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7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**
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11 Free Now Foundation, Brave And Free
Santa Cruz, D.Q., by his Next Friend, Alix
12 Mayer, A.R., by his Next Friend, Alix
Mayer, T.E., by his Next Friend, Kathleen
13 Lynch, and N.D., by his Next Friend
Kathleen Lynch;

14 Plaintiffs;

15 vs.

16 Erica Pan, In Her Official Capacity As
Director Of The California Department Of
17 Public Health;

18 Defendants
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CASE NO. 2:24-cv-03523-DJC-SCR

**PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS**

Date: August 21, 2025

Time: 1:30 p.m.

Courtroom: 7

Judge: Hon. Daniel J. Calabretta

Action Filed: December 16, 2024

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1 **1. INTRODUCTION**

2 Under *Cruzan v. Missouri*, forced medications are always an infringement of personal liberties
3 guaranteed under the Due Process Clause of the Fourteenth Amendment and, under *Washington v.*
4 *Harper*, when those forced medications are harmful, especially if they can cause death, even if only
5 rarely, the liberty interest is much higher. Therefore, in such forced medication cases, including
6 mandated childhood vaccines that have been found by the Congress to cause injury and death, there
7 must be a clear and compelling reason for such forced treatment as determined by an individual
8 assessment and decision-making process, weighing the necessity for treatment against the potential
9 harms in each case, and a clear and compelling finding of necessity to impose those risks of harm on
10 innocent persons, especially children.

11 California Health and Safety Code (HSC) Section 120335, California's mandate for
12 immunizations in order for children to attend school, public or private, immunizations found by
13 Congress to cause serious injury and death, fails both the substantive and procedural due process
14 prongs of *Harper* and *Williams*.

15 Plaintiffs filed their Second Amended Complaint seeking declaratory and injunctive relief from
16 the enforcement by Defendant Erica Pan, Director of the California Department of Public Health, of
17 the immunizations required for school attendance under HSC 120335 as to themselves and all other
18 similarly situated California schoolchildren. This complaint for injunctive relief is based upon the fact
19 that those immunizations were determined by the Congress of the United States to cause serious
20 permanent injury, including death, when Congress enacted the National Childhood Vaccine Injury Act
21 of 1986 (NCVIA). Under the NCVIA, victims and survivors are compensated under the federal
22 Vaccine Injury Compensation Program (VICP). That program has adjudicated, and compensated, more
23 than 11,000 claims for vaccine injuries and 390 vaccine deaths, compensation totaling more than \$5.3
24 billion.

25 Plaintiffs contend that they and all other California schoolchildren have a fundamental right
26 under the Fourteenth Amendment to the Constitution of the United States to: (1) refuse unwanted
27 medical treatments, a right that can, under California law, be exercised by their parents, (2) attend
28 schools for their education, and (3) enjoy their fundamental right to attend school without having to

1 give up their fundamental right to refuse unwanted medical treatments.

2 Defendant Pan has now filed a Motion to Dismiss Plaintiffs' Second Amended Complaint
3 under Fed. R. Civ. Proc., Rule 12(b)(6). Such a motion tests the legal sufficiency of the facts pleaded
4 by the plaintiffs to support an entitlement to relief under a cognizable legal theory.

5 In the main, Defendant Pan argues that:

6 "State Legislatures have a long history of requiring children to be vaccinated as a condition to
7 school enrollment, and for as many years, both state and federal courts have upheld those
8 requirements against constitutional challenge." *Whitlow v. California (Whitlow)* 203 F. Supp.
3d 1079, 1092 (S.D. Cal. 2016). This lawsuit is no different.

9 Motion to Dismiss (MTD), at p. 1:3-6. ECF # 51.

10 Plaintiffs' claims, premised on violations of Plaintiffs' purported substantive and procedural
11 due process rights and the unconstitutional conditions doctrine, are unsupported as a matter of
12 federal and state constitutional law, which for decades has consistently held that: (1) a state's
13 exercise of its police powers in protecting the public from communicable diseases is rationally
14 based; and (2) states have a legitimate, if not compelling, interest in requiring children to be
15 vaccinated as a condition of attending school to protect the public health from the rapid spread
16 of life-threatening illness.

17 *Id.*, at 1:19-25.

18 However, this lawsuit is, indeed, different. All of the other cases cited by the defendant have
19 attacked California's school immunization requirements as contrary to religious and/or personal
20 beliefs. None of those other cases have attacked California's school immunization requirements on
21 the basis that those immunizations are dangerous and are known to Congress, under the NCVIA, to
22 cause serious permanent injury and even death. This fact cannot be disputed because these injuries and
23 deaths have already been adjudicated under the VICP.

24 Defendant Pan tries to ignore and hide from these injuries and deaths, the centerpiece of the
25 pleadings in the Second Amended Complaint("SAC") (p. 28:2-32:10), as seen by the fact that her
26 MP&A in support of her Motion to Dismiss (MTD) fails to even once mention the NCVIA or the
27 billions paid out by the VICP in compensation for those vaccine injuries and deaths.

28 Defendant Pan tacitly concedes this vaccine injury and death issue by attempting to re-frame
this case as being about "personal beliefs" rather than about vaccine injury and death. MTD, at p. 23:5,
23:10. Defendant Pan also tacitly concedes this vaccine injury and death issue by attempting to re-frame
this case as being about vaccine "efficacy" rather than vaccine injury and death. MTD, at pp. 1:9-12,

1 13:11-20, 13:27-14:1. Defendant Pan, as the Director of the California Department of Public Health,
2 knows perfectly good and well that vaccine “efficacy” measures whether the vaccine is *effective* at
3 preventing the spread of infection or ameliorating the harmful effects of infection, not whether the
4 vaccine is *safe* or causes injury, as found by Congress when it enacted the NCVIA. This case is about
5 vaccine injury and death, not vaccine “efficacy.” Defendant Pan’s attempt to hide from the vaccine
6 safety issue by claiming that the issue is really “efficacy” is telling.

