

APPENDIX

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APPENDIX A

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 17a0252p.06

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

No. 17-1367

[Filed November 7, 2017]

TARA NIKOLAO,	)
<i>Plaintiff-Appellant,</i>	)
	)
<i>v.</i>	)
	)
NICK LYON, individually and	)
in his official capacity as Director	)
of the Michigan Department of	)
Health and Human Services;	)
WAYNE COUNTY DEPARTMENT	)
OF HEALTH, VETERANS, AND	)
COMMUNITY WELLNESS, DR.	)
MOUHANAD HAMMAMI,	)
individually and in his official	)
capacity as Director of the Wayne	)
County Department of Health,	)
Veterans, and Community	)
Wellness, and CAROL	)
AUSTERBERRY, individually and	)
in her official capacity as Division	)

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Director and Deputy Health)
Officer of the Wayne County)
Department of Health, Veterans,)
and Community Wellness.)
Defendants-Appellees.)
_____)

Appeal from the United States District Court
for the Eastern District of Michigan at Flint.
No. 4:16-cv-12545—Linda V. Parker, District Judge.

Argued: October 12, 2017

Decided and Filed: November 7, 2017

Before: SUHRHEINRICH, GRIFFIN, and
KETHLEDGE, Circuit Judges.

COUNSEL

ARGUED: Kate Oliveri, THOMAS MORE LAW CENTER, Ann Arbor, Michigan, for Appellant. Darrin F. Fowler, OFFICE OF THE MICHIGAN ATTORNEY GENERAL, Lansing, Michigan, for Appellee Nick Lyon. Davidde A. Stella, WAYNE COUNTY CORPORATION COUNSEL, Detroit, Michigan, for Appellees Wayne County, Hammami, and Austerberry. **ON BRIEF:** Kate Oliveri, Brandon Bolling, THOMAS MORE LAW CENTER, Ann Arbor, Michigan, for Appellant. Darrin F. Fowler, Mark A. Gabrielse, OFFICE OF THE MICHIGAN ATTORNEY GENERAL, Lansing, Michigan, for Appellee Nick Lyon. Davidde A. Stella, WAYNE COUNTY CORPORATION COUNSEL, Detroit, Michigan, for Appellees Wayne County, Hammami, and Austerberry.

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SUHRHEINRICH, J., delivered the opinion of the court in which GRIFFIN, J., joined, and KETHLEDGE, J., joined in the result. KETHLEDGE, J. (pg. 12), delivered a separate opinion concurring in the judgment.

OPINION

SUHRHEINRICH, Circuit Judge. The state of Michigan mandates that school-age children be vaccinated prior to entering the public school system. It also offers exemptions from this requirement for certain medical and nonmedical reasons. However, in order to get an exemption, a parent must first visit a local health department and explain the basis for his or her objection. A devout Catholic, Plaintiff-Appellant Tara Nikolao (“Nikolao”) sought a vaccination waiver for her children for religious reasons. At the mandatory meeting, two Wayne County nurses tried to disabuse Nikolao of the notion that her Catholic faith prevented her from vaccinating her children, but Nikolao ultimately received the waiver. Nonetheless, she sued state and county officials for violations of the First Amendment’s religion clauses. The district court granted Defendants’ motion to dismiss. We affirm in part and vacate and remand in part.

I. BACKGROUND

The following facts are taken as true for purposes of Nikolao’s appeal from the district court’s dismissal under Rule 12(b)(6):

Michigan state law requires parents and guardians to vaccinate their children prior to entering public

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school. Mich. Comp. Laws § 333.9205. However, parents may seek exemptions from the mandatory vaccination law if they object “because of religious convictions or other objection to immunization.” *Id.* § 333.9215(2). In December 2014, the Michigan Department of Health and Human Services (“MDHHS”) passed a rule requiring parents asking for vaccination exemptions on behalf of their children to visit a county health office to discuss their objections with a local health worker. Mich. Admin. Code r. 325.176(12) (“Certification Rule”). The health worker must certify that the parent has “received education on the risks of not receiving the vaccines being waived and the benefits of vaccination to the individual and the community.” *Id.* Moreover, Michigan has published a series of “Waiver Notes” that contain responses to many common objections to vaccination. Local health workers are instructed to use these Notes and to give them to objecting parents for review. Waiver Notes are also available online to the general public.

In October 2015, Nikolao went to the Wayne County health department to get an exemption. As a devout Catholic, Nikolao maintains that she cannot use vaccines “which have moral problems,’ such as those created from aborted fetal cells.” R. 1, ID# 36. Further, she believes “the body is a temple and injecting it with chemicals that alter the person permanently violates the will of God.” R. 1, ID# 37.

Nikolao met with two Wayne County nurses, Jane Does 1 and 2.¹ The nurses pressed Nikolao for more

¹ Jane Does 1 and 2 have not been served in these proceedings and are thus not parties to this appeal.

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information. At one point, Jane Doe 2 issued her an ultimatum, telling Nikolao that she must “declare what religion she practices, explain her religious beliefs, and engage in a back and forth discussion . . . concerning her religious objection.” R. 1, ID# 51. She also told Nikolao that “there are no religions that have objections to vaccines.” R. 1, ID# 51 (emphasis omitted). Finally, Nikolao was given the state’s Religious Waiver Note—a document responding to common religious objections to vaccination—for review. The Religious Waiver Note contained a quote falsely attributed to Pope Benedict XVI stating that parents who chose not to vaccinate their children “would be in ‘more proximate cooperation with evil’ than those who gave their children the vaccines in question because of the life saving nature of vaccines.” R. 1, ID# 28. In reality, Monsignor Jacques Suaudeau, a doctor at the Pontifical Academy for Life, made these statements. R. 1, ID# 30.

Nikolao did not yield to the nurses’ pressure, and she was given her exemption. However, on the form noting her compliance with the Certification Rule, the nurses wrote that Nikolao had objected because she wanted her “child to have natural immunity.” R. 11, Ex. 1. Nikolao wanted the form to report her religious objection specifically.

Nikolao filed this lawsuit against both state and county actors under 42 U.S.C. § 1983, challenging the treatment she received during the certification process. She claimed that the state and county violated her First Amendment religious rights by forcing her to take time off from work, travel to and from the health department office, undergo the nurses’ questioning,

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and by failing to properly memorialize her objection. Nikolao also brought state law claims under the religious protections of the Michigan Constitution, *see* Mich. Const., Art. 1, § 4, as well as under Mich. Comp. Laws § 333.9215, which grants her the right to an exemption.

Nikolao named the following defendants: Nick Lyon (“Lyon”), Director of MDHHS; the Wayne County Department of Health (“WCDH”); Dr. Mouhanad Hammami, Director of WCDH; Carol Austerberry, Division Director and Deputy Health Officer of WCDH; and Jane Does 1 and 2. She argued that these defendants violated her First Amendment religious rights and sought injunctive relief that would remove the certification requirement and the Religious Waiver Note. Nikolao also sought nominal damages.

Lyon filed motions to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). WCDH, Dr. Hammami, and Austerberry filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). The district court did not address Lyon’s Rule 12(b)(1) motion, but granted Defendants’ motions to dismiss under Rule 12(b)(6). The district court then declined to exercise supplemental jurisdiction over the remaining state law claims. We affirm in part and vacate and remand in part.

II. ANALYSIS

A. Standing

In the lower court proceedings, Lyon challenged Nikolao’s standing to pursue her federal constitutional claims. The district court did not consider those arguments, and instead dismissed the case on the

merits. Nonetheless, “we are under an independent obligation to examine [our] own jurisdiction.” *Hamdi ex rel. Hamdi v. Napolitano*, 620 F.3d 615, 620 (6th Cir. 2010) (quoting *Baird v. Norton*, 266 F.3d 408, 410 (6th Cir. 2001)); see also *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 95 (1998) (“[E]very federal appellate court has a special obligation to ‘satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review.’”) (quoting *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934)). “The requirement that jurisdiction be established as a threshold matter ‘spring[s] from the nature and limits of the judicial power of the United States’ and is ‘inflexible and without exception.’” *Steel Co.*, 523 U.S. at 94-95 (quoting *Mansfield, C. & L.M. Ry. Co. v. Swan*, 111 U.S. 379, 382 (1884)). As such, we address Nikolao’s standing to pursue these claims as a threshold matter.

A federal court may only adjudicate “cases” and “controversies.” U.S. Const. art. III, § 2, cl. 1. The standing doctrine is derived from the case or controversy requirement and obligates plaintiffs to show a “personal stake in the outcome of the controversy as to . . . justify [the] exercise of the court’s remedial powers on [their] behalf.” *Town of Chester, N.Y. v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 38 (1976)). To establish standing, a litigant must show: (i) that she has suffered an “injury in fact”; (ii) that her injury was caused by the defendant’s conduct; and (iii) that it is likely that the injury will be redressed by a favorable court decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). Nikolao must “demonstrate standing for each claim [s]he seeks to

press.” *Town of Chester*, 137 S. Ct. at 1650 (quoting *Davis v. Fed. Election Comm’n*, 554 U.S. 724, 734 (2008)).

1. Free Exercise Clause Claim

The First Amendment states that “Congress shall make no law . . . prohibiting the free exercise [of religion].” U.S. Const., amend. I. The Sixth Circuit has held that the Free Exercise Clause is “predicated on coercion.” *Mozert v. Hawkins Cty. Bd. of Educ.*, 827 F.2d 1058, 1066 (6th Cir. 1987) (quoting *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 223 (1963)). As such, a litigant suffers an injury to her free exercise rights when the state compels her “to do or refrain from doing an act forbidden or required by one’s religion, or to affirm or disavow a belief forbidden or required by one’s religion.” *Id.* Nikolao has not suffered this type of injury here.

While Nikolao has presented facts suggesting that she was exposed to religious information with which she did not agree, she has given no indication that the information *coerced* her into doing or not doing anything. Nikolao went to the WCDH to receive a vaccination exemption and left with one. Thus, it is clear that the state’s religious information did not coerce her into changing her religious beliefs in order to obtain the waiver.

Moreover, she has not been denied any legal right on the basis of her religion. Constitutionally, Nikolao has no right to an exemption. *See Jacobson v. Massachusetts*, 197 U.S. 11, 38 (1905) (holding that compulsory vaccination laws with only medical exemptions do not violate any federal constitutional

right). Statutorily, Michigan *has* provided her the right to an exemption. Mich. Comp. Laws § 333.9215(2). But, Michigan has not given her the right to describe the nature of her objections on her exemption form. The exemption may be granted “because of religious convictions or other objection to immunization.” *Id.* In fact, this provision makes no mention as to where or how, if at all, a parent’s objections should be noted. Thus, the statutory right provided to Nikolao—the right to object to mandatory vaccinations and receive a waiver as a result—is precisely what she exercised here.

