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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ANA WHITLOW, Individually and as Parent and Next Friend of B.A.W. and D.M. F.-W., minor children; ERIK NICOLAISEN, Individually and as Parent and Next Friend of A.W.N., a minor child; DENE SCHULTZE-ALVA, D.C., Individually, and as Parent and Next Friend of S.M.A., a minor child; NICOLE ANDRADE, Individually, and as Parent and Next Friend of I.G.A., a minor child; BRIANNA OWENS, Individually, and as Parent and Next Friend of K.R.O-R. and J.S.W.S., minor children; VERONICA DELGADO, Parent and Next Friend of A.D., a minor child;	Case No.: _____ **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** **TEMPORARY RESTRAINING ORDER SOUGHT**

EDUCATION FOR ALL, a Nevada not for profit Corporation; WESTON A. PRICE FOUNDATION, a District of Columbia not for profit Corporation; CITIZENS FOR HEALTH, a Nevada not for profit Corporation; and ALLIANCE FOR NATURAL HEALTH, a Georgia not for profit Corporation,,

Plaintiffs,

v.

STATE OF CALIFORNIA, DEPARTMENT OF EDUCATION; TOM TORLAKSON, SUPERINTENDENT OF THE DEPARTMENT OF EDUCATION, in his Official Capacity; STATE OF CALIFORNIA, DEPARTMENT OF PUBLIC HEALTH; DR. KAREN SMITH, DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH, 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, Depart_ments of Public Health and Education,,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COME NOW the above-named Plaintiffs, by and through their attorneys, James S. Turner and Betsy E. Lehrfeld of Swankin & Turner, Washington, D.C., and Carl M. Lewis, to file their Complaint seeking Declaratory and Injunctive Relief.

Plaintiffs bring this action for a Temporary Restraining Order, and Declaratory and Injunctive relief, to maintain the *status quo ante,* and to enjoin the implementation of Senate Bill 277 (Pan, 2015) ("SB 277"). Plaintiffs respectfully allege the following facts and causes of action against the Defendants, as follows:

INTRODUCTION

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 a 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 not 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 SB 277.

13. Moreover, the overwhelming majority of the children with PBEs are selectively vaccinated. They received some, but not all of the required vaccine doses.

14. Only one year before SB 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, 2012) went into effect.

16. Notwithstanding declining PBE rates and historically high vaccination rates, SB 277 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.

JURISDICTION AND VENUE

18. This Court has original subject matter jurisdiction under 28 U.S.C. § 1331 (federal question). This action arises under the Constitution of the United States, specifically, the First Amendment and the Equal Protection and Due Process clauses of the Fourth, Fifth, and Fourteenth Amendments.

19. This Court additionally has original subject matter jurisdiction under 28 U.S.C. §1343 (a)(3) (civil rights), 42 U.S.C. § 1983 ("Civil action for deprivation of rights"), and 28 U.S.C. § 2201 (declaratory relief).

20. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over the Plaintiffs' state-law claims, which are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Plaintiffs' state-law claims include alleged violations of fundamental rights, equal protection, and due process.

21. Venue is proper in this Court under 28 U.S.C. § 1391(e) on two independent bases: San Diego Unified School District resides in this judicial district; and the acts and omissions that gave rise to Plaintiffs Ana and Anthony Whitlow's claims occurred in this judicial district.

PARTIES

22. Plaintiff Ana Whitlow resides with her husband, family and minor sons B.A.W. and D.M.F-W., in the city of San Diego, located in San Diego County. Plaintiff Ana Whitlow and her husband have chosen to selectively vaccinate B.A.W. and D.M.F-W. to avoid vaccines that offend their religious beliefs by virtue of certain ingredients, and in the interest of B.A.W's and D.M.F-W's health and wellbeing. Plaintiff Ana Whitlow's son D.M.F-W. shows sufficient antibody levels to be deemed "proof of immunity" to the diseases for which he has not received all required vaccine doses. Plaintiff Ana Whitlow seeks injunctive relief requiring the defendant state actors and agencies of the State of California to admit B.A.W. into kindergarten at the defendant Ocean Beach

Elementary School, operated by the defendant San Diego Unified School District. Plaintiff Ana Whitlow seeks injunctive relief prohibiting the defendant state actors and agencies of the State of California from denying admission of D.M.F-W into the defendant Correa Middle School, operated by the San Diego Unified School District. (Decl. of Ana Whitlock, pp. 1-6)