7 Nonetheless, Defendant Pan does concede that:

8 The gravamen of Plaintiffs’ complaint is that (1) vaccines are allegedly unsafe and ineffective;
9 and (2) CDPH has purportedly violated Plaintiffs’ substantive and procedural due process rights
under the Fourteenth Amendment by enforcing California’s school vaccine law.

10 MTD, at p. 12:21-24.

11 Thus, Defendant Pan concedes that plaintiffs have pleaded facts sufficient to allege that
12 California’s mandated vaccines are unsafe in many cases. The question, then, is whether these facts
13 plead a legal cause of action for relief sufficient to survive a Rule 12(b)(6) motion?

14 While Defendant Pan cites many cases in which school immunization mandates have been
15 upheld, she fails to cite any cases in which such mandates have been upheld even though they are
16 known, under the NCVIA, to cause serious permanent injury and death, as plaintiffs have alleged. Thus,
17 those other cases cited by Defendant Pan are of no help to her, or this Court, in resolving the issue of
18 whether California has the power to mandate vaccine injury and death or whether California is
19 prohibited by the Substantive Due Process Clause of the Fourteenth Amendment from doing so?

20 In 1990 the Supreme Court held that, “... a competent person has a liberty interest in refusing
21 unwanted medical treatment...” *Cruzan, supra*, at 278, citing *Jacobson, supra*, at p. 24-30. The *Cruzan*
22 Court also cited its then recent decision in *Harper*,¹ for the proposition that, “[t]he forcible injection
23 of medication into a nonconsenting person’s body represents a substantial interference with that person’s
24 liberty”. *Id.*, at p. 278.

25 Most of the cases addressing forced medication outside of the immunization context have
26 involved prisoners forced to take anti-psychotic drugs. The Ninth Circuit Court of Appeals cited

27
28 ¹ *Washington v. Harper*, 494 U.S. 210, 221-222, 110 S.Ct. 1028, 1036, 108 L.Ed.2d 178 (1990)
(“*Harper*”).

1 *Washington v. Harper, Riggins v. Nevada*,² and *Sell v. United States*,³ in finding “a significant liberty
2 interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause
3 of the Fourteenth Amendment.” *U.S. v. Williams*, 356 F.3d 1045, 1053 (9th Cir. 2004). One of the
4 reasons cited in that case for that “liberty interest” was the fact that “the drugs can have serious, even
5 fatal side effects” *Id.*, at p. 1054. Because of these serious, even fatal, side effects, an order for an
6 “antipsychotic medication is an especially grave infringement of liberty and a thorough inquiry is
7 required before a court may issue it.” *Id.*, at p. 1055. “[H]ere, the liberty interest is one so weighty that
8 even with respect to prisoners it can be overcome only with ‘a finding of overriding justification and
9 a determination of medical appropriateness,’” *Id.*, at 1056.

10 If prisoner’s have such a weighty liberty interest in avoiding serious, even fatal, side effects,
11 from unwanted medications that a court must make an on-the-record finding that the ordered medication
12 “involves no greater deprivation of liberty than is reasonably necessary,” shouldn’t innocent children
13 and infants have at least as much of a liberty interest in avoiding serious, even fatal, side effects from
14 childhood immunizations and be afforded at least as much due process ?

15 **2. STATEMENT OF FACTS**

16 **2.1 The National Vaccine Injury Compensation Program (VICP) Was Established To 17 Provide Compensation For Vaccine Injury Victims**

18 The National Vaccine Injury Compensation Program (VICP) was established under the NCVIA
19 to compensate the victims of vaccine injury as the sole means of compensation for such injuries in lieu
20 of tort claims asserted against vaccine makers, who now enjoy statutory immunity under that Act. SAC,
21 at ¶ 26.

22 **2.2 The VICP Has Awarded Approximately \$5.3 Billion In Compensation For More 23 11,000 Claims For Injuries And Deaths Due To Vaccines**

24 Since 1988, over 28,292 petitions have been filed with the National Vaccine Injury
25 Compensation Program (NVICP). *Id.* Over that 30-year time period, 24,602 petitions have been
26 adjudicated, with 11,671 of those determined to be compensable, while 12,931 were dismissed. Total

27 ² *Riggins v. Nevada*, 504U.S. 127, 137, 112 S.Ct. 1810, 118 L.Ed.2d 479 (1992).

28 ³ *Sell v. United States*, 539U.S. 166, 123 S.Ct. 2174, 2183, 156 L.Ed.2d 197 (2003)

1 compensation paid over the life of the program is approximately \$5.3 billion. As of December 1, 2011
2 the NVICP had paid awards for 390 deaths. Furthermore, the NCVIA does not generally cover autism
3 and Sudden Unexpected Infant Death cases, among the most common and serious vaccine injuries.
4 SAC, at ¶ 27.

5 **2.3 The National Rate Of Autism In Children Is Now One In Thirty-One And One In**
6 **Twenty In California**

7 According to CDC data, the prevalence of autism in the United States is now one in every thirty-
8 one 4 year-old children. SAC, at ¶ 4. In vaccine-mandating California, the prevalence is sharply higher
9 at one in twenty four year-old children, with the prevalence of autism in California boys about one in
10 every twelve four year-olds. *Id.*

11 Of the autism cases among children age one to three (the most common age of onset) reported
12 to the CDC Vaccine Adverse Event Reporting System (VAERS), the greatest number had their onset
13 within one day after an immunization and more than half within the first two days. SAC, at ¶ 144. The
14 close temporal association between vaccination and onset leaves no doubt that vaccines were the
15 proximate causes.

16 The CDC reports that 22% of the autistic children had IQ's less than 70 such that they were
17 considered intellectually disabled. SAC at ¶ 7. With California having a birth rate of about 750,000 per
18 year, that implies about 33,000 new autism cases per year, nearly one hundred per day, with about 40%
19 (forty per day) intellectually disabled and needing full-time care.