Having to take time off from work to travel to and from the local health office is not a sufficient injury for standing purposes either. This requirement does nothing to burden her practice of religion, nor does it discriminate against religion in any way, as all parents seeking nonmedical exemptions must go through the same process. This includes parents with entirely non-religious objections, such as those concerned about Autism.

In short, Nikolao has not presented any facts to suggest that the state has coerced her in her religious practices. As such, she has not suffered an injury-in-fact under the Free Exercise Clause and does not have standing to pursue that claim. The district court’s decision as it relates to the Free Exercise Clause is vacated and we remand this case with instructions that Nikolao’s free exercise claim be dismissed for lack of jurisdiction.

2. Establishment Clause Claim

Unlike the Free Exercise Clause, the Establishment Clause does not require Nikolao to show an element of coercion as part of the injury-in-fact requirement. Instead, “a plaintiff may demonstrate an injury [under the Establishment Clause] by showing direct and unwelcome contact with a government-sponsored religious object.” *ACLU of Ky. v. Grayson Cty.*, 591 F.3d 837, 843 (6th Cir. 2010). Nikolao has pled facts sufficient to meet this requirement.

During her visit to the WCDH, Nikolao was given religious information both through the Religious Waiver Note and verbally by virtue of the nurses’ questioning. The Religious Waiver Note is a state-drafted document circulated to the county health departments to be used as it was here. Nikolao did not welcome such contact; indeed, she actively attempted to avoid it by declining to discuss the specifics of her religious objections. Nonetheless, she was presented with the religious information and the Waiver Note. This alone is sufficient to satisfy the injury-in-fact requirement of the standing inquiry for her Establishment Clause challenge. *See id.*

Moreover, there is no question that she can meet the causation and redressability prongs of the standing analysis here. The state adopted the Certification Rule, which imposes the mandatory discussion with local health workers about which Nikolao complains. The state also drafted and circulated the Religious Waiver Note—a direct cause of her stated injuries. Further, she seeks injunctive relief eliminating the certification process as well as discontinuing the use of the Religious Waiver Note. These two remedies—as well as

nominal damages for the violations of her rights—would redress her injuries here. For these reasons, Nikolao has standing to pursue her Establishment Clause Claim.

B. Merits of Establishment Clause Claim

Having concluded that Nikolao has standing to pursue her Establishment Clause claim, we now consider the merits of that claim. The district court granted Defendants’ Rule 12(b)(6) motion and dismissed her claim, holding that the Certification Rule has a secular purpose in protecting children from communicable diseases. Further, the lower court reasoned that the Certification Rule does not inhibit religion because the information that Nikolao received did not disapprove of her religion or religion in general.

In order to withstand a Rule 12(b)(6) motion to dismiss, Nikolao’s complaint “must contain sufficient factual matter, accepted as true, ‘to state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). While Nikolao need not plead “detailed factual allegations,” she must provide more than a “formulaic recitation of the elements of a cause of action.” *Twombly*, 550 U.S. at 555. Dismissal under Rule 12(b)(6) is appropriate if the facts alleged fail to state a claim under which relief can be granted. *Iqbal*, 556 U.S. at 678.

To comply with the Establishment Clause, a state law or practice must meet the following conditions: (i) “the statute must have a secular legislative purpose”; (ii) the statute’s “principal or primary effect must be one that neither advances nor inhibits

religion”; and (iii) “the statute must not foster an excessive government entanglement with religion.” *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971) (citation omitted). Where a state law fails under any one of these three prongs, it violates the Establishment Clause. *See, e.g., Smith v. Jefferson Cty. Bd. of Sch. Comm’rs*, 788 F.3d 580, 586 (6th Cir. 2015). Nikolao argues that the Certification Rule and the Religious Waiver Note violate each of these three prongs.

Specifically, she contends that the Certification Rule and the Religious Waiver Note are designed to “educate parents away from their religious beliefs with skewed, false, and misleading religious education.” She also argues that this process both inhibits religion and impermissibly entangles the state with religious operations.

1. Certification Rule

Michigan’s Certification Rule does not violate the Establishment Clause. First, the purpose of the Certification Rule is plainly secular. The Certification Rule is designed to protect the health and safety of public school children through extensive vaccinations. Where a parent wishes not to vaccinate his or her child, Michigan educates that parent regarding the risks associated with that decision. This is done in an effort to get parents to reconsider and, ultimately, to get more children vaccinated. The endgame is widespread vaccination, which is necessary, indeed essential, to promote adequate immunity.

The importance of extensive vaccination should not be understated—the efficacy of vaccination relies on the theory of “herd immunity.” In essence, once a

critical mass of the population is immune to a particular disease, the chance that unvaccinated individuals contract that disease drastically decreases. See Dina Nathanson, *Herd Protection v. Vaccine Abstention: Potential Conflict Between School Vaccine Requirements and State Religious Freedom Restoration Acts*, 42 Am. J.L. & Med. 621, 624 (2016). The critical mass needed to achieve herd immunity varies by disease, but is uniformly large. *Id.* (“[T]he following immunization thresholds are required: measles: 83-94[%]; mumps: 75-86%; rubella: 83-85%; diphtheria: 85%; polio: 80-86%; pertussis: 92-94%; and varicella: 90%.”). Thus, to stop the outbreak of preventable diseases in public school, the significant majority of children entering the school system must be vaccinated. It is true that Michigan is trying to discourage parents from opting out of vaccination—but it is only doing so to protect children from serious and avoidable diseases. We are hard-pressed to envision a more secular purpose than this.²

² Aside from educating parents on the importance of vaccinations, the Certification Rule serves the simple but crucial role of making it more difficult to opt out of getting vaccinated. Whereas the previous exemption rule merely required parents to fill out and mail a form noting their objection, this new requirement imposes additional obstacles. Considering the burden of getting certain vaccinations—Hepatitis B, for example, requires three or four shots over a six-month period—the state has a legitimate interest in trying to tip these scales. For a discussion on the importance of imposing hurdles to getting vaccination exemptions, see PBS, *Vermont’s Rules on Vaccines for School Met with Parents’ Support and Pushback* Sept. 26, 2017), <http://www.pbs.org/newshour/bb/vermonts-rules-vaccines-school-met-parents-support-pushback/>.

Moreover, the educational requirement of the Certification Rule does nothing to promote or inhibit a particular religion or religion in general. The requirement itself is specifically limited to information concerning the benefits of vaccinations, rather than targeting or concerning itself with religion.

Finally, while the Certification Rule may require state employees to discuss religion with parents seeking religious exemptions, this does not entail “excessive government entanglement” with religion. Determining what amounts to excessive government entanglement requires an examination of the “character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority.” *Lemon*, 403 U.S. at 615. In this case, state officials are not inserted into the religious institution’s operations. The Certification Rule only requires local health workers to have a conversation with objecting parents about the benefits of vaccinating children and the potential dangers in declining to do so. As part of that conversation, the state may offer its own take on a parent’s objections. But the Certification Rule does not allow state officials to withhold an exemption based on the legitimacy of those objections. Were that the case, the outcome here may very well be different. *Cf. Sherr v. Northport-E. Northport Union Free Sch. Dist.*, 672 F. Supp. 81, 91-92 (E.D.N.Y. 1987) (finding excessive entanglement where New York vaccination law required state officials to determine which religious organizations were “recognized”). However, that is not the case before us. Here, the state is merely voicing its own opinion on religious objections in an effort prevent the outbreak of

communicable diseases. This does not rise to the level of excessive entanglement needed to sustain an Establishment Clause challenge.

2. Religious Waiver Note

Similarly, the Religious Waiver Note does not violate the Establishment Clause. The Note outlines a health department worker's available responses to religious objections concerning vaccination. To be sure, this document contains information about specific religions, as well as the disputed Pope Benedict XVI quote. But, again, the purpose of providing this information is secular. Michigan is attempting to promote health and safety among school-age children by educating parents about vaccinations. Part of this education requires the state to be able to respond to certain objections—including religious objections—by offering its own point of view. Importantly, this process *does not* predicate the receipt of an exemption on a parent's willingness to affirm any religious information that the state offers. Indeed, the Religious Waiver Note opens with the following "General Response:" "I understand your concern between vaccinating your child and following your religious beliefs, but I am also concerned about the risk to your child. Vaccine preventable diseases are still occurring." In short, this document is designed to promote secular goal of children's health and safety by encouraging parents to vaccinate their children.

In the same vein, this document does not have the primary effect of inhibiting religion. While the purpose of the Religious Waiver Note is to provide information that might cause a parent to reconsider getting a vaccination exemption for his or her children, this does

not amount to a disparagement of religion. As the Religious Waiver Note itself provides, health department workers must remember that “[t]he key to this conversation is to respect [parents’] religious views while informing them of your concerns about vaccine preventable diseases.” Neither the document itself nor its use in the certification process lead to the inhibition of religion. Rather, the Note provides state workers with information necessary to promote its secular goal of vaccinating as many public school children as it can in an effort to protect the health and safety of those children.

Finally, for the same reasons as discussed within the context of the Certification Rule’s educational requirements, the Religious Waiver Note does nothing to foster excessive government entanglement with religion. The Religious Waiver Note is an educational tool provided to state employees that administer the certifications necessary for a vaccination exemption—it does not require those employees to involve themselves with the activities of any religious organizations. Tellingly, it also does not require state actors to determine which beliefs are sincerely held and does not condition receipt of an exemption on such a finding.

For these reasons, Nikolao’s complaint that the Certification Rule and the Religious Waiver Note violate the Establishment Clause fails to state a legal claim.

III. CONCLUSION

We **VACATE** the lower court’s judgment with respect to Nikolao’s first cause of action under the Free Exercise Clause and **REMAND** the case with

instructions directing that the claim be dismissed for lack of subject matter jurisdiction. Because Nikolao has also failed to properly allege a violation of the Establishment Clause, we **AFFIRM** the decision below with respect to her second cause of action. Without any remaining federal questions, the district court properly declined to exercise supplemental jurisdiction over the outstanding state law claims.

CONCURRING IN THE JUDGMENT

KETHLEDGE, Circuit Judge, concurring in the judgment. The problem in this case is that the plaintiff has sued the wrong defendants. Tara Nikolao alleges that two Wayne County nurses improperly interrogated her about her religion and showed her a “Religious Waiver Note” that offended her. But for whatever reason Nikolao never served the nurses, and thus she gives us no reason to opine on the constitutionality of what went on in that room.

