

1 _____
(Name)

2 _____
(Address)

3 _____
4 _____
5 _____
6 (Phone)

7 *Plaintiff(s) in Pro Per*

8
9 CALIFORNIA SUPERIOR COURT,

10
11 _____ COUNTY

12 _____) **Case No:** _____

13 _____)
14 _____) **COMPLAINT FOR**
15 _____) **INJUNCTIVE RELIEF.**

16 _____)
17 _____) **1. Freedom of Religion**
18 _____) {Calif. Const., Art. 1, Sec. 4}

19 *Plaintiff(s),*

20 _____) **2. Children’s Right to Go to School**
21 _____) {Calif. Const., Art. 9, Sec. 5}

22 *vs.*

23 **KAREN SMITH, in her capacity**
24 **as the Director of the California**
25 **Department of Public Health,**
26 **and DOES 1 – 9, inclusive,**

27 _____) **3. Equal Protection—(Discrimination)**
28 _____) {Calif. Const., Art. 1, Sec. 7}
_____) **4. Due Process—(Fundamental Fairness)**
_____) {Calif. Const., Art. 1, Sec. 7}

_____) *Defendant(s).*

_____) **PLAINTIFFS DEMAND JURY TRIAL.**

œ JURISDICTION & PARTIES œ

1
2 (1) Plaintiffs seek a court order striking-down, as unconstitutional, Senate Bill
3 No. 277, [*codified at* Calif. H&S Code §§120325–120380], requires that all
4 children must provide proof of “immunization” as a pre-condition to attending
5 school (public, private, or charter). SB277 became effective on January 1, 2016.
6 SB277 removes the “personal” and “religious” beliefs exemption to school
7 vaccination requirements; former law recognized the family’s right to opt-out of
8 vaccination based on “personal” or “religious” beliefs, but SB277 eliminates these
9 two exemptions. (And while SB277 does allow for “medical” exemptions,
10 Plaintiffs’ children do not qualify.) Plaintiffs sue for a court order striking-down
11 SB277 as unconstitutional. Plaintiffs allege four causes of action that “arise under”
12 the California Constitution:

- 13 (i) *Freedom of Religion*, [Calif. Const., Art. 1, Sec. 4];
- 14 (ii) *Children’s Right to Go to School*, [Calif. Const., Art. 9, Sec. 5];
- 15 (iii) *Equal Protection—(Discrimination)*, [Calif. Const., Art. 1, Sec. 7];
- 16 (iv) *Due Process—(Fundamental Fairness)*; [Calif. Const., Art. 1, Sec. 7].

17 (2) Plaintiffs, and their minor children, are residents of the aforesaid county.
18 Plaintiffs sue on behalf of themselves and their minor children.

19 (3) Defendant, KAREN SMITH, Director of the California Department of Public
20 Health, is herein sued in her capacity as Director of the Department.

21 (4) DOES 1 – 9, inclusive are herein sued under fictitious names; when
22 Plaintiffs learn their true and correct names, Plaintiffs will amend the complaint;
23 each DOE is a proximate cause of Plaintiffs’ harm.

24 (5) Plaintiffs and their minor children are free of infectious disease; indeed,
25 they are all healthy. Plaintiffs refuse to vaccinate their minor children because it
26 fundamentally conflicts with their parental right to raise their kids the way they
27 see fit—free from unwarranted governmental intrusion.

28 ////

1

☞ GENERAL ALLEGATIONS ☞

2 (6) No vaccine is guaranteed to actually confer immunity, and thus, there is no
3 rational basis to admit pupils to school based only on whether a given pupil is
4 (supposedly) immunized; if vaccine makers cannot guarantee immunity to the
5 child, then there is no rational basis for the state to conclude that any given child
6 is “immune” to any of the ten diseases that SB277 contemplates.