20 **2.4 Hundreds Of California Infants Die Every Year Soon After An Immunization**

21 According the the CDC, there were about 3,400 sudden unexpected infant deaths (SUID) in the
22 United States in 2022 (SAC, at ¶ 162), that is, about 10 every day. Using the CDC data, the number of
23 SUID in California for 2024 can be estimated at nearly 400, more than one per day. *Id.*

24 According to the sworn statement of a veteran police SIDS investigator, she estimates that about
25 half of all the 250 or so SUID that her unit investigated during her career as a SUID investigator
26 occurred within 72 hours of an immunization and that, overall, about 85% of all those SUID were likely
27 related to an immunization. SAC, at ¶ 166.

28 **3. PROCEDURAL HISTORY**

1 The procedural history is as set forth by Defendant Pan. MP&A ISO MTD, at pp. 5:12-6:14,
2 ECF #51.

3 **4. ARGUMENT**

4 **4.1 Plaintiffs' Many Cognizable Legal Theories**

5 **4.1.1 As Much, If Not More, Than Prisoners, Innocent Children Have A**
6 **Significant Liberty Interest Under The Due Process Clause Of The**
7 **Fourteenth Amendment In Avoiding The Unwanted Administration Of**
8 **Medications, Such As Vaccines, That Can Cause Serious Injury, And Even**
9 **Death**

10 In 1990 the Supreme Court held that, "... a competent person has a liberty interest in refusing
11 unwanted medical treatment..." *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261, 278
12 110 S.Ct. 2841, 111 L.Ed.2d 224 (1990) ("*Cruzan*"), citing *Jacobson v. Massachusetts*, 197 U.S. 11,
13 24-30, 25 S.Ct. 358, 360-361, 49 L.Ed. 643 (1905) ("*Jacobson*"). The *Cruzan* Court also cited its then
14 recent decision in *Washington v. Harper*,⁴ for the proposition that, "[t]he forcible injection of
15 medication into a nonconsenting person's body represents a substantial interference with that person's
16 liberty". *Id.*, at p. 278.

17 In *Harper*, where Harper was a prisoner objecting to forced medication, the Supreme Court held
18 that, "[w]e have no doubt that...respondent possesses a significant liberty interest in avoiding the
19 unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth
20 Amendment." *Harper, supra*, at pp. 221-222. The Court recognized that the state's power to compel
21 such medication required the weighing of the prisoner's liberty interest in avoiding those medication
22 as against the state's penological interests. *Id.*, at pp. 222-223. The court found such forced medication
23 of inmates to be reasonable where inmates, "represent a significant danger to themselves or others." *Id.*,
24 at p. 226.

25 The Ninth Circuit Court of Appeals cited *Washington v. Harper, Riggins v. Nevada*,⁵ and *Sell*
26 *v. United States*,⁶ in finding "a significant liberty interest in avoiding the unwanted administration of

27 ⁴ *Washington v. Harper*, 494 U.S. 210, 221-222, 110 S.Ct. 1028, 1036, 108 L.Ed.2d 178 (1990)
28 (*Harper*).

⁵ *Riggins v. Nevada*, 504 U.S. 127, 137, 112 S.Ct. 1810, 118 L.Ed.2d 479 (1992).

⁶ *Sell v. United States*, 539 U.S. 166, 123 S.Ct. 2174, 2183, 156 L.Ed.2d 197 (2003)

1 antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment." *U.S. v. Williams*, 356
2 F.3d 1045, 1053 (9th Cir. 2004). One of the reasons cited in that case for that "liberty interest" was the
3 fact that "the drugs can have serious, even fatal side effects." *Id.*, at p. 1054. Because of these serious,
4 even fatal, side effects, an order for an "antipsychotic medication is an especially grave infringement
5 of liberty and a thorough inquiry is required before a court may issue it." *Id.*, at p. 1055. "[H]ere, the
6 liberty interest is one so weighty that even with respect to prisoners it can be overcome only with 'a
7 finding of overriding justification and a determination of medical appropriateness,'" *Id.*, at 1056.

8 Plaintiffs' cognizable legal theory in this case is that the individual named plaintiffs, and all
9 other similarly situated children in California, as much or more than prisoners, have a significant liberty
10 interest in avoiding the unwanted administration of childhood vaccines under the Due Process Clause
11 of the Fourteenth Amendment...because of the fact that "the drugs can have serious, even fatal side
12 effects," similar to the liberty interest found in *U.S. v. Williams, supra*, at 1053-54.

13 Because of the serious, even fatal, side effects, as pleaded in this case for childhood vaccines,
14 an order for a childhood vaccine would be "... an especially grave infringement of liberty and a
15 thorough inquiry is required before a court may issue it." As much or more than prisoners, innocent
16 children have a "...liberty interest ... so weighty that ... it can be overcome only with 'a finding of
17 overriding justification and a determination of medical appropriateness,'" Thus, plaintiffs have both
18 substantive and procedural rights under the Due Process Clause of the Fourteenth Amendment under
19 the requirements of *Williams*. Indeed, plaintiffs' liberty interest in avoiding unwanted vaccines is more
20 substantial than those of inmates, where inmates' "constitutional rights are judged under a
21 'reasonableness' test less restrictive than that ordinarily applied to alleged infringements of fundamental
22 constitutional rights." *Harper, supra*, at 224, citing *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349. 107
23 S.Ct. 2400, 2404, 96 L.Ed.2d 282 (1987).

24 **4.1.2 Infringements Of Fundamental Rights Are Reviewed Under Strict Scrutiny**

25 "Governmental actions that infringe upon a fundamental right receive strict scrutiny." *Fields*
26 *v. Palmdale School Dist.* 427 F.3d 1197, 1208 (2005), *Mullins v. State of Oregon*, 57 F.3d 789, 793
27 (1995), citing *Reno v. Flores*, 113 S.Ct. 1439, 1447, 123 L.Ed.2d 1, 507 U.S. 292 (1993).

