

25-2504

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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

v.

ERICA PAN,
in her official capacity as the State Public Health Officer,
Appellee.

On Appeal from the United States District Court
for the Southern District of California
Case No. 3:23-cv-02012-H-BLM
The Honorable Judge Marilyn L. Huff

APPELLANTS' OPENING BRIEF

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CORPORATE DISCLOSURE STATEMENT

Pursuant to the disclosure requirements of Fed. R. App. P. 26.1, Sara Royce, Sarah Clark, Tiffany Brown, and Kristi Caraway, are individuals and, as such, they are not a subsidiary or affiliate of a publicly owned corporation and there is no publicly held corporation that owns ten percent or more of any stock issued by them.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT.....	2
TABLE OF CONTENTS	3
TABLE OF AUTHORITIES.....	5
I. INTRODUCTION	8
II. JURISDICTIONAL STATEMENT	9
III. STATUTORY AND REGULATORY AUTHORITIES.....	10
IV. ISSUE PRESENTED	10
V. STATEMENT OF THE CASE.....	10
A. Background	10
1. Appellants Sara Royce, Sarah Clark, Tiffany Brown, and Kristi Caraway.....	10
2. SB 277’s History and Numerous Secular Exemptions.....	12
3. California Legislature Targeted Religious Exemptions.....	18
B. Procedural History	20
VI. SUMMARY OF THE ARGUMENT	22
VII. STANDARD OF REVIEW	23
VIII. ARGUMENT.....	23
A. The District Court Erred; Appellants Stated a Valid First Amendment Claim Upon Which Relief Should be Granted.....	23
1. The District Court’s Opinion Cannot Be Squared with the Supreme Court’s holding in <i>Fulton v. City of Philadelphia</i>	24
2. The District Court’s Opinion Conflicts with the Supreme Court’s Holding in <i>Tandon v. Newsom</i>	28
3. The District Court’s Decision Misapplies <i>Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n</i>	30

4.	Appellants' Allegations Establish a Valid First Amendment Claim that Should Not Have Been Dismissed.	32
IX.	CONCLUSION	41
	STATEMENT OF RELATED CASES	42
	CERTIFICATE OF COMPLIANCE.....	43
	CERTIFICATE OF SERVICE.....	44

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Bartnett v. Centoni</i> , 31 F.3d 813 (9th Cir. 1994)	28
<i>Bose Corp. v. Consumers Union of U.S., Inc.</i> , 466 U.S. 485 (1984)	23
<i>Braunfeld v. Brown</i> , 366 U.S. 599 (1961)	38
<i>Brown v. Entm't Merchs. Ass'n</i> , 564 U.S. 786 (2011)	40
<i>Burwell v. Hobby Lobby Stores, Inc.</i> , 573 U.S. 682 (2014)	passim
<i>Cantwell v. Conn.</i> , 310 U.S. 296 (1940)	32
<i>Church of the Lukumi Babalu Aye, Inc.</i> , 508 U.S.	33, 40
<i>City of Boerne v. Flores</i> , 521 U.S. 507 (1997)	39
<i>Employment Div., Dept. of Human Resources of Ore. v. Smith</i> , 494 U.S. 872 (1990)	30, 32, 33, 34
<i>F.C.C. v. Beach Commc'ns, Inc.</i> , 508 U.S. 307 (1993)	21
<i>Fulton v. City of Philadelphia</i> , 141 S. Ct. 1868 (2021)	passim
<i>Gonzales v. O Centro Espírita Beneficente União do Vegetal</i> , 546 U.S. 418 (2006)	37, 40
<i>Holt v. Hobbs</i> , 574 U. S. 352 (2015)	27, 33
<i>Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC</i> , 565 U.S. 171 (2012)	33
<i>Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group of Bos.</i> , 515 U.S. 557 (1995)	23

<i>Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rights Comm’n</i> , 584 U.S. 617 (2018)	9, 22, 30, 32
<i>McDaniel v. Paty</i> , 435 U.S. 618 (1978)	32
<i>O Centro</i> , 546 U.S.	40
<i>O’Brien v. Welty</i> , 818 F.3d 920 (9th Cir. 2016)	23
<i>Outdoor Media Grp., Inc. v. City of Beaumont</i> , 506 F.3d 895 (9th Cir.2007)	23
<i>Salve Regina Coll. v. Russell</i> , 499 U.S. 225 (1991)	23
<i>Sherbert v. Verner</i> , 374 U.S. 399- (1963)	33, 37, 38
<i>Tandon v. Newsom</i> , 593 U.S. 61 (2021)	passim
<i>Tandon v. Newsom</i> , 992 F.3d 916 (9th Cir.)	28
<i>Thomas v. Review Board</i> , 450 U.S. 707 (1981)	passim
<i>United States v. Lee</i> , 455 U.S. 252 (1982)	33, 35, 36
<i>Wisconsin v. Yoder</i> , 406 U.S. 205 (1972)	37, 38, 40

Statutes

28 U.S.C. §1291	10
28 U.S.C. §1331	9
42 U.S.C. § 1983	20
Cal. Educ. Code §§ 48204.7, 48850, 48852.7, 49069.5, 49701	21
Cal. Educ. Code § 48216(b)	17
Cal. Educ. Code §§ 51745-51749.3	15
Cal. Educ. Code § 56026.....	21
Cal. Health & Saf. Code § 120335(f)	21
Cal. Health & Saf. Code § 120335(h)	21
Cal. Health & Saf. Code § 120335(g)	16
Cal. Health & Saf. Code §§ 120340, 120341	21
Cal. Health & Saf. Code § 120360.....	16, 21

Cal. Health & Saf. Code § 120365.....	17
Cal. Health & Safety Code § 120370(a)	13, 17, 18, 21
Cal. Health & Saf. Code §120370(a)(1)-(2)	21
Cal. Health & Saf. Code § 120372(a)-(j).....	26
Cal. Health & Saf. Code § 120372.05.....	27

Rules

Fed. R. App. P. 4(a)(1)(A)	10
Fed. R. Civ. P. 12(b)(6)	9, 10, 23, 28

Regulations

Cal. Code Regs. tit. 17, § 6035(d)(1).....	17
--	----

Other Authorities

SB 276.....	26, 27
SB 277.....	passim

I. INTRODUCTION

California is excluding schoolchildren from the State's public and private schools based on their religious beliefs. California has given these schoolchildren and their families a Hobson's choice: violate your sincerely held religious beliefs or forego your education. It does not need to be this way. In fact, the First Amendment prohibits it from being so.

For over 60 years, California provided a personal belief exemption to its compulsory school vaccination law, an exemption which encompassed both personal belief objections to vaccinations and the far smaller group of persons who hold religious objections to vaccination such as Appellants. In 2016, however, California enacted Senate Bill ("SB") 277, which targeted and repealed all personal belief exemptions, including—but never quantifying or narrowly tailoring its law to address the lesser included number of religious exemptions it decided to ban. California enacted SB 277 knowing that the law would have the effect of banning religious families from schools and with the desire to force religious families to violate their sincerely held religious beliefs. With SB 277, California departed from religious exemptions safely permitted in 46 states and placed itself in the miniscule, super-minority of states that denies religious students the right to a public and private education.

Appellants Sara Royce, Sarah Clark, Tiffany Brown, and Kristi Caraway are California mothers of school-aged children. Each Appellant holds religious beliefs forbidding them from fully vaccinating their children in accordance with California's SB 277. Plaintiffs desire

to enroll their children in California public or private schools but the State has forbidden them from doing so.

The State, however, freely allows exemptions for secular reasons. SB 277 allows unvaccinated students to enter public or private school based on the status of their family or economic life (in foster care or homeless), based on their age, based on the status of whether the student receives special education services (has an individualized education program “IEP”), and provides a medical exemption. California also accommodates schoolchildren enrolled in independent study, allowing those schoolchildren to participate in camps, visit public libraries, and participate in extra-curricular activities at schools—all without proof of vaccination. SB 277’s statutory scheme cannot be squared with United States Supreme Court precedent. See *Tandon v. Newsom*, 593 U.S. 61, 141 S. Ct. 1294 (2021); *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rights Comm’n*, 584 U.S. 617 (2018). California should have the burden under strict scrutiny to demonstrate that SB 277 is narrowly tailored to serve a compelling state interest. *Id.* The district court applied the wrong legal standard.

The district court decision, which dismissed Appellants’ claims in their entirety pursuant to Fed. R. Civ. P. 12(b)(6), reflects significant errors of law and requires reversal.

II. JURISDICTIONAL STATEMENT

The district court had subject matter jurisdiction under 28 U.S.C. §1331. The district court entered its Judgment and Order granting Defendant-Appellee’s Motion to Dismiss Plaintiff-Appellants’ Third Amended Complaint on March 17, 2025. ER-3-32. Appellants filed a

timely notice of appeal on April 16, 2025. ER-96-98; *see* Fed. R. App. P. 4(a)(1)(A). This Court has jurisdiction under 28 U.S.C. §1291.

III. STATUTORY AND REGULATORY AUTHORITIES

All relevant constitutional and statutory authorities appear in the Addendum to this brief.

IV. ISSUE PRESENTED

Whether the district court erred in granting the State's Fed. R. Civ. P. 12(b)(6) motion to dismiss Appellant's First Amendment claim?

V. STATEMENT OF THE CASE

A. Background

1. *Appellants Sara Royce, Sarah Clark, Tiffany Brown, and Kristi Caraway*

Sara Royce is the mother of one school-aged child. ER-35, ¶ 7. Sara objects to vaccinations that use or are derived from aborted fetal cells in their testing or manufacturing due to her sincerely held religious beliefs. ER-35, ¶ 8. After discerning her beliefs through prayer and biblical study, Sara and her family determined that involving themselves with vaccinations that use and are made with aborted fetal cells would make them complicit in abortion. ER-35, ¶ 8; ER-47-48, ¶ 80-84. Although California prohibits Sara's child from attending public or private schools due to the family's religious beliefs, Sara's child frequently interacts with children who do attend school, including spending time with school-attending children at Church and all other public and private locations, venues, and activities left untouched by SB 277 (which would be every location, venue, and activity other than school). ER-35, ¶ 9.

