health risks of vaccination outweigh the health benefits. *Id.* Community

1 immunity lessens the risks of disease spread for many communicable diseases. *Id.*
2 For highly contagious diseases, like measles, community immunity is reached when
3 approximately 95 percent of the local population is fully immunized. RJN Ex. 9.2.

4 For the past century, states have relied on school vaccination requirements to
5 increase vaccination rates, reduce the incidence of childhood disease, and reduce
6 community spread of disease. *See Love v. State Dept. of Education*, 29 Cal.App.5th
7 980, 992 (2018) (“compulsory immunization has long been recognized as the gold
8 standard for preventing the spread of contagious diseases”). California’s school
9 immunization scheme was implemented in 1961, requiring immunization against
10 polio for all students entering public or private school in California. *See Cal. Stats.*
11 *1961 Reg. Sess., ch. 837, § 1; 3AC at 6 (¶ 26)*. The law allowed two exemptions: if
12 a parent or guardian submitted to a school’s governing authority “a letter stating
13 that immunization [was] contrary to” the parents’ beliefs, or if they submitted a
14 letter from a physician stating immunization was “not considered safe” based on the
15 child’s physical condition or medical circumstances. *Ibid.* Over the next 40 years,
16 the Legislature expanded the list of required immunizations after careful
17 consideration of the public health risks of these diseases, costs to the State and
18 health system, communicability, and transmission rates. *See Cal. Stats. 1967 Reg.*
19 *Sess., ch. 1021, § 1; Cal. Stats. 1971 Reg. Sess., ch. 833, § 1; Cal. Stats. 1977 Reg.*
20 *Sess., ch. 1176, § 2; Cal. Stats. 1979 Reg. Sess., ch. 435, § 1; Cal. Stats. 1992 Reg.*
21 *Sess., ch. 1320, §§ 1–2; Cal. Stats. 1995 Reg. Sess., ch. 291, § 1; Cal. Stats. 1999*
22 *Reg. Sess., ch. 747, §§ 1–2*. The Legislature also added other institutionalized
23 childcare settings to the law. *See Cal. Stats. 1992 Reg. Sess., ch. 1320, § 1*. PBEs
24 and medical exemptions continued. *See, e.g., Cal. Stats. 1999 Reg. Sess., ch. 747, §*
25 *1 (former Cal. Health & Safe. Code, § 120325, subd. (c))*.

26 Over the past 25 years, the law has consistently required any student attending
27 public or private childcare center or daycare, elementary school, or high school in
28 California to be immunized against 10 diseases: diphtheria, haemophilus influenzae

1 type b, measles, mumps, pertussis (whooping cough), polio, rubella, tetanus,
2 hepatitis B, and varicella (chickenpox). Cal. Health & Safe. Code § 120335(b)¹;
3 RJN Ex. 9.4. These diseases pose serious health risks to children, some life-
4 threatening. *Id.* These diseases, except tetanus, can be spread by contact with
5 infected children.² *Id.*

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

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

18 In considering SB 277, the Legislature reviewed alarming evidence of falling
19 vaccination levels in communities across the State, alongside a rise in personal
20 beliefs exemptions submitted by parents to excuse their children from school
21 vaccination requirements. This included a report showing that more than a quarter
22 of California schools had measles-immunization rates below the threshold
23 recommended by the CDC. RJN Ex. 9.5. At the same time, the number of
24 personal-belief exemptions had tripled between 2000 and 2013—from 1 percent of
25 kindergarteners in 2000, to 3.15 percent by 2013. *Id.* at 9.2; *see Love*, 29

26 _____
27 ¹ All further statutory references are to the California Health and Safety Code
unless otherwise noted.

28 ² 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 Cal.App.5th at 987. Legislative analysis found these trends were connected, stating
2 that “Studies find that when belief exemptions to vaccination guidelines are
3 permitted, vaccination rates decrease.” RJN Ex. 9.5.

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

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

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

27 The legislative intent was not strictly limited to the prevention of transmission
28 of disease, as suggested by Paragraphs 36 and 37 of the 3AC. 3AC at 7 (¶¶ 36–37).