7 (7) Plaintiffs allege that all vaccines are *unavoidably unsafe*, *i.e.*, all vaccines
8 are legally presumed to come with risk of “unavoidable adverse side effects.”
9 [See 42 U.S.C. §300aa–22(b)] Plaintiffs rely on *Bruesewitz v. Wyeth LLC*, [(2011),
10 562 U.S. 223], in which the Supreme Court held that all vaccines—even if
11 “manufactured” and “labeled” in strict compliance with the FDA license—are
12 nevertheless presumed to come with a risk of “unavoidable adverse side effects.”
13 Assuming a given vaccine is free of manufacturing and labeling defects—two
14 presumptions remain: (i) “design defects” must be the legal cause of any and all
15 vaccine injuries and deaths; and, (ii) all “design defects” are unavoidable, (*i.e.*,
16 “no-fault” of the vaccine maker). And thus, even if a given vaccine is properly
17 manufactured and labeled—precisely according to spec—there still remains the
18 legal presumption that that given vaccine has “unavoidable adverse side effects,”
19 which lay beyond the scope of the vaccine maker’s control; in other words, all
20 vaccines are unavoidably unsafe.

21 (8) States may exercise “police powers,” but only in very narrow instances,
22 (*e.g.*, a public health crisis). Yes, states may infringe on civil liberties—by
23 imposing medical mandates—but only where the proposed intervention is actually
24 “necessary for the public health”—*i.e.*, necessary to halt the spread of disease.
25 [See *Jacobson v. Mass.*, (1905) 97 U.S. 11, 27] In the county aforesaid, no actual
26 “medical necessity” now exists, and thus, the exercise of police powers is simply
27 unwarranted; and, even if a health crisis did exist, SB277 goes way too far because

1 it *permanently abrogates* civil rights; notably, *Jacobson*, only allows for states to
2 *temporarily suspend* civil rights—until the infectious outbreak subsides.

3 (9) Here, because fundamental rights are at stake, “strict scrutiny” is the
4 appropriate standard of judicial review; and thus, the burden of proof shifts to the
5 state, which must plead and prove, as an affirmative defense, the existence of a
6 “narrowly tailored, compelling governmental interest.”

7 (10) In order to survive strict scrutiny, the state must prove three things:

8 (i) the existence of a “compelling governmental goal or interest” in SB 277;

9 (ii) that SB 277 was “narrowly tailored” to achieve only that goal or interest, and,

10 (iii) that SB 277 was the “least restrictive means” of achieving it.

11 (11) Stated Goal of SB277: Pursuant to Health & Safety Code Sec. 120325(a),
12 the stated goal of SB277 is to provide: “[a] means for the eventual achievement of
13 *total immunization* of appropriate age groups against [enumerated] childhood
14 diseases.” [See H & S Code §120325(a); emphasis added.]

15 (12) The three-pronged legal analysis becomes: (i) whether there exists a

16 “compelling governmental interest” in the stated goal, *i.e.*, “total immunization;”

17 (ii) whether SB 277 is “narrowly tailored” to achieve that stated goal, (*i.e.*, “total
18 immunization”); and (iii) whether there are “less-restrictive means” of achieving

19 said goal, (*i.e.*, “total immunization”). Ultimately, the state’s interest in *educating*
20 children is necessarily paramount to its interest in *vaccinating* them.

21 (13) There is no “compelling governmental interest” in “total immunization.”

22 The stated goal is vague and ambiguous, (how many vaccines are needed to
23 achieve total immunization?). Besides, no vaccine comes with an immunization
24 guarantee, and thus, there is no rational basis for the state to conclude that any
25 given child is immune to any given disease. Furthermore, there are “less-
26 restrictive” alternative available to the state, *e.g.*, in the event of an outbreak,
27 individual counties may institute quarantine procedures, which are the most
28 effective means for halting infectious outbreaks.

1 (14) SB277 is plainly unconstitutional because, at present, there exists no
2 epidemiological outbreak or other emergency circumstance sufficient to justify an
3 exercise of the state’s police powers. As per *Jacobson vs. Massachusetts*, (1905)
4 197 U.S. 11, states may use their police powers to thwart infectious outbreaks, but
5 only where there is an actual, present-time “medical necessity.” Today, in the
6 county aforesaid, there exists no actual “medical necessity,” and therefore, SB277
7 is *not* a legitimate exercise of police powers, which means that SB277 is thus
8 unconstitutional.