Sarah Clark is the mother of two school-aged child. ER-35, ¶ 10. After Sarah's two children obtained some of their childhood vaccinations, Sarah experienced a religious conversion. ER-35, ¶ 11. Sarah now holds a sincere religious belief stemming from biblical text 1 Corinthians 6: 19-20. ER-35, ¶ 11. Due to their religious beliefs, Sarah's children are not allowed to attend public and private school in California and have been forced to homeschool. ER-35, ¶ 12. Sarah has lost professional opportunities due to not being able to place her children in any school in the State. ER-35, ¶ 12.

Tiffany Brown is the mother of two school-aged children. ER-35, ¶ 13. Like Sara Royce, Tiffany objects to vaccines that are derived from aborted fetal cells in their manufacturing and testing. ER-35, ¶ 15; ER-47-48, ¶ 80-84. Tiffany and her family's religious beliefs require them to not be complicit in any abortion. ER-35, ¶ 15. Remaining faithful to this religious belief means that Tiffany's children also are not allowed to attend California schools.

Kristi Caraway is the mother of ten biological children, of which six are school-aged. ER-35-36, ¶ 17, 20. Kristi's third child, J.C., has a medical exemption from vaccination. ER-35, ¶ 18. After being vaccinated, J.C. developed several health implications. ER-35, ¶ 18. J.C. was non-verbal until age six and was diagnosed with autism in 2018. ER-35, ¶ 18. After her experience with J.C., Kristi and her husband researched vaccines. It was then that they discovered vaccines' relationship to aborted fetal cell lines. ER-35, ¶ 19 ER-47-48, ¶ 80-84. Kristi sincerely holds religious objections to using products that use or are derived from aborted fetal cells in their testing or manufacturing. ER-35, ¶ 19. Therefore, Kristi's children are also not

allowed to attend California schools and are homeschooled. ER-36, ¶ 20. All Appellants want to send their children to private or public schools in California, but cannot due to their sincerely held religious beliefs. ER-35-36, ¶ 9, 12, 16, 20. The California Department of Education reports that in the 2023-24 schoolyear, there were 6,339,340 students who attended California's public and private schools (5,128,055 enrolled in public K-12 schools, 709,635 enrolled in charter schools, 42,858 enrolled in private kindergarten, 301,251 enrolled in private elementary schools, and 157,541 enrolled in private high schools). (<https://www.ed-data.org/state/ca>, last visited Aug. 6, 2025); see also (<https://www.cde.ca.gov/ds/ad/filesenrcensus.asp>, last visited Aug. 6, 2025). Appellants' children who seek a religious exemption from vaccination represent only 0.000173519% of California's reported students attending private and public school in the State.

2. SB 277's History and Numerous Secular Exemptions

Since 1961 California has required compulsory vaccinations to some degree for California school children. ER-39, ¶ 26. Until January 1, 2016, the law blanketly allowed a "personal belief" exemption that permitted families to conscientiously decline a vaccination that conflicted with their personal beliefs. ER-39-40, ¶ 33, 37. Parents could utilize this personal belief exemption to avoid conflict with their religious convictions; however, it was not required, and many used this exemption for non-religiously related objections. At the time of SB 277's passing, only about 2.5% of students were exempted from vaccinations under the personal belief exemption. ER-40, ¶ 35.

In December 2014, specifically on the dates of December 17-20, 2014, adults and children were exposed to measles at Disneyland in

Orange County. ER-73. Notably, this measles exposure and transmission took place during a time when most schools in California were closed for several weeks due to Winter Break. *See, e.g.*, (<https://rowlandschools.edlilotest.com/apps/events/2014/12/22/1816478/?id=2>, last visited Aug. 6, 2025) (“Winter Break Dec. 15-Jan. 2”); (https://www.ausd.us/Student_Calendar_2014-2015.pdf, last visited Aug. 6, 2025) (“End of First Semester Dec. 18 . . . School reopens Jan. 5, 2015”); (<https://www.berkeleyschools.net/2014/01/2014-2015-school-year-calendar/> last visited Aug. 6, 2025) (showing last day of school before winter break as Friday, December 19, 2014 and first day after winter break as Monday, January 5, 2015). Instead of regulating Disneyland or large-scale theme parks, the cause of the issue, California sought to regulate school admission for most schoolchildren, but not all—specifically targeting the 2.5% of schoolchildren with personal belief and religious exemptions from vaccination.

In 2016, SB 277 eliminated the personal belief exemption, but the law still provides numerous secular exemptions including: (1) a medical exemption, Cal. Health & Safety Code § 120370(a); (2) a “home based private school” or “independent study program” exemption, *id.* § 120335(f); (3) an individualized education program (IEP) exemption, *id.* § 120335(h); (4) an individual over the age of eighteen, *id.* § 120360; and (5) exemptions for various classifications of students including immigrant, homeless, military, and foster youth, allowing them to attend classes without proof of vaccination. ER-40-44, ¶¶ 36, 38, 41-59. This shows California’s lack of hesitancy when issuing secular program-based exemptions (such as exemptions for schoolchildren with IEP or in

independent study programs) and when issuing secular status-based exemptions (such as familial status and economic status).

IEPs affect and exempt a vast number of students. “According to the California Department of Education (CDE), over 700,000, or approximately 11% of, California students received Special Education services in the 2013-14 academic year.” ER-84; see also (<https://dq.cde.ca.gov/dataquest/DQCensus/SPEDEnr.aspx?cds=00&agglevel=State&year=2023-24>, last visited Aug. 6, 2025) (reporting the number of California K-12 students in the 2023-24 school year as 836,846).

Further IEPs can be quite expansive in scope. “Pursuant to the federal Individuals with Disabilities Education Act (IDEA), children with disabilities are guaranteed the right to a free, appropriate public education, including necessary services for a child to benefit from his or her education. Between 1976 and 1984, to meet this federal mandate, California schools provided mental health services to special education students who needed the services pursuant to an Individualized Education Program (IEP). An IEP is a legally binding document that determines what special education services a child will receive and why. IEPs include a child’s classification, placement, specialized services, academic and behavioral goals, a behavior plan if needed, percentage of time in regular education, and progress reports from teachers and therapists. A child may require any related services in order to benefit from special education, including (but not limited to): speech-language pathology and audiology services, early identification and assessment of disabilities in children, medical services, physical and occupational

therapy, orientation and mobility services; and psychological services.” ER-84.

SB 277’s exemption for independent study programs is also broad. Independent studies can be taught online at the student’s home, in a school, or hybrid with other students. 2005 CA Educ. Code §§51745-51749.3. Relevant to the present matter, options for students in independent studies include small groups and one-to-one instruction *at the school*. *Id.*; *see also* My School My Rights, *Right to In-Person School*, (<https://www.myschoolmyrights.com/rights/right-to-in-person-school/>, last visited Aug. 6, 2025). While the exemption does not apply to classroom-based instruction, the small groups and one-to-one instruction are not considered classroom based but still may take place in the school.¹ Even if a student is learning in a one-on-one program, it may be at a school where the student will interact with other students in hallways, cafeterias, playgrounds, between classes, and before and after school. Accordingly, students in independent studies may meet together in classrooms that mimic a traditional classroom setting. *Id.*; *see also* ER-41-42, ¶ 43. Students enrolled in independent study programs, who are not required to be vaccinated, are still free to participate in sports and extra-curricular activities with students who attend California schools. ER-50, ¶ 121.

¹ §51745.5(d) differentiates classroom-style learning from hybrid learning models, defining “[s]ynchronous instruction” as “classroom-style instruction or designated small group or one-on-one instruction delivered in person[.]”

SB 277 also does “not apply to any person 18 years of age or older” so any high school student over the age of eighteen is also categorically exempt. Cal. Health & Saf. Code § 120360.

Regarding status-based exemptions, California does not require homeless children, military families, or foster youth students to provide proof of vaccination within a certain period. ER-33-34, ¶¶ 49-55. Neither does the school district have to disenroll students when school districts spend the entire year trying to ensure students are compliant. ER-34, ¶¶ 55-58. The fact that a child can attend classes without required vaccinations is clearly a risk that the State has determined to be worthwhile as it is a repeating theme in SB 277’s exemptions and grandfathering scheme.

Cal. Health & Safety Code § 120335(g) provided a seven year exemption to those students previously granted a personal believe exemption: “A pupil who, prior to January 1, 2016, submitted a letter or affidavit on file at a private or public elementary or secondary school, child day care center, day nursery, nursery school, family day care home, or development center stating beliefs opposed to immunization shall be allowed enrollment to any private or public elementary or secondary school, child day care center, day nursery, nursery school, family day care home, or development center within the state until the pupil enrolls in the next grade span.” Under Cal. Health & Safety Code § 120335(g), “grade span” means each of the following: (A) Birth to preschool; (B) Kindergarten and grades 1 to 6, inclusive, including transitional kindergarten; and (C) Grades 7 to 12, inclusive. Effectively, the legislature decided to create a “grandfather” clause granting a

continuation of the personal belief exemptions to students despite the purported health risks they claim the exemption creates.

Cal. Code Regs. tit. 17, § 6035(d)(1) provides an exemption for 30 school days to pupils transferring from another state: “For a pupil transferring into a school in California from another school in the United States at kindergarten through 12th grade whose immunization record, as specified in section 6065 or 6070, has not been received by the new school at the time of admission, the governing authority of the school may admit the pupil for up to 30 school days.” And Cal. Ed. Code § 48216(b) effectively provides a two-week exemption for any pupil that has not been properly immunized: “The governing board of the district shall notify the parent or guardian of the pupil that they have two weeks to supply evidence either that the pupil has been properly immunized, or that the pupil is exempted from the immunization requirement pursuant to Section 120365 or 120370 of the Health and Safety Code.” The conditional exemptions granted to transfer students, foster youth, homeless students, migrants, and military families, which last anywhere from two weeks to 30 days to a full school year, pose the same risk of transmission as a student with a religious exemption. ER-61-62, ¶ 143-47.