23. Plaintiff Erik Nicolaisen lives with his wife, family and minor son A.W.N. in Studio City, Los Angeles County, California. Erik Nicolaisen in concert with A.W.N's mother has chosen to selectively vaccinate A.W.N. in the interest of A.W.N's health and wellbeing, and seeks injunctive relief prohibiting the defendant state actors and agencies of the State of California from denying A.W.N. into the Carpenter Elementary School, operated by the Los Angeles Unified School District. (Decl. of Erik Nicolaisen, pp. 1-5)

24. Plaintiff Dene Schultze-Alva resides with her husband, family and minor daughter S.M.A. in Sierra Madre, California, in Los Angeles County. Plaintiff Dene Schultze-Alva has chosen to selectively vaccinate S.M.A. according to the guidance of her religion and in the interest of S.M.A's health and wellbeing, and seeks injunctive relief prohibiting the defendant state actors and agencies of the State of California from denying admission of S.M.A. into the preschool facility known as the Early Childhood Development Center located in Altedena California, operated by the Pasadena Unified School District. (Decl. of Dr. Dene Schultze-Alva, pp. 1-6)

25. Plaintiff Nicole Andrade resides in Placer County, near Loomis, California, with her husband and family, including her minor daughter I.G.A., who is ready to enter the seventh grade. Plaintiff Nicole Andrade is religiously opposed to vaccines manufactured from aborted fetal cell lines, having fully vaccinated her oldest child before she became aware that Measles Mumps Rubella vaccine is manufactured using an aborted fetal cell line. Plaintiff Nicole Andrade has taken

up in her prayers the question of whether to vaccinate, and believes that God would want her pro-life family to wait for more pure and safe vaccines, before vaccinating I.G.A. again. Plaintiff Nicole Andrade has chosen to selectively vaccinate S.M.A. according to the guidance of her religion and in the interest of S.M.A's health and wellbeing and seeks an order prohibiting the defendant state actors and agencies of the State of California from denying admission of I.G.A. into Franklin Elementary School, operated by the Loomis Union School District. (Decl. of Nicole Andrade, pp. 1-6)

26. Plaintiff Brianna Owens resides in Petrolia, Humboldt County, California. She is the parent of four children, two of whom are impacted by SB 277 and its ban from education of children who are not fully vaccinated. She has been hesitant to vaccinate her children because of a family history of autoimmune disease and her own reaction to the Tdap vaccine when she was 26 years old. Her daughter received the Tdap vaccine and had a reaction similar to her own, but less severe. Her pediatrician told her that she could not get a medical exemption for her children because he had received a "special class" where he was told that to qualify for a medical exemption her children would have to have a "documented anaphylactic reaction" to a particular vaccine and then only for that particular vaccine. She seeks an order prohibiting the defendant state actors and agencies of the State of California from denying admission of her children into school under SB 277. (Decl. of Brianna Owens, pp. 1-5)

27. Plaintiff Veronica Delgado is the parent of seven children, one of whom, A.N.D., has been selectively vaccinated and is about to enter 7th grade. A.N.D. had a PBE prior to the effective date of SB 277 but is now being told he cannot return to school unless his vaccinations are "caught up." He also has an IEP, but she has been told by the school that it does not entitle him to an exemption. Next year she will have a second child, who also has an IEP that she

believes is a consequence of a vaccine reaction, ready to enter 7th grade who will encounter the same problem. She seeks an order prohibiting the defendant state actors and agencies of the State of California from denying admission of her children into school under SB 277. (Decl. of Veronica Delgado, pp. 1-4)

28. Plaintiff E4A Foundation is a non-profit organization under the laws of the State of Nevada, with its principal place of business in California, whose purpose is to promote and protect equal access to public and private education.

29. Plaintiff Weston A. Price Foundation is a nonprofit, tax exempt nutrition education foundation whose members follow healthy natural approaches to health and healing. It has 39 local chapters and 1,836 members in California, many of whom are families with young children who would avail themselves, or may have in the past received, a personal belief exemption.

30. Plaintiff Citizens for Health is a nonprofit, 501(c)(4) advocacy organization providing information about natural healing and laws affecting health to approximately 30,000 Californians.

