

1 James S. Turner, Esq. (D.C. Bar No. 82479)  
2 Betsy E. Lehrfeld, Esq. (Cal. Bar No. 77153)  
3 Swankin & Turner  
4 1400 16<sup>th</sup> Street, NW #101  
5 Washington, DC 20036  
6 Telephone: (202) 462-8800  
7 Facsimile: (202) 265-6564  
8 E-mail: [jim@swankin-turner.com](mailto:jim@swankin-turner.com);  
9 [betsy@swankin-turner.com](mailto:betsy@swankin-turner.com)

10 Carl M. Lewis, Esq. (Cal. Bar No. 121776)  
11 1916 Third Avenue  
12 San Diego, California 92101  
13 Telephone: (619) 232-0160  
14 Facsimile: (619) 232-0420  
15 Email: [cmllaw@pacbell.net](mailto:cmllaw@pacbell.net)

16 Attorneys for Plaintiffs

17 UNITED STATES DISTRICT COURT  
18 SOUTHERN DISTRICT OF CALIFORNIA

19 ANA WHITLOW, Individually and as  
20 Parent and Next Friend of B.A.W. and  
21 D.M. F.-W., minor children; ERIK  
22 NICOLAISEN, Individually and as  
23 Parent and Next Friend of A.W.N., a  
24 minor child; DENE SCHULTZE-  
25 ALVA, D.C., Individually, and as  
26 Parent and Next Friend of S.M.A., a  
27 minor child; NICOLE ANDRADE,  
28 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.: '16CV1715 DMS BGS

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**TEMPORARY RESTRAINING  
ORDER SOUGHT**

1 EDUCATION FOR ALL, a Nevada not  
2 for profit Corporation; WESTON A.  
3 PRICE FOUNDATION, a District of  
4 Columbia not for profit Corporation;  
5 CITIZENS FOR HEALTH, a Nevada  
6 not for profit Corporation; and  
7 ALLIANCE FOR NATURAL  
8 HEALTH, a Georgia not for profit  
9 Corporation,,  
10

Plaintiffs,

v.

11 STATE OF CALIFORNIA,  
12 DEPARTMENT OF EDUCATION;  
13 TOM TORLAKSON,  
14 SUPERINTENDENT OF THE  
15 DEPARTMENT OF EDUCATION, in  
16 his Official Capacity; STATE OF  
17 CALIFORNIA, DEPARTMENT OF  
18 PUBLIC HEALTH; DR. KAREN  
19 SMITH, DIRECTOR OF THE  
20 DEPARTMENT OF PUBLIC  
21 HEALTH, in her Official Capacity; and  
22 JOHN DOE 1 through JOHN DOE  
23 1000, in their Official Capacities as  
24 agents, servants, employees or Officials  
25 of the State of California, Depart\_ments  
26 of Public Health and Education,,  
27

Defendants.

28  
**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.

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

5 **INTRODUCTION**

6 1. Effective July 1, 2016, SB 277 will bar children from attending any  
7 public and private school unless proof is provided that the child has received  
8 multiple doses of vaccines for ten enumerated childhood diseases.

9 2. SB 277 abolished the Personal Belief Exemption (“PBE”) to  
10 California’s school vaccination requirements and arguably eliminated an existing  
11 exemption from vaccination based on religious beliefs.

12 3. Forty-seven states currently allow either a religious or a  
13 conscientious/personal belief exemption from school vaccination mandates.

14 4. The California Supreme Court has long recognized that a child’s right  
15 to an education is a fundamental right guaranteed by the California Constitution.  
16 Laws that impact the fundamental right to education, and which are not narrowly  
17 tailored to serve a compelling state interest, are unconstitutional. As the court held  
18 in *Serrano v. Priest* 18 Cal 3d 584 at 606 (1971) “We indulge in no hyperbole to  
19 assert that society has a compelling interest in affording children an opportunity to  
20 attend school.”

21 5. The State has broad responsibility to ensure basic educational equality  
22 and to provide a statewide public education system open on equal terms to all.

23 6. Since 1961, California has allowed a philosophical exemption to  
24 vaccination based on one’s personal beliefs.

25 7. Since 1961, the number of vaccines and vaccine doses required for  
26 school attendance have dramatically increased.



1 8. Notwithstanding the increase in required vaccines and vaccine doses,  
2 PBE rates have always remained below four percent.

3 9. For decades, full vaccination coverage in California has remained well  
4 above 95% for each required vaccine.

5 10. Public health experts agree that 95% vaccination coverage meets or  
6 exceeds the levels of vaccination theorized to achieve herd immunity for infectious  
7 diseases for which vaccines are available.

8 11. California's PBE rate has not exceeded four percent of the entire  
9 population of school children.

10 12. At the time SB 277 was enacted, according to the California  
11 Department of Public Health ("CDPH"), over 97% of California's school-aged  
12 children were fully vaccinated for each of the vaccines required by SB 277.

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

16 14. Only one year before SB 277 was enacted, the Immunization Branch  
17 of the CDPH stated that "[v]accination coverage in California is at or near all-time  
18 high levels."

19 15. At the time SB 277 was enacted, California had seen a 19 percent  
20 reduction in PBEs when AB 2109 (Pan, 2012) went into effect.

21 16. Notwithstanding declining PBE rates and historically high vaccination  
22 rates, SB 277 was enacted to permanently bar children who do not receive every  
23 dose of every mandated vaccine from all public and private schools.