That leaves us with Nikolao’s claims against the parties she did serve, namely the Wayne County health department; its director, Dr. Mouhanad Hammami; one of its division directors, Carol Austerberry; and Nick Lyon, director of the state’s Department of Health and Human Services. As an initial matter, I think that Nikolao has standing to assert her claims because if her claims are valid she has suffered a legal injury. *See Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 89 (1998). And on the merits I would decide this case on more narrow grounds than the majority does. Specifically, Nikolao cannot obtain damages from any

of these defendants because she does not allege that any of them directed or approved of the nurses' conduct, or that such conduct is customary at the Wayne County health department. *See Polk Cty. v. Dodson*, 454 U.S. 312, 325-26 (1981). Moreover, none of these defendants currently publish the Religious Waiver Note, so we have no basis to enjoin any of them from publishing it. *See Mosley v. Hairston*, 920 F.2d 409, 415 (6th Cir. 1990). Nikolao's only remaining claim is that the "Certification Rule"—which requires anyone seeking an exemption for any reason to hear first about the benefits of vaccination—is unconstitutional on its face. And that claim fails because the Rule on its face says nothing about religion.

I therefore respectfully concur in the judgment.

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**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

No. 17-1367

[Filed November 7, 2017]

TARA NIKOLAO,	)
Plaintiff - Appellant,	)
	)
v.	)
	)
NICK LYON, individually and	)
in his official capacity as Director	)
of the Michigan Department of	)
Health and Human Services;	)
WAYNE COUNTY DEPARTMENT	)
OF HEALTH, VETERANS, AND	)
COMMUNITY WELLNESS, DR.	)
MOUHANAD HAMMAMI,	)
individually and in his official	)
capacity as Director of the Wayne	)
County Department of Health,	)
Veterans, and Community	)
Wellness, and CAROL	)
AUSTERBERRY, individually and	)
in her official capacity as Division	)
Director and Deputy Health	)
Officer of the Wayne County	)
Department of Health, Veterans,	)
and Community Wellness.	)
Defendants - Appellees.	)

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Before: SUHRHEINRICH, GRIFFIN, and
KETHLEDGE, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Eastern District of Michigan at Flint.

THIS CAUSE was heard on the record from the
district court and was argued by counsel.

IN CONSIDERATION THEREOF, it is ORDERED
that the judgment of the district court is VACATED
with respect to Tara Nikolao's first cause of action
under the Free Exercise Clause and REMANDED with
instructions to dismiss the claim for lack of subject
matter jurisdiction. IT IS FURTHER ORDERED that
judgment of the district court with regard to Nikolao's
Establishment Clause claim is AFFIRMED.

ENTERED BY ORDER OF THE COURT

/s/Deborah S. Hunt

Deborah S. Hunt, Clerk

APPENDIX B

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**Civil Case No. 16-12545
Honorable Linda V. Parker**

[Filed December 28, 2017]

TARA NIKOLAO,	)
	)
Plaintiff,	)
	)
v.	)
	)
NICK LYON, WAYNE COUNTY	)
DEPARTMENT OF HEALTH,	)
VETERANS, AND COMMUNITY	)
WELLNESS, MOUHANAD	)
HAMMAMI, CAROL	)
AUSTERBERRY, JANE DOE 1,	)
and JANE DOE 2,	)
	)
Defendants.	)

AMENDED JUDGMENT

In a Complaint filed July 7, 2016, Plaintiff alleged the following claims against Defendants: (1) violation of the Free Exercise Clause of the First Amendment; (2) violation of the Establishment Clause of the First

Amendment; (3) violation of Article 1, Section 4 of the Michigan Constitution; and (4) violation of Michigan Compiled Laws Section 333.9215. On February 23, 2017, this Court granted in part and denied in part Defendants' motions to dismiss, finding no merit to Counts 1 or 2 of the Complaint and declining to exercise jurisdiction over Plaintiff's state law claims. On the same date, the Court entered a judgment dismissing with prejudice Counts 1 and 2 of Plaintiff's Complaint and dismissing without prejudice Counts 3 and 4. Plaintiff appealed.

On November 7, 2017, the Sixth Circuit Court of Appeals affirmed in part and reversed in part. In its decision, the court remanded the matter to the district court to dismissed Count 1 of Plaintiff's Complaint for lack of subject matter jurisdiction. The Sixth Circuit issued its mandate on December 22, 2017.

Accordingly,

IT IS ORDERED, ADJUDGED, AND DECREED, that Count 1 of Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction, Count 2 of Plaintiff's Complaint is **DISMISSED WITH PREJUDICE**, and Count and Counts 3 and 4 are **DISMISSED WITHOUT PREJUDICE**. This case is **CLOSED**.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: December 28, 2017

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on

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this date, December 28, 2017, by electronic and/or U.S.
First Class mail.

s/ R. Loury
Case Manager

APPENDIX C

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**Civil Case No. 16-12545
Honorable Linda V. Parker**

[Filed February 23, 2017]

TARA NIKOLAO,	)
	)
Plaintiff,	)
	)
v.	)
	)
NICK LYON, WAYNE COUNTY	)
DEPARTMENT OF HEALTH,	)
VETERANS, AND COMMUNITY	)
WELLNESS, MOUHANAD	)
HAMMAMI, CAROL	)
AUSTERBERRY, JANE DOE 1,	)
and JANE DOE 2,	)
	)
Defendants.	)

**OPINION AND ORDER GRANTING IN PART
AND DENYING IN PART DEFENDANTS'
MOTIONS TO DISMISS**

This lawsuit arises from Plaintiff Tara Nikolao's interaction with employees at the Wayne County

Health Department while procuring the forms necessary to exempt her children from the State of Michigan's vaccination requirement to attend public school. In a Complaint filed July 7, 2016, Plaintiff alleges the following claims against Defendants: (1) violation of the Free Exercise Clause of the First Amendment; (2) violation of the Establishment Clause of the First Amendment; (3) violation of Article 1, Section 4 of the Michigan Constitution; and (4) violation of Michigan Compiled Laws Section 333.9215. Defendants are: Nick Lyon ("Director Lyon"), sued in his individual capacity and in his official capacity as Director of the Michigan Department of Health and Human Services ("MDHHS"); the Wayne County Department of Health, Veterans, and Community Wellness ("DHVCW"); Dr. Mouhanad Hammami ("Dr. Hammami"), sued individually and in his official capacity as Director of DHVCW; Carol Austerberry ("Ms. Austerberry"), sued individually and in her official capacity as Division Director and Deputy Health Officer of DHVCW; and Jane Does 1 and 2, sued individually and in their official capacities as nurse and nurse manager, respectively, for DHVCW.

Presently before the Court is Director Lyon's motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6), filed August 24, 2016. (ECF No. 11.) Also before the Court is a motion to dismiss pursuant to Rule 12(b)(6) or, in the alternative, Rule 56, filed by DHVCW, Dr. Hammami, and Ms. Austerberry (collectively "Wayne County Defendants"). (ECF No. 10.) Plaintiff filed a brief responding to both motions on September 14, 2016. (ECF No. 12.) Director Lyon and the Wayne County Defendants filed reply briefs on September 28, 2016. (ECF Nos. 13, 14.) Finding the

facts and legal arguments sufficiently presented in the parties' briefs, the Court is dispensing with oral argument pursuant to Eastern District of Michigan Local Rule 7.1(f).

I. Applicable Standards

A motion to dismiss pursuant to Rule 12(b)(1) challenges the Court's subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Where subject matter jurisdiction is challenged under this rule, the plaintiff bears the burden of proving jurisdiction. *Moir v. Cleveland Reg'l Transit Auth.*, 895 F.2d 266, 269 (6th Cir. 1990). Rule 12(b)(1) motions to dismiss for lack of subject matter jurisdiction fall into two general categories: facial attacks and factual attacks. Fed. R. Civ. P. 12(b)(1); *United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir. 1994).

A facial attack challenges the sufficiency of the pleading itself. In that instance, the court accepts the material allegations in the complaint as true and construes them in the light most favorable to the nonmoving party. *Ritchie*, 15 F.3d at 598 (citing *Scheuer v. Rhodes*, 416 U.S. 232, 235-37 (1974)). In contrast, a factual attack is "not a challenge to the sufficiency of the pleading's allegation, but a challenge to the factual existence of subject matter jurisdiction." *Id.* Where the motion presents a factual attack, the court does not afford a presumption of truthfulness to the allegations but weighs the evidence to determine whether subject matter jurisdiction exists. On a factual attack, the court has broad discretion to consider extrinsic evidence, including affidavits and documents, and can conduct a limited evidentiary hearing if necessary. *See DLX, Inc. v. Kentucky*, 381 F.3d 511, 516

(6th Cir. 2004); *Ohio Nat'l Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir.1990).

A motion to dismiss pursuant to Rule 12(b)(6) tests the legal sufficiency of the complaint. *RMI Titanium Co. v. Westinghouse Elec. Corp.*, 78 F.3d 1125, 1134 (6th Cir. 1996). Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” To survive a motion to dismiss, a complaint need not contain “detailed factual allegations,” but it must contain more than “labels and conclusions” or “a formulaic recitation of the elements of a cause of action . . .” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A complaint does not “suffice if it tenders ‘naked assertions’ devoid of ‘further factual enhancement.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 557).

As the Supreme Court provided in *Iqbal* and *Twombly*, “[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). The plausibility standard “does not impose a probability requirement at the pleading stage; it simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of illegal [conduct].” *Twombly*, 550 U.S. at 556.

In deciding whether the plaintiff has set forth a “plausible” claim, the court must accept the factual allegations in the complaint as true. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). This presumption, however, is not applicable to legal conclusions. *Iqbal*, 556 U.S. at 668. Therefore, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* (citing *Twombly*, 550 U.S. at 555).

Summary judgment pursuant to Rule 56 is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The central inquiry is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986). After adequate time for discovery and upon motion, Rule 56 mandates summary judgment against a party who fails to establish the existence of an element essential to that party’s case and on which that party bears the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

II. Factual Background

Michigan law requires children to receive certain vaccinations in order to attend public school, with two exceptions:

- (1) A child is exempt from the requirement of this part as to a specific immunization for any period of time as to which a physician certifies that a specific immunization is or may be

detrimental to the child's health or is not appropriate.

(2) A child is exempt from this part if a parent, guardian, or person in loco parentis of the child presents a written statement to the administrator of the child's school ... to the effect that the requirements of this part cannot be met because of religious convictions or other objection to immunization.

Mich. Comp. Laws § 333.9215. In December 2014, a new administrative rule was implemented in Michigan requiring individuals seeking a nonmedical exemption from the vaccination requirement to obtain certification from "the local health department that the individual received education on the risks of not receiving the vaccines being waived and the benefits of vaccination to the individual and the community." Mich. Admin. Code R. 325.176(12). The rule states that "[a]ll waivers shall be submitted using the waiver form prescribed by the department." *Id.* MDHHS provides local health department employees with materials outlining *inter alia* responses to concerns about vaccinations and asserted religious reasons for rejecting immunizations. (Compl. ¶ 26, Ex. B.) Plaintiff alleges that the materials "contain[s] many misrepresentations and falsehoods about Catholic beliefs and teachings relating to vaccines." (*Id.* ¶ 27.)