31. Plaintiff Alliance for Natural Health USA (ANH-USA) is a Georgia-based nonprofit corporation founded in 1992. The ANH-USA mission is to protect access to natural health options and a toxin free lifestyle, including the ability to decline vaccination or modify the vaccine schedule for one's children. The ANH - USA consists of over 500,000 members, including 78,000 California residents, many of whom will be harmed by SB 277 because they will not be able to make their own decisions for their school age children based on their beliefs about vaccine-related harms.

32. Defendant Department of Education of the State of California is a state agency created by California statute, charged with implementing the laws at issue.

33. Defendant Tom Torlakson, Superintendent of the Department of Education, is sued in his official capacity, as a state actor responsible for implementing and enforcing the laws at issue.

34. Defendant Department of Public Health of the State of California is a state agency created by California statute, charged with implementing the California Health and Safety Code and in particular regulating the vaccination requirements at issue, including, *inter alia,* Health & Safety Code sections 120325, 120335, 120338, 120370 and 120375.

35. Defendant Dr. Karen Smith, Director of the Department of Public Health is sued in her official capacity, as a state actor, responsible for implementing and enforcing the laws at issue.

36. Charity Dean, MD and Takashi Wada, MD, are the Health Officer and Director, respectively, of the Santa Barbara County Public Health Department, and are responsible for implementing and enforcing the laws at issue.

37. Defendants, and each of them, have violated the rights of Plaintiffs as set forth below by their actual and threatened enforcement actions pursuant to SB 277. If the statute is not ruled unconstitutional for its infringement of fundamental rights and liberties, and if they are not enjoined from enforcement of SB 277, Defendants will increasingly cause harm to the Plaintiffs, their children, and parents and children similarly situated and undermine the state's compelling interest in providing access to education for all Californians.

STATUTORY SCHEME

38. SB 277 requires full vaccination according to a rigid schedule requiring 36-38 doses of vaccines for 10 diseases, administered between birth and seventh grade entry, the bulk of which (33-35 doses) are required before kindergarten entry at 5 or 6 years of age.

39. Specifically, the law mandates vaccines for diphtheria, tetanus (which is not communicable), pertussis, measles, mumps, rubella, Haemophilus influenzae type b (Hib), varicella (chicken pox), polio, and hepatitis B (which is blood borne).

40. The State recommends an additional 33-34 doses of vaccinations for another 7 diseases before age eighteen.

41. The statutory vaccine schedule has increased dramatically over the past two decades, and it seems likely to continue to expand. SB 277 provides authority to expand the vaccine schedule with no public hearing or other due process (although there would continue to be a PBE in the case of new vaccines).

42. Since at least 1961, California statutes provided the following exemption for schoolchildren: "Immunization of a person shall not be required for admission to a public or private…school…if such immunization is contrary to his or her beliefs." Chapter 837 of Laws 1961.

43. The percentage of fully vaccinated children has not dropped below 95% of California school aged children in any period for which CDPH provides historical vaccination data.

44. AB2109 (Pan, 2012), which became effective in January 2014, created section 120365 of the Health & Safety Code, which narrowed the conscientious exemption based on personal beliefs, requiring parents claiming a PBE to submit a letter or affidavit to their school or child care facility, stating their objection and containing verification from a health care practitioner of the fact that the parent had received information about the benefits and risks of vaccination and the risks of vaccine preventable diseases.

45. When signing AB2109 into law on September 30, 2012, Governor Edmond G. Brown, Jr., provided a signing statement, stating, in pertinent part:

> I am signing AB 2109 and am directing the Department of Public Health to oversee this policy so parents are not overly burdened by its implementation. Additionally, I will direct the department to allow for

a separate religious exemption on the form. In this way, people whose religious beliefs preclude vaccinations will not be required to seek a health care practitioner's signature.

46. Subsequently, Defendant California Department of Public Health (CDPH) did not require persons claiming a religious exemption to provide the verification by a health care provider.

SB 277

47. SB 277, effective July 1, 2016, is "[a]n act to amend Sections 120325, 120335, 120370, and 120375 of, to add Section 120338 to, and to repeal Section 120365 of, the Health and Safety Code, relating to public health."

48. As described by the Legislative Counsel Digest, SB 277 was passed to eliminate "the exemption from existing specified immunization requirements based upon personal beliefs," as set forth at that time in Section 120365.