28 **4.1.3 HSC 120335 Infringes The Child's Fundamental Right, As Exercised By**

1 **Their Parent Or Guardian, To Refuse Unwanted Vaccine Injections Upon Pain Of**
 2 **Forfeiting Their Fundamental Right To Education**

3 The Substantive Due Process Clause has long provided a liberty interest in refusing unwanted
 4 medical treatments. *Cruzan, supra*, at p. 278 (holding that Missouri could regulate medical treatment
 5 of an incompetent adult while noting that “[t]he principle that a competent person has a constitutionally
 6 protected liberty interest in refusing unwanted medical treatment may be inferred from our prior
 7 decisions,” citing *Jacobson, supra*, at 24-30). In *Harper* the Court noted that “[t]he forcible injection
 8 of medication into a nonconsenting person's body represents a substantial interference with that person's
 9 liberty”). *Harper, supra*, at 229. Where that person is a minor, California confers the right of consent
 10 upon the parent or guardian. *Cobbs v. Grant*, 8 Cal.3d 229, 244, 104 Cal.Rptr. 505, 502 P.2d 1 (Cal.
 11 1972) (“...if the patient is a minor or incompetent, the authority to consent (to medical care) is
 12 transferred to the patient's legal guardian or closest available relative,” citing *Ballard v. Anderson* 4
 13 Cal.3d 873, 883, 95 Cal.Rptr. 1, 484 P.2d 1345 (1971); *Doyle v. Giuliucci* 62 Cal.2d 606, 43 Cal.Rptr.
 14 697, 401 P.2d 1 (1965); *Bonner v. Moran* 75 U.S.App.D.C. 156, 126 F.2d 121 (1941).

15 HSC 120335 infringes the child’s fundamental right, as exercised by their parent or guardian,
 16 to refuse unwanted injections of vaccines forced upon the child by the highly coercive means of
 17 forfeiting the child’s fundamental right to pre-school and grade school educations, the Meyer-Pierce
 18 right (see next). Such infringements of fundamental rights are reviewed under strict scrutiny.

19 **4.1.4 The Right Of Parents To Decide Their Children’s Medical Treatments Is**
 20 **Fundamental And Any Infringements Must Be Reviewed Under Strict Scrutiny**

21 The Due Process Clause of the Fourteenth Amendment “...also includes a substantive
 22 component that ‘provides heightened protection against government interference with certain
 23 fundamental rights and liberty interests.’” *Troxel et vir. v Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054
 24 (2000), citing *Washington v. Glucksberg*, 521 U.S.702, 720, 138 L. Ed. 2d 772 (1977), and *Reno v.*
 25 *Flores, supra*, at 301-302. “The liberty interest at issue in this case -- the interest of parents in the care,
 26 custody, and control of their children -- is perhaps the oldest of the fundamental liberty interests
 27 recognized by this Court.” *Troxel*, at p. 65, citing *Meyer v. Nebraska*, 262 U.S. 390, 399, 401, 67 L. Ed.
 28 1042, 43 S. Ct. 625 (1923) (“... right of parents to ‘establish a home and bring up children’ and ‘to
 control the education of their own.’”); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535, 69 L. Ed.

1 1070, 45 S. Ct. 571(1925) (“the ‘liberty of parents and guardians’ includes the right ‘to direct the
2 upbringing and education of children under their control,’” and “‘the child is not the mere creature of
3 the State...,’”); *Prince v. Massachusetts*, 321 U.S. 158, 88 L. Ed. 645, 64S. Ct. 438 (1944) (“[i]t is
4 cardinal with us that the custody, care and nurture of the child reside first in the parents...”); *Wisconsin
5 v. Yoder*, 406 U.S. 205, 232, 32 L. Ed. 2d 15, 92 S. Ct. 1526 (1972) (“The history and culture of
6 Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their
7 children. This primary role of the parents in the upbringing of their children is now established beyond
8 debate...”); *Quilloin v. Walcott*, 434 U.S. 246, 255, 54 L. Ed. 2d 511, 98 S. Ct. 549 (1978) (“[w]e have
9 recognized on numerous occasions that the relationship between parent and child is constitutionally
10 protected”); *Parham v. J. R.*, 442 U.S. 584, 602, 61 L. Ed. 2d 101, 99 S. Ct. 2493 (1979) (“Our
11 jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad
12 parental authority over minor children”); *Santosky v. Kramer*, 455 U.S. 745, 753, 71 L. Ed. 2d 599, 102
13 S. Ct. 1388 (1982) (discussing “the fundamental liberty interest of natural parents in the care, custody,
14 and management of their child”); *Washington v. Glucksberg, supra*, at 720 (“[i]n a long line of cases,
15 we have held that, in addition to the specific freedoms protected by the Bill of Rights, the ‘liberty’
16 specially protected by the Due Process Clause includes the right . . . to direct the education and
17 upbringing of one’s children” (citing *Meyer* and *Pierce*).) Most recently, the Supreme Court held that
18 parents had the right to a “preliminary injunction that would permit them to have their children excused
19 from instruction related to the storybooks while this lawsuit proceeds” where the sexually explicit
20 storybooks combined with the schools decision to withhold notice and opt-outs unconstitutionally
21 burdened their religious exercise. *Mahmoud v. Taylor*, 24-297, at p. 23 (Jun 27, 2025). In *Mahmoud*,
22 the Court noted that homeschooling, the only alternative under HSC 120335 for parents who don’t wish
23 to take the risks of California’s mandated immunizations:

24 comes with a hefty price as well; it requires at least one parent to stay at home during the normal
25 workday to educate children, thereby forgoing additional income opportunities. It is both
26 insulting and legally unsound to tell parents that they must abstain from public education in
order to raise their children in their religious faiths, when alternatives can be prohibitively
expensive and they already contribute to financing the public schools.”

27 *Id.*, at p. 40.

28 Obviously, the Supreme Court takes a very dim view of homeschooling as the only alternative

1 available to parents who object to school policies that burden their fundamental rights..

2 Under these many Supreme Court precedents, parents have a fundamental right in the care of
3 their children. The fundamental right to care for one’s children has also, traditionally, included medical
4 care. *Cobbs v. Grant, supra*. Any infringements of that fundamental right must reviewed under strict
5 scrutiny. As held in *Pierce v. Society of Sisters*, “the child is not the mere creature of the State...”.
6 *Pierce, supra*, at p. 535.