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

9 SB 277 removed the personal beliefs 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),
18 emphasis added. It also authorized the Department to add to the list of required
19 vaccines for school entry without Legislative action, subject to the condition that
20 any such additional immunizations must include exemptions for both medical
21 reasons and personal 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 beliefs 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 medical
5 exemption misuse. Cal. Stats. 2019 Reg. Sess., ch. 278. Among other changes, the
6 bill enacted objective criteria and standardized requirements for medical exemption
7 certifications, and a process for state-level review of medical exemptions in limited
8 situations. § 120372(a), (c)-(d). In the two years after the bill’s passage, medical
9 exemptions fell 70 percent for kindergarteners and around 75 percent for seventh
10 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 or permanent, depending on the child’s
16 condition. § 120372; Cal. Code Regs., tit. 17, §§ 6035(a)(3), 6050, 6051. Medical
17 exemptions are limited to the specific vaccination or vaccinations that are medically
18 contraindicated; the child must obtain all other required vaccinations. *Id.* When the
19 medical exemption is temporary, the child must obtain the exempted vaccination
20 within the time set forth by the attesting physician. Cal. Code Regs., tit. 17, §
21 6035(a)(3), (b). School districts must monitor for compliance every thirty days. *Id.*

22 Schools must maintain a list of all students who are not completely
23 immunized, whether exempted or conditionally admitted. Cal. Health & Safe.
24 Code, § 120357(a); Cal. Code Regs., tit. 17, § 6060. If the school has good cause to
25 believe a student who is not fully immunized against a particular communicable
26 disease may have been exposed to that disease, the school must immediately notify
27 the local health officer and may require exclusion until the student no longer poses
28 a health risk. *Id.*

1 **C. Plaintiffs’ fact allegations**

2 Plaintiffs are four mothers with school-aged children who reside in California.
3 3AC 2–5 (¶¶ 7–20). Plaintiffs Royce, Brown and Caraway cite their belief that the
4 required vaccines were derived from aborted fetal cells and that vaccination of their
5 children would therefore violate their religious beliefs against abortion. *Id.* at 2–4
6 (¶¶ 8, 15, 19). Plaintiff Clark references a more general religious belief that
7 vaccines violate the Bible because they are a foreign substance. *Id.* at 3 (¶ 11).

8 Plaintiffs admit that since forming their religious beliefs they have not
9 vaccinated their children. Plaintiff Royce has one school-aged child who is
10 unvaccinated. 3AC at 2–3 (¶¶ 7–8). Plaintiff Clark has two grade school-aged
11 children who were vaccinated as newborns and again in 2018–19, before she
12 formed the belief that vaccines violate the Bible. *Id.* at 3 (¶¶ 10–11). Plaintiff
13 Brown “vaccinated her [three school-aged] children in their early years,” but she
14 began researching vaccines after her children “started to experience severe
15 reactions following vaccination.” *Id.* at 4 (¶¶ 13–14). Her youngest child has not
16 been vaccinated. *Id.* at 4 (¶ 15). Plaintiff Caraway “vaccinated her eldest three
17 children,” whose ages are undisclosed. *Id.* at 4 (¶ 18). Her third child received
18 vaccines until developing injuries after receiving the HepB and MMR vaccines; he
19 now has a medical exemption. *Id.* Plaintiff Caraway has not vaccinated her six
20 youngest children. *Id.* at 5 (¶ 20).

21 Plaintiff Royce alleges that she “desires” to enroll her one elementary school-
22 aged child in public or private school but is unable to do so. 3AC at 3 (¶ 9).
23 Plaintiff Clark’s children are homeschooled, but she “would like her children to
24 attend public school.” *Id.* (¶ 12). Plaintiff Brown’s children are homeschooled. *Id.*
25 at 4 (¶ 16). Plaintiff Caraway’s youngest six children are homeschooled through a
26 charter program. *Id.* at 5 (¶ 20). She alleges a “desire” to send her children to
27 public school. *Id.*

1 **STATEMENT OF CASE**

2 Plaintiffs’ 3AC is the operative complaint. Plaintiffs maintain their single
3 cause of action seeking declaratory and injunctive relief for alleged violations of the
4 Free Exercise Clause of the First Amendment. 3AC 30–34 (¶¶ 149–173). They
5 maintain their allegations that SB 277 singles out religious adherents for worse
6 treatment and demonstrates hostility towards religion “as evidenced by the
7 comments of legislators diminishing the sincerely held religious beliefs of parents.”
8 *Id.* at 12, 31 (¶¶ 65–70, 156–157). They maintain their allegations that SB 277’s
9 removal of the PBE is not narrowly tailored because students with allowed medical
10 exemptions, students who attend home-based private school, independent study
11 without classroom instruction, who are allowed to access IEP services, or who are
12 conditionally admitted under specified circumstance for a limited time are treated
13 differently while posing the same contagion hazards as students who would seek
14 PBEs based on religious beliefs. *Id.* at 8–11, 31–32 (¶¶ 41–60, 158–165).

15 Plaintiffs add new allegations claiming the required vaccinations contain
16 harmful and morally objectionable ingredients. 3AC 13–16 (¶¶ 73–92). They have
17 also added allegations that the required vaccinations have known risks and failed to
18 undergo large-scale, double-blind, placebo-controlled studies. *Id.*, at 17–21 (¶¶ 93–
19 109). Lastly, they add allegations, based in large part upon an anonymous non-
20 academic non-peer-reviewed book, that SB 277 and California’s mandatory
21 vaccination requirements lack rational basis on grounds that vaccinated individuals
22 may still catch and possibly transmit some of the specified diseases despite being
23 vaccinated and that certain vaccinations do not contribute to community immunity.
24 *Id.*, at 24–28 (¶¶ 124–140).