49. As passed, SB 277 charges the Department of Public Health and schools with enforcing the provision. Specifically:

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

50. SB 277 states that Section 120335, which sets forth the required vaccinations, does not apply to homeschool students and students in independent study programs. Specifically, SB 277 states:

51.

> Section 120335 of the Health and Safety Code is amended to read:
> * * *
> (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.

52. SB 277 also states that Section 120335 does not impact students under Individualized Education Programs. Specifically, SB 277 states:

> (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.

53. Additionally, SB 277 grandfathers PBE documentation submitted prior to January 1, 2016, to allow the child to remain in school under the PBE until the next "grade span." "Grade span" is defined as follows:

> (A) Birth to preschool.
>
> (B) Kindergarten and grades 1 to 6, inclusive, including transitional kindergarten.
>
> (C) Grades 7 to 12, inclusive.

54. Children entering preschool may not obtain PBE status. SB 277 states:

> (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.

55. Regarding medical exemptions, SB 277 purports to vest medical judgment in the child's physician. SB 277 states:

> (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 [immunization] requirements . . .

56. When signing SB 277 into law on June 30, 2015, Governor Edmond G. Brown, Jr. again provided a signing statement, stating, in pertinent part:

> The 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 . . ."
>
> Thus, SB 277, while requiring children be vaccinated, explicitly provides an exception when a physician believes that circumstances — in the judgment and sound discretion of the physician — so warrant.

57. Schools in California are rejecting medical exemptions and refusing to admit children with medical exemptions issued by physicians into school.

58. California health departments are collecting and scrutinizing medical exemptions.

59. Charity Dean, MD and Takashi Wada, MD, in their official capacities as Health Officer and Director, respectively, of the Santa Barbara County Public

Health Department, have initiated a "Medical Exemption Pilot Project," designed to "identify any Medical Exemption not meeting SB 277 criteria."

60. No law provides authority for California schools or administrative agencies to regulate medical exemptions, or to override the medical judgment of physicians.

61. In enacting SB 277, the legislature was clear that children with disabilities who have individualized education plans ("IEPs") are exempt from SB 277's vaccination requirements and can attend school without restrictions.

62. Notwithstanding this legislative history, some schools and school districts have refused to admit children with disabilities who have IEPs but who do not meet SB 277's vaccination requirements.

63. For example, the Orange County Department of Education has publicly refused to admit children with IEPs into school without full vaccination records and has encouraged school districts to obtain court orders requiring parents of special education students to fully vaccinate their children under the vaccination requirements of SB 277.

64. Despite repeated requests, the Department of Education has declined to provide guidance to schools and school districts regarding the impact of SB 277 on students with IEPs.

65. In the absence of such guidance from the Department of Education, individual schools and school districts have been implementing SB 277 inconsistently.

66. Refusing admission of students with IEPs infringes on the rights of children with disabilities and violates Health & Safety Code section 120335(h).

67. Districts refusing to admit students with IEPs additionally violate the rights of students under the Federal Individuals with Disabilities Education Act (IDEA) (42 U.S.C. § 1400, *et seq.*) which guarantees students with qualifying

disabilities a free and appropriate public education in the least restrictive environment.

68. Inconsistent application of SB 277 to students with IEPs results in a violation of Equal Protection rights of children with disabilities.

69. The regulatory schemes being established under SB 277 fail to provide for due process in the form of a hearing before a medical exemption is denied, or before a child is excluded from school.

Eliminating PBEs Fails to Benefit Public Health

70. California vaccination rates are at or near an "all time high" despite the availability of personal belief, religious, and medical exemptions from vaccination since the first mandatory vaccinations to attend public school were introduced in California in 1961.

71. According to the Immunization Branch of the CDPH, in recent years such as 2014, there were zero cases of HiB, hepatitis B, polio, diphtheria, rubella or tetanus in California school-aged children.

72. Public health authorities attribute all occurrences of pertussis and mumps reported in recent years to failing vaccine efficacy, rather than lack of vaccination coverage in the population of California school children.

73. California experienced a pertussis epidemic in 2014, in which almost 90 percent of pediatric pertussis cases for which vaccination records were available occurred in vaccinated children.

74. Since the first mandatory vaccine to attend public school in 1961, California's vaccination program has resulted in a fully-vaccinated rate of over 95% for each of the vaccines on the schedule.