7 **4.1.5 The Doctrine Of Unconstitutional Conditions Is Infringed By Conditioning**
8 **The Child’s Fundamental Meyer-Pierce Right To Attend School On The**
9 **Waiver Of The Child’s Right To Refuse Unwanted And Harmful Vaccine**
10 **Injections**

11 The Doctrine of Unconstitutional Conditions forbids the government from conditioning the
12 enjoyment of a government benefit or right upon the infringement of a constitutional right. *Perry v.*
13 *Sindermann*, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972) (the government “may not deny a
14 benefit to a person on a basis that infringes his constitutionally protected interests,” where a college
15 professor alleged that his employment was ended because he exercised his first amendment right to
16 criticize the college); *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d. 304 (1994)
17 (holding that “... the government may not require a person to give up a constitutional right—here the
18 right to receive just compensation when property is taken for a public use—in exchange for a
19 discretionary benefit conferred by the government where the benefit sought has little or no relationship
20 to the property.”)

21 A parent’s right to educate their child is a fundamental right, often termed the Meyer-Pierce
22 right, since it derives from those two decisions. In California, children also have a right to a public
23 school education. California Constitution, Article IX, Section 5. The parent’s right to decide the child’s
24 medical treatment is also a fundamental right, as also discussed above.

25 California HSC Section 120335(b) requires a parent who wishes to exercise the latter
26 fundamental right to waive the former fundamental rights. This is a plain violation of the Supreme
27 Court’s “unconstitutional conditions” doctrine.

28 **4.1.6 Neither *Jacobson*, *Zucht*, Nor *Prince* Are Controlling In This Case For**
Many Reasons

The three Supreme Court decisions cited by Defendant Pan to support mandatory immunization

1 laws are *Jacobson* (1905), *Zucht* (1922),⁷ and *Prince* (1944). Defendant Pan offers these cases for the
2 proposition that they give state governments the power to mandate any and all vaccines under any
3 circumstances as long as they deem it to be “necessary to protect public health.” MTD, at pp. 13:14-20,
4 23-26, 14:8- 15:27.

5 *Jacobson* is not authority for any such unlimited, free-wheeling power to mandate any and all
6 immunizations regardless of their risks of injury and death. In *Jacobson*, the Supreme Court was much
7 more circumspect. To begin with, the Court held, in *Jacobson*, that, “We now decide only that the
8 statute covers the present case,” (*id.*, at p. 39) *ie.*, (1) smallpox vaccination (2) of adults (3) during an
9 “epidemic” of smallpox (4) that endangered the public health (5) of an entire population. *Id.*, at p. 31
10 (“...a smallpox epidemic that imperiled (an entire population”), *id.*, at p. 37 (vaccination necessary for
11 “the public health when endangered by epidemics of disease). But, California’s mandated school
12 immunizations apply, not to smallpox, but to other usual childhood infections that have never posed
13 any serious threat to “imperil an entire population,” and regardless of whether there is any epidemic or
14 not. Some of those mandated immunizations, such as tetanus, are not readily transmissible, are never
15 epidemic, and never “imperil an entire population.” *Jacobson* is not blanket authority for any and all
16 immunizations of any and all children under any and all circumstances regardless of the risks.
17 Defendant Pan must make a particularized showing under the *Jacobson* factors as to each vaccine, as
18 *Jacobson* did for smallpox, in order to claim authority under *Jacobson* for mandating them.

19 While the *Jacobson* Court deferred to the legislature to determine the issues of safety and
20 effectiveness of smallpox vaccination in 1905, in the present case California’s mandated immunizations
21 have already been found by the Congress to cause serious permanent injury and death under the NCVIA
22 of 1986. That fact is, therefore, not in dispute. Furthermore, in 1905, a person injured or killed by a
23 smallpox vaccine could sue for damages. Not so since the NCVIA of 1986. Now a child who develops
24 autism right after a California-mandated immunization, as pled in the SAC (1 in every 12 California
25 boys), has no recourse for compensation since autism, the most common serious vaccine injury, is not
26 a covered condition under the NCVIA. Thus, these children are mandated by California to risk injury

27

28

⁷ *Zucht v. King* 260 U.S. 174, 67 L.Ed. 194, 43 S.Ct. 24 (“*Zucht*”).

1 for which they are prohibited by statute from recovering damages. That certainly sounds like a
2 deprivation of liberty and health without due process of law. Nor is the deprivation either trivial or
3 confined to just the child with severe autism. The child loses his future as a productive, happy, and
4 fulfilled member of society and, instead, becomes a lifetime burden to the family, often requiring full-
5 time custodial care, usually by the mother, that precludes her from a normal life and the opportunity to
6 make a living. The stress often leads to divorce with the mother then left to bear the burden by herself
7 and no income from outside employment. These outcomes did not occur with smallpox vaccination and
8 *Jacobson* did not even contemplate them, much less try to weigh them in the balance of private versus
9 public interests and burdens. *Jacobson* is no authority at all for such seriously harmful immunizations.

10 Neither *Jacobson*, *Zucht*, nor *Prince* apply in this case for three other reasons. First, all three
11 decisions based the authority for mandatory vaccination on the state’s police power, i.e., the power of
12 the state to mandate vaccination to protect the public from serious or life threatening infections
13 transmitted by others, as opposed to the *parens parentis* power to protect children from their own
14 infections. Where, as here, the state does not have compelling evidence that its mandated
15 immunizations prevent the transmission of serious infections to others, neither *Jacobson*, *Zucht*, nor
16 *Prince* apply.

17 Furthermore, the use of the police power, under *Jacobson*, to mandate widespread inoculation
18 of all children with harmful vaccines, as alleged in the SAC, collides with the liberty interest upheld
19 in *Cruzan* and *Harper* and the individualized due process requirements for such harmful medications
20 as upheld in *Harper*. See also section 4.1.7 next.