25 **LEGAL STANDARD**

26 A complaint may be dismissed under Rule 12(b)(6) for failure to state a claim
27 “where there is no cognizable legal theory or an absence of sufficient facts alleged
28 to support a cognizable legal theory.” *Zamani v. Carnes*, 491 F.3d 990, 996 (9th

1 Cir. 2007). In considering if a complaint states a claim, a court must accept as true
2 all of the material factual allegations in it, but need not accept as true allegations
3 that contradict matters properly subject to judicial notice” or “are merely
4 conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Sprewell*
5 *v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (citation omitted).

6 In ruling on a motion to dismiss, the court may also consider documents
7 attached to the complaint or referenced by the complaint, even though not
8 physically attached, and whose authenticity no party questions. *Branch v. Tunnell*,
9 14 F.3d 449, 454 (9th Cir. 1994), overruled on other grounds in *Galbraith v. Cnty.*
10 *of Santa Clara*, 307 F.3d 1119, 1125 (9th Cir. 2002); and see *Young v. Wells Fargo*
11 *Bank, N.A.*, 717 F.3d 224, 231 (1st Cir. 2013).

12 ARGUMENT

13 I. PLAINTIFFS LACK STANDING

14 Plaintiffs fail to allege injury sufficient to establish standing. A plaintiff
15 possesses Article III standing only if he or she has “(1) suffered an injury in fact,
16 (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is
17 likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578
18 U.S. 330, 338 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). To
19 establish an injury in fact, a plaintiff must show a “concrete and particularized” or
20 “de facto” injury. *Id.* at 340; *Lujan*, 504 U.S. at 560. Further, when plaintiffs seek
21 prospective relief, they must demonstrate the injury they fear is “imminent” and
22 “certainly pending.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013).

23 Here, Plaintiffs fail to allege any cognizable First Amendment Free Exercise
24 Clause harm to themselves traceable to SB 277 or Director Aragón. *Food & Drug*
25 *Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024) (plaintiffs lack
26 standing to challenge state action simply based on moral or ideological objections).
27 Plaintiffs expressly allege that they have exercised their religious beliefs against
28 vaccination by not having their children vaccinated due to their religious beliefs.

1 3AC 2–5 (¶¶ 8, 11, 15, 19–20). SB 277 has done nothing to prevent Plaintiffs from
2 exercising their religious beliefs. Similarly, there are no allegations that their
3 children have suffered any injury by being homeschooled, as allowed for
4 unvaccinated children under SB 277. *Id.* Moreover, Plaintiffs’ allegations fail to
5 trace any such injury to SB 277’s requirements, as opposed to their own
6 independent decisions regarding how to educate their children. Nor are their
7 allegations of a “desire” to send their children to public school sufficient. *Valley*
8 *Forge Christian Coll. V. Americans United for Separation of Church & State, Inc.*,
9 454 U.S. 464, 485–486 (1982). For these reasons, Plaintiffs lack standing and their
10 claims should be dismissed.

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

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

14 The authority of the State to require student vaccinations to protect the health
15 and safety of other students and the public at large, irrespective of their parents’
16 personal beliefs, is firmly embedded in our jurisprudence and embodies a
17 quintessential function of government to protect its people from preventable harm.
18 The State has an unquestionably legitimate and compelling interest in protecting
19 public health and safety, as recognized by the Supreme Court in *Jacobson v.*
20 *Commonwealth of Massachusetts*, 197 U.S. 11 (1905), which upheld the
21 constitutionality of a state’s smallpox vaccination requirement and the state’s
22 ability to make vaccination a pre-condition to enter or remain in public schools. *Id.*
23 at 32. Following *Jacobson*, the Supreme Court reiterated that “it is within the
24 police power of a state to provide for compulsory vaccination.” *Zucht v. King*, 260
25 U.S. 174, 175–177 (1922). The Supreme Court further held in *Prince v.*
26 *Massachusetts*, 321 U.S. 158 (1944), that “neither the rights of religion nor rights of
27 parenthood are beyond limitation,” and both can be interfered with when necessary
28 to protect a child. *Id.*, at 166. The Supreme Court reaffirmed that a parent “cannot

1 claim freedom from compulsory vaccination for the child more than for himself on
2 religious grounds. The right to practice religion freely does not include liberty to
3 expose the community or the child to communicable disease or the latter to ill
4 health or death.” *Id.*