75. The California legislature has stated that "vaccination rates of up to 95 percent are necessary to preserve herd immunity and prevent future outbreaks."

76. The State has shown no benefit in increasing vaccination rates in school-aged children above the levels theorized to meet the requirements for herd immunity.

77. Children with PBEs account for only 0.42 percent of California's total population.

78. In adopting SB 277, the legislature stated a goal to eliminate children with PBEs from "certain pockets of California."

79. This goal assumes that diseases respect artificial boundaries such as school buildings and that herd immunity can be measured by the vaccination rate in a particular building, such as a school.

80. Barring children from school and forcing them into homeschooling creates more of the purported "pockets" of children that SB 277 sought to eliminate.

81. SB 277 does not recognize a serological exemption or titer test to vaccination, which results in unnecessary and potentially harmful over-vaccination of children.

82. No compelling interest exists to require vaccination of students who already have sufficient antibodies as demonstrated by a titer test against the targeted diseases due to selective vaccination or natural infection.

83. Eight-seven percent of children with PBEs in California have been selectively or partially vaccinated.

84. SB 277 will indiscriminately exclude children from all schools, regardless of the school's PBE rate.

85. SB 277 grandfathers all children currently attending school with PBEs until a "grade span" entry year requires vaccination. For school students, the three threshold years for vaccinations are entry into preschool, kindergarten and the seventh grade.

Plaintiffs' Concerns Regarding Vaccines

86. As described through this pleading, Plaintiffs, in consultation with their medical providers, have legitimate concerns about the timing and safety of particular mandated vaccines for their children.

87. The Centers for Disease Control and Prevention (CDC) acknowledges that "no vaccine is actually 100% safe or effective for everyone because each person's body reacts to vaccines differently." (http://www.cdc.gov/vaccinesafety/ensuringsafety/history/index.html.)

88. The legislature acknowledges the same. For example, the following Congressional findings, made during passage of the Vaccine Act, Public Law 99-660, are reported in the (H.R. Rep. No. 908, 99th Cong., 2nd Sess. 1986 at 6, reprinted 1986 U.S.C.C.A.N. 6344, 6347):

> While it is true that some children, because of their physical condition, are more likely to react to a vaccine, vaccine reactions are not completely foreseeable. There is today no 'perfect' or reaction-free childhood vaccine on the market. A relatively small number of children who receive immunizations each year have serious reactions to them. But it is not always possible to predict who they will be or what reactions they will have. And since State law requires that all children be immunized before entering school, most parents have no choice but to risk the change—small as that may be—that their child may be injured from a vaccine.

89. The Vaccine Act created, among other programs, the National Childhood Vaccine Injury Compensation Program (42 U.S.C. §§ 300aa-10 *et seq.*), which provides compensation to victims of vaccine injuries. Over Three Billion Dollars has been paid to persons with vaccine injuries pursuant to this program.

90. In 1991, the Institutes of Medicine (IOM) of the National Academy of Sciences published a report titled, "Adverse Events of Pertussis and Rubella

Vaccines." The report contained evidence that serious brain and immune system injuries are caused by the vaccines targeting pertussis and rubella.

91. In 1994, IOM published a report titled, "Adverse Events Associated with Childhood Vaccines: Evidence bearing on Causality." The report contained evidence that serious brain and immune system injuries are caused by vaccines targeting tetanus, diphtheria, polio, measles, mumps, rubella, HiB and hepatitis B.

92. The IOM has identified a current lack of research to identify susceptibilities to vaccine injury, and has pointed to critical research gaps that prevent science from being able to predict what vaccine injuries will occur, and to whom.

Harm To Plaintiffs

93. Plaintiffs' children have a fundamental right to a school-based, equal education under the California Constitution.

94. Plaintiff's children have liberty interests in bodily integrity, and the right to be free from potentially dangerous medical interventions for which there is no true consent.

95. Plaintiffs have liberty interests in making medical treatment choices for their minor children.

96. Plaintiffs have health-related concerns regarding vaccines, including the practice of administering multiple vaccinations at once, and the safety of certain vaccines ingredients and contaminating substances, such as aluminum, animal proteins, egg protein, formaldehyde, mercury and genetic fragments.