Plaintiff is a devout Roman Catholic and the mother of four children. (*Id.* ¶¶ 12, 13.) Plaintiff opposes all vaccines based on her religious beliefs "that the body is God's temple and injecting it with chemicals that permanently alter the body violates the will of God." (*Id.* ¶ 14.) Prior to October 2015, Plaintiff received

religious exemptions from the State vaccination requirement approximately ten times by submitting her objection in writing and providing it to her children's school. (*Id.* ¶ 38.)

On October 5, 2015, in accordance with administrative rule 325.176(12), Plaintiff went to the Wayne County Health Department ("WCHD") to obtain the certification now needed for her children's exemption forms. (*Id.* 39.) Plaintiff alleges that to obtain the forms, she had to leave work early, pack up her four children, and drive approximately two hours to travel roundtrip between her home and the WCHD. When she arrived at the WCHD, Plaintiff met with Defendant Jane Doe 1, a WCHD nurse. (*Id.* ¶¶ 21, 42.)

According to Plaintiff, after she stated she had a religious objection to vaccines, the nurse "asked [Plaintiff] what her *actual* reason was for objecting." (*Id.* ¶ 42, emphasis in original.) When Plaintiff repeated that she had a religious objection to vaccines, Jane Doe 1 stated that Plaintiff needed to be more specific. (*Id.* ¶43.) Plaintiff refused because she did not want to share her personal beliefs; however, Jane Doe 1 insisted on specifics stating that the "State's got documentation that a lot of the religions are now going for the vaccines." (*Id.* 45.) Plaintiff claims Jane Doe 1 "pressed harder, repeatedly asking what [Plaintiff's] religious belief was and if it had to do with the ingredients in vaccines or injections." (*Id.* ¶ 47.)

When Plaintiff continued to offer nothing more than that she is requesting an exemption based on her religious beliefs, Jane Doe 1 left to get Defendant Jane Doe 2, the nurse manager. (*Id.* ¶ 22, 49.) According to Plaintiff, she then told the nurses that State law only

required a person to assert a religious objection. (*Id.* ¶ 50.) Plaintiff claims that Jane 2 issued in response “an ultimatum: if [Plaintiff] wanted the statutorily mandated religious waiver, she needed to declare what religion she practices, explain her religious beliefs, and engage in a back and forth discussion with the Wayne County nurse concerning her religious objection because, according to Defendant Jane Doe 2, there are no religions that have objections to vaccines.” (*Id.* ¶ 51.)

Jane Doe 2 next showed Plaintiff MDHHS educational materials, which Plaintiff claims “contain[] misrepresentations and lies about Catholic beliefs and teachings.” (*Id.* ¶ 52.) Plaintiff specifically points to this statement in the materials:

In 2005, Pope Benedict XVI addressed [vaccines made from aborted fetal cells]. It was determined that parents who chose not to give vaccines derived from these cells would be in “more proximate cooperation with evil” than those who gave their children the vaccines in question because of the life saving nature of vaccines.

(*Id.* ¶ 28, quoting Ex. B at 4.) Plaintiff asserts that Pope Benedict XVI never uttered the above-quoted phrase or any similar statement regarding vaccines. (*Id.* ¶ 29.) Instead, the statement was made to the Catholic News Service by Monsignor Jacques Suaudeau, a medical doctor and official at the Pontifical Academy for Life. (*Id.* ¶ 30, citing Ex. C.) According to Plaintiff, Monsignor Suaudeau subsequently distanced himself from the statement. (*Id.* ¶ 31.)

Plaintiff eventually obtained the exemption forms from the nurses, although she claims that they refused to list her religious convictions on the forms as the basis for the exemption. (*Id.* ¶ 55.) Plaintiff asserts Defendants deprived her of “her religious and moral responsibility to object . . . on account of her religion, forcing her to violate her beliefs” by writing as the reason for the waiver: “mom wants child to have natural immunity.” (*Id.* ¶ 57; Wayne County Defs.’ Mot., Ex. 3.)

On December 1, 2015, Plaintiff filed a petition requesting a declaratory ruling from MDHHS that administrative rule 325.176(12) is invalid and that MDHHS lacked the authority to promulgate the rule. (Compl. ¶ 8, Ex. A.) On February 2, 2016, Director Lyon, as Director of MDHHS, denied Plaintiff’s request. (*Id.*, Ex. A.)

III. Defendants’ Arguments

In their motions, Defendants raise several arguments in support of dismissal or summary judgment.

Director Lyon first argues in his motion to dismiss that Plaintiff lacks standing to bring this lawsuit because she in fact obtained her children’s exemptions from the State’s vaccination requirements. Director Lyon next argues that Plaintiff’s claims against him in his official capacity, brought pursuant to 42 U.S.C. § 1983, are barred by Eleventh Amendment immunity. To the extent Plaintiff is suing Director Lyon in his individual capacity, he contends he is entitled to qualified immunity because Plaintiff suffered no violation of her constitutional rights or at least no

clearly established right. Director Lyon alternatively maintains that Plaintiff fails to state a claim against him because she does not allege his personal involvement in any wrongdoing, aside from his denial of her administrative grievance, and neither this denial nor respondeat superior liability support the imposition of § 1983 liability.

Separate from his qualified immunity argument, but related, Director Lyon also argues that Plaintiff fails to state a claim against him because her claims fail as a matter of law. Lastly, Director Lyon urges the Court to abstain from deciding Plaintiff's Complaint because she had the opportunity to challenge his order through an appeal to the state court.

In their motion to dismiss, the Wayne County Defendants maintain that Plaintiff cannot establish a municipal liability claim against DHVCW because no municipal policy or custom was the "moving force" behind any alleged constitutional violation. They argue that DHVCW's employees were acting in accordance with Michigan state law rather than any Wayne County policy, practice, or procedure. The Wayne County Defendants alternatively argue that Plaintiff cannot establish the violation of her First Amendment rights based on the facts alleged in her Complaint. Lastly, the Wayne County Defendants contend that Plaintiff alleges no personal involvement between herself and Dr. Hammami or Ms. Austerberry to hold them liable in their individual capacities.

IV. Applicable Law and Analysis

The first issue the Court must decide is the order in which to address Defendants' arguments for dismissal.

A claim that a plaintiff lacks standing or that a defendant is entitled to Eleventh Amendment immunity speak to the court's power to adjudicate the litigation. The Sixth Circuit has held that "jurisdictional issues" must "be addressed prior to reaching the merits." *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Engler*, 304 F.3d 616, 618 (6th Cir. 2002); *see also Rossborough Mfg. Co. v. Trimble*, 301 F.3d 482, 489 (6th Cir. 2002) ("As a threshold matter, we must determine whether the Treasurer and the Administrator are entitled to Eleventh Amendment immunity."); *Children's Hosp. Med. Ctr. of Akron v. Youngstown Assocs. in Radiology, Inc.*, 612 F. App'x 836, 836-37 (6th Cir. 2015) (citing *Steel Co. v. Citizens for a Better Env.*, 523 U.S. 83 (1988)) (remanding the action to the district court to decide standing issue, as it must be decided before any questions on the merits). The Sixth Circuit has held, however, that where a defendant raises sovereign immunity as an alternative ground for dismissal and the merits offer a more straightforward means of resolving a case, "the federal courts have discretion to address the sovereign-immunity defense and the merits in whichever order they prefer." *Nair v. Oakland Cty. Cmty. Mental Health Auth.*, 443 F.3d 469, 477 (6th Cir. 2006).

While standing always is a threshold issue to address, Director Lyon's standing argument simply overlaps his— as well as the remaining defendants'—merits arguments. Director Lyon asserts that Plaintiff lacks standing because she has not suffered an injury to any of her constitutional rights. As Director Lyon argues, Plaintiff's children were not forced to be vaccinated over her objections, they were not denied

enrollment in school, Plaintiff received the exemptions she sought, whether her objection was recorded as religious or otherwise made no difference on whether it was honored, and the fact she was offended by or disagreed with the nurses' statements does not state an injury to her constitutional rights. In other words, Director Lyon merely contends that Plaintiff's averments fail to state a violation of her constitutional rights and, therefore, she did not suffer any cognizable injury to grant her standing to sue. The Supreme Court has stated, however, that such an argument generally does not raise a challenge to subject-matter jurisdiction. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998).

As the Supreme Court explained in *Steel Company*:

[J]urisdiction is not defeated by the possibility that the averments might fail to state a cause of action on which [the plaintiff] could actually recover. Rather, the district court has jurisdiction if the right of the [plaintiffs] to recover under their complaint will be sustained if the Constitution and laws of the United States are given one construction and will be defeated if they are given another, ... unless the claim clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous.

Id. (internal quotation marks, citations, and ellipsis omitted). The Court explained further: "Dismissal for lack of subject-matter jurisdiction because of the

inadequacy of the federal claim is proper only when the claim is ‘so insubstantial, implausible, foreclosed by prior decisions of [the Supreme] Court, or otherwise devoid of merit as not to involve a federal controversy.’” *Id.* (quoting *Oneida Indian Nation of New York v. Cty. of Oneida*, 414 U.S. 661, 666 (1974)). While this Court may conclude that Plaintiff fails to state viable constitutional claims, it cannot say that her claims should be dismissed for lack of subject-matter jurisdiction on the grounds of insubstantiality or frivolousness.

Defendants also raise qualified immunity as a defense. However, this defense involves a two-step analysis, with the initial inquiry being whether a constitutional right has been violated if the plaintiff’s allegations are established. *Estate of Carter v. City of Detroit*, 408 F.3d 305, 310-11 (6th Cir. 2005) (citing *Saucier v. Katz*, 533 U.S. 194, 201 (2001)).

For these reasons, and because the Court finds it more straightforward to address the merits of Plaintiff’s claims, it will do so first.

A. First Amendment Law

The First Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment, states in relevant part: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof” U.S. Const., amend. I; *Everson v. Bd. of Educ.*, 330 U.S. 1, 8 (1947). Through these two clauses, which are “distinct in their objectives and their applicability[,]” “[t]he First Amendment forbids both the abridgment of the free exercise of religion and the

enactment of laws ‘respecting an establishment of religion.’” *Sch. Dist. of Abington Twp., Penn. v. Schempp*, 374 U.S. 203, 232 (1963) (Brennan, J., concurring) (quoting U.S. Const., amend. I).