9 ////

10 ////

11 ////

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

☞ CAUSE of ACTION No. 1 ☞

1
2 (15) Cause-of-Action No. 1: Violation of California Constitution, Article 1,
3 Section 4, “*Freedom of Religion.*”

4 (16) Plaintiffs bring *Cause of Action No. 1*, on behalf of themselves and their
5 minor children, as against Defendant, KAREN SMITH, in her capacity the Director
6 of the California Department of Public Health. Plaintiffs herein incorporate all
7 other numbered paragraphs.

8 (17) Senate Bill No. 277, [Calif. H&S Code §§120325–120380], violates
9 California Constitution, Art. 1, Sec. 4, which provides: “*Free exercise and*
10 *enjoyment of religion without discrimination or preference are guaranteed.*”

11 (18) SB 277 violates the Free Exercise Clause of the California Constitution
12 by prohibiting Plaintiffs from freely exercise religion. Plaintiffs’ faith forbids
13 intrusion into their children’s bodies for any purpose; Plaintiffs fundamentally
14 reject the notion that injecting pathogens and toxins into children’s thigh muscles
15 will somehow confer future disease-fighting abilities. Freedom of religion means
16 something more than merely holding thoughts, ideas and beliefs in one’s mind;
17 Plaintiffs argue that the California Constitution bestows the inalienable right to
18 affirmatively “act” upon one’s sincerely held thoughts, ideas and beliefs—
19 especially where, as here, the state enacts a burdensome and oppressive medical
20 intervention that clearly exceeds the lawful scope of a state’s police powers.
21 Freedom of religion means nothing if you can’t keep the government out of your
22 children’s bodies.

23 (19) Plaintiffs respectfully request a court order striking-down SB277 as violative
24 of the right to freely exercise religion, [Calif. Const. Art. 1, Sec. 4]. Plaintiff also
25 seeks reimbursement for costs and expenses of this lawsuit.

26 ////

27 ////

28 ////

☞ CAUSE of ACTION No. 2 ☞

1
2 (20) Cause-of-Action No. 2: Violation of the California Constitution, Article 9,
3 Section 5, “*Children’s Right to Go to School.*”

4 (21) Plaintiffs bring *Cause of Action No. 2*, on behalf of themselves and their
5 minor children, as against Defendant, KAREN SMITH, in her capacity the Director
6 of the California Department of Public Health. Plaintiffs herein incorporate all
7 other numbered paragraphs.

8 (22) SB 277 violates the California Constitution, Art. 9, Sec. 5, which provides:
9 “*The Legislature shall provide for a system of common schools by which a free*
10 *school shall be kept up and supported.*” [Calif. Const., Art. 9, § 5]

11 (23) California Constitution, Art. 9, Sec. 5, guarantees the children’s fundamental
12 right to go to school, whether it be a free public school, a paid private school, or
13 daycare facility, charter school, *etc.*

14 (24) SB 277 wrongfully prohibits children from enjoying their constitutional
15 right to go to school. SB 277’s medical mandate violates a fundamental right
16 under Calif. Const., Art. 9, Sec. 5—the children’s right to go to school.

17 (25) SB 277 wrongfully places conditions on children’s constitutional right to
18 go to school; the state may not place 86 vaccines between children and their
19 constitutional rights. States may place no conditions on fundamental rights.
20 SB277 is unconstitutional. The right to go to school means nothing if you can’t
21 keep the government out of your children’s bodies.

22 (26) Plaintiffs respectfully request a court order striking-down SB277 as violative
23 of the constitutional right to attend school, [Calif. Const., Art. 9, § 5]. Plaintiff also
24 seeks reimbursement for costs and expenses of this lawsuit.

25 // //

26 // //

27 // //

☞ CAUSE of ACTION No. 3 ☞

1
2 (27) Cause-of-Action No. 3: Violation of the California Constitution, Article 1,
3 Section 7, *Equal Protection—(Discrimination)*.