SB 277 also broadened medical exemptions under § 120370(a) to give physicians discretion to write medical exemptions beyond the narrow Center for Disease Control (CDC) guidelines. ER-44, ¶ 52. When former Governor Brown signed SB 277, he acknowledged that “[t]he Legislature, after considerable debate, specifically amended SB 277, to exempt a child from immunizations whenever the child’s physician concludes that there are circumstances, including, but not limited to,

family medical history, for which the physician does not recommend immunization[.]” ER-44, ¶ 53. Medical exemptions under Cal. Health & Safety Code § 120370(a) are not temporary in nature. An exemption is provided for the entire duration that the student has his or her medical condition. ER-54-55, ¶ 111, 113-14.

A year prior to the enactment of SB 277, personal belief exemptions declined. ER-55, ¶ 112; see also (<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/School/tk-12-reports.aspx#>, last visited Aug. 6, 2025). There is no evidence to suggest that the number of religious exemptions would increase more than medical exemptions. ER-54-55, ¶ 111, 113-14. The converse appears true as since 2016, medical exemptions in California have increased rapidly. ER-55, ¶ 114.

3. California Legislature Targeted Religious Exemptions

Yet despite allowing exemptions for large swathes of schoolchildren based on secular justifications, the California Legislature knowingly targeted religious exemptions for elimination—knowing that doing so would infringe upon the religious exercise of people such as the Appellants. ER-45, ¶¶ 64-65. When considering SB 277, the Senate Judiciary committee highlighted that repealing the personal belief exemption “effectively repeals any possible religious exemptions” and noted SB 277’s conflict with the Free Exercise Clause. ER-45, ¶ 61.

Numerous religious individuals testified about how SB 277 would negatively impact them and their families. ER-45, ¶ 64. Yet, then-Governor Brown still signed the bill over their objections. ER-45, ¶ 64. The legislators’ treatment and consideration of religious concerns was neither tolerant nor respectful. ER-45, ¶ 65.

The American Civil Liberties Union of California (ACLU) warned that the law did not meet constitutional scrutiny as it did “not believe that there has been a sufficient showing of need at present to warrant conditioning access to education on mandatory vaccination for each of the diseases covered by this bill for every school district in the state.” ER-80. The ACLU noted that under California’s Constitution education is a fundamental right; therefore, access to this fundamental right “must not be denied” unless the State’s regulations can meet strict scrutiny review. ER-75. The ACLU then proposed lesser restrictive alternatives such as allowing current reforms the “opportunity to work before they are stricken” and employing better data keeping. ER-75. The ACLU also reminded the California Legislature of the fact “herd immunity is a concept that applies to the entire population in a geographic area, not simply to public school students.” ER-75. SB 277 leaves settings like sports leagues, public extracurricular activities, and hours of services at churches and synagogues—all settings that pose the same risk of transmission as classroom settings, unregulated. ER-56, ¶¶ 120-22. SB 277 leaves unregulated all other locations where schoolchildren encounter contagious disease and all other categories of persons, including even people who come onto school property, such as school visitors.

SB 277’s elimination of a religious exemption, while maintaining numerous secular exemptions is unjustified. But what is worse, the California legislature openly targeted religious individuals in its enactment of the law. Several legislators, including the author of SB 277, Richard Pan, publicly made discriminatory remarks about individuals who hold sincere religious objections to vaccination. ER-45,

¶ 66. Richard Pan stated that people who “opt out of vaccines should be opted out of American society.” ER-45, ¶ 67. He even equated these individuals to drunk drivers. ER-45, ¶ 67. Maral Farsi, who served as the Deputy Director of Legislative and Inter-Governmental Affairs, stated that parents who object to vaccinations are “oxygen thieves who don’t care about children.” ER-45, ¶ 68. These statements were meant to insult and demean parents across California who hold sincere religious beliefs that prohibit them from obtaining all of the State-mandated childhood vaccines. ER-46, ¶ 69. While the numerous exemptions that the California Legislature allows per SB 277 pose the same risk or a much greater risk than Appellants’ requested religious exemption, no derogatory statements were made about how harmful those people allegedly were to society or that they should be cast out of society entirely. ER-45-46, ¶¶ 66-69. Only people like Appellants received that derogatory treatment.

B. Procedural History

Appellants initiated their lawsuit with the filing of their Original Complaint on October 31, 2023, and, most relevant to this appeal, Appellants filed their Third Amended Complaint on December 20, 2024. ER-101, 105. Appellants’ Third Amended Complaint brings one claim: violation of Appellants’ First Amendment rights pursuant to 42 U.S.C. § 1983. ER-34-67. Appellees filed a Motion to Dismiss the Complaint on January 10, 2025. ER-105. Appellants responded in opposition on February 10, 2025, and Appellee filed a reply. ER-105. On March 17, 2025, the district court granted Appellee’s motion to dismiss. ER-3-31.

In its opinion, the lower court recognized the numerous secular exemptions to SB 277:

There are exceptions to California's immunization requirements. First, children may be medically exempt from the immunization requirements if a licensed physician states in writing that "the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe." Cal. Health & Saf. Code § 120370(a) (West 2016), current Cal. Health & Saf. Code §120370(a)(1)-(2). Second, vaccinations are not required for any child in a home-based private school or a child who is enrolled in an independent study program and does not receive classroom-based instruction. Cal. Health & Saf. Code § 120335(f). Third, children who qualify for an individualized education program ("IEP"), pursuant to federal law and § 56026 of the California Education Code, may not be prohibited from accessing any special education and related services required by their IEP based on vaccination status. Cal. Health & Saf. Code § 120335(h). Fourth, California's immunization requirements do not apply to persons "18 years of age or older." Cal. Health & Saf. Code § 120360. Finally, California law also allows conditional admission for students who are homeless, in "migrant" status, in foster care, or in military families, pending receipt of the students' vaccination records. See Cal. Educ. Code §§ 48204.7, 48850, 48852.7, 49069.5, 49701; Cal. Health & Saf. Code §§ 120340, 120341.

ER-6. Yet, despite listing the numerous secular exemptions in its opinion, the lower court held that SB 277 was a generally applicable law and therefore strict scrutiny did not apply. ER-29-30. The lower court then determined that under rational basis review, "[l]egislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data." ER-29 (quoting *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993)). Then, using this standard, the lower court held that SB 277 was rationally related to

a legitimate government interest. ER-29-30. The lower court erred by applying the wrong legal standard, an error that requires reversal.

VI. SUMMARY OF THE ARGUMENT

The resolution of this appeal turns on whether the district court erred in applying mere rational basis review to Appellants' First Amendment claim. It did err. As argued here, and upon this Court's *de novo* review, this Court should reverse the district court's opinion and judgment and remand with instructions to apply strict scrutiny consistent with this Court's application of the standard.

The district court misapplied *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021). The lower court repeats an error the Supreme Court has spent over three decades denouncing: the practice of burdening religious exercise with heavy-handed restrictions "that do not satisfy the threshold requirement of being neutral and generally applicable." *Id.* at 1871. By committing this error, the district court misapplied *Fulton* which requires that "[a] law is not generally applicable if it invites the government to consider the particular reasons for a person's conduct by creating a mechanism for individualized exemptions." *Id.* And that "[a] law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Id.* at 1877.

The district court also misapplied the Supreme Court's holdings in *Tandon v. Newsom*, 141 S. Ct. 1294, 1297-98 (2021) and *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rights Comm'n*, 584 U.S. 617 (2018), which both require a finding of that SB 277 is not generally applicable; each for reasons in their own right. In the final analysis, Appellants' well-pleaded complaint plausibly states a claim under the First Amendment.

The district court erred by dismissing Appellants' claim, and the lower courts' errors require reversal.

VII. STANDARD OF REVIEW

A district court's dismissal of a case for failure to state a claim under Fed. R. Civ. P. 12(b)(6) is reviewed *de novo* on appeal. *O'Brien v. Welty*, 818 F.3d 920, 929 (9th Cir. 2016); *Outdoor Media Grp., Inc. v. City of Beaumont*, 506 F.3d 895, 899 (9th Cir.2007).

Under *de novo* review, this Court is free to substitute the flawed judgment of the lower court with its own judgment and even give the findings of the lower court "no form of appellate deference." *Salve Regina Coll. v. Russell*, 499 U.S. 225, 238 (1991). And since this case implicates First Amendment rights, this Court must closely scrutinize the record "because the reaches of the First Amendment are ultimately defined by the facts it is held to embrace." *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group of Bos.*, 515 U.S. 557, 567 (1995). This Court should "conduct an independent examination of the record as a whole, without deference to the trial court" on Plaintiffs' First Amendment claims. *Id.*; *see also Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 499 (1984).

VIII. ARGUMENT

A. The District Court Erred; Appellants Stated A Valid First Amendment Claim Upon Which Relief Should Be Granted.

The lower court erred by holding that SB 277 is generally applicable and, consequently, applied the wrong legal standard. The district court's errors require reversal.

1. *The District Court’s Opinion Cannot Be Squared with the Supreme Court’s holding in *Fulton v. City of Philadelphia*.*

Under the Supreme Court’s decision in *Fulton v. City of Philadelphia* Court, “[a] law is not generally applicable if it invites the government to consider the particular reasons for a person’s conduct by providing a mechanism for individualized exemptions.” 141 S. Ct. at 1877 (internal quotations, punctuation, and citations omitted). As found by the Court:

The creation of a formal mechanism for granting exceptions renders a policy not generally applicable, regardless whether any exceptions have been given, **because it invites the government to decide which reasons for not complying with the policy are worthy of solicitude.**

Id. at 1879 (internal punctuation, quotations, and citation omitted) (emphasis added). SB 277’s entire exemption scheme is based on a formal mechanism that allows individualized exemptions for some reasons, but not for others.