97. Some Plaintiffs have religious concerns regarding vaccines, including the fact that vaccines including the MMR (measles mumps rubella) are manufactured from cell lines intentionally derived from aborted fetal cell lines.

98. Some Plaintiffs seek to specifically select their children's vaccinations based on their religious beliefs.

99. Prior to SB 277, some Plaintiffs obtained conscientious exemptions for their children based on religious or personal beliefs.

100. Plaintiffs include parents who are unable to homeschool their children because they are single working parents, or they are parents in households for which two incomes are essential and homeschooling would interfere with their employment, or they are not fluent in the English language, which is statutorily required for homeschool education, and/or lack sufficient education to homeschool their children.

101. Those Plaintiffs who can neither send their children to school nor provide homeschooling stand to potentially lose custody of their children for "neglect," under the California Welfare and Institutions Code § 300 and/or face criminal penalties under the California Penal Code:

> (a) A parent or guardian of a pupil of six years of age or more who is in kindergarten or any of grades 1 to 8, inclusive, and who is subject to compulsory full-time education or compulsory continuation education, whose child is a chronic truant as defined in Section 48263.6 of the Education Code, who has failed to reasonably supervise and encourage the pupil's school attendance, and who has been offered language accessible support services to address the pupil's truancy, is guilty of a misdemeanor punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. (Title 9, Ch. 2 Sec. 270.1)

102. Some Plaintiffs have sincere concerns about vaccination being unsafe for their children but cannot obtain medical exemptions for their children.

103. Plaintiffs have no adequate legal remedy for these harms.

COUNT I: INFRINGEMENT ON RIGHTS PROTECTED BY THE CALIFORNIA CONSTITUTION

104. Each preceding paragraph of this pleading is hereby incorporated by reference.

105. SB 277 violates the right of education and equal protection provisions of the California Constitution, on its face and as applied to Plaintiffs.

106. Education is a fundamental right under the California Constitution's provisions guaranteeing equal protection of the laws.

107. Defendants' failure to provide regulations or other guidance has caused disparate treatment of children, including certain school districts' refusal to admit children with disabilities who have individualized education plans (IEPs), and certain school districts' restriction of medical exemptions.

108. As a result of these arbitrary distinctions, similarly situated children do not have substantially equal access to education.

109. Because education is a fundamental interest under the California Constitution, this unequal, arbitrary treatment violates the equal protection provisions of the California Constitution.

110. SB 277 and Defendants' conduct purportedly implementing it serve no compelling interest, are not narrowly tailored to serve any interest that can override the compelling state interest in education, and fail to use the least restrictive means necessary to further any state interest.

111. Refusing to admit IEP students additionally violates the Federal Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400, *et seq.*), which guarantees students with qualifying disabilities a free and appropriate public education in the least restrictive environment.

112. Defendants' conduct harmed Plaintiffs as alleged throughout this Complaint.

COUNT II: INFRINGEMENT ON RIGHTS PROTECTED BY THE U.S. CONSTITUTION

113. Each preceding paragraph of this pleading is hereby incorporated by reference.

114. Defendants' conduct infringes on the Plaintiffs' and their children's fundamental rights, including parental rights, right to bodily integrity, right to informed consent and to refuse medical intervention, right to privacy, and/or right to free exercise of religion, by requiring Plaintiffs to choose between those rights and the right to education.

115. Eliminating the existing exemptions and regulating medical exemptions serves no compelling state interest, is not narrowly tailored to serve any interest that can override the compelling state interest in education, and fails to use the least restrictive means necessary to further any state interest.

116. Defendants' conduct deprives Plaintiffs of equal protection and due process.

117. Automatic exclusion of students from schools without a hearing violates the Plaintiffs' right to procedural due process.

118. Defendants' conduct harmed Plaintiffs as alleged throughout this Complaint.

COUNT III: VIOLATION OF FEDERAL FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

119. Each preceding paragraph of this pleading is hereby incorporated by reference.

120. The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, allows schools to share students' medical records to serve "legitimate educational interests," which must be the subject of annual notice to students of criteria under 34 CFR § 99.7 (a) (3) (iii).

121. Under §1232g (b) (1) and 34 C.F.R. § 99.31 (a) (1) (I) (A), schools may not share medical records of exemptions without parents' prior consent.

122. Defendants' conduct, including collecting medical records relating to the exemption, violates FERPA and applicable regulations.