5 California courts reached the same conclusion. In *Walker v. Superior Court*,
6 47 Cal.3d 112 (1988), the California Supreme Court agreed that “parents have no
7 right to free exercise of religion at the price of a child’s life, regardless of the
8 prohibitive or compulsive nature of the governmental infringement.” *Id.*, at 140. In
9 *French v. Davidson*, 143 Cal. 658 (1904), the Court upheld a municipal vaccination
10 requirement, explaining that “the proper place to commence in the attempt to
11 prevent the spread of a contagion was among the young, where they were kept
12 together in considerable numbers in the same room for long hours each day . . .
13 children attending school occupy a natural class by themselves, more liable to
14 contagion, perhaps, than any other class that we can think of.” *Id.* at 662.

15 Since *Jacobson*, *Zucht*, *Prince*, *Abeel*, and *French*, *supra*, federal and state
16 courts have repeatedly upheld mandatory vaccination laws over constitutional
17 challenges. *See. e.g., Phillips v. City of New York*, 775 F.3d 538, 543 (2nd Cir.
18 2015); *Workman v. Mingo County Sch.*, 667 F. Supp.2d 679, 690-691 (S.D. W. Va.
19 2009); *Boone v. Boozman*, 217 F. Supp.2d 938, 956 (E.D. Ark. 2002); *Hanzel v.*
20 *Arter*, 625 F. Supp. 1259 (S.D. Ohio 1985); *Maricopa County Health Dept. v.*
21 *Harmon*, 750 P.2d 1364 (Ariz. 1987).

22 In California, district and state courts previously rejected First Amendment
23 Free Exercise claims against SB 277 in four cases. In *Whitlow v. California*, 203
24 F.Supp.3d 1079, 1085–86 (S.D. Cal. 2016), the district court found that the
25 plaintiffs were unlikely to prevail on their free exercise arguments against SB 277.
26 The *Whitlow* plaintiffs alleged that SB 277 violated the Free Exercise Clause of the
27 First Amendment by (1) failing to provide a religious exemption to the vaccination
28 mandate; (2) forcing parents to choose between faith dictates and their children’s

1 education; and (3) offering secular exemptions (medical, home schooling and
2 [IEP]) while failing to provide a religious exemption. *Id.* Relying on *Workman*,
3 *Phillips*, and *Prince*, the court reasoned that plaintiffs were unlikely to prevail on
4 their first two arguments: because the right to free exercise does not outweigh the
5 state's interest in public health and safety, mandatory vaccination as a condition to
6 school admission does not violate the Free Exercise Clause. *Id.* at 1086. The court
7 also rejected plaintiffs' secular exemption argument because a majority of the
8 Circuit Courts of Appeal refused to find that providing a secular exemption
9 necessarily requires a religious exemption. *Id.* at 1086–87, citing *Grace United*
10 *Methodist Church v. City of Cheyenne*, 451 F.3d 643, 651 (10th Cir. 2006). This
11 remains true post-*Fulton*, as addressed below.

12 In *Torrey-Love v. State of California Dep't of Educ.*, *supra*, 2017 WL
13 11636240, at *3–*4, the Central District dismissed plaintiffs' substantive due
14 process and equal protection challenges to SB 277 with prejudice. The *Torrey-Love*
15 court rejected plaintiffs' theories that SB 277 violated rights to refuse medical
16 treatment and asserted rights to education. *Id.*

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

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

24 Significantly, these decisions have been relied upon and reaffirmed in recent
25 challenges to other states' vaccination laws repealing religious exemptions. *See We*
26 *the Patriots USA, Inc. v. Connecticut Off. of Early Childhood Dev.*, 76 F.4th 130,
27 137, 147–148 (2d Cir. 2023), *cert. denied* 2024 WL 3089546 (*We The Patriots*)
28 (upholding dismissal of a Free Exercise challenge to Connecticut's repeal of the

1 state’s religious exemption to vaccination requirements); *F.F. v. State*, 194 A.D.3d
2 80, 87–88 (N.Y. App. Div. 2021) (upholding New York’s repeal of its specific
3 religious belief exemption); *Milford Christian Church v. Russell-Tucker*, No. 3:23-
4 CV-304 (VAB), 2023 WL 8358016, at *11 (D. Conn. Dec. 1, 2023) (dismissing
5 challenge to related Connecticut law); *see also Doe v. San Diego Unified School*
6 *District*, 19 F.4th 1173 (9th Cir. 2021) (upholding school district’s COVID-19
7 vaccine mandate). Nothing in this lawsuit upsets these seminal decisions.

