

LAWYERS OPPOSED TO CALIFORNIA SB 277

1808 Sixth Street
Berkeley, California 94710

June 17, 2015

Senators, California State Senate
Assembly Members, California State Assembly
State Capitol
Sacramento, California 95814

Re: Statement of Lawyers Opposed to California SB 277

Dear California State Legislators:

We, the undersigned attorneys, strongly oppose SB 277, the proposed California legislation that unnecessarily removes all philosophical and religious exemptions from school vaccination requirements. We join thousands of Americans who conscientiously intend to protect their right to informed consent for medical procedures and to retain their Constitutional right to make parental decisions regarding their children's health. For multiple reasons, our view is that SB 277 is unconstitutional both under the United States and California Constitutions. Perhaps even more important is our view that enactment of SB 277 is not in the best interests of our children and our nation.

If enacted SB 277 would repeal philosophical and religious exemptions for adults and children. There is no compelling reason to disrupt the current California legal framework in which exemptions to vaccination, both religious and philosophical, are respected and preserved. Public acceptance of vaccination is not in question, and vaccination uptake rates are high and stable.¹ There exists no compelling public health emergency that justifies the radical change to California law contained in SB 277. A small percentage of the population elects to exempt themselves from vaccination. Government mandated medical procedures – which by their nature are coercive and derogate informed consent – may have unintended consequences that will disrupt the social fabric and likely create enhanced suspicion about the vaccine program and the safety of vaccines.

The global standard is that prior, free and informed consent must apply to all medical interventions, including preventive treatments like vaccination. This standard has been endorsed by members of the United Nations Educational, Scientific and Cultural Organization (UNESCO), including the United States, and is the hallmark of a rational approach to all medical interventions in civil society. Universal Declaration on Bioethics

¹National, State, and Local Area Vaccination Coverage Among Children Aged 19–35 Months — *United States, 2012 Morbidity and Mortality Weekly Report (MMWR)* September 13, 2013 / 62(36); 733-740
<http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6236a1.htm> (accessed 6/4/15)

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and Human Rights², Article VI, § 1. We believe current California law incorporates this foundational principle and should not be disturbed. Government compulsion violates this principle by eviscerating the notion of informed consent.

California's Constitution guarantees the right to public education. Cal. Const. Art. 9 § 5. The Supreme Court of California has long unequivocally affirmed this right, stating: "We indulge in no hyperbole to assert that society has a compelling interest in affording children an opportunity to attend school." *Serrano v. Priest*, 5 Cal. 3d 584, 606, 487 P.2d 1241, 1257 (1971). We believe that vaccine compulsion will not withstand a strict scrutiny analysis to qualify as a sufficiently compelling interest to take the extreme and unconstitutional step of excluding children from their right to education in California. The legal right to a free and appropriate public education is also contained in the Federal Individuals with Disabilities Education Act ("IDEA"). Exclusion of children from school would, under SB 277, violate IDEA.

Furthermore, the United States Constitution protects the right of privacy and religious freedom. Under the Fourteenth Amendment to the United States Constitution, no state may "deprive a person of life, liberty or property without due process of law." The United States Supreme Court extends that protection to the right to refuse unwanted medical interventions. *Cruzan v. Director Missouri Dept. Health*, 497 U.S. 261, 278 (1990). In the case of children, the courts have consistently held that parents who have the capacity to act in their child's best interests have the right to make appropriate health care decisions for them. A child is not a "mere creature of the State." *Parham v. J.R.*, 422 U.S. 584, 602 (1979). SB 277 improperly and unnecessarily removes the parent as the decision maker and transfers this power to the department of public health.

Religious exemptions are permissible under the Free Exercise Clause of the First Amendment. The United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Accordingly, parents should have the religious freedom to oppose medical procedures and to not have government dictate their expression of religious belief.

We also must point out that vaccines can cause injury to children. For this reason, Congress passed the National Childhood Vaccine Injury Act of 1986. This legislation created the national Vaccine Injury Compensation Program, which, since its inception, has paid more than \$3 billion to the victims of vaccine injury. The legislation provided almost complete immunity from liability to vaccine manufacturers on the ground that vaccines are "unavoidably unsafe", even if properly prepared and manufactured in compliance with FDA standards. *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 131 S. Ct. 1068, 1089, 179 L. Ed. 2d 1 (2011). At the same time, the Vaccine Injury Compensation

² http://portal.unesco.org/en/ev.php-URL_ID=31058&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed 6/5/15).

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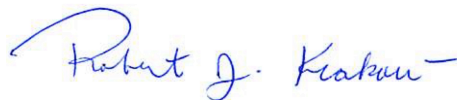
Program limits compensation for pain and suffering and does not allow for a trial by jury, as guaranteed by the Seventh Amendment to the United States Constitution, or for discovery of information about vaccines or their safety. 42 U.S.C. §300aa-1 et seq.

The United States Court of Appeals for the Federal Circuit has recognized that medical science is “a field bereft of complete and direct proof of how vaccines affect the human body.” *Althen v. Sec’y of Health & Human Servs.*, 418 F.3d 1274 (Fed. Cir. 2005). Medical science cannot explain how or when vaccines cause injury. There is no way of knowing in advance who might suffer harm from these products. Because of this incomplete knowledge, individuals have a right to choose whether or not they consent to vaccination, a right they have with any other medical procedure. It is not possible to make a vaccine that is completely risk free nor is it possible to make vaccines that are 100% effective in preventing infectious diseases. In light of these realities, we respectfully submit that mandating medical procedures without allowing for a philosophical or religious exemption is draconian public policy.

For these and many other reasons that are beyond the scope of this letter but which have been presented to California legislators through in-depth analysis contained in correspondence and testimony, we strongly urge you to decline the temptation to tamper with California’s legislative scheme that works both to achieve public health objectives while protecting the rights of individuals to make conscientious medical decisions regarding their own health.

Please take the responsible course by rejecting SB 277 and avoiding the legal, educational and health decision-making chaos that would follow from enactment of this legislation.

Respectfully submitted,



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