123. Defendants' conduct harmed Plaintiffs as alleged throughout this Complaint.

COUNT IV: VIOLATION OF CALIFORNIA CONFIDENTIALITY OF MEDICAL INFORMATION ACT

124. Each preceding paragraph of this pleading is hereby incorporated by reference.

125. California Confidentiality of Medical Information Act (CMIA), Cal. Civil Code §56.11 prohibits schools and agencies from gathering medical exemption information to substantively review those exemptions.

126. Defendants' conduct, including gathering medical exemption information to substantively review those exemptions, violates the CMIA.

127. Defendants' conduct harmed Plaintiffs as alleged throughout this Complaint.

COUNT V: VIOLATION OF CALIFORNIA INFORMATION PRACTICES ACT

128. Each preceding paragraph of this pleading is hereby incorporated by reference.

129. The California Information Practices Act (IPA) (Cal. Civ. Code. §§ 1798-1798.78) limits the collection, maintenance, and distribution of personal information by state agencies.

130. Defendants' conduct, including collecting, maintaining, and distributing the students' personal information, violates the IPA.

131. Defendants' conduct harmed Plaintiffs as alleged throughout this Complaint.

COUNT VI: VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE § 120440

132. Each preceding paragraph of this pleading is hereby incorporated by reference.

133. California Health & Safety Code §120440 (e) allows a parent to refuse to permit record sharing. That Section provides:

> "(e) **A patient or a patient's parent or guardian may refuse to permit record sharing**... (4) The patient or client, or the parent or guardian of the patient or client, may refuse to allow this information to be shared in the manner described, 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.**"

(Emphasis added.)

134. Defendants' conduct, including requiring or coercing Plaintiffs to permit sharing of records relating to the exemptions, violates §120440.

135. Defendants' conduct harmed Plaintiffs as alleged throughout this Complaint.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully requests that the Court grant judgment for Plaintiffs and:

1. Declare unconstitutional and set aside SB 277 and its regulatory scheme;

2. Grant temporary, preliminary, and permanent injunctive relief prohibiting the enforcement of the unconstitutional ban on personal belief and religious objections and the restriction of medical choice exemptions;

3. Grant temporary, preliminary, and permanent injunctive relief immediately prohibiting the denial of school admission to the children of the individual Plaintiffs and all others similarly situated.

4. Award to Plaintiffs reasonable attorney's fees, expert witness fees, and costs incurred in connection with this action; and

5. Grant such other and further relief as the Court deems just and proper.

DATED: July 1, 2016

Respectfully submitted,

James S. Turner
Betsy E. Lehrfeld
Carl M. Lewis
Attorney for Plaintiffs

RULE 5.1 CERTIFICATION

This action draws into question the constitutionality of a California statute. Pursuant to Fed.R.Civ.P. 5.1(a), undersigned certifies that he has caused this Complaint to be served on the California Attorney General by certified mail addressed to:

Office of the Attorney General
1300 "I" Street
Sacramento, California 95814-2919

Office of the Attorney General
P.O. Box 944255
Sacramento, California 95814-2919

DATED: July 1, 2016

Carl M. Lewis
Attorney for Plaintiffs

VERIFICATION

I am a party to this action. I have read the foregoing Complaint and know the contents thereof. The matters stated therein are true of my own personal knowledge, except as to those matters which are stated on the basis of information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed this 1st day of July, 2016 at San Diego, California.

_____

Plaintiff

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

ANA WHITLOW, Individually and as Parent and Next Friend of B.A.W. and D.M. F.-W., minor children, et al.

(b) County of Residence of First Listed Plaintiff: San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
James S. Turner, Betsy E. Lehrfeld, Swankin & Turner, 1400 16th Street, NW #101, Washington, DC 20036, (202) 462-8800; Carl M. Lewis, 1916 Third Avenue, San Diego, CA 92101, (619) 232-0160

DEFENDANTS

STATE OF CALIFORNIA, DEPARTMENT OF EDUCATION; TOM TORLAKSON, SUPERINTENDENT OF THE DEPARTMENT OF EDUCATION, in his Official Capacity, et al.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)*

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☒ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☒ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
U.S. Const., amend. I, IV and V; 20 U.S.C. §1232g

Brief description of cause:
Injunctive relief to enjoin application and enforcement of California SB277 and related statutes

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 07/01/2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____