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

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

24 Here, Plaintiffs’ claims continue to fail for the same reasons articulated by the
25 courts in *Whitlow*, *Brown*, *Torrey-Love*, *Love*, *We The Patriots*, *F.F.*, and this
26 Court’s prior ruling, *Royce v. Bonta*, 725 F. Supp. 3d at 1132–1140. Indeed, the
27 conclusion is more compelling in relation to SB 277, which repealed PBEs, as
28 compared to the religion-based exemption repealed in *We The Patriots* and *F.F.*

1 **1. Personal beliefs are not protected by the Free Exercise**
2 **Clause**

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

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

15 Even presuming Plaintiffs’ objections are religious, rather than their personal
16 subjective beliefs, Plaintiffs’ assertion that strict scrutiny is the applicable standard
17 of review for their claims is wrong. 3AC at 32 (¶ 167). “The right to exercise
18 one’s religion freely . . . ‘does not relieve an individual of the obligation to comply
19 with a valid and neutral law of general applicability on the ground that the law
20 proscribes (or prescribes) conduct that [one’s] religion prescribes (or proscribes).’”
21 *Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1075 (9th Cir. 2015) (quoting *Emp’t*
22 *Div. v. Smith*, 494 U.S. 872, 879 (1990)). “[A] law that is neutral and of general
23 applicability need not be justified by a compelling governmental interest even if the
24 law has the incidental effect of burdening a particular religious practice.” *Church*
25 *of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993).

26 SB 277 is neutral and of general applicability; it applies to all children in
27 public and private schools and childcare facilities. See § 120325 *et seq.* Thus,
28 rational basis review is the correct level of scrutiny. See also *Phillips*, 775 F.3d at

1 543, n. 5 (finding that “no court appears ever to have held” that *Jacobson* now
2 demands strict scrutiny); *Parents for Privacy v. Barr*, 949 F.3d 1210, 1234 (9th Cir.
3 2020) (courts look to both the text and the actual operation of a law to determine
4 whether it is neutral and generally applicable).

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

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

23 SB 277 is rationally related to a legitimate state interest of protecting the
24 public from the spread of debilitating, and potentially fatal, diseases, as its
25 legislative history confirms: “Vaccine coverage at the community level is vitally
26 important for people too young to receive immunizations and [for] those unable to
27 receive immunizations due to medical reasons.” RJN Ex. 7.6. “[W]hen belief
28 exemptions to vaccination guidelines are permitted, vaccination rates decrease.” *Id.*

1 at Ex. 9.5. “Given the highly contagious nature of [these] diseases . . . vaccination
2 rates of up to 95% are necessary to preserve herd immunity and prevent future
3 outbreaks.” *Id.* at Ex. 7.5.

4 **C. Plaintiffs’ religious animus allegations fail**

5 Plaintiffs continue to rely on *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) and
6 *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2023), along with their
7 conclusory allegations of religious animus and differential treatment as a means of
8 shifting analysis of SB 277 from rational basis review to strict scrutiny. 3AC at 30–
9 32 (¶¶ 154–167). However, the analysis in *We The Patriots* and *F.F.* shows that
10 *Tandon* and *Fulton* are inapplicable here, and Plaintiffs’ claims fail.

11 To fail the neutrality prong based on religious animus, “it is not enough for a
12 law to simply *affect* religious practice; the law or the process of its enactment must
13 demonstrate ‘hostility’ to religion.” *We The Patriots*, 76 F.4th at 145, citing
14 *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rts. Comm’n*, 584 U.S. 617, 634–635
15 (2018). “Factors relevant to the assessment of governmental neutrality include ‘the
16 historical background of the decision under challenge, the specific series of events
17 leading to the enactment or official policy in question, and the legislative or
18 administrative history, including contemporaneous statements made by members of
19 the decisionmaking body.’” *Masterpiece Cakeshop*, 584 U.S. at 639.

20 *We The Patriots* and *F.F.* rejected assertions of religious animus based on the
21 fact that legislative debate occurred over religious beliefs and the removal of a
22 preexisting religion-based exemption. *We The Patriots*, 76 F.4th at 148–149; *F.F.*,
23 194 A.D.3d at 86–88. Here, the legislative history for SB 277 shows respectful and
24 considered debate over removal of California’s PBE, with a recognition that the
25 removal would incidentally impact a subset of PBEs based on religion. *See, e.g.*,
26 RJN Exs. 7.3, 7.7–7.13, 7.16–7.18. It shows no animosity. *Id.*³ Nor does it show

27 ³ Plaintiffs’ additional reliance on CDPH’s updated FAQs to assert religious
28 animus fails. 3AC at 31 (¶ 156, n. 35). First, CDPH’s updated FAQs were issued
(continued...)