21 Second, the Massachusetts statute upheld under *Jacobson* involved a very minor restriction for
22 those objecting to the mandated vaccination, a modest \$5 fine, not the forfeiture of the child’s entire
23 education, protected as a fundamental right under the *Meyer* and *Pierce* decisions. *Roman Catholic*
24 *Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 71, 208 L.Ed.2d 206 (2020) (J. Gorsuch concurring) (the
25 Massachusetts statute, under which “individuals could accept the vaccine, pay the [\$5] fine, or identify
26 a basis for exemption...easily survived rational basis review, and might even have survived strict
27 scrutiny, given the opt-outs available...” (emphasis added.) While medical exemptions from HSC
28 120335’s requirements are available under Health and Safety Code Section 120372, such exemptions

1 are ineffective to prevent widespread vaccine injury and death in California children as alleged in the
2 SAC.

3 Third, both *Jacobson* (1905) and *Zucht* (1922) were decided under rational basis review before
4 the Supreme Court adopted the strict scrutiny standard of review for infringements of fundamental
5 rights. *Skinner v. State of Oklahoma Williamson*, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942)
6 (adopting strict scrutiny standard of review for forced medical sterilization). Here, parents' right to
7 decide their children's medical treatments is fundamental.

8 **4.1.7 The Issue Of Forced Medications, Such As Mandated Immunizations, That**
9 **Cause Injury And Death Is Controlled By The More Recently Decided Case**
10 **Of *Washington v. Harper* Rather Than The 1905 *Jacobson* Decision**

11 In *Cruzan*, the Supreme Court held that, “the forcible injection of a medication into a
12 nonconsenting person’s body represents a substantial interference with that person’s liberty. *Cruzan*,
13 *supra*, at p. 278, citing *Washington v. Harper, supra*, at p. 229. Under *Harper*, that liberty interest is
14 far greater when the forced medication is known to cause injury and even death.

15 When the holdings of *Cruzan* and *Harper* are applied to mandated immunization statutes such
16 as HSC section 120335, where the the mandated vaccines have been found by the Congress to cause
17 serious, permanent injury and death, they diminish the force of the Court’s earlier vaccine decisions
18 offered by Defendant Pan, such as *Jacobson*, *Zucht*, and *Prince*, to support mandatory immunization
19 of school children. Those earlier decisions are then cabined by the Court’s later decisions. Indeed, some
20 of the Court’s later decisions outright overrule its earlier decisions, as *Dobbs*⁸ recently overruled *Roe*.⁹

21 *Harper* is far more relevant than *Jacobson* in this context because *Harper* dealt with a
22 medication, Haldol, well known at the time and still, to cause harm and even death, whereas *Jacobson*
23 did not recognize smallpox vaccination as a common cause of harm as generally understood at the time.

24 Thus, when the forced medications are known to cause injury and death, as childhood vaccines
25 are under the NCVIA, then *Harper* controls over *Jacobson*, both as to the substantive and procedural
26 rights to be afforded.

27 ⁸ *Dobbs v. Jackson Women's Health Org.*, 142 S.Ct. 2228, 213 L.Ed.2d 545 (2022).

28 ⁹ *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973).

1 **4.1.8 Because The Purpose Of California’s Immunization Requirements Is To**
2 **Protect The Child And Not The Public, They Infringe On The Parent’s**
3 **Fundamental Rights To Care For Their Children And Must Be Reviewed**
4 **Under Strict Scrutiny**

5 California Health and Safety Code Section 120325 states the purpose for California’s
6 immunization requirements:

7 In enacting this chapter ... it is the intent of the Legislature to provide: (a) A means for the
8 eventual achievement of total immunization of appropriate age groups against the following
9 childhood diseases: (1) Diphtheria, (2) Hepatitis B, (3) Haemophilus influenzae type b, (4)
10 Measles, (5) Mumps, (6) Pertussis (whooping cough), (7) Poliomyelitis, (8) Rubella, (9)
11 Tetanus, (10) Varicella (chickenpox). (11) Any other disease deemed appropriate by the
12 department, taking into consideration the recommendations of the Advisory Committee on
13 Immunization Practices of the United States Department of Health and Human Services, the
14 American Academy of Pediatrics, and the American Academy of Family Physicians.

15 This statement of intent provides no insight into the question of whether the purpose of these
16 requirements is a public health purpose, *i.e.*, to prevent the transmission and spread of contagious
17 diseases from infected individuals to and among the public, or for the private purpose of protecting
18 individual children from acquiring those infections or to lessen their illnesses.

19 The distinction is very important because the prevention of transmission of infectious diseases
20 from infected individuals to the public, such as by quarantine, has been held to be a police power.
21 *Jacobson, supra*, at p. 25 (“the police power of a state must be held to embrace, at least, such reasonable
22 regulations established directly by legislative enactment as will protect the public health and the public
23 safety.)

24 On the other hand, any state authority to protect the child from the child’s own infections arises,
25 not from its police powers, but from its limited *parens patriae* powers to safeguard the child’s own
26 health and welfare. *Wisconsin v. Yoder, supra*, at 232, holding that the state’s *parens patriae* powers “to
27 ‘save’ a child from himself or his Amish parents” did not extend to requiring an additional two years
28 of formal high school education. Since “the interest of parents in the care, custody, and control of their
29 children ... is perhaps the oldest of the fundamental liberty interests recognized by this Court” any
30 infringement upon that fundamental interest by the state by mandated medical treatments, such as under
31 a claim of *parens patriae*, must be reviewed under strict scrutiny. For example, given the Court’s recent

1 decisions in *Mahmoud* and *Skrmetti*,¹⁰ there can be little doubt that the Court would strongly support
2 parents' rights over government powers to teach and mandate "gender-affirming" medical care for some
3 ostensible public health purpose where parents object.