“The Establishment Clause ... prohibits government from appearing to take a position on questions of religious beliefs or from making adherence to a religion relevant in any way to a person’s standing in the political community.” *Am. Civil Liberties Union of Ohio Found. v. Ashbrook*, 375 F.3d 484, 490 (6th Cir. 2004) (quoting *Cty. of Allegheny v. Am. Civil Liberties Union*, 492 U.S. 573, 593-94 (1989)) (additional quotation marks and citation omitted). As the Supreme Court summarized in *Schempp*:

[T]he [Establishment C]lause withdrew all legislative power respecting religious belief or the expression thereof. The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion.

374 U.S. at 222. In *Lemon v. Kurtzman*, 403 U.S. 602 (1971), the Court stated the applicable questions as a three part test, for which each factor must be met for a

governmental practice to satisfy the Establishment Clause:

First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, ...; finally, the statute must not foster an excessive entanglement with religion.

Id. at 612-13 (internal quotation marks and citations omitted). “[U]nwelcome direct conduct with the offensive [governmental practice] is enough” to establish standing to assert an Establishment Clause violation. *Washegesic v. Bloomington Public Sch.*, 33 F.3d 679, 682 (6th Cir. 1994) (internal quotation marks and citation omitted).

In comparison, the First Amendment’s Free Exercise Clause is not violated simply because the government requires a person to be exposed to ideas he or she finds objectionable on religious grounds. *See Mozert v. Hawkins Cty. Bd. of Educ.*, 827 F.2d 1058, 1065 (6th Cir. 1987). “[G]overnment actions that merely offend or cast doubt on religious beliefs do not on that account violate free exercise.” *Id.* at 1068. “Were the free exercise clause violated whenever governmental activity is offensive to or at variance with sincerely held religious precepts, virtually no governmental program would be constitutionally possible.” *Id.* at 1068 (quoting *Grove v. Mead Sch. Dist. No. 354*, 753 F.2d 1528, 1542 (9th Cir. 1985)).

Instead, to establish a violation of the Free Exercise Clause, the plaintiff must show an “unconstitutional burden consist[ing] of compulsion either to do an act

that violated the plaintiff's religious convictions or communicate an acceptance of a particular idea or affirm a belief." *Id.* at 1066. As the Sixth Circuit concluded in *Mozert*: "It is clear that governmental compulsion either to do or refrain from doing an act forbidden or required by one's religion, or to affirm or disavow a belief forbidden or required by one's religion is the evil prohibited by the Free Exercise Clause." *Id.*

The Supreme Court describes the Free Exercise Clause similarly:

Its purpose is to secure religious liberty in the individual by prohibiting any invasions thereof by civil authority. Hence it is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his religion.

Schempp, 374 U.S. at 223. "[I]ndirect coercion or penalties on the free exercise of religion, not just outright prohibitions, are subject to scrutiny under the First Amendment." *Lyng v. Northwest Indian Cemetery Ass'n*, 485 U.S. 439, 450 (1988). Nevertheless, the *Lyng* Court went on to state:

This does not and cannot imply that incidental effects of government programs, which may make it more difficult to practice certain religions but which have no tendency to coerce individuals into acting contrary to their religious beliefs, require government to bring forward a compelling justification for its otherwise lawful actions.

Id. at 450-51, 456 (“The dissent begins by asserting that the ‘constitutional guarantee we interpret today ... is directed against *any* form of government action that frustrates or inhibits religious practice.’ ... The Constitution, however, says no such thing. Rather, it states: ‘Congress shall make no law ... *prohibiting* the free exercise [of religion].’”) (emphasis in original). Thus, to establish a violation of the First Amendment’s Free Exercise Clause, the plaintiff must show that the challenged state action compelled the plaintiff to “‘declare a belief,’ ‘communicate by word and sign [the plaintiff’s] acceptance’ of the ideas presented, or make an ‘affirmation of a belief and an attitude of mind.’” *Mozert*, 827 F.2d at 1066.

B. First Amendment Analysis

Plaintiff’s Free Exercise Clause claim fails because the facts she alleges do not suggest Defendants compelled her either “to do an act or refrain from doing an act forbidden or required by [her] religion, or to affirm or disavow a belief forbidden or required by [her] religion.” *Mozert*, *supra*. At most what Plaintiff alleges is that she was exposed to “coercion” to violate her beliefs regarding immunization for her children and “filled with lies about her faith from health department employees.” Plaintiff, however, did not yield to the nurses’ alleged pressure or lies and agree to immunize her children. She left the health department with the required and completed immunization waiver forms.

As set forth in the preceding section, exposure to information Plaintiff believes wrong, a lie, disagreeable, or objectionable does not establish a violation of her rights under the Free Exercise Clause. The inconvenience Plaintiff allegedly endured to obtain

the immunization waivers (i.e., having to leave work early and drive to the county health department) is a burden placed on all individuals seeking a nonmedical waiver, regardless of whether the basis for their request is their religious or philosophical beliefs or something else (e.g., a fear that vaccinations cause Autism).

The Court therefore is dismissing Plaintiff's Free Exercise Clause claim (Count 1) for failure to state a claim on which relief may be granted.

With respect to her Establishment Clause claim, Plaintiff asserts her rights were violated because administrative rule 325.176(12) and Defendants' enforcement of the rule were used to inquire into and challenge Plaintiff's religious beliefs.

The Supreme Court has held that mandatory vaccination is within the State's police power, concluding "we do not perceive that this legislation has invaded *any right* secured by the Federal Constitution." *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 25, 38 (1905) (emphasis added). In reaching this conclusion, the *Jacobson* Court rejected the argument that the individual liberty guaranteed by the Constitution overcame the State's judgment that mandatory vaccination was in the interest of the population as a whole. *Id.* at 38. More recently, several federal district and circuit courts have held that state statutes requiring vaccinations as a condition to public school admission do not violate the Free Exercise Clause of the First Amendment. *See, e.g., Phillips v. City of New York*, 775 F.3d 538, 543 (2d Cir. 2015) (declaring "clearly constitutional" New York law precluding school attendance by non-vaccinated

children exempted from the state's vaccination requirement for religious reasons during an outbreak of a vaccine-preventable disease); *Workman v. Mingo Cty. Bd. of Educ.*, 419 F. App'x 348, 353-54 (4th Cir. 2011) (concluding "that the West Virginia statute requiring vaccinations as a condition of admission to school does not unconstitutionally infringe [the plaintiffs] right to free exercise"); *McCarthy v. Boozman*, 212 F. Supp. 2d 945, 948 (W.D. Ark. 2002) ("The constitutional right to freely practice one's religion does not provide an exemption for parents seeking to avoid compulsory immunization for their school-aged children."); *Sherr v. Northport-East Northport Union Free Sch. Dist.*, 672 F. Supp. 81, 88 (E.D.N.Y. 1987) ("[I]t has been settled law for many years that claims of religious freedom must give way in the face of the compelling interest of society in fighting the spread of contagious diseases through mandatory inoculation programs."). Michigan, therefore, could constitutionally mandate that *all* children receive the required immunizations before attending public school.

Michigan law goes beyond what is constitutionally required by allowing an exemption for medical reasons or "because of religious convictions or other objection to immunization." Mich. Comp. Laws § 333.9215. Michigan's interest in protecting its school-age children and its citizens from communicable diseases clearly gives it the right to require individuals seeking an exemption to receive educational information concerning immunizations to confirm that the individual is making a well-informed decision. Knowing the reason(s) for the individual's objection is necessary to identify the relevant educational information the county health department employee needs to cover.

Administrative rule 325.176(12) imposes this educational requirement for *all* nonmedical exemptions (i.e., those based on religious or philosophical beliefs or some other reason). Thus, it reflects a secular purpose. Plaintiff nevertheless contends that the rule and the manner in which it was enforced in her case inhibit religion. Specifically, Plaintiff alleges in her Complaint that the rule “allows State employees to withhold public schooling unless parents submit to a religious inquisition on the substance and logic of their beliefs, and endure false and misleading State-sponsored religious instruction about their beliefs.” (Compl. ¶ 1.) As evidence of this “religious instruction”, Plaintiff points to one document MDHHS prepared to respond to concerns or objections related to religion.¹ (*Id.*, Ex. B.)

Neither the rule nor Defendants’ alleged conduct convey disfavor of a certain religion or religions. Nor do they express disfavor of all religions. More importantly, their primary effect is neither the advancement nor inhibition of religion. When reviewed comprehensively

¹ Plaintiff also alleges that Defendants “require[ed] her to mask her religious beliefs in the shroud of an ‘other’ objection[]” (Compl. ¶ 55) and interfered with her “grave responsibility ... to make a conscientious objection with regard to those vaccines which have moral problems.” (*Id.* ¶ 56, internal quotation marks and emphasis removed.) Michigan law provides Plaintiff the ability to obtain a religious waiver for its immunization requirement. Plaintiff does not have a constitutional right to have the reason for her waiver stated on the Immunization Waiver Form, however. Moreover, Defendants did not inhibit Plaintiff’s practice of her religion by not writing “religious objection” or something similar as the reason for the waiver. Plaintiff was free to state her objection to vaccines, and in fact did so.

and in context, MDHHS' materials addressing religious objections to vaccination do not disapprove of a particular religion or religion in general. Instead, the materials simply provide county health department staff with educational information to share with individuals seeking an exemption. The fact that Plaintiff does not agree with statements in the materials or believes any statement is wrong does not render their use a violation of the Establishment Clause. Notably, while Plaintiff only attaches to her Complaint the materials MDHHS prepared to respond to religious objections to vaccination, a review of MDHHS' website reflects that it has created several documents titled "Waiver Education" to address other reasons individuals object to immunizations.² See http://www.michigan.gov/mdhhs/0,5885,7-339-73971_4911_4914_68361_78052---,00.html.

² Without converting a Rule 12(b)(6) motion to dismiss to a motion for summary judgment under Rule 56, a court can take judicial notice of "[p]ublic records and government documents available from reliable sources on the internet,' such as websites run by governmental agencies." *U.S. ex. rel. Modglin v. DJO Global, Inc.*, 48 F. Supp. 3d 1362, 1381 (C.D. Cal. 2014) (quoting *Hansen Beverage Co. v. Innovation Ventures, LLC*, No. 08-cv-1166, 2009 WL 6597891, at *1 (S.D. Cal. Dec. 23, 2009)); see also *In re Wellburtin SR/Zyban Antitrust Litig.*, 281 F. Supp. 2d 751, 754 n.2 (E.D. Pa. 2003) (citing cases) ("The fact that an agency report is 'published' on the internet does not affect the Court's ability to take judicial notice of the contents of that report," and the Court may consider the information as a matter of public record without converting a motion to dismiss to one for summary judgment.); see also Fed. R. Evid. 201.