1 differential treatment. *Id.* Instead, it shows the removal of California’s PBE
2 applied equally to all Californians who may have any personal beliefs against
3 vaccination, regardless of the nature of the belief. *Id.* It further shows an intent to
4 narrowly tailor impact of the removal of the PBE by limiting it to the ten specified
5 mandatory vaccinations and by adding a provision that if CDPH adds any new
6 mandatory vaccination, it must include a PBE. RJN Ex. 7.17–7.18; § 120338.

7 Plaintiffs’ continued reliance on allegations of purported statements by
8 Senator Richard Pan and Maral Farsi, Governor Brown’s Deputy Director of
9 Legislative and Inter-Governmental Affairs, fail to demonstrate hostility towards
10 religion. Neither statement ascribed to Senator Pan or Maral Farsi say anything
11 about religion or religious beliefs. 3AC at 12 (¶¶ 66–68). Further, judicially
12 noticeable matter demonstrates that the purported statements occurred well after the
13 passage of SB 277, and therefore have no connection sufficient to demonstrate
14 hostility to religion in the passage of SB 277. RJN Exs. 24–26.⁴ Nor do Plaintiffs
15 adequately allege how statements by a single state senator and a deputy director in
16 the governor’s office *after* the passage SB 277 resulted in a bill that was passed
17 based on religious animus. In the absence of allegations showing actual religious
18 animus in connection with the enactment of SB 277, Plaintiffs’ conclusory
19 allegations do not overcome the express legislative history showing that the
20 Legislature was considerate of all personal belief proponents in evaluating
21 elimination of the PBE. *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 after SB 277 took effect and therefore cannot demonstrate animus in the enactment
25 of SB 277. *See* RJN Ex. 18.1. Second, CDPH’s updated FAQs demonstrate that
26 SB 277’s removal of PBEs applied equally to all Californians and made no
27 distinction between secular or religious beliefs. *Id.*

28 ⁴ SB 277 was passed in 2016. However, the proffered statements by Senator
Pan were not made until 2019. *See* RJN Exhs. 24–25. Likewise, Maral Farsi was
appointed as Governor Brown’s Deputy Director of Legislative and Inter-
Governmental Affairs in April of 2018, well after the passage of SB 277. RJN Exh.
26.

1 were more measles outbreaks in January of 2015 than any one month in the 20
2 years prior. RJN at Exs. 4.2, 5.5. The author statement for SB 277 further
3 identified concerns over the significant rise in PBEs—a 337 percent increase
4 between 2000 and 2012—with some areas of California having PBE rates as high
5 as 21%, “which places our communities at risk for preventable disease.” *Id.* These
6 are all neutral grounds concerned with public health and addressing low vaccination
7 rates. There is no demonstrable religious animus behind the introduction and
8 passage of SB 277, especially when SB 277 passed by over 60%. *See* RJN Ex. 2
9 (vote of 25 to 11 in Senate and 46 to 31 in Assembly). Plaintiffs’ conclusory
10 assertions that the two statements they rely on “*diminish* the sincerely held religious
11 beliefs of parents across California” are insufficient. 3AC at 13 (¶ 69). That does
12 not satisfy the requirement to show hostility towards religion and religious beliefs
13 in the enactment of a law. *We The Patriots*, 76 F.4th at 145; *Masterpiece*
14 *Cakeshop*, 138 S. Ct. at 1729; *and see Doe v. San Diego Unified Sch. Dist.*, 19
15 F.4th 1173, 1177 (9th Cir. 2021). Plaintiffs’ religious animus allegations fail.

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

18 Plaintiffs rely on *Fulton* for their allegation that SB 277 treats comparable
19 secular activity more favorably, thereby shifting analysis from rational basis review
20 to strict scrutiny. 3AC at 31–33 (¶¶ 155, 158–167). Plaintiffs continue to rely on
21 assertions that SB 277’s medical exemption entails individualized discretionary
22 review, thus warranting strict scrutiny. *Id.* at 32 (¶¶ 164). Plaintiffs also continue
23 to rely on provisions allowing conditional admission of migrant students, homeless
24 children, foster youth, children of military families, while adding an allegation
25 related to California Education Code section 48216(b) where school districts must
26 notify parents and give them two weeks to supply proof of vaccination or a valid
27 exemption, to support their assertion that comparable secular activity is treated
28 more favorably. *Id.* at 8–11 (¶¶ 41, 4358). However, even with their additional

1 allegations, Plaintiffs fail to establish grounds for strict scrutiny. SB 277 treated all
2 personal beliefs, religious or otherwise, the same in eliminating California’s
3 allowance of PBEs to vaccination in their entirety. *Does 1-6 v. Mills*, 16 F.4th 20,
4 30 (1st Cir. 2021), cert. den. 142 S. Ct. 1112 (2022) (“The state legislature removed
5 both religious and philosophical exemptions from mandatory vaccination
6 requirements, and thus did not single out religion alone.”) Further, the proffered
7 secular medical exemption and conditional admissions are not comparable.