The Supreme Court in *Fulton* further emphasized that “[a] law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way.” *Id.* at 1877 (emphasis added). And when such a law burdens religious exercise in this way, it must survive strict scrutiny. *See id.* at 1879-82. *Fulton* affirmed that “[a] government policy can survive strict scrutiny only if it advances ‘interests of the highest order’ and is narrowly tailored to achieve those interests. . . . Put another way, so long as the government can achieve its interests in a manner

that does not burden religion, it must do so.” *Id.* at 1881 (internal citation omitted). The Court further clarified that “[t]he question, then, is not whether the [Government] has a compelling interest in enforcing its . . . policies generally, but whether it has such an interest in denying an exception to” a person or entity seeking an exemption. *Id.*

The district court’s analysis here, therefore, undercuts one of the primary aims of *Fulton*—to require the government to show why it must burden the religious exercise of Appellants when it permits exemptions for secular conduct. Instead of enforcing this standard, the district court focused on trying to draw distinctions between Appellants’ arguments and *Fulton*—without serious regard for *comparable risk* or the *specific risk Appellants* would impose compared to the risk of the secular exemptions already allowed by the State. To begin, the lower court never addresses one of the primary concerns of the ACLU in enacting SB 277, raised in Appellants’ Complaint: that SB 277 sought to improve herd immunity, but that is “a concept that applies to the *entire* population in a geographic area, not simply to public school students.” ER-75 (emphasis added). The lower court never addressed this gaping hole in SB 277’s statutory scheme, that it leaves all other locations and settings like sports leagues, public extracurricular activities, and hours school aged children spend at other locations in their communities, unregulated. ER-56, ¶¶ 120-22. Clearly these other settings pose the very same risk (the transmission of infectious disease) that California says that they wish to address by SB 277 in classroom settings. ER-56, ¶¶ 120-22. Ironically, SB 277 does not address the transmission of infectious disease in the setting of large-scale theme parks, which was the impetus for the law. ER-73. SB 277 does not require vaccination of

every person who steps foot on public school grounds or encounters school aged children for periods long enough to be infected by or to transmit infectious disease. The district court paid no attention to these calculated risks or deficiencies within the law. The district court, however, did opine on several of the secular exemptions allowed by SB 277 such as its medical exemption, independent study program, exemption for students over 18-years-old, exemptions for 30-days or more for transfer students and migrant, homeless, foster, and military children, and its exemption for over 700,000 schoolchildren who have an IEP. ER-84, ER-17. At every turn, the district court's analysis shifts from the real comparative risk that the government seeks to address by SB 277, which is: the exposure of an unvaccinated child to infectious disease for a period long enough to either transmit or be infected by the disease.

For example, when addressing the State's IEP exemption, the lower court failed to analyze how permitting an exemption for over 700,000 students posed a lesser risk than honoring Appellants' religious exemption. When addressing medical exemptions, the district court focused on the amount of discretion the government authority has when reviewing a medical exemption submission. ER-21. The district court found that the State retains no discretion, but it is the State who created the mechanism of the exemption and the ability of a student to try to qualify for the exemption. Furthermore SB 276, enacted on September 9, 2019, authorizes the State Department of Public Health to govern and control "the process and guidelines for review of medical exemptions pursuant to this section." See Cal. Health & Safety Code § 120372(a)-(j). And the State has authority over the process and controls the

process to “appeal a medical exemption denial or revocation to the Secretary of California Health and Human Services.” Cal. Health & Safety Code § 120372.05. Each medical exemption is an individualized assessment which is controlled and determined through SB 277 and SB 276.

The only comparative risk analysis that the district court provided when comparing Appellants’ request for a religious exemption to the numerous secular exemptions allowed under the category of medical exemptions was that at the time of enacting SB 277 “personal belief exemptions” were being granted at a higher rate than the 2021-22 numbers for the government granting medical exemptions. ER-19. Because of this data, the district court concluded, “California’s medical exemption is not comparable to a religious exemption.” ER- 19. This comparison analysis is deeply flawed. The number of “personal belief exemptions” is not indicative of the number of religious exemptions, as it is representative a much larger group of exemptions to which religious objections was included. It is synonymous with obtaining data for all people who identify as LGBTQAI+ and then using that number (for the entirety of the grouping) to represent those who identify only as transgender. The district court’s synecdochical analysis, unfortunately, is nothing short of error.²

The truth is that nowhere in the record has the State provided data for the number of *religious* exemptions that were or would be requested, nor did the district court analyze the comparative risk of

² If the estimated number of those who might seek different exemptions is relevant, it is not factored into the comparator analysis but in the court’s strict scrutiny analysis. See *Holt v. Hobbs*, 574 U. S. 352, 368 (2015) (considering sizes of different groups seeking exemptions).

Appellants' eleven requested exemptions. When deciding whether Appellee's Fed. R. Civ. P. 12(b)(6) motion should have been granted or denied, the factual allegations in Appellants' Complaint should have been viewed in the light most favorable to them. *Bartnett v. Centoni*, 31 F.3d 813, 816 (9th Cir. 1994). The district court failed to apply this standard to its comparator analysis.

But here is a critical point that the district court failed to apprehend: once the government creates a mechanism for permitting individualized exemptions, the law is no longer generally applicable. *Fulton*, 141 S. Ct. at 1871. SB 277 plainly prohibits Appellants' "religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Id.* at 1877. SB 277 allows unvaccinated children to attend school whether for 30 days, the school year, several years, or permanently under secular exemptions, but does not allow the very same conduct under a religious exemption.

2. *The District Court's Opinion Conflicts with the Supreme Court's Holding in Tandon v. Newsom.*

The district court also diverges with the Supreme Court's general applicability analysis in *Tandon v. Newsom*, 141 S. Ct. 1294, 1297-98 (2021).

In *Tandon*, the Ninth Circuit Court held that private religious gatherings were not comparable "in terms of risk to public health or reasonable safety measures to address that risk—to commercial activities, or even to religious activities, in public buildings." *Tandon v. Newsom*, 992 F.3d 916, 920 (9th Cir.), *disapproved in later proceedings*, 141 S. Ct. 1294 (2021). The Supreme Court, however, swiftly reversed

the Ninth Circuit's reasoning, issuing a clear directive: "This is the fifth time the Court has summarily rejected the Ninth Circuit's analysis of California's [health and safety] restrictions on religious exercise." *Tandon*, 141 S. Ct. at 1298. Yet, it is this similarly flawed analysis, rejected by the Supreme Court five times, that the lower court employed in the instant case. The lower court held that while unvaccinated school children could qualify for myriad exemptions for secular reasons, such as having an IEP, qualifying for a medical exemption, being over eighteen years of age, or having a certain economic, familial, or military status (exemptions that could last from thirty days, to over a school year, to permanently), children with religious prohibitions from vaccination cannot attend any public or private school in the State of California.

The decision below undermines the Supreme Court's reasoning in *Tandon* and seemingly created its own comparator for purposes of its First Amendment analysis. The problem here is that the comparator analysis is created by the exemptions permitted by the government and through the conduct left unregulated by the government, not by judicial architecting. The district court confined its comparator analysis to secular exemptions SB 277 permits for schoolchildren within public and private schools. In *Tandon*, however, the Supreme Court warned against applying less favorable conditions to religious exercise on private property than activities left unregulated by the government. *Id.* at 1298 (noting that while the government regulated private religious exercise, it did not apply the same restrictions to "hair salons, retail stores, personal care services, movie theaters, private suites at sporting events and concerts, and indoor restaurants."). Similarly, here, while SB 277 bans religious exemptions for schoolchildren within all public

and private schools, it does not prohibit any activities where infectious disease could be transmitted in all other private and public locations. And when such restrictions contain “myriad exceptions” such as all the venues California has chosen to leave unregulated and “accommodations for comparable activities” by providing secular exemptions, strict scrutiny must be applied. The Supreme Court further warned that this “standard is not watered down; it really means what it says.” *Id.* (internal quotations and citations omitted). The district court simply did not follow what it says.

3. *The District Court’s Decision Misapplies Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n.*

To be clear, SB 277 is not generally applicable due to its treatment of comparative risks and its mechanism for individualized exemptions under *Fulton* and *Tandon*—without any showing of hostility or targeting. The Supreme Court’s decision in *Masterpiece*, however, provides a third reason for why SB 277 is not a law of generally applicability.

Under the Free Exercise Clause, the government “cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices.” *Masterpiece*, 584 U.S. at 639-40; see also *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 877–878 (1990). As a result, the Supreme Court has warned that government actions burdening religious practice should be “set aside” when the “slight suspicion” exists that the governmental action “stem[s] from animosity to religion or distrust of its practices.” *Masterpiece*, 584 U.S. at 639-40. SB 277 is one of those actions.

California provided a religious exemption from 1961-2016 encompassed within the State's "personal belief" exemption. ER-39, ¶ 26. At the time of SB 277's passing, the California Legislature knew of widespread opposition to the law, including the fact that the law would require religious objectors to be excluded from all private and public schools within the State. ER-45, ¶¶ 64-65. Indeed, when considering SB 277, the Senate Judiciary committee highlighted that repealing the personal belief exemption "effectively repeals any possible religious exemptions" and noted SB 277's conflict with the Free Exercise Clause. ER-45, ¶ 61. Numerous religious individuals testified about how SB 277 would negatively impact them and their families. ER-45, ¶ 64. The legislators' treatment and consideration of religious concerns showed great intolerance. ER-45, ¶ 65. Several legislators, including the author of SB 277, Richard Pan, publicly made discriminatory remarks about individuals who hold sincere religious objections to vaccination. ER-45, ¶ 66. Religious objectors were considered to be "opting out of vaccines" voluntarily, and Richard Pan targeted such objectors and openly stated that they "should be opted out of American society." ER-45, ¶ 67. He even equated such individuals to drunk drivers. ER-45, ¶ 67. Maral Farsi, who served as the Deputy Director of Legislative and Inter-Governmental Affairs, stated that parents who hold sincere objections to certain vaccines were "oxygen thieves who don't care about children." ER-45, ¶ 68. Such statements were meant to insult and demean parents across California who hold sincere religious beliefs that prohibit them from obtaining all the State-mandated vaccinations. ER-46, ¶ 69. While the numerous exemptions that the California Legislature allows per SB 277 pose the same risk or a much greater risk than Appellants'

requested religious exemption, no derogatory statements were made about how harmful those people allegedly were to society or that they should be cast out of society entirely. ER-45-46, ¶¶ 66-69. No one argued that schoolchildren with medical exemptions from vaccinations were a plague on society, nor did they campaign against the over 700,000 children exempt from SB 277 who were receiving special education services through IEPs.