For these reasons, the Court holds that Plaintiff's Establishment Clause claim (Count 2) fails as a matter of law.

C. Plaintiff's State Law Claims

This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367. Section 1367 provides that "[t]he district courts may decline to exercise supplemental jurisdiction over a claim ... if ... the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3). District courts have "broad discretion in deciding whether to exercise supplemental jurisdiction over state law claims." *Musson Theatrical, Inc. v. Fed. Express Corp.*, 89 F.3d 1244, 1254 (6th Cir. 1996). The court's discretion, however, is circumscribed by considerations of "judicial economy, convenience, fairness, and comity." *Id.* (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988)). "After a [Rule] 12(b)(6) dismissal, there is a strong presumption in favor of dismissing supplemental claims." *Id.* at 1255 (citations omitted) ("When all federal claims are dismissed before trial, the balance of considerations usually will point to dismissing state law claims, or remanding them to state court if the action was removed.").

Plaintiff's Complaint has been pending in this Court for a little more than six months and is at the earliest stages of litigation. Defendants responded to Plaintiff's Complaint with their motions to dismiss and, besides those motions, no other substantive documents have been filed. Nor have any conferences or hearings been held. Moreover, analyzing the state law issues raised in Plaintiff's Complaint would not be a wise application of

federal judicial resources. The Michigan courts should resolve Plaintiff's claims that Defendants' actions violate the state's constitution and that administrative rule 325.176(12) violates Michigan Compiled Laws § 333.9215. This Court cannot identify any prejudice resulting from the litigation of those issues in state court.

For these reasons, the Court is declining to exercise supplemental jurisdiction over Plaintiff's state law claims upon its dismissal of her federal constitutional claims.

V. Conclusion

For the reasons set forth above, the Court concludes that Plaintiff's First Amendment claims (Counts 1 and 2) fail to state a claim upon which relief may be granted. The Court is dismissing those claims with prejudice pursuant to Rule 12(b)(6). The Court declines to exercise supplemental jurisdiction over Plaintiff's remaining state law claims (Counts 3 and 4). The Court, therefore, is dismissing those claims without prejudice pursuant to 28 U.S.C. § 1367(c)(3).

Accordingly,

IT IS ORDERED that Defendants' motions to dismiss (ECF Nos. 10, 11) are **GRANTED IN PART AND DENIED IN PART**.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: February 23, 2017

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I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, February 23, 2017, by electronic and/or U.S. First Class mail.

s/ Richard Loury
Case Manager

APPENDIX D

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**Civil Case No. 16-12545
Honorable Linda V. Parker**

[Filed February 23, 2017]

TARA NIKOLAO,	)
	)
Plaintiff,	)
	)
v.	)
	)
NICK LYON, WAYNE COUNTY	)
DEPARTMENT OF HEALTH,	)
VETERANS, AND COMMUNITY	)
WELLNESS, MOUHANAD	)
HAMMAMI, CAROL	)
AUSTERBERRY, JANE DOE 1,	)
and JANE DOE 2,	)
	)
Defendants.	)

JUDGMENT

This lawsuit arises from Plaintiff interaction with employees at the Wayne County Health Department while procuring the forms necessary to exempt her children from the State of Michigan's vaccination

requirement to attend public school. In a Complaint filed July 7, 2016, Plaintiff alleges the following claims against Defendants: (1) violation of the Free Exercise Clause of the First Amendment; (2) violation of the Establishment Clause of the First Amendment; (3) violation of Article 1, Section 4 of the Michigan Constitution; and (4) violation of Michigan Compiled Laws Section 333.9215. Defendants filed motions to dismiss, which this Court granted in part and denied in part on today's date. The Court concluded that Plaintiff's First Amendment claims fail to state a claim upon which relief may be granted and declined to exercise supplemental jurisdiction over Plaintiff's remaining state law claims.

Accordingly,

IT IS ORDERED, ADJUDGED, AND DECREED, that Counts 1 and 2 of Plaintiff's Complaint are **DISMISSED WITH PREJUDICE** and Counts 3 and 4 are **DISMISSED WITHOUT PREJUDICE**. This case is **CLOSED**.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: February 23, 2017

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, February 23, 2017, by electronic and/or U.S. First Class mail.

s/ Richard Loury
Case Manager

APPENDIX E

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

No. 17-1367

[Filed December 14, 2017]

TARA NIKOLAO,	)
	)
Plaintiff-Appellant,	)
	)
v.	)
	)
NICK LYON,	)
INDIVIDUALLY AND IN	)
HIS OFFICIAL CAPACITY	)
AS DIRECTOR OF THE	)
MICHIGAN DEPARTMENT	)
OF HEALTH AND HUMAN	)
SERVICES, ET AL.	)
	)
Defendants-Appellees.	)

O R D E R

BEFORE: SUHRHEINRICH, GRIFFIN, and
KETHLEDGE, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original

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submission and decision of the case. The petition then was circulated to the full court.* No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/Deborah S. Hunt

Deborah S. Hunt, Clerk

* Judge White recused herself from participation in this ruling.

APPENDIX F

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

No: 17-1367

[Filed December 22, 2017]

TARA NIKOLAO,	)
	)
Plaintiff - Appellant,	)
	)
v.	)
	)
NICK LYON, individually and	)
in his official capacity as Director	)
of the Michigan Department of	)
Health and Human Services;	)
WAYNE COUNTY DEPARTMENT	)
OF HEALTH, VETERANS, AND	)
COMMUNITY WELLNESS, DR.	)
MOUHANAD HAMMAMI,	)
individually and in his official	)
capacity as Director of the Wayne	)
County Department of Health,	)
Veterans, and Community	)
Wellness, and CAROL	)
AUSTERBERRY, individually and	)
in her official capacity as Division	)
Director and Deputy Health	)
Officer of the Wayne County	)
Department of Health, Veterans,	)

and Community Wellness,)
JANE DOE 1, individually and in her)
official capacity as Nurse for the)
Wayne County Department of)
Health, Veterans, and Community)
Wellness, JANE DOE 2, individually)
and in her official capacity as Nurse)
Manager for the Wayne County)
Department of Health, Veterans,)
and Community Wellness.)
Defendants - Appellees.)

MANDATE

Pursuant to the court's disposition that was filed
11/07/2017 the mandate for this case hereby issues
today.

COSTS: None

APPENDIX G

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

No. 4:16-cv-12545-LVP-SDD

[Filed July 7, 2016]

TARA NIKOLAO,	)
	)
Plaintiff,	)
	)
v.	)
	)
NICK LYON, individually and in his	)
official capacity as Director of the	)
Michigan Department of Health and	)
Human Services, WAYNE	)
COUNTY DEPARTMENT OF	)
HEALTH, VETERANS, AND	)
COMMUNITY WELLNESS, DR.	)
MOUHANAD HAMMAMI,	)
individually and in his official	)
capacity as Director of the Wayne	)
County Department of Health,	)
Veterans, and Community Wellness,	)
CAROL AUSTERBERRY,	)
individually and in her official	)
capacity as Division Director and	)
Deputy Health Officer of the Wayne	)
County Department of Health,	)
Veterans, and Community Wellness,	)
JANE DOE 1, individually and in	)

her official capacity as Nurse for the)
Wayne County Department of Health,)
Veterans, and Community Wellness,)
JANE DOE 2, individually and in)
her official capacity as Nurse)
Manager for the Wayne County)
Department of Health, Veterans,)
and Community Wellness,)
)
Defendants.)
_____)

COMPLAINT

[Civil Rights Action under 42 U.S.C. § 1983 and
Michigan State Law]

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Plaintiff Tara Nikolao, by and through her undersigned counsel, brings this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof alleges the following upon information and belief:

INTRODUCTION

1. This civil rights action seeks to protect fundamental constitutional rights under the First and

Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, and Article 1 § 4 of the Michigan Constitution, and to vindicate the violation thereof. It challenges the constitutionality of Mich. Admin. Code r. 325.176(12) (the “Rule”), which allows State employees to withhold public schooling unless parents submit to a religious inquisition on the substance and logic of their beliefs, and endure false and misleading State-sponsored religious instruction about their beliefs. This action also challenges the ability of an administrative agency to implement a Rule that conflicts with a statute enacted by the legislature.

2. Defendants, as authorized by the Rule, violated the Free Exercise and Establishment Clauses of the First Amendment to the United States Constitution by inquiring into the substance of Mrs. Nikolao’s beliefs and indoctrinating her with false and misleading statements about her Catholic faith. The Supreme Court authoritatively stated: “Particularly in this sensitive area [of religion], it is not within the judicial function and judicial competence to inquire whether the petitioner . . . correctly perceived the commands of [her] common faith. **Courts are not arbiters of scriptural interpretation.**” *Thomas v. Review Bd. of Ind. Emp’t Sec. Div.*, 450 U.S. 707, 715-16 (1981) (emphasis added).

3. Additionally, Michigan has long recognized the “special protection” afforded to religious liberty, the fortification of which is “one of the Bill of Rights’ most important achievements.” *People v Dejonge*, 501 N.W.2d 127, 134 (Mich. 1993). “No provision in our constitution ought to be dearer to man than that which

protects the rights of conscience against the enterprises of the civil authority.” *Id.* (internal quotation marks, brackets, and citations omitted). “The Michigan Constitution is *at least* as protective of religious liberty as the United States Constitution.” *Id.* at 131 n. 9 (emphasis added).

4. Defendants, as authorized by the Rule, force Mrs. Nikolao to undergo these violations in order to receive public schooling for her children.

5. The Rule, thereby, deprives Mrs. Nikolao the right to freely exercise her religious beliefs and the right to be free from State-sponsored religious indoctrination.

6. Furthermore, the Michigan legislature, recognizing the importance of religious liberty, enacted Mich. Comp. Laws § 333.9215, which *mandates* that parents be allowed to exempt their children from State vaccination requirements because of their religious convictions.

7. Mrs. Nikolao seeks a declaration that Defendants violated her clearly established constitutional rights as set forth in this Complaint; a declaration that the Rule and the individual defendants enforcement of the rule violates the United States Constitution and 42 U.S.C. § 1983; a declaration that the Rule violates the Michigan Constitution; a declaration that, through the enforcement and attempted enforcement of the Rule, Defendants have substantially burdened and unlawfully infringed upon Plaintiff’s right to free exercise of religion and right to be free from established religious instruction in violation of the United States Constitution and 42

U.S.C. § 1983; a declaration the Rule conflicts with Mich. Comp. Laws § 333.9215; a preliminary injunction and permanent injunction enjoining the enforcement of the Rule; an injunction ordering Defendants to change Mrs. Nikolao's "other" exemption to a religious exemption; and nominal damages for the harm caused by Defendants. Mrs. Nikolao also seeks an award of the reasonable costs of litigation, including attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988 and other applicable law.