4 (28) Plaintiffs bring *Cause of Action No. 3*, on behalf of themselves and their
5 minor children, as against Defendant, KAREN SMITH, in her capacity the Director
6 of the California Department of Public Health. Plaintiffs herein incorporate all
7 other numbered paragraphs.

8 (29) Calif. Const., Art. 1, Sec. 7 provides, “[a] person may not be denied equal
9 protection of the law.” Plaintiffs contend that SB 277 violates Equal Protection
10 because it discriminates against students based on “vaccination status.” Schools
11 must treat all children the same—regardless of whether they are vaccinated.

12 (30) Differential treatment of students based on “vaccination status” constitutes
13 unlawful discrimination because the differential treatment is arbitrary and
14 capricious—because inoculation brings no guarantee of immunity. No vaccine
15 maker guarantees its vaccines will confer immunity; therefore, it is arbitrary and
16 capricious to treat students differently based on only whether they’ve been
17 vaccinated. Note also, both vaccinated and non-vaccinated persons can *contract*
18 all the childhood diseases set forth at SB277, and further, both vaccinated and
19 non-vaccinated can *spread* them. Measles, for example, is an equal opportunity
20 virus; it strikes regardless of one’s vaccination status. To segregate students based
21 on vaccination status does nothing to halt the spread of disease.

22 (31) SB 277 creates a segregated school system—vaccinated and non-
23 vaccinated—based on “vaccination status.” Plaintiffs argue that “vaccination
24 status” should be deemed a protected class under California law.

25 (32) Under *Brown vs. Board of Education*, segregated school systems, *e.g.*,
26 vaccinated and non-vaccinated, violate the “separate-but-equal” doctrine, and
27 such divided education systems cannot be tolerated. Discrimination based on
28 “vaccination status” violates Equal Protection, (Calif. Const., Art. 1, Sec. 7).

1 (33) Plaintiffs identify eight (8) separate and distinct bases of discrimination;
2 in all instances, the unequal treatment is based directly on “medical status,” a
3 suspect class requiring heightened scrutiny.

- 4 a. SB277 discriminates in favor of **vaccinated students**, who may
5 attend school—and as against **non-vaccinated students**, who may
6 *not* attend school; [H & S Code §120335]
- 7 b. SB277 discriminates in favor of **home-based students**, (where non-
8 familial groups may congregate), who are exempt from the vaccine
9 mandate—and as against **classroom-based students**, who are *not*
10 exempt from the vaccine mandate;
11 [H & S Code §120335(f)]
- 12 c. SB277 discriminates in favor of **8th–12th grade students**, who are
13 exempt from the vaccine mandate—for a period of up to five (5)
14 years, (*i.e.*, grades 8 through 12)—and as against **kindergarteners**
15 **& 7th graders**, who are *not* exempt from the vaccine mandate;
16 [H & S Code §120335(g)(2)(B)–(C)]
- 17 d. SB277 discriminates in favor of **1st–6th grade students**, who are
18 exempt from the vaccine mandate—for a period of up to six (6) years,
19 (*i.e.*, grades 1 through 6—until they reach the 7th grade checkpoint)—
20 and as against **kindergarteners & 7th graders**, who are *not* exempt
21 from the vaccine mandate;
22 [H & S Code §120335(g)(2)(B)–(C)]
- 23 e. SB277 discriminates in favor of **medically exempt students**, who
24 are indefinitely exempt from the vaccine mandate—and as against
25 **students without medical exemptions**, who are *not* exempt from
26 the vaccine mandate; [H & S Code §120370(a)]
- 27 f. SB277 discriminates in favor of **IEP students**, (“Individual
28

1 Education Programs” under Education Code §56026), who are
2 indefinitely exempt from the vaccine mandate—and as against
3 **students without IEPs**, who are *not* exempt from the vaccine
4 mandate; [H & S Code §120335(h)]