4 Here, where the vaccines mandated by California for children have been found by Congress,
5 under the NCVIA, and the VICP to cause serious injury and death such that they are entitled to
6 compensation under the Vaccine Injury Compensation Program, California cannot show that those
7 requirements are narrowly tailored to achieve a compelling government interest sufficient to infringe
8 the parents' fundamental right to protect their children from such injury and death. Thus, they fail strict
9 scrutiny.

10 **4.1.9 California's School Immunization Requirements Under Health and Safety**
11 **Code Sections 120325 And 120335 Are Not Narrowly Tailored To Achieve**
12 **A Compelling Government Interest**

13 There is nothing in Health and Safety Code Sections 120325 or 120335 that shows narrow
14 tailoring for any of the mandated immunization so as to achieve an important government interest as
15 required for strict scrutiny, especially in view of their serious and deadly side effects.

16 California Health and Safety Code Section 120325 provides that:

17 In enacting this chapter ... it is the intent of the Legislature to provide: (a) A means for the
18 eventual achievement of *total* immunization (emphasis added) of appropriate age groups against
19 the following childhood diseases: (1) Diphtheria, (2) Hepatitis B, (3) Haemophilus influenzae
20 type b, (4) Measles, (5) Mumps, (6) Pertussis (whooping cough), (7) Poliomyelitis, (8) Rubella,
21 (9) Tetanus, (10) Varicella (chickenpox). (11) Any other disease deemed appropriate by the
22 department, taking into consideration the recommendations of the Advisory Committee on
23 Immunization Practices of the United States Department of Health and Human Services, the
24 American Academy of Pediatrics, and the American Academy of Family Physicians.

25 California Health and Safety Code Section 120335(b) provides that:

26 (b) The governing authority shall not unconditionally admit any person as a pupil of any private
27 or public elementary or secondary school, child care center, day nursery, nursery school, family
28 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 [California Department of Public Health], 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.

¹⁰ *United States v. Skrmetti*, 23-477 (Jun 18, 2025).

1 Thus, the goal of these statutes is the “total immunization” of all children with vaccines known
2 to cause serious injury and death, the exact opposite of any narrow tailoring of these requirements, such
3 as by considering family history, genetic susceptibility, or previous vaccine injury, to achieve a
4 compelling interest. An already autistic child is not exempted. Neither do these statutes set forth any
5 stated compelling public health interest(s) by which a court could determine the legislative intent so as
6 to apply strict scrutiny. In fact, the real legislative intent is to guarantee business for the vaccine
7 industry, shielded from any liability by the NCVIA, and the doctors who inject those vaccines,
8 regardless of the harm and death caused to children; a highly profitable, cynical, and disgraceful,
9 business model.

10 **4.1.10 The State May Not Require Children To Be Injected With Often**
11 **Permanently Harmful And Potentially Lethal Drugs For The Purported**
12 **Benefit Of Others**

12 Under Anglo-Saxon common law, the state may not impose harm on some for the benefit of
13 others. This principle was cogently illustrated in *McFall v. Shimp*.¹¹ In that case McFall suffered from
14 a rare bone marrow disease with a very dim prognosis for survival unless he received a bone marrow
15 transplant from a compatible donor. A cousin, Shimp, was the only compatible donor but refused to
16 donate the necessary bone marrow. McFall then sought an order from the court to require Shimp to
17 donate the necessary bone marrow. But the court refused to issue such an order:

18 The common law has consistently held to a rule which provides that one human being is under
19 no legal compulsion to give aid or to take action to save another human being or to rescue. A
20 great deal has been written regarding this rule which, on the surface, appears to be revolting in
21 a moral sense. Introspection, however, will demonstrate that the rule is founded upon the very
22 essence of our free society. It is noteworthy that counsel for plaintiff has cited authority which
23 has developed in other societies in support of plaintiff's request in this instance. Our society,
24 contrary to many others, has as its first principle, the respect for the individual, and that society
25 and government exist to protect the individual from being invaded and hurt by another. Many
26 societies adopt a contrary view which has the individual existing to serve the society as a whole.
27 In preserving such a society as we have, it is bound to happen that great moral conflicts will
28 arise and will appear harsh in a given instance. In this case, the chancellor is being asked to
force one member of society to undergo a medical procedure which would provide that part of
that individual's body would be removed from him and given to another so that the other could
live. Morally, this decision rests with defendant, and, in the view of the court, the refusal of
defendant is morally indefensible. For our law to compel defendant to submit to an intrusion
of his body would change every concept and principle upon which our society is founded. To
do so would defeat the sanctity of the individual, and would impose a rule which would know
no limits, and one could not imagine where the line would be drawn.

¹¹ *McFall v. Shimp*, 10 Pa. D. & C.3d 90 (1978).

1 *Id.*, at p. 91.

2 In this case, Shimp was not asked to submit to anything known to the Congress to cause severe
3 injury and death, such as childhood vaccines, but only to donate some of his bone marrow which would
4 have caused him little harm in the short term and none in the long term. *McFall v. Shimp* is an unusual
5 case, but not because the need to procure organs is uncommon, the need is very common. What was
6 uncommon about the *McFall* case is that McFall thought that he could get a court to order it, that's the
7 unusual part. Everyone knows that, in this country, the government and the courts do not order people
8 to give up their organs for the benefit of others, even if the donation would not harm the donor. Indeed,
9 reports of forced organ donation in China are universally condemned in this country. The Congress has
10 already found that the risk of harm from the immunizations mandated by California is so constant and
11 foreseeable as to require legislation to provide remediation for it. This clearly violates McFall's "first
12 principle, the respect for the individual, and that society and government exist to protect the individual
13 from being invaded and hurt by another," especially being intentionally hurt, or even killed, by the
14 government itself.

15 **4.1.11 Children Must Be Afforded Due Process Before Their Liberty Interests In**
16 **Avoiding Unwanted Medications May Be Infringed, Due Process Not**
17 **Available Under HSC 120335**

18 Children must be afforded appropriate due process before their liberty interests may be
19 infringed. *Parham v. J.R.*, 442 U.S. 584, 599-600, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1977) (holding that
20 Georgia's medical factfinding processes for the commitment of children to state mental hospitals were
21 consistent with constitutional guarantees, based upon three factors, "[f]irst, the private interest that will
22 be affected by the official action; second, the risk of an erroneous deprivation of such interest through
23 the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;
24 and finally, the Government's interest, including the function involved and the fiscal and administrative
25 burdens that the additional or substitute procedural requirement would entail," citing *Mathews v.*
26 *Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18 (1976).