8 The analysis in *We The Patriots* rejecting assertions of individualized
9 determinations applies equally to California’s medical exemption. The *We The*
10 *Patriots* Court reasoned that the use of “shall be exempt” in the medical exemption
11 language made the exemptions mandatory upon a showing that the requirements for
12 a medical exemption have been met, and therefore there is no individualized
13 determination because the exemption must be granted. *We The Patriots*, 76 F.4th at
14 150–151. Here, California’s medical exemption provision contains similar “shall
15 be exempt” language which makes the exemption mandatory upon the presentation
16 of a physician’s written statement attesting to the basis for the medical exemption.
17 RJN Ex. 1.4; § 120370(a), current § 120370(a)(1). Further, medical exemptions
18 and CDPH’s review of a sampling of those exemptions follow established medical
19 standards and related vaccine contraindication criteria established by the CDC’s
20 Advisory Committee on Immunization and the American Academy of Pediatrics. §
21 120372(a)(2)(C) and (d)(3)(A). There simply are no individualized determinations
22 under the medical exemption provision.

23 As recognized in *Doe v. San Diego Unified Sch. Dist.*, medical exemptions
24 based on medically contraindicated conditions “serves the primary interest for
25 imposing the mandate—protecting student ‘health and safety’—and so does not
26 undermine the [state’s] interests as a [PBE] would.” *Doe v. San Diego Unified Sch.*
27 *Dist.*, 19 F.4th at 11778, citing in part to *Fulton*, 141 S. Ct. at 1877; *Does 1-6 v.*
28 *Mills*, 16 F.4th at 30–31 (exempting from vaccination those whose health would be

1 endangered by vaccination did not undermine state’s interest in requiring healthcare
2 worker vaccination for COVID-19); *We The Patriots USA, Inc. v. Hochul*, 17 F.4th
3 266, 282, 285, 289–290 (2d Cir. 2021) *cert. den. sub. nom. Dr. A. v. Hochul*, 142 S.
4 Ct. 2569 (2022) (medical exemption did not undermine state’s interest and was not
5 rendered discretionary where statute relied on accepted medical standards); *Tandon*
6 *v. Newsom*, 593 U.S. at 62 (“[W]hether two activities are comparable for purposes
7 of the Free Exercise Clause must be judged against the asserted government interest
8 that justifies the regulation at issue”). Finally, medical exemptions are not
9 comparable to PBEs because medical exemptions may be of limited duration. §
10 120372(a)(2)(G); Cal. Code Regs., tit. 17, § 6035(a)(3). Medical exemptions only
11 exempt the specific vaccination or vaccinations that are medically
12 contraindicated—all other vaccinations are required. Cal. Code Regs., tit. 17, §§
13 6050(a), 6051(a). By comparison, PBEs would apply to all vaccinations and for the
14 student’s entire education. *See Doe v. San Diego Unified Sch. Dist.*, 19 F.4th at
15 1178. They are not comparable.

16 Plaintiffs’ 3AC has no additional facts showing the conditional admission of
17 homeless, immigrant, foster youth, and military children treats secular activity more
18 favorably than religious exercise. 3AC at 8–11 (¶¶ 43–58). These are not
19 exemptions from the mandatory vaccination requirements, nor are they comparable.
20 First, the provisions governing homeless, immigrant and foster youth contemplate
21 that the children will remain in their school of origin where they would have
22 already been immunized prior to admission, unless otherwise exempted. *See* Cal.
23 Edu. Code §§ 48852.7(a), 48853.5(f)(1). It is only when the child seeks to move
24 schools that the provisions allow for conditional admission pending the school
25 obtaining, or the child providing, proof of vaccination or 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 vaccination records.

1 Cal. Edu. Code § 48853.5(f)(8)(C). School district liaisons are further tasked with
2 arranging for medical services where any required vaccinations can be obtained.
3 See Cal. Edu. Code § 48851.5.

4 These provisions for temporary conditional admission recognize that
5 homeless, foster, immigrant and military youth may lack access to vaccination
6 records due to their current circumstances, or may need a limited time to complete
7 mandatory vaccinations. Conditionally admitted students have 30 days to provide
8 records of immunization or to obtain the required immunizations. Cal. Code Regs.,
9 tit. 17, § 6035(d)(1). Conditional admissions for a short period 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.