JURISDICTION AND VENUE

8. On December 1, 2015, pursuant to the Administrative Procedures Act, Mrs. Nikolao filed a petition requesting a declaratory ruling from the Michigan Department of Health and Human Services ("MDHHS").

9. On February 2, 2016, Mrs. Nikolao received a final decision from Nick Lyon, the Director of MDHHS, denying her request. (Exhibit A).

10. Mrs. Nikolao alleges violation of her First and Fourteenth Amendment Rights under 42 U.S.C. § 1983, and violation of Michigan law. Therefore, under 28 U.S.C §§ 1331 and 1367, this Court has jurisdiction.

11. Venue is proper in the Eastern District of Michigan pursuant to 28 U.S.C § 1391(b)(2) as a substantial part of the events giving rise to the claim occurred in this district.

PLAINTIFF

12. Plaintiff Tara Nikolao is an adult resident of Wyandotte, Michigan in Wayne County. She is a registered nurse and the mother of four children.

13. Mrs. Nikolao is a devout Roman Catholic and, therefore, objects to vaccinations manufactured from aborted fetal cells. Mrs. Nikolao further believes that, as a Catholic, she has a “grave responsibility . . . to make a conscientious objection with regard to those [vaccines] which have moral problems.”

14. Mrs. Nikolao’s personal religious beliefs also oppose all vaccines, even those that are not manufactured from aborted fetal cells, because she believes that the body is God’s temple and injecting it with chemicals that permanently alter the body violates the will of God.

DEFENDANTS

15. Defendant Nick Lyon is the Director of MDHHS, an administrative agency for the State of Michigan, and is responsible for the operation, management, and policy of MDHHS, including promulgation, administration, and enforcement of the Rule and the MDHHS document on Religion (Exhibit B).

16. Defendant Nick Lyon, on behalf of MDHHS, rejected Plaintiff’s petition for a declaratory ruling on the constitutionality of the Rule. (Exhibit A).

17. Defendant Nick Lyon is sued individually and in his official capacity as Director of MDHHS. At all

relevant times, Defendant Nick Lyon was acting under color of state law.

18. Defendant Wayne County Department of Health, Veterans, and Community Wellness (“WCHD”) is a county agency responsible for implementing the Rule. At all relevant times, WCHD supervised and employed health department staff, including Defendants Jane Doe 1 and Jane Doe 2.

19. Defendant Mouhanad Hammami is the Director of WCHD and is responsible for the operation, management, and policy of WCHD. Defendant Mouhanad Hammami is sued individually and in his official capacity as Director of WCHD. At all relevant times, Defendant Mouhanad Hammami was acting under color of state law.

20. Carol Austerberry is the Division Director and Deputy Health Officer of WCHD and is responsible for the management, operation, and policy of the Wellness Services Division of WCHD, which includes the vaccine waiver services. Defendant Carol Austerberry is sued individually and in her official capacity as Division Director and Deputy Health Officer of WCHD. At all relevant times, Defendant Carol Austerberry was acting under color of state law.

21. Defendant Jane Doe 1 is a nurse at WCHD. At all relevant times, she was an agent, servant, or employee of WCHD, acting under color of state law. Defendant Jane Doe 1 is sued individually and in her official capacity as a nurse for WCHD.

22. Defendant Jane Doe 2 is a nurse manager at the WCHD. At all relevant times, she was an agent, servant, or employee of WCHD, acting under color of

state law. Defendant Jane Doe 2 is sued individually and in her official capacity as a nurse manager for WCHD.

STATEMENT OF THE FACTS

I. The Rule, Mich. Admin. Code r. 325.176(12)

23. In December 2014, the Joint Committee on Administrative Rules implemented a new rule that requires parents seeking a religious exemption to travel to a county health department and speak with a local health department employee to receive the certified waiver necessary to exempt their children from the vaccinations and attend public schools. Michigan Department of Health and Human Services, *Immunization Waiver Information*, http://www.michigan.gov/mdhhs/0,5885,7-339-73971_4911_4914_68361-344843--,00.html (last visited July 5, 2016); Mich. Admin. Code r. 325.176(12).

24. This new requirement was not enacted by the Michigan legislature but rather by a small committee comprised of only five State representatives and five State senators. Michigan Department of Health and Human Services, *Immunization Waiver Information*, http://www.michigan.gov/mdhhs/0,5885,7-339-73971_4911_4914_68361-344843--,00.html (last visited July 5, 2016); Michigan Legislative Council, *Joint Committee on Administrative Rules*, <http://council.legislature.mi.gov/CouncilAdministrator/jcar> (last visited July 5, 2016).

25. This new Rule was implemented despite the statutory requirement that a child “is exempt” from State vaccination requirements if the parents “present[] a written statement to the administrator of

the child's school or operator of the group program to the effect that the [vaccination requirements] cannot be met because of religious convictions." Mich. Comp. Laws § 333.9215.

26. MDHHS provides the local health department employees, including WCHD, with a *Note for Local Health Department Staff– Waiver Education: Religion* ("Religious Waiver Note"), which provides the employees with a menu of statements and arguments to coerce parents with religious objections into vaccinating their children. (Exhibit B).

27. The Religious Waiver Note contains many misrepresentations and falsehoods about Catholic beliefs and teachings relating to vaccines.

28. Specifically, the Religious Waiver Note falsely states, "In 2005, Pope Benedict XVI addressed [vaccines made from aborted fetal cells]. It was determined that parents who chose not to give vaccines derived from these cells would be in 'more proximate cooperation with evil' than those who gave their children the vaccines in question because of the life saving nature of vaccines." (Exhibit B).

29. Pope Benedict XVI never uttered the phrase that parents would be in "more proximate cooperation with evil," or any similar statement regarding vaccines.

30. This is a statement by Msgr. Jacques Suaudeau to the press, ***not Pope Benedict XVI***. Carol Glatz, *Vatican Says Refusing Vaccines Must be Weighed Against Health Threats*, Catholic News Service (July 26, 2005) (Exhibit C).

31. Msgr. Suaudeau distanced himself from this statement saying that it was a “mistake” to speak with “some English-speaking journalist” and that people should read “Moral Reflections on Vaccines Prepared from Cells Derived from Aborted Human Foetuses” to understand the Church’s position. Children of God for Life, *Vatican Official Clarifies his Position*, <https://cogforlife.org/2005/08/03/vatican-official-clarifies-his-position/> (last visited July 5, 2016).

32. The Vatican document produced on vaccines containing the cells of aborted children by the Vatican’s Pontifical Academy for Life, ***again not Pope Benedict XVI***, did not contain any condemnation of parents who refuse to vaccinate, especially not the specific, quoted phrase in the Religious Waiver Note. *See* (Exhibit D).

33. The Religious Waiver Note authorizes and encourages local health department employees to excessively entangle themselves in a person’s religion by having them instruct people in their faith.

II. Defendants violate Mrs. Nikolao’s First Amendment Rights

34. Mrs. Nikolao’s religious beliefs prevent her from vaccinating her children.

35. As a Roman Catholic, she believes it is sinful to use vaccines manufactured from aborted fetal cells.

36. As a Catholic, Mrs. Nikolao has a “grave responsibility . . . to make a conscientious objection with regard to those [vaccines] which have moral problems,” such as those created from aborted fetal cells. (Exhibit D).

37. Mrs. Nikolao also believes that the body is a temple and injecting it with chemicals that alter the person permanently violates the will of God.

38. Prior to October 2015, Mrs. Nikolao received the statutorily mandated religious exemption from the State vaccination requirement approximately ten times by submitting her objection in writing and providing it to her children's school.

39. On October 5, 2015, Mrs. Nikolao went to WCHD to comply with the burdens of the new Rule, expecting to receive the statutorily required religious exemption from the State vaccination requirements as she had approximately ten times before.

40. In order to comply with her beliefs, the Rule required Mrs. Nikolao to leave work early, pack up her four children, and drive approximately two hours roundtrip to WCHD to attempt to obtain a religious exemption.

41. Upon arrival, Defendants Jane Doe 1 and Jane Doe 2, employees of WCHD, pursuant to Mich. Admin. Code r. 325.176(12) and the Religious Waiver Note promulgated by MDHHS, subjected Mrs. Nikolao to State-sponsored bullying and harassment because of her religious beliefs.

42. After Mrs. Nikolao stated that she had a religious objection to vaccines, Defendant Jane Doe 1 asked Mrs. Nikolao what her *actual* reason was for objecting.

43. Mrs. Nikolao again asserted that she had a religious objection and the nurse repeatedly stated that she needed to be more specific.

44. Mrs. Nikolao refused because she did not want to share her personal religious beliefs with the government and the Michigan exemption statute did not require her to do so.

45. Defendant Jane Doe 1 insisted on more specifics because the “State’s got documentation that a lot of the religions are now going for the vaccines.”

46. Mrs. Nikolao still refused.

47. Defendant Jane Doe 1 pressed harder, repeatedly asking what Mrs. Nikolao’s belief was and if it had to do with the ingredients in vaccines or injections.

48. Mrs. Nikolao insisted her request for an exemption was based upon her religious beliefs.

49. Defendant Jane Doe 1 then left to get her supervisor, Defendant Jane Doe 2.

50. Mrs. Nikolao explained to Defendants Jane Doe 1 and Jane Doe 2 that the State law only required a person to assert a religious objection.

51. Defendant Jane Doe 2 issued an ultimatum: if Mrs. Nikolao wanted the statutorily mandated religious waiver, she needed to declare what religion she practices, explain her religious beliefs, and engage in a back and forth discussion with the Wayne County nurse concerning her religious objection because, according to Defendant Jane Doe 2, *there are no religions that have objections to vaccines.*

52. Defendant Jane Doe 2 then showed Mrs. Nikolao the Religious Waiver Note created and promulgated by MDHHS, which contains

misrepresentations and lies about Catholic beliefs and teachings.

53. As a Roman Catholic, Mrs. Nikolao believes that the Pope “is the perpetual and visible source and foundation of the unity both of the bishops and of the whole company of the faithful.” *Catechism of the Catholic Church*, 882 (internal quotation marks and citations omitted). The Pope, as Vicar of Christ, “has full, supreme, and universal power over the whole Church, a power which he can always exercise unhindered.” *Id.* (internal quotation marks and citations omitted).

54. Defendants attempted to use Mrs. Nikolao’s beliefs and adherence to Papal authority to coerce her into vaccinating her children by telling her lies about the Catholic faith and untrue Papal statements.

55. In the end, despite the Michigan statute providing an exemption for religious convictions, Defendants refused to give Mrs. Nikolao a religious exemption, requiring her to mask her religious beliefs in the shroud of an “other” objection.