The Free Exercise Clause protects not only the right to hold popular religious beliefs, but also unpopular religious beliefs. And it protects the right to live out those beliefs publicly in “the performance of (or abstention from) physical acts.” *Smith*, 494 U.S. at 877. Laws targeting acts for disfavor when they are religious in nature or because of their religious character are “doubtless . . . unconstitutional.” *Id.*, at 877–878. As a result, where “official expressions of hostility” accompany laws or policies burdening the free exercise of religion, the court can and should “set aside” such policies without additional inquiry. *Masterpiece*, 584 U.S. at 640. If this Court, however, does not find animus based on allegations within Appellants’ Third Amended Complaint, SB 277 still is not a generally applicable law and requires strict scrutiny review.

4. *Appellants’ Allegations Establish a Valid First Amendment Claim that Should Not Have Been Dismissed.*

Fundamentally, the “exercise of religion” under the First Amendment embraces two concepts: the freedom to believe and the freedom to act. *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940); see *McDaniel v. Paty*, 435 U.S. 618, 626 (1978) (“The Free Exercise Clause categorically prohibits government from regulating, prohibiting, or rewarding religious beliefs as such.”). Indeed, “[t]he principle that

government may not enact laws that suppress religious belief or practice is . . . well understood.” *Church of the Lukumi Babalu Aye, Inc.*, 508 U.S. at 523.

Appellants’ religious objection to SB 277 is religious exercise protected by the First Amendment. The Supreme Court has held that the exercise of religion involves “not only belief and profession but the performance of (or abstention from) physical acts that are engaged in for religious reasons.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 710 (2014). The Supreme Court has recognized that religious exercise can take a variety of forms. In *Smith*, for example, the plaintiffs exercised their religion by ingesting hallucinogenic drugs. 494 U.S. at 874. In *Sherbert*, the plaintiff exercised her religion by refusing to work on a particular day of the week. *Sherbert v. Verner*, 374 U.S. 399-400 (1963). In *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993), the plaintiffs exercised their religion by engaging in animal sacrifice. *Id.* at 524-25. And in *Holt v. Hobbs*, 574 U.S. 352 (2015), “the religious exercise at issue [wa]s the growing of a beard” and the refusal to shave it. *Id.* at 361.

Supreme Court cases also make clear that religious exercise can involve indirect actions. In *Thomas v. Review Board*, 450 U.S. 707, 715 (1981), the plaintiff exercised his religion by refusing to “participat[e] in the production of armaments” that might be used by others in war. In *United States v. Lee*, 455 U.S. 252, 257 (1982), the plaintiffs exercised their religion by refusing to “pay[] Social Security taxes” that they believed would “threaten” the social practice among the Amish of caring for each other without governmental assistance. In *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171, 179

(2012), the plaintiff was a school that exercised its religion by refusing to employ a teacher who had acted contrary to the tenets of its Lutheran “belief[s].” And in *Hobby Lobby*, the plaintiffs exercised their religion by refusing to provide their employees with health insurance that, if used by employees, might “result in the destruction of an embryo.” 573 U.S. at 720.

Supreme Court cases have thus firmly established that all religious exercise, even if considered unpopular or unorthodox, must be treated equally. The law cannot treat some instances of religious exercise as more important, significant, or substantial than others, because “courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim.” *Smith*, 494 U.S. at 887. Simply put, “the judicial process is singularly ill equipped to resolve” how important or substantial a religious practice is. *Thomas*, 450 U.S. at 715-16. Such matters are “not within the judicial function [or] judicial competence,” because “[c]ourts are not arbiters of scriptural interpretation.” *Id.* at 716. Accordingly, once a plaintiff draws a line between conduct that is “consistent with his religious beliefs” and conduct that is “morally objectionable,” “it is not for [a court] to say that [his] religious beliefs are mistaken or insubstantial.” *Hobby Lobby*, 573 U.S. at 725. Of course, courts can assess whether a person’s asserted religious belief is “sincere” in order to “weed out insincere claims” that are simply a pretext to avoid complying with the law. *Hobby Lobby*, 573 U.S. at 717, n.28. If a claim is “nonreligious in motivation,” then it is not entitled to any protection. *Thomas*, 450 U.S. at 715. But where, as here, a plaintiff’s claim is sincere, courts must “accept” the claimant’s

view that a particular act or omission is “forbidden by [his] faith.” *Lee*, 455 U.S. at 257.

It is equally clear that courts cannot second-guess religious objections that are based on a theory of moral complicity. If a religious adherent sincerely believes that she must abstain from a particular activity because it would make her morally complicit in a sinful act, then courts must defer to her sincerely held belief. The reason is straightforward: whether an act “is connected” to wrongdoing “in a way that is sufficient to make it immoral” is fundamentally a question of private religious belief. *Hobby Lobby*, 573 U.S. at 724. This question “implicates a difficult and important question of religion and moral philosophy, namely, the circumstances under which it is wrong for a person to perform an act that is innocent in itself but that” the person believes “has the effect of enabling or facilitating the commission of an immoral act by another.” *Id.* Courts cannot “[a]rrogat[e] the authority to provide a binding national answer to this religious and philosophical question.” *Id.* This follows directly from the principle that secular courts have no business questioning whether a religious believer has “correctly perceived the commands of [his own] faith.” *Thomas*, 450 U.S. at 716.

At least three Supreme Court cases directly confirm that courts may not second-guess a plaintiff’s sincerely held religious objection. In *Thomas*, the plaintiff had a religious objection to “participat[ing] in the production of armaments” that might be used by others in war. 450 U.S. at 715. Specifically, he objected to working directly on “tank turrets,” even though he did not object to working in a “roll foundry” on “sheet steel” that “may have found its way into tanks or other weapons.” *Id.* at 711 & n.3. The lower court dismissed his claim because it found his

beliefs to be logically “inconsistent.” *Id.* at 715. The Supreme Court rejected that reasoning, emphasizing that the plaintiff was entitled to decide for himself which actions were “sufficiently insulated from producing weapons of war.” *Id.* Once he “drew a line” as to which conduct he found religiously objectionable, a court could not “undertake to dissect [his] religious beliefs.” *Id.* Because he had an “honest conviction that [certain] work was forbidden by his religion,” his refusal to engage in such work was a protected exercise of religion. *Id.* at 716.

Similarly, in *Lee*, an Amish plaintiff objected to paying Social Security taxes because he believed that doing so would discourage other Amish from “provid[ing] for their fellow members the kind of assistance contemplated by the social security system.” 455 U.S. 257. The Government disagreed, arguing that “payment of social security taxes w[ould] not,” in fact, “threaten the integrity of the Amish religious belief or observance.” *Id.* Once again, the Supreme Court rejected that argument, stating that “[i]t is not within the judicial function [or] competence . . . to determine whether [the plaintiff] or the Government has the proper interpretation of the Amish faith” as to whether paying Social Security taxes was religiously objectionable. *Id.* (citation and internal quotation marks omitted). Because the plaintiff himself believed that paying the taxes was religiously forbidden, his refusal to do so was an exercise of religion, and “compulsory participation in the social security system interfere[d] with [his] free exercise rights.” *Id.*

Finally, in *Hobby Lobby*, the government’s main argument was that “the connection between what the objecting parties must do (provide [contraceptive coverage]) and the end that they find to be morally wrong (destruction of an embryo) is simply too attenuated” to

support a cognizable religious objection. 573 U.S. at 723-24. The Supreme Court rejected that argument. *Id.* at 724. Just as in *Thomas* and *Lee*, the relevant point was that the plaintiffs themselves believed that providing the mandated coverage would wrongfully “facilitat[e] the commission of an immoral act by another.” See *id.* at 724-25. For that reason, their refusal to provide that coverage was a protected exercise of religion.

As the record in the lower reflects, the district court paid lip service to precedent regarding this standard, but it did not specifically hold that Appellants’ beliefs were sincerely held. ER-9-31. Furthermore, the district court’s analysis seemed to cast doubt on how seriously it valued Appellants’ beliefs. *Id.* Appellants’ abstention from vaccination that violates their sincerely held religious beliefs is religious exercise protected under the Constitution and must be treated in the same vein and manner as religious beliefs more popularly held. We now look at how the Supreme Court has handled similar abstentions.

In both *Sherbert v. Verner* and *Wisconsin v. Yoder*, the Supreme Court “looked beyond broadly formulated interests justifying the general applicability of government mandates, scrutinized the asserted harms, and granted specific exemptions to particular religious claimants.” *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 431 (2006); see also *Wisconsin v. Yoder*, 406 U.S. 205, 213, 221, 236 (1972); *Sherbert*, 374 U.S. at 410. In *Sherbert*, the Court held that the State’s denial of unemployment benefits to an employee who refused to work on Saturdays because of her religious beliefs was an impermissible burden on her free exercise of religion because it “force[d] her to choose between following the precepts of her religion and

forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand.” *Id.* at 404. The court held that the government could not impose the same kind of burden upon the free exercise of religion as it would impose a fine against general noncompliance of the law. *Id.* at 402 (“Government may neither compel affirmation of a repugnant belief, nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities, nor employ the taxing power to inhibit the dissemination of particular religious views.”) (internal citations omitted).

In *Yoder*, Amish and Mennonite parents of teenaged children held religious beliefs that prohibited them from sending their children to high school as required by Wisconsin law. *Yoder*, 406 U.S. at 207. Each parent was fined \$5 per child for failing to comply with state law for not sending their children to school beyond the eighth grade in accordance with their sincerely held religious belief that “higher learning tends to develop values they reject as influences that alienate man from God.” *Id.* at 208-13. The Court held that the impact of Wisconsin law, while recognizing the “paramount” interest in education that the law sought to promote, impermissibly compelled the parents to perform acts undeniably at odds with the fundamental tenets of their religious beliefs. *Id.* at 218, 213, 221; *see also Braunfeld v. Brown*, 366 U.S. 599, 605 (1961). The Court found that this compulsion “carries with it precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent,” *Yoder* at 218; the same kind of impermissible compulsion is before the Court in this case. Appellants’ complaint establishes that SB 277 violates their sincerely

held religious beliefs, and the cost of exercising their faith is the loss of the fundamental right to private and public schooling in California.

As addressed in Sections I. A.-C, SB 277 is not a law of general applicability. Therefore, the lower court was in error by not applying strict scrutiny: the “most demanding test known to constitutional law.” *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997).

Under strict scrutiny, “so long as the government can achieve its interests in a manner that does not burden religion, it *must* do so.” *Fulton*, 141 S. Ct. at 1881 (emphasis added). In *Fulton*, the Court held that Philadelphia’s refusal to contract with Catholic Social Services for the provision of foster care services unless CSS agrees to certify same-sex couples as foster parents violated the Free Exercise Clause of the First Amendment. The Court affirmed that “[a] government policy can survive strict scrutiny only if it advances ‘interests of the highest order’ and is narrowly tailored to achieve those interests[.]” *Id.* at 1881 (internal citation omitted). The Court clarified that “[t]he question, then, is not whether the City has a compelling interest in enforcing its non-discrimination policies generally, but whether it has such an interest in denying an exception to CSS.” *Id.* The question here is not whether the government has a compelling interest in enforcing SB 277 generally, but whether it has such an interest in denying an exception just to Appellants.

Under strict scrutiny, the State must “demonstrate that the compelling interest test is satisfied through application of the challenged law [to] the particular claimant whose sincere exercise of religion is being substantially burdened.” *Hobby Lobby*, 573 U.S. at 726-27 (citation omitted). “[B]roadly formulated” or “sweeping” interests are

inadequate. *O Centro*, 546 U.S. at 431; *Yoder*, 406 U.S. at 221. Rather, the government must show with “particularity how [even] admittedly strong interest[s]” “would be adversely affected by granting an exemption.” *Yoder*, 406 U.S. at 236. In other words, the lower court was required to “look to the marginal interest in enforcing the [vaccine] mandate in th[is] case[].” *Hobby Lobby*, 573 U.S. at 726-27. The State did not establish such a compelling interest here.

Appellee has failed to identify why this “particular claimant” (the Appellants with their eleven requested exemptions) is critical to their purported compelling interest. *Hobby Lobby*, 573 U.S. at 726-27. Appellee has not addressed why, given these factors, it is “actually *necessary*” to enforce SB 277 against Appellants to achieve their aims—especially when their statutory scheme exempts over 700,000 students under just one of its many secular exemptions. *Brown v. Entm’t Merchs. Ass’n*, 564 U.S. 786, 799 (2011) (emphasis added). Based on the numerous exemptions SB 277 does allow, it is hard to see how denying Appellants’ religious accommodations is critical to the State’s immunization scheme. A law cannot be regarded as protecting “an interest of the highest order” “when it leaves appreciable damage to that supposedly vital interest unprohibited.” *Church of the Lukumi Babalu Aye, Inc.*, 508 U.S. at 547 (citation omitted); *O Centro*, 546 U.S. at 43.

Furthermore, Appellee failed to use the least restrictive means. So long as *any* lesser restrictive means is available, the State “must” use it. *See Fulton*, 141 S. Ct. at 1881. The State could use lesser restrictive alternatives such as limiting some of its secular exemptions, such as opening its campuses to unvaccinated schoolchildren enrolled in individual study programs, limiting its school campuses to outside

visitors, restricting access to other locations like large-scale theme parks that better address transmission events such as the 2014 Disneyland outbreak, exploring lesser restrictive alternatives posed by the ACLU during SB 277's bill passage, see ER-75, utilizing quarantine practices, etc. In short, there are a panoply of lesser restrictive alternatives available to the State that fall short of banning schoolchildren from their fundamental right to education in the State of California.

IX. CONCLUSION

The district court erred by granting Appellee's motion to dismiss and applied the wrong legal standard. Based on the foregoing, this Court should reverse and remand for further proceedings.

Respectfully submitted,

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STATEMENT OF RELATED CASES
(Pursuant to Circuit Rule 28-2.6)

Appellants are not aware of any related proceeding pending before this Court.

/s/ Erin Elizabeth Mersino
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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word limit of Cir. R. 32-1, because this brief contains 9,023 words, excluding the items exempted by Fed. R. App. P. 32(f). This document complies with the type-case requirement of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6). This document has been prepared using Microsoft Word in 14-point Century Schoolbook font.

/s/ Erin Elizabeth Mersino
Erin Elizabeth Mersino

CERTIFICATE OF SERVICE

I certify that on August 8, 2025, this document was electronically filed with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ Erin Elizabeth Mersino
Erin Elizabeth Mersino

ADDENDUM

CONSTITUTIONAL AND STATUTORY AUTHORITIES

First Amendment of the United States Constitution:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. U.S. Const., amend I.

42 U.S.C. § 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For

the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

S.B. 277:

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 120325 of the Health and Safety Code is amended to read:

120325.

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

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

- (1) Diphtheria.
- (2) Hepatitis B.
- (3) Haemophilus influenzae type b.
- (4) Measles.
- (5) Mumps.

(6) Pertussis (whooping cough).

(7) Poliomyelitis.

(8) Rubella.

(9) Tetanus.

(10) Varicella (chickenpox).

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

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

(c) Exemptions from immunization for medical reasons.

(d) For the keeping of adequate records of immunization so that health departments, schools, and other institutions, parents or guardians, and the persons immunized will be able to ascertain that a child is fully or

only partially immunized, and so that appropriate public agencies will be able to ascertain the immunization needs of groups of children in schools or other institutions.

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

SEC. 2.

Section 120335 of the Health and Safety Code is amended to read:

120335.

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

(b) The governing authority shall not unconditionally admit any person as a pupil of any private or public elementary or secondary school, childcare center, day nursery, nursery school, family day care home, or development center, unless, prior to his or her first admission to that institution, he or she has been fully immunized. The following are the diseases for which immunizations shall be documented:

- (1) Diphtheria.
 - (2) Haemophilus influenzae type b.
 - (3) Measles.
 - (4) Mumps.
 - (5) Pertussis (whooping cough).
 - (6) Poliomyelitis.
 - (7) Rubella.
 - (8) Tetanus.
 - (9) Hepatitis B.
 - (10) Varicella (chickenpox).
 - (11) Any other disease deemed appropriate by the department, taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians.
- (c) Notwithstanding subdivision (b), full immunization against hepatitis B shall not be a condition by which the governing authority shall admit or advance any pupil to the 7th grade level of any private or public elementary or secondary school.

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

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

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

(g) (1) A pupil who, prior to January 1, 2016, submitted a letter or affidavit on file at a private or public elementary or secondary school, child day care center, day nursery, nursery school, family day care home, or development center stating beliefs opposed to immunization shall be allowed enrollment to any private or public elementary or secondary school, child day care center, day nursery, nursery school, family day care home, or development center within the state until the pupil enrolls in the next grade span.

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

(A) Birth to preschool.

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

(C) Grades 7 to 12, inclusive.

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

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

SEC. 3.

Section 120338 is added to the Health and Safety Code, to read:

120338.

Notwithstanding Sections 120325 and 120335, any immunizations deemed appropriate by the department pursuant to paragraph (11) of subdivision (a) of Section 120325 or paragraph (11) of subdivision (b) of Section 120335, may be mandated before a pupil's first admission to any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, only if exemptions are allowed for both medical reasons and personal beliefs.

SEC. 4.

Section 120365 of the Health and Safety Code is repealed.

SEC. 5.

Section 120370 of the Health and Safety Code is amended to read:

120370.

(a) If the parent or guardian files with the governing authority a written statement by a licensed physician to the effect that the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe, indicating the specific nature and probable duration of the medical condition or circumstances, including, but not limited to, family medical history, for which the

physician does not recommend immunization, that child shall be exempt from the requirements of Chapter 1 (commencing with Section 120325, but excluding Section 120380) and Sections 120400, 120405, 120410, and 120415 to the extent indicated by the physician's statement.

(b) If there is good cause to believe that a child has been exposed to a disease listed in subdivision (b) of Section 120335 and his or her documentary proof of immunization status does not show proof of immunization against that disease, that child may be temporarily excluded from the school or institution until the local health officer is satisfied that the child is no longer at risk of developing or transmitting the disease.

SEC. 6.

Section 120375 of the Health and Safety Code is amended to read:

120375.

(a) The governing authority of each school or institution included in Section 120335 shall require documentary proof of each entrant's immunization status. The governing authority shall record the immunizations of each new entrant in the entrant's permanent enrollment and scholarship record on a form provided by the department.

The immunization record of each new entrant admitted conditionally shall be reviewed periodically by the governing authority to ensure that within the time periods designated by regulation of the department he or she has been fully immunized against all of the diseases listed in Section 120335, and immunizations received subsequent to entry shall be added to the pupil's immunization record.

(b) The governing authority of each school or institution included in Section 120335 shall prohibit from further attendance any pupil admitted conditionally who failed to obtain the required immunizations within the time limits allowed in the regulations of the department, unless the pupil is exempted under Section 120370, until that pupil has been fully immunized against all of the diseases listed in Section 120335.

(c) The governing authority shall file a written report on the immunization status of new entrants to the school or institution under their jurisdiction with the department and the local health department at times and on forms prescribed by the department. As provided in paragraph (4) of subdivision (a) of Section 49076 of the Education Code, the local health department shall have access to the complete health information as it relates to immunization of each student in the schools

or other institutions listed in Section 120335 in order to determine immunization deficiencies.

(d) The governing authority shall cooperate with the county health officer in carrying out programs for the immunization of persons applying for admission to any school or institution under its jurisdiction. The governing board of any school district may use funds, property, and personnel of the district for that purpose. The governing authority of any school or other institution may permit any licensed physician or any qualified registered nurse as provided in Section 2727.3 of the Business and Professions Code to administer immunizing agents to any person seeking admission to any school or institution under its jurisdiction.

S.B. 276:

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS
FOLLOWS:

SECTION 1.

The Legislature finds and declares all of the following:

(a) Immunizations are public health measures to ensure protection against debilitating and sometimes fatal diseases.

(b) Immunization requirements have led to greatly diminished or eliminated debilitating childhood diseases, such as measles.

(c) According to the State Department of Public Health immunization assessment for the 2018–19 school year:

(1) The immunization rate, or the rate at which children attending school are fully vaccinated on schedule, for kindergarten-aged children was 94.8 percent, which is 0.3 percent less than the previous school year.

(2) Of the schools reporting, 16 percent of California counties had kindergarten immunization rates below 90 percent.

(d) By May 2019, the federal Centers for Disease Control and Prevention reported 1,022 cases of the measles nationwide. Fifty-one of those incidences were in California.

(e) For all but a small number of individuals, immunizations are safe and effective.

(f) Effective immunizations not only protect immunized individuals from disease but have the ability to provide indirect protection for which immunizations are not effective or safe. This indirect protection is called herd or community immunity.

(g) Herd immunity successfully occurs if and when a sufficient portion of the community is immune. Herd immunity prevents sustained transmission of disease even when immunization coverage is below 100 percent.

SEC. 2.

Section 120370 of the Health and Safety Code is amended to read:

120370.

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

(2) Commencing January 1, 2021, an exemption issued before January 1, 2021, pursuant to this subdivision is valid only if the parent or guardian has complied with paragraph (2) of subdivision (c) of Section 120372.

(b) If there is good cause to believe that a child has been exposed to a disease listed in subdivision (b) of Section 120335 and the child's documentary proof of immunization status does not show proof of immunization against that disease, that child may be temporarily excluded from the school or institution until the local health officer is satisfied that the child is no longer at risk of developing or transmitting the disease.

SEC. 3.

Section 120372 is added to the Health and Safety Code, to read:

120372.

(a) (1) By January 1, 2021, the department shall develop and make available for use by licensed physicians and surgeons an electronic, standardized, statewide medical exemption certification form that shall be transmitted directly to the department's California Immunization Registry (CAIR) established pursuant to Section 120440. Pursuant to Section 120375, the form shall be printed, signed, and submitted directly

to the school or institution at which the child will attend, submitted directly to the governing authority of the school or institution, or submitted to that governing authority through the CAIR where applicable. Notwithstanding Section 120370, commencing January 1, 2021, the standardized form shall be the only documentation of a medical exemption that the governing authority may accept, except as provided in paragraph (2) of subdivision (c).

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

(A) The name, California medical license number, business address, and telephone number of the physician and surgeon who issued the medical exemption, and of the primary care physician of the child, if different from the physician and surgeon who issued the medical exemption.

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

(C) A statement certifying that the physician and surgeon has conducted a physical examination and evaluation of the child consistent with the relevant standard of care and complied with all applicable requirements of this section.

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

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

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

(G) Whether the medical exemption is permanent or temporary, including the date upon which a temporary medical exemption will expire. A temporary exemption shall not exceed one year.

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

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

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

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

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

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

(c) (1) By January 1, 2021, the department shall create a standardized system to monitor immunization levels in schools and institutions as specified in Sections 120375 and 120440, and to monitor patterns of

unusually high exemption form submissions by a particular physician and surgeon.

(2) If a medical exemption has been authorized pursuant to Section 120370 prior to the adoption of the statewide standardized form, a parent or guardian shall submit, by January 1, 2021, a copy of the medical exemption to the department for inclusion in a state database in order for the medical exemption to remain valid.

(d) (1) The department, at a minimum, shall annually review immunization reports from all schools and institutions in order to identify medical exemption forms submitted to the department pursuant to Section 120370 and under this section that will be subject to paragraph (2).

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

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

(B) Physicians and surgeons who have submitted five or more medical exemptions in a calendar year.

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

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

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

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

Pursuant to this review, the State Public Health Officer or physician and surgeon designee may revoke the medical exemption.

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

(5) If a medical exemption is revoked pursuant to this subdivision, the child shall continue in attendance. However, within 30 calendar days of the revocation, the child shall commence the immunization schedule required for conditional admittance under Chapter 4 (commencing with Section 6000) of Division 1 of Title 17 of the California Code of Regulations in order to remain in attendance, unless an appeal is filed pursuant to Section 120372.05 within that 30-day time period, in which case the child shall continue in attendance and shall not be required to otherwise comply with immunization requirements unless and until the revocation is upheld on appeal.

(6) (A) If the department determines that a physician's and surgeon's practice is contributing to a public health risk in one or more communities, the department shall report the physician and surgeon to

the Medical Board of California or the Osteopathic Medical Board of California, as appropriate. The department shall not accept a medical exemption form from the physician and surgeon until the physician and surgeon demonstrates to the department that the public health risk no longer exists, but in no event shall the physician and surgeon be barred from submitting these forms for less than two years.

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

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

(8) Notwithstanding any other provision of this section, a clinically trained immunization program staff member who is a physician and

surgeon or a registered nurse may review any exemption in the CAIR or other state database as necessary to protect public health.

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

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

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

(h) If the department or the California Health and Human Services Agency determines that contracts are required to implement this section, the department may award these contracts on a single-source or sole-

source basis. The contracts are not subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(i) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer this section through provider bulletins, or similar instructions, without taking regulatory action.

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

SEC. 4.

Section 120372.05 is added to the Health and Safety Code, to read:

120372.05.

(a) A medical exemption revoked pursuant to Section 120372 may be appealed by a parent or guardian to the Secretary of California Health

and Human Services. Parents or guardians may provide necessary information for purposes of the appeal.

(b) The secretary shall establish an independent expert review panel, consisting of three licensed physicians and surgeons who have relevant knowledge, training, and experience relating to primary care or immunization to review appeals. The agency shall establish the process and guidelines for the appeals process pursuant to this section. The agency shall post this information on the agency's internet website. The agency shall also establish requirements, including conflict-of-interest standards, consistent with the purposes of this chapter, that a physician and surgeon shall meet in order to qualify to serve on the panel.

(c) The independent expert review panel shall evaluate appeals consistent with the federal Centers for Disease Control and Prevention, federal Advisory Committee on Immunization Practices, or American Academy of Pediatrics guidelines or the relevant standard of care, as applicable.

(d) The independent expert review panel shall submit its determination to the secretary. The secretary shall adopt the determination of the independent expert review panel and shall promptly issue a written

decision to the child's parent or guardian. The decision shall not be subject to further administrative review.

(e) A child whose medical exemption revocation pursuant to subdivision (d) of Section 120372 is appealed under this section shall continue in attendance and shall not be required to commence the immunization required for conditional admittance under Chapter 4 (commencing with Section 6000) of Division 1 of Title 17 of the California Code of Regulations, provided that the appeal is filed within 30 calendar days of revocation of the medical exemption.

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

SEC. 5.

Section 120375 of the Health and Safety Code is amended to read:

120375.

(a) The governing authority of each school or institution included in Section 120335 shall require documentary proof of each entrant's immunization status. The governing authority shall record the immunizations of each new entrant in the entrant's permanent enrollment and scholarship record on a form provided by the department. The immunization record of each new entrant admitted conditionally shall be reviewed periodically by the governing authority to ensure that within the time periods designated by regulation of the department the entrant has been fully immunized against all of the diseases listed in Section 120335, and immunizations received after entry shall be added to the pupil's immunization record.

(b) The governing authority of each school or institution included in Section 120335 shall prohibit from further attendance any pupil admitted conditionally who failed to obtain the required immunizations within the time limits allowed in the regulations of the department until that pupil has been fully immunized against all of the diseases listed in Section 120335, unless the pupil is exempted under Section 120370 or 120372.

(c) The governing authority shall file a written report, on at least an annual basis, on the immunization status of new entrants to the school or institution under their jurisdiction with the department and the local health department on forms prescribed by the department. As provided in paragraph (4) of subdivision (a) of Section 49076 of the Education Code, the local health department shall have access to the complete health information as it relates to immunization of each student in the schools or other institutions listed in Section 120335 in order to determine immunization deficiencies.

(d) The governing authority shall cooperate with the county health officer in carrying out programs for the immunization of persons applying for admission to any school or institution under its jurisdiction. The governing board of any school district may use funds, property, and personnel of the district for that purpose. The governing authority of any school or other institution may permit any licensed physician or any qualified registered nurse to administer immunizing agents to any person seeking admission to any school or institution under its jurisdiction.

SEC. 6.

Section 120440 of the Health and Safety Code is amended to read:

120440.

(a) For the purposes of this chapter, the following definitions shall apply:

(1) “Health care provider” means any person licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code or a clinic or health facility licensed pursuant to Division 2 (commencing with Section 1200).

(2) “Schools, childcare facilities, and family childcare homes” means those institutions referred to in subdivision (b) of Section 120335, regardless of whether they directly provide immunizations to patients or clients.

(3) “WIC service provider” means any public or private nonprofit agency contracting with the department to provide services under the California Special Supplemental Food Program for Women, Infants, and Children, as provided for in Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106.

(4) “Health care plan” means a health care service plan as defined in subdivision (f) of Section 1345, a government-funded program the purpose of which is paying the costs of health care, or an insurer as

described in Sections 10123.5 and 10123.55 of the Insurance Code, regardless of whether the plan directly provides immunizations to patients or clients.

(5) “County welfare department” means a county welfare agency administering the California Work Opportunity and Responsibility to Kids (CalWORKs) program, pursuant to Chapter 2 (commencing with Section 11200.5) of Part 3 of Division 9 of the Welfare and Institutions Code.

(6) “Foster care agency” means any of the county and state social services agencies providing foster care services in California.

(7) “Tuberculosis screening” means an approved intradermal tuberculin test or any other test for tuberculosis infection that is recommended by the federal Centers for Disease Control and Prevention and licensed by the federal Food and Drug Administration.

(b) (1) Local health officers may operate immunization information systems pursuant to their authority under Section 120175, in conjunction with the Immunization Branch of the State Department of Public Health. Local health officers and the State Department of Public Health may operate these systems in either or both of the following manners:

(A) Separately within their individual jurisdictions.

(B) Jointly among more than one jurisdiction.

(2) This subdivision does not preclude local health officers from sharing the information set forth in paragraphs (1) to (11), inclusive, of subdivision (c) with other health officers jointly operating the system.

(c) Notwithstanding Sections 49075 and 49076 of the Education Code, Chapter 5 (commencing with Section 10850) of Part 2 of Division 9 of the Welfare and Institutions Code, or any other provision of law, unless a refusal to permit recordsharing is made pursuant to subdivision (e), health care providers, and other agencies, including, but not limited to, schools, child care facilities, service providers for the California Special Supplemental Food Program for Women, Infants, and Children (WIC), health care plans, foster care agencies, and county welfare departments, may disclose the information set forth in paragraphs (1) to (11), inclusive, from the patient's medical record, or the client's record, to local health departments operating countywide or regional immunization information and reminder systems and the State Department of Public Health. Local health departments and the State Department of Public Health may disclose the information set forth in paragraphs (1) to (11),

inclusive, to each other and, upon a request for information pertaining to a specific person, to health care providers taking care of the patient and to the Medical Board of California and the Osteopathic Medical Board of California. Local health departments and the State Department of Public Health may disclose the information in paragraphs (1) to (7), inclusive, and paragraphs (9) to (11), inclusive, to schools, child care facilities, county welfare departments, and family child care homes to which the person is being admitted or in attendance, foster care agencies in assessing and providing medical care for children in foster care, and WIC service providers providing services to the person, health care plans arranging for immunization services for the patient, and county welfare departments assessing immunization histories of dependents of CalWORKs participants, upon request for information pertaining to a specific person. Determination of benefits based upon immunization of a dependent CalWORKs participant shall be made pursuant to Section 11265.8 of the Welfare and Institutions Code. The following information shall be subject to this subdivision:

(1) The name of the patient or client and names of the parents or guardians of the patient or client.

- (2) Date of birth of the patient or client.
- (3) Types and dates of immunizations received by the patient or client.
- (4) Manufacturer and lot number for each immunization received.
- (5) Adverse reaction to immunizations received.
- (6) Other nonmedical information necessary to establish the patient's or client's unique identity and record.
- (7) Results of tuberculosis screening.
- (8) Current address and telephone number of the patient or client and the parents or guardians of the patient or client.
- (9) Patient's or client's gender.
- (10) Patient's or client's place of birth.
- (11) Patient's or client's information needed to comply with Chapter 1 (commencing with Section 120325), but excluding Section 120380.

(d) (1) Health care providers, local health departments, and the State Department of Public Health shall maintain the confidentiality of information listed in subdivision (c) in the same manner as other medical record information with patient identification that they possess. These providers, departments, and contracting agencies are subject to civil action and criminal penalties for the wrongful disclosure of the

information listed in subdivision (c), in accordance with existing law. They shall use the information listed in subdivision (c) only for the following purposes:

(A) To provide immunization services to the patient or client, including issuing reminder notifications to patients or clients or their parents or guardians when immunizations are due.

(B) To provide or facilitate provision of third-party payer payments for immunizations.

(C) To compile and disseminate statistical information of immunization status on groups of patients or clients or populations in California, without identifying information for these patients or clients included in these groups or populations.

(D) In the case of health care providers only, as authorized by Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code.

(2) Schools, childcare facilities, family childcare homes, WIC service providers, foster care agencies, county welfare departments, and health care plans shall maintain the confidentiality of information listed in subdivision (c) in the same manner as other client, patient, and pupil information that they possess. These institutions and providers are

subject to civil action and criminal penalties for the wrongful disclosure of the information listed in subdivision (c), in accordance with existing law. They shall use the information listed in subdivision (c) only for those purposes provided in subparagraphs (A) to (D), inclusive, of paragraph (1) and as follows:

(A) In the case of schools, childcare facilities, family childcare homes, and county welfare departments, to carry out their responsibilities regarding required immunization for attendance or participation benefits, or both, as described in Chapter 1 (commencing with Section 120325), and in Section 11265.8 of the Welfare and Institutions Code.

(B) In the case of WIC service providers, to perform immunization status assessments of clients and to refer those clients found to be due or overdue for immunizations to health care providers.

(C) In the case of health care plans, to facilitate payments to health care providers, to assess the immunization status of their clients, and to tabulate statistical information on the immunization status of groups of patients, without including patient-identifying information in these tabulations.

(D) In the case of foster care agencies, to perform immunization status assessments of foster children and to assist those foster children found to be due or overdue for immunization in obtaining immunizations from health care providers.

(e) A patient or a patient's parent or guardian may refuse to permit record sharing. The health care provider administering immunization and any other agency possessing any patient or client information listed in subdivision (c), if planning to provide patient or client information to an immunization system, as described in subdivision (b), shall inform the patient or client, or the parent or guardian of the patient or client, of the following:

(1) The information listed in subdivision (c) may be shared with local health departments and the State Department of Public Health. The health care provider or other agency shall provide the name and address of the State Department of Public Health or of the immunization registry with which the provider or other agency will share the information.

(2) Any of the information shared with local health departments and the State Department of Public Health shall be treated as confidential medical information and shall be used only to share with each other, and,

upon request, with health care providers, schools, child care facilities, family child care homes, WIC service providers, county welfare departments, foster care agencies, and health care plans. These providers, agencies, and institutions shall, in turn, treat the shared information as confidential, and shall use it only as described in subdivision (d).

(3) The patient or client, or parent or guardian of the patient or client, has the right to examine any immunization-related information or tuberculosis screening results shared pursuant to this section and to correct any errors in it.

(4) The patient or client, or the parent or guardian of the patient or client, may refuse to allow this information to be shared pursuant to this section or to receive immunization reminder notifications at any time, or both. After refusal, the patient's or client's physician may maintain access to this information for the purposes of patient care or protecting the public health. After refusal, the local health department and the State Department of Public Health may maintain access to this information for the purpose of protecting the public health pursuant to Sections 100325,

120140, and 120175, as well as Sections 2500 to 2643.20, inclusive, of Title 17 of the California Code of Regulations.

(f) (1) The health care provider administering the immunization or tuberculosis screening and any other agency possessing any patient or client information listed in subdivision (c), may inform the patient or client, or the parent or guardian of the patient or client, by ordinary mail, of the information in paragraphs (1) to (4), inclusive, of subdivision (e). The mailing shall include a reasonable means for refusal, such as a return form or contact telephone number.

(2) The information in paragraphs (1) to (4), inclusive, of subdivision (e) may also be presented to the parent or guardian of the patient or client during any hospitalization of the patient or client.

(g) If the patient or client, or parent or guardian of the patient or client, refuses to allow the information to be shared, pursuant to paragraph (4) of subdivision (e), the health care provider or other agency may not share this information in the manner described in subdivision (c), except as provided in subparagraph (D) of paragraph (1) of subdivision (d).

(h) (1) Upon request of the patient or client, or the parent or guardian of the patient or client, in writing or by other means acceptable to the

recipient, a local health department or the State Department of Public Health that has received information about a person pursuant to subdivision (c) shall do all of the following:

(A) Provide the name and address of other persons or agencies with whom the recipient has shared the information.

(B) Stop sharing the information in its possession after the date of the receipt of the request.

(2) After refusal, the patient's or client's physician may maintain access to this information for the purposes of patient care or protecting the public health. After refusal, the local health department and the State Department of Public Health may maintain access to this information for the purpose of protecting the public health pursuant to Sections 100325, 120140, and 120175, as well as Sections 2500 to 2643.20, inclusive, of Title 17 of the California Code of Regulations.

(i) Upon notification, in writing or by other means acceptable to the recipient, of an error in the information, a local health department or the State Department of Public Health that has information about a person pursuant to subdivision (c) shall correct the error. If the recipient is

aware of a disagreement about whether an error exists, information to that effect may be included.

(j) (1) Any party authorized to make medical decisions for a patient or client, including, but not limited to, those authorized by Section 6922, 6926, or 6927 of, Part 1.5 (commencing with Section 6550), Chapter 2 (commencing with Section 6910) of Part 4, or Chapter 1 (commencing with Section 7000) of Part 6, of Division 11 of, the Family Code, Section 1530.6 of the Health and Safety Code, or Sections 727 and 1755.3 of, and Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code, may permit sharing of the patient's or client's record with any of the immunization information systems authorized by this section.

(2) For a patient or client who is a dependent of a juvenile court, the court or a person or agency designated by the court may permit this record sharing.

(3) For a patient or client receiving foster care, a person or persons licensed to provide residential foster care, or having legal custody, may permit this record sharing.

(k) For purposes of supporting immunization information systems, the State Department of Public Health shall assist the Immunization Branch of the State Department of Public Health in both of the following:

(1) Providing department records containing information about publicly funded immunizations.

(2) Supporting efforts for the reporting of publicly funded immunizations into immunization information systems by health care providers and health care plans.

(l) Subject to any other provisions of state and federal law or regulation that limit the disclosure of health information and protect the privacy and confidentiality of personal information, local health departments and the State Department of Public Health may share the information listed in subdivision (c) with a state, local health departments, health care providers, immunization information systems, or any representative of an entity designated by federal or state law or regulation to receive this information. The State Department of Public Health may enter into written agreements to exchange confidential immunization information with other states for the purposes of patient care, protecting the public health, entrance into school, childcare and other institutions requiring

immunization prior to entry, and the other purposes described in subdivision (d). The written agreement shall provide that the state that receives confidential immunization information must maintain its confidentiality and may only use it for purposes of patient care, protecting the public health, entrance into school, childcare and other institutions requiring immunization prior to entry, and the other purposes described in subdivision (d). Information may not be shared pursuant to this subdivision if a patient or client, or parent or guardian of a patient or client, refuses to allow the sharing of immunization information pursuant to subdivision (e).

SEC. 7.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.