12 Plaintiffs’ conclusory assertions about IEPs, independent study, and home-
13 based private school similarly fail. 3AC at 8–9 (¶¶ 43, 46). First, federal law
14 requires implementation of IEPs. See 20 U.S.C. § 1415(j); *Doe v. San Diego*
15 *Unified Sch. Dist.*, 19 F.4th at 1179. State law was thus required to accommodate
16 access to IEP services. Second, students engaged in independent study *without*
17 *classroom instruction* or specifically accessing federally mandated IEP services are
18 not necessarily placed in institutionalized classroom settings where they interact
19 with multiple students over the entire school day. Independent studies may be
20 accessed on-line, at home, at a school or a hybrid of these in small group or one-on-
21 one instruction. See Cal. Educ. Code §§ 51745, 51745.5. Thus, allowing access to
22 independent study and federally mandated IEP services does not pose the same
23 risks as PBEs which would allow full access to the classroom setting. It “is
24 unlikely that the ‘risk’ to the government’s asserted interest posed by this provision
25 would qualify as ‘comparable’ to the risk posed by” PBEs. *Doe v. San Diego*
26 *Unified Sch. Dist.*, 19 F.4th at 1180. Plaintiffs offer no allegations otherwise.

27 Nor are the risks of students with medical exemptions, conditional admissions,
28 accessing independent study and IEP services comparable to PBEs. Judicially

1 noticeable data, tracked and compiled by the California Department of Public
 2 Health pursuant to state law in reports incorporated by reference in the 3AC, show
 3 the number of unvaccinated students in these other categories are not comparable to
 4 the 2.5% of students with PBEs in 2015. See 3AC at 7, 21–22, nn. 14–16 (¶¶ 35,
 5 111–112); Cal. Health & Safe. Code, §§ 120357(b)–(c), 120475; Cal. Code Regs.,
 6 tit. 17, §§ 6070(a)–(b), 6075(a)–(b); *and see* RJN Nos. 29–30 and RJN Exs. 15–17,
 7 22, 27–28. The data confirms the following percentages:

School Year	Total Students	All Req'd. Immunization	PBE	Conditional Entrants	PME	Others Lacking Immunization (IEP, indep. study, home-based school)
2015–2016	551,123	92.8%	2.4%	4.4%	0.2%	N/A
2016–2017	562,924	95.6%	0.6%	1.9%	0.5%	0.5%
2017–2018	564,121	95.1%	0.0%	1.8%	0.7%	1.1%
2018–2019	555,735	94.8%	0.0%	1.7%	0.9%	1.5%
2019–2020	554,250	94.3%	0.0%	1.7%	1.0%	1.6%
2020–2021	485,538	92.8%	0.0%	0.8%	0.6%	1.7%
2021–2022	503,722	94.0%	0.0%	1.3%	0.3%	1.7% (1st Grade)

18 RJN No. 29 and Exs. 15.7, 15.20, 28.17, 28.20, 22.17, 22.20, 16.13. “Others
 19 lacking immunization” breaks down as:

School Year	Others Lacking Immunization		Independent Study		IEP Services		Home-Based Private School	
	#	%	#	%	#	%	#	%
2016–2017	2,564	0.5%	1,684	0.3%	684	0.1%	196	0.0%
2017–2018	6,072	1.1%	4,399	0.8%	1,133	0.2%	540	0.1%
2018–2019	8,318	1.5%	6,502	1.2%	1,577	0.3%	239	0.0%
2019–2020	8,896	1.6%	7,018	1.3%	1,673	0.3%	295	0.1%

27 RJN Exhs. 27.33, 15.36, 28.34, 22.34. These percentages are not comparable.

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

4 **IV. SB 277 WITHSTANDS STRICT SCRUTINY ANALYSIS**

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

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

21 In enacting SB 277, the Legislature expressed its intent “to provide . . . [a]
22 means for the eventual achievement of total immunization of appropriate age
23 groups” against these childhood diseases. § 120325(a). “Protecting the individual
24 and the community from communicable diseases . . . is a core function of public
25 health.” RJN Ex. 7.7. Moreover, the enactment of SB 277 was a reasoned response
26 to escalating numbers of unvaccinated children and outbreaks of dangerous
27 communicable diseases. *Id.* at Exs. 9.2, 12.5, 13.7-13.8. This is the same
28 overarching goal and interest found 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 need access to IEP services. *Id.* at (h). Thus, California’s
10 mandatory vaccination requirement is narrowly directed to institutional settings of
11 public and private schools and daycare facilities where the State has a compelling
12 interest in protecting all children who attend those institutions. *See* RJN Ex. 7.3,
13 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’ Third Amended Complaint fails to
17 state a claim. The motion to dismiss should be granted without leave to amend.

18 Dated: January 10, 2025

Respectfully submitted,

19 ROB BONTA
20 Attorney General of California
21 BENJAMIN G. DIEHL
Supervising Deputy Attorney General

22 /s/ DARIN L. WESSEL
23 DARIN L. WESSEL
24 Deputy Attorney General
Attorneys for Defendant
Tomás Aragón, in his official capacity
as State Public Health Officer

25 SD2023305834
26 84911571.docx

27
28