56. This façade on its own violated Mrs. Nikolao’s religion since, as a Catholic, she has a “grave responsibility . . . to make a *conscientious* objection with regard to those [vaccines] which have moral problems.” (Exhibit D) (emphasis added).

57. Defendants deprived Mrs. Nikolao of her religious and moral responsibility to object to the aborted fetal cell vaccinations on account of her religion, forcing her to violate her beliefs.

58. Mrs. Nikolao did her best under the circumstances to fully comply with her religion by placing “v.c.” (an abbreviation for the Latin term “*vi coactus*,” which indicates that a person is signing under duress) before her signature but MDHHS and WCHD, through enforcement of the Rule, took away her statutory right to make her conscientious religious objection, as required by the teachings of her faith, by characterizing her religious objection as “other” and not as religious.

59. Mrs. Nikolao will be forced to undergo these constitutional violations again in fall 2016 in an attempt to comply with her religious beliefs by seeking an exemption for one of her children from the State vaccination requirements.

FIRST CAUSE OF ACTION
(Violation of the Free Exercise Clause of the
First Amendment)

60. Plaintiff incorporates by reference all stated paragraphs.

61. The Rule and Defendants’ enforcement of the Rule substantially burden Mrs. Nikolao’s free exercise of religion without being the least restrictive means of furthering a compelling governmental interest in violation of the First Amendment to the United States Constitution as applied to the States and their political subdivisions under the Fourteenth Amendment and 42 U.S.C. § 1983.

62. Defendants have deprived and continue to deprive Mrs. Nikolao of the right to freely exercise her faith.

63. The Rule and Defendants' enforcement of the Rule are not neutral or generally applicable because parents with specific religious beliefs and who practice specific religions are singled out and pressured into compliance.

64. The Rule and Defendants' enforcement thereof forced Mrs. Nikolao to choose between two alternatives that violated her faith: either inject her children with vaccines produced from abortions or deny her faith and duty to make a conscientious objection by taking an "other" exemption.

65. The Rule and Defendants enforcement thereof coerced Mrs. Nikolao into violating her beliefs and penalized her for her beliefs by threatening to deny her the rights, benefits, and privileges enjoyed by other citizens.

66. The Rule and Defendants' enforcement thereof place a substantial burden on Mrs. Nikolao's religious exercise.

67. The hassle of taking time off work and driving to the local health department is a substantial burden on the exercise of her religion.

68. Undergoing a religious inquisition filled with lies about her faith from health department employees is a substantial burden on Mrs. Nikolao's religious exercise.

69. The Rule is not the least restrictive means of encouraging parents to vaccinate their children or providing for public health and safety.

70. For nearly 40 years, the State implemented a different exemption process codified in Mich. Comp. Laws § 333.9215 (2016), which it still follows for medical exemptions.

71. Defendants do not have a compelling interest in forcing Mrs. Nikolao to violate her faith.

SECOND CAUSE OF ACTION
(Violation of the Establishment Clause of the
First Amendment)

72. Plaintiff hereby incorporates by reference all stated paragraphs.

73. The Rule and Defendants' enforcement of the Rule excessively entangle the government in religion in violation of the First Amendment to the United States Constitution as applied to the States and their political subdivisions under the Fourteenth Amendment and 42 U.S.C. § 1983.

74. Defendants Jane Doe 1 and Jane Doe 2, acting pursuant to the Rule and the Religious Waiver Note promulgated by MDHHS and WCHD, told Mrs. Nikolao that her beliefs were wrong as "no religions oppose vaccination" and attempted to instruct her on the teachings of the Catholic Church.

75. "[C]ivil determination of religious doctrine" violates the First Amendment. *Serbian E Orthodox Diocese v Milivojevich*, 426 U.S. 696, 709 (1976).

76. Defendants Jane Doe 1 and Jane Doe 2, acting pursuant to the Rule and the Religious Waiver Note promulgated by MDHHS and WCHD, inquired into Mrs. Nikolao's sincerely held religious beliefs,

refusing to give her a religious waiver unless she engaged in a back and forth discussion on her beliefs.

77. Defendants gave false quotes from the Pope, using his authority to attempt to manipulate Mrs. Nikolao into violating her sincerely held religious beliefs.

78. Defendants put on the guise of religious instructors in an attempt to further their agenda.

79. Defendants violate the Establishment Clause by forcing their interpretation of religious documents and beliefs on parents.

THIRD CAUSE OF ACTION
(Violation of Mich. Const. art 1, § 4)

80. Plaintiff hereby incorporates by reference all stated paragraphs.

81. The Constitution of the State of Michigan guarantees that “[e]very person shall be at liberty to worship God according to the dictates of his own conscience” and that “[t]he civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief.” Mich. Const. art. 1, § 4.

82. Defendants have forced Ms. Nikolao to violate the dictates of her conscience.

83. Defendants have diminished Ms. Nikolao’s civil and political rights, and privileges and capacities because of her religious belief.

84. The Rule and Defendants’ enforcement of the Rule substantially burden Mrs. Nikolao’s ability to

worship God according to the dictates of her conscience without being the least restrictive means of furthering a compelling governmental interest in violation of Article 1, Section 4 of the Michigan Constitution.

85. Defendants have deprived and continue to deprive Mrs. Nikolao of the rights and privileges afforded to other citizens because of her religious beliefs.

86. The Rule and Defendants' enforcement thereof forced Mrs. Nikolao to choose between two alternatives that violated the dictates of her conscience: either inject her children with vaccines produced from abortions or deny her faith and duty to make a conscientious objection by taking an "other" exemption.

87. The Rule and Defendants enforcement thereof coerced Mrs. Nikolao into violating her beliefs and penalized her for her beliefs by threatening to deny her the rights, benefits, and privileges enjoyed by other citizens.

88. The Rule and Defendants' enforcement thereof place a substantial burden on Mrs. Nikolao's religious exercise.

89. The hassle of taking time off work and driving to the local health department is a substantial burden on the exercise of her religion.

90. Undergoing a religious inquisition filled with lies about her faith from health department employees is a substantial burden on Mrs. Nikolao's religious exercise.

91. The Rule is not the least restrictive means of encouraging parents to vaccinate their children or providing for public health and safety.

92. For nearly 40 years, the State implemented a different exemption process codified in Mich. Comp. Laws § 333.9215, which it still follows for medical exemptions.

93. Defendants do not have a compelling interest in forcing Mrs. Nikolao to violate her faith.

**FOURTH CAUSE OF ACTION
(Violation of Mich. Comp. Laws § 333.9215)**

94. Plaintiff hereby incorporates by reference all stated paragraphs.

95. In 1978, nearly 40 years ago, the Michigan legislature set forth the procedure for a parent to exempt a child from vaccination requirements on religious grounds.

96. The procedure remained virtually the same until the Rule came into effect in 2015.

97. As laid out in Mich. Comp. Laws § 333.9215, a child ***is exempt*** from immunizations if: (1) parents puts in writing that they cannot comply with the vaccination requirements because of religious convictions or other objections and (2) parents present that written statement to the administrator of the child's school.

98. Ignoring this statutory mandate, the Rule sets forth additional requirements that conflict with the nondiscretionary language “is exempt” in Mich. Comp. Laws § 333.9215.

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99. The Rule requires that parents get their exemption certified by the local health department and receive education on the risks of not vaccinating their child. Mich. Admin. Code, r. 325.176 (12).

100. MDHHS cannot change laws enacted by the legislature.

101. The Joint Committee on Administrative Rules cannot change laws enacted by the legislature.

102. Mich. Comp. Laws § 333.9215 sets forth a mandatory, nondiscretionary exemption if a parent complies with two requirements.

103. The Rule changes the law, which sets forth the procedure for obtaining a religious vaccine exemption waiver, and is, therefore, prohibited by Mich. Comp. Laws § 333.9215.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully asks that the Court:

- a. Assume jurisdiction over this action;
- b. Declare that Defendants violated Plaintiff's fundamental federal and State constitutional rights as set forth in this complaint;
- c. Declare that Mich. Admin. Code r. 325.176(12) is unconstitutional on its face;
- d. Declare that Mich. Admin. Code r. 325.176(12) is unconstitutional as applied to Plaintiff;

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e. Declare that Mich. Admin. Code r. 325.176(12) conflicts with the nondiscretionary mandate in Mich. Comp. Laws § 333.9215;

f. Enter preliminary and permanent injunctions enjoining Defendants from enforcing Mich. Admin. Code r. 325.176(12);

g. Declare that the Religious Waiver Note is unconstitutional on its face;

h. Enter preliminary and permanent injunctions enjoining Defendants from utilizing the Religious Waiver Note;

i. Enter an injunction ordering Defendants to change Mrs. Nikolao's "other" exemption to a religious exemption;

j. Award Plaintiff nominal damages against Defendants for loss of her constitutional rights;

k. Award Plaintiff her reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law; and

l. Grant such other and further relief as the Court finds just and proper.

Date: July 7, 2016

Respectfully submitted,

THOMAS MORE LAW CENTER

/s/ Kate Oliveri

Kate Oliveri, Esq. (P79932)

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P.O. Box 393

App. 75

Ann Arbor, MI 48106
Phone: 734.827.2001
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Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury of all issues triable of right by a jury.

Date: July 7, 2016

Respectfully submitted,

/s/ Kate Oliveri
Kate Oliveri, Esq. (P79932)

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EXHIBIT B

Religion

February 4, 2015

Concern: My child cannot receive vaccines today based on our religious beliefs.

Note for LHD Staff:

- Religious objections to vaccines are generally based on one of these tenets:
 - An ethical dilemma associated with using human tissue cells to create vaccine
 - The belief that the body is sacred and should not receive certain chemicals, blood or tissues from animals
 - A belief that the body should be healed by God or natural means
- Objection to vaccine for religious reasons may be masking the parent's or guardian's real question regarding safety, which is not a true religious objection. This would be a philosophical objection. However, understanding and acceptance may need to occur in regards to a person's religious beliefs.
- A religion may not necessarily be opposed to vaccines (or western medicine), but the person's religious views are real to them. Each person has the right to practice their beliefs and choose the form of health care they want.
- The key to this conversation is to respect their religious views while informing them of your concerns about vaccine preventable

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diseases (the risk of disease and benefit of vaccinations). You may want to add in some vaccine preventable disease stories.

- There is some information regarding some religions and their beliefs after “Risk of Disease” (see next page).

General Responses on Religion

- I understand your concern between vaccinating your child and following your religious beliefs, but I am also concerned about the risk to your child. Vaccine preventable diseases are still occurring.
- I have some information regarding your concern about vaccines. We could review your concerns, if that is okay with you.

Risk of Disease

- Some vaccine preventