

Historic Lawsuit Filed in Federal Court Challenging California's New Mandatory Vaccination Law

On July 1, 2016, the very day the draconian new California mandatory vaccination law went into effect, a major lawsuit was filed in federal court by the firm of Swankin & Turner, ICA's longtime legal counsel, on behalf of both individuals and groups seeking a stay on the law's implementation. The new California law repeals California's 55 year old personal belief exemption from mandatory vaccination. That law, Senate Bill 277 (SB 277) passed in 2015 and went into effect July 1, 2016. The law's main provisions, the suit alleges, jeopardize the right of California children to an education which is guaranteed by California's constitution. Since the new law went into force on July 1st, the suit is asking for an injunction to stop it from going into effect until the constitutionality of its provisions can be decided.

The new California law revokes the right for parents to use a Personal Belief Exemption (PBE) to preclude all or some vaccines when enrolling their children for school. Unless the injunction is granted, it will now be mandatory for students going to either public or private daycare, preschool, elementary, middle or high school to receive all doses of the 10 vaccines specified in the law.

If the new law is allowed to stand, all children must receive 33-36 doses of vaccines by kindergarten. The only available legal exemption is for medical reasons certified by the child's medical physician. Parents who have children who do not qualify for medical exemptions will have to quickly vaccinate their children or homeschool. Schools are also being encouraged to challenge medical exemptions in apparent violation of SB 277, and are already acting to do so the suit alleges.

Under article IX, section 5 of the California Constitution, children are guaranteed the right to a public education. SB 277 is in direct opposition of this right. SB 277 has made second class citizens out of children who for very compelling reasons are not vaccinated according to the Centers for Disease Control (CDC) schedule. Lead plaintiff's counsel James Turner stated, "We are hoping the court will grant us an injunction while the judicial process takes place to see if this law is constitutional, which it most certainly does not seem to be."

The Complaint for Declaratory and Injunctive Relief in the United States District Court entered on July 1st in the Southern District of California was filed specifically against the State of California's Department of Education, Tom Torlakson, Superintendent of the California Department of Education "in his official; capacity" Dr. Karen Smith, Director of the California Department of Public Health also "in her official capacity" and "JOHN DOE 1 through JOHN DOE 1000, in their Official Capacities as agents, servants, employees or officials of the State of California, Departments of Public Health and Education."

Careful and realistic legal research went into crafting the bases for the suit, with arguments and assertions developed that spoke to compelling legal and constitutional

points. "It is the objective of the suit to get the court to see clearly the constitutional infringements the new California law puts into place and to also understand the negative and disruptive impact on children and families its implementation is already having," said Mr. Turner.

The filing, in the case now assigned the number 3:16-cv-01715-DMS-BGS, states that declaratory and injunctive relief is being sought from the court because:

1. *Effective July 1, 2016, SB 277 will bar children from attending any public and private school unless proof is provided that the child has received multiple doses of vaccines for ten enumerated childhood diseases.*
2. *SB 277 abolished the Personal Belief Exemption (PBE) to California's school vaccination requirements and arguably eliminated an existing exemption from vaccination based on religious beliefs.*
3. *Forty-seven states currently allow either a religious or conscientious/personal belief exemption from school vaccination mandates.*
4. *The California Supreme Court has long recognized that a child's right to an education is a fundamental right guaranteed by the California Constitution. Laws that impact the fundamental right to education, and which are narrowly tailored to serve a compelling state interest, are unconstitutional. As the court held in *Serrano v. Priest* 18 Cal 3d 584 at 606 (1971), "We indulge in no hyperbole to assert that society has a compelling interest in affording children an opportunity to attend school."*
5. *The State has broad responsibility to ensure basic educational equality and to provide a statewide public education system open on equal terms to all.*
6. *Since 1961, California has allowed a philosophical exemption to vaccination based on one's personal beliefs.*
7. *Since 1961, the number of vaccines and vaccine doses required for school attendance have dramatically increased.*
8. *Notwithstanding the increase in required vaccines and vaccine doses, PBE rates have always remained below four percent.*
9. *For decades, full vaccination coverage in California has remained well above 95% for each required vaccine.*
10. *Public health experts agree that 95% vaccination coverage meets or exceeds the levels of vaccination theorized to achieve herd immunity for infectious diseases for which vaccines are available*
11. *California's PBE rate has not exceeded four percent of the entire population of school children.*
12. *At the time SB 277 was enacted, according to the California Department of Public Health ("CDPH"), over 97% of California's school-aged children were fully vaccinated for each of the vaccines required by SB277.*
13. *Moreover, the overwhelming majority of the children with BPEs are selectively vaccinated. They received some, but not all of the required vaccine doses.*
14. *Only one year before SB2 277 was enacted, the Immunization Branch of the CDPH stated that "(v)accination coverage in California is at or near all-time high levels."*

15. *At the time SB 277 was enacted, California had seen a 19 percent reduction in PBEs when AB 2109 (Pan, 1012) went into effect.*
16. *Notwithstanding declining PBE rates and historically high vaccination rates, SB277 was enacted to permanently bar children who do not receive every dose of every mandated vaccine from all public and private schools.*
17. *Plaintiffs have thus been denied their fundamental right to an education guaranteed by the California Constitution.*

On July 7, 2016, San Diego Federal Judge Dana M. Sabraw denied the Ex Parte Temporary Restraining Order (TRO) request presented by the Plaintiffs for the SB 277 suit. This was not unexpected and the judge did so, it appears, because he needed to see evidence of immediate and pending harm to children and families. The stage is now set for a preliminary injunction hearing at which the lawyers for the case will present detailed evidence supporting the need to have the law enjoined until the constitutionality or unconstitutionality of its provisions can finally be determined. "It is very important for all parties supporting this action to understand that it will be a very long and drawn-out process," said Mr. Turner. "We need to be prepared to work on all elements of the case for months and perhaps even years as it is very likely that it will ultimately end up before the US Supreme Court."

Work is underway on many fronts to support the case including the preparation of "friend of the court" or amicus briefs by concerned parties adding evidence and argument in support of having the law stayed. It is also likely that additional plaintiffs might be added to the suit, especially individuals and families that will be directly and personally impacted by the implementation of the new law.

"All citizens should be very concerned not only over the specific elements of the new California law and its immediate and profound negative impact on the lives of tens of thousands of families and hundreds of thousands of children," said International Chiropractors Association (ICA) President Dr. George Curry. "Citizens should also understand the alarming trend towards unchecked and arbitrary state mandated medication and the removal of basic human rights and freedoms it signals. ICA urges all concerned individuals to become familiar with the issues in the California law and the legal challenge that has been mounted in response but also to understand the greater national context and the need to mobilize, speak out and be active in defense of personal control over the health care and lives of ourselves and our families."