24 17. Plaintiffs have thus been denied their fundamental right to an  
25 education guaranteed by the California Constitution.

26 **JURISDICTION AND VENUE**  
27  
28

1 18. This Court has original subject matter jurisdiction under 28 U.S.C. §  
2 1331 (federal question). This action arises under the Constitution of the United  
3 States, specifically, the First Amendment and the Equal Protection and Due  
4 Process clauses of the Fourth, Fifth, and Fourteenth Amendments.

5 19. This Court additionally has original subject matter jurisdiction under  
6 28 U.S.C. §1343 (a)(3) (civil rights), 42 U.S.C. § 1983 (“Civil action for  
7 deprivation of rights”), and 28 U.S.C. § 2201 (declaratory relief).

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

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

17 **PARTIES**

18 22. Plaintiff Ana Whitlow resides with her husband, family and minor  
19 sons B.A.W. and D.M.F-W., in the city of San Diego, located in San Diego  
20 County. Plaintiff Ana Whitlow and her husband have chosen to selectively  
21 vaccinate B.A.W. and D.M.F-W. to avoid vaccines that offend their religious  
22 beliefs by virtue of certain ingredients, and in the interest of B.A.W’s and D.M.F-  
23 W’s health and wellbeing. Plaintiff Ana Whitlow’s son D.M.F-W. shows  
24 sufficient antibody levels to be deemed “proof of immunity” to the diseases for  
25 which he has not received all required vaccine doses. Plaintiff Ana Whitlow seeks  
26 injunctive relief requiring the defendant state actors and agencies of the State of  
27 California to admit B.A.W. into kindergarten at the defendant Ocean Beach  
28

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

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

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

22 25. Plaintiff Nicole Andrade resides in Placer County, near Loomis,  
23 California, with her husband and family, including her minor daughter I.G.A., who  
24 is ready to enter the seventh grade. Plaintiff Nicole Andrade is religiously opposed  
25 to vaccines manufactured from aborted fetal cell lines, having fully vaccinated her  
26 oldest child before she became aware that Measles Mumps Rubella vaccine is  
27 manufactured using an aborted fetal cell line. Plaintiff Nicole Andrade has taken  
28



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

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

22         27. Plaintiff Veronica Delgado is the parent of seven children, one of  
23 whom, A.N.D., has been selectively vaccinated and is about to enter 7<sup>th</sup> grade.  
24 A.N.D. had a PBE prior to the effective date of SB 277 but is now being told he  
25 cannot return to school unless his vaccinations are "caught up." He also has an  
26 IEP, but she has been told by the school that it does not entitle him to an  
27 exemption. Next year she will have a second child, who also has an IEP that she  
28

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

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

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

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

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

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





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

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

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

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

14           43. The percentage of fully vaccinated children has not dropped below  
15 95% of California school aged children in any period for which CDPH provides  
16 historical vaccination data.

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

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

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



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

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

7 **SB 277**

8 47. SB 277, effective July 1, 2016, is "[a]n act to amend Sections 120325,  
9 120335, 120370, and 120375 of, to add Section 120338 to, and to repeal Section  
10 120365 of, the Health and Safety Code, relating to public health."

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

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

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

17 (a) The governing authority of each school or institution included in  
18 Section 120335 shall require documentary proof of each entrant's  
19 immunization status. The governing authority shall record the  
20 immunizations of each new entrant in the entrant's permanent  
21 enrollment and scholarship record on a form provided by the  
22 department. The immunization record of each new entrant  
23 admitted conditionally shall be reviewed periodically by the  
24 governing authority to ensure that within the time periods  
25 designated by regulation of the department he or she has been fully  
26 immunized against all of the diseases listed in Section 120335, and  
27 immunizations received subsequent to entry shall be added to the  
28 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



1           120370, until that pupil has been fully immunized against all of the  
2           diseases listed in Section 120335.

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

6           51.

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

8           \* \* \*

9           (f) This section does not apply to a pupil in a home-based private  
10          school or a pupil who is enrolled in an independent study program  
11          pursuant to Article 5.5 (commencing with Section 51745) of Chapter  
12          5 of Part 28 of the Education Code and does not receive classroom-  
13          based instruction.

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

16          (h) This section does not prohibit a pupil who qualifies for an  
17          individualized education program, pursuant to federal law and Section  
18          56026 of the Education Code, from accessing any special education  
19          and related services required by his or her individualized education  
20          program.

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

24                   (A) Birth to preschool.

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

27                   (C) Grades 7 to 12, inclusive.

28          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

1 institutions specified in this subdivision for the first time, or admit or  
2 advance any pupil to 7th grade level, unless the pupil has been  
3 immunized for his or her age as required by this section.

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

6 (a) If the parent or guardian files with the governing authority a  
7 written statement by a licensed physician to the effect that the  
8 physical condition of the child is such, or medical circumstances  
9 relating to the child are such, that immunization is not considered  
10 safe, indicating the specific nature and probable duration of the  
11 medical condition or circumstances, including, but not limited to,  
12 family medical history, for which the physician does not recommend  
13 immunization, that child shall be exempt from the [immunization]  
14 requirements . . .

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

17 The Legislature, after considerable debate, specifically amended SB  
18 277, to exempt a child from immunizations whenever the child's  
19 physician concludes that there are “circumstances, including, but not  
20 limited to, family medical history, for which the physician does not  
21 recommend immunization . . .”

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

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

28 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