27 Under *Harper* and *Williams*, the procedural requirements for forced medications are stringent.
28 Because of the serious, even fatal, side effects, an order for an "antipsychotic medication is an
especially grave infringement of liberty and a thorough inquiry is required before a court may issue it."

1 *Williams, supra*, at p. 1055. “[H]ere, the liberty interest is one so weighty that even with respect to
2 prisoners it can be overcome only with ‘a finding of overriding justification and a determination of
3 medical appropriateness,’” *Id.*, at 1056.

4 Here, the child’s private interest is enormous, the avoidance of the risk of serious, permanent
5 injury (1 in 12 for autism in boys) or sudden infant death. The risk of erroneous deprivation under HSC
6 120335 is high because there are no due process procedures provided that statute.

7 **4.2 The Minor Plaintiffs Have Standing**

8 **4.2.1 The Minor Plaintiffs Are Properly Represented By Their Next Friends**

9 Defendant Pan argues that, “The four individual Plaintiffs should be dismissed because they are
10 minors proceeding without duly appointed representatives.” MTD, at p. 7:5.

11 Under Fed. R. Civ. Proc., Rule 17, subdivision (c)(2):

12 (2) Without a Representative.

13 A minor or an incompetent person who does not have a duly appointed representative may sue
14 by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem—or issue
15 another appropriate order—to protect a minor or incompetent person who is unrepresented in
16 an action.

17 In this action, minor plaintiffs D.Q., A.R., T.E., and N.D. are represented by “next friends” at
18 the specific request of their parents who do not wish to be identified lest that identify the child in
19 contravention of the intent of Fed. R. Civ. Proc., Rule 5.2. The parents have authority to terminate or
20 replace those next friends as they wish. SAC, ¶¶ 63, 69, 75, 83.

21 The requirements for a “next friend” under Rule 17(c)(2) are that; (1) the plaintiff is unable to
22 litigate on his own behalf due to some disability, (2) the next friend must be truly dedicated to the best
23 interests of the person on whose behalf he seeks to litigate, and (3) the next friend should have some
24 significant relationship with the real party in interest. *Whitmore v. Arkansas*, 495 U.S. 149, 163-4, 110
25 S.Ct. 1717, 109 L.Ed.2d 135 (1990). If a minor plaintiff has a “next friend” who meets these criteria
26 and who will serve as the minor’s representative, then the appointment of a guardian ad litem is not
27 required. *Ayala v. Cnty. of Imperial*, CASE NO. 15cv397-LAB (NLS) (S.D. Cal. Feb 03, 2017), at p.
28 8, citing *Cartner v. Davis*, 988 F.Supp.2d 33 (D. D.C. 2013).

The Court should allow the minor plaintiffs to proceed represented by their respective next
friends, as under *Ayala*. In the alternative, the Court could simply issue an order appointing the

1 respective next friends as the guardians ad litem. Dismissal on this ground is unwarranted.

2 **4.2.2 The Minor Plaintiffs Have Standing On The Basis Of Actual Injury**

3 Defendant Pan argues that minor plaintiffs A.R. and N.D. lack Article III standing, alleging that
4 they have suffered no injury-in-fact because they were in school during the past term. MTD, at p. 9:25-
5 10:1.

6 As for minor plaintiff A.R., he currently attends a private school that has not, so far, excluded
7 him on the basis of his immunization status. However, he has been warned by his school that he could
8 be excluded from that school based upon his immunization status. SAC, at ¶ 67-68. Thus, he has a
9 reasonable fear of such exclusion sufficient to seek injunctive relief.

10 As for minor plaintiff N.D., he also currently attends a private school and is also out of
11 compliance with the immunization requirements under HSC 120335. SAC, at ¶ 79. Therefore, he is also
12 at risk of being excluded from his school. SAC, at ¶ 80. Thus, he has a reasonable fear of such
13 exclusion sufficient to seek injunctive relief.

14 **4.2.3 Plaintiffs Free Now Foundation and Brave and Free Santa Cruz Have**
15 **Associational Standing Because Next Friend Alix Mayer Is A Member Of**
16 **Free Now Foundation And Next Friend Kathleen Lynch Is A Member Of**
17 **Brave And Free Santa Cruz**

18 Defendant Pan argues that plaintiffs Free Now Foundation and Brave and Free Santa Cruz lack
19 associational standing. MTD, at p. 12:1-18.

20 Minor plaintiffs D.Q. and A.R. are represented in this action by next friend, Alix Mayer, the
21 Chair of the Free Now Foundation at the request of their parents. SAC, at ¶¶ 63, 69. As Alix Mayer is
22 a member of Free Now Foundation, that fact confers associational standing on Free Now Foundation.
23 *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 342-343, 97 S.Ct. 2434, 53
24 L.Ed.2d 383 (1977) (holding that, "...an association has standing to bring suit on behalf of its members
25 when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks
26 to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief
27 requested requires the participation of individual members in the lawsuit.

28 Similarly, minor plaintiffs T.E. and N.D. are represented in this action, at the request of their
29 parents, by next friend Kathleen Lynch, co-chair of Brave and Free Santa Cruz. SAC, at ¶¶ 75, 83.

As Kathleen Lynch is a member of Brave and Free Santa Cruz, that fact confers associational status on

1 Brave and Free Santa Cruz.

2 **5. CONCLUSION**

3 Defendant Pan's Motion To Dismiss under Rule 12(b)(6) should be denied because the plaintiffs
4 have alleged facts sufficient to plead a cause of action under multiple cognizable legal theories.

5 Dated: July 30, 2025

Respectfully submitted,

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8 Richard B. Fox, Counsel for Plaintiffs
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