5 g. SB277 discriminates in favor of “**grandfathered-in**” students,
6 (*i.e.*, students who, prior to Jan. 1, 2016, submitted a letter to a
7 public or private school stating beliefs in opposition to immunization),
8 who are exempt from the vaccine mandate (until the 7th grade
9 checkpoint)—and as against **students not “grandfathered-in”**
10 who are *not* exempt from the vaccine mandate;
11 [H & S Code §120335(g)(1)]

12 h. SB277 discriminates in favor of **students infected with Hepatitis-B**,
13 who may attend school—and as against **non-vaccinating students**
14 **not infected with Hepatitis-B**, who may *not* attend school. [H & S
15 Code §120335 and §120335(b)(9)]

16 (34) In all the foregoing examples of SB277’s discriminatory impact, the
17 discrimination, in each instance, is based directly on the child’s “medical status,”
18 more specifically, on “vaccination status,” which ought to be deemed a protected
19 class in California. Plaintiffs pray the Court recognize “vaccination status” as a
20 protected class—on par with sex, race, creed and color.

21 (35) Plaintiffs respectfully request a court order striking-down SB277 as
22 discriminatory, in violation of Equal Protection, [Calif. Const., Art. 1, Sec. 7].
23 Plaintiff also seeks reimbursement for costs and expenses of this lawsuit.

24 ////

25 ////

26 ////

☞ CAUSE of ACTION No. 4 ☞

1
2 (36) Cause-of-Action No. 4: Violation of the California Constitution, Article 1,
3 Section 7, *Due Process*—(*Fundamental Fairness*).

4 (37) Plaintiffs bring *Cause of Action No. 4*, on behalf of themselves and their
5 minor children, as against Defendant, KAREN SMITH, in her capacity the
6 Director of the California Department of Public Health. Plaintiffs herein
7 incorporate all other numbered paragraphs.

8 (38) Calif. Const., Art. 1, Sec. 7 entitles all Californians to traditional notions of
9 due process—which includes fundamental fairness. SB 277 is fundamentally
10 unfair because all vaccines are “unavoidably unsafe.” [*Bruesewitz v. Wyeth LLC*,
11 (2011) 562 U.S. 223]

12 (39) Plaintiffs make the argument that no state may mandate products known to
13 be “unavoidably unsafe,” *i.e.*, all vaccines kill and maim indiscriminately.
14 Notably, there is no legal precedent for this argument—pro or con—anywhere in
15 the English-speaking world. For state lawmakers to intentionally put children in
16 harm’s way violates traditional notions of fundamental fairness. Because vaccines
17 kill and injure indiscriminately, SB277 is akin to selective service—“the draft.”
18 Plaintiffs argue that our children should not be drafted as foot soldiers to fight a
19 perpetual Orwellian War on Measles. Defendants cannot deny that SB277 directly
20 results in childhood injuries and death, and therefore, it is fundamentally unfair.
21 Freedom means nothing if you can’t keep the government out of your body.

22 (40) Plaintiffs respectfully request a court order striking-down SB277 as
23 violative of Due Process, for want of fundamental fairness, [Calif. Const., Art. 1,
24 Sec. 7]. Plaintiff also seeks reimbursement for costs and expenses of this lawsuit.

25 ////

26 ////

27 ////

28

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

œ PRAYER for RELIEF œ

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, in the following manner:

- for an award of judgment on all causes of action;
- for court order striking-down, as unconstitutional, Senate Bill No. B 277:
“An 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.”
- for costs and expenses of this lawsuit;
- for such other and further relief as the Court deems just and proper.

Dated: _____

PLAINTIFF, IN PRO PER
(signature)

PLAINTIFF, IN PRO PER
(signature)

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

œ VERIFICATION *œ*

I am a Plaintiff herein. I have read this lawsuit and I am familiar with the allegations, which are true of my own personal knowledge, except as to those matters alleged on information and belief, and as to those matters, I reasonably believe them to be true. I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is both true and correct.

Dated: _____

PLAINTIFF, IN PRO PER
(signature)

PLAINTIFF, IN PRO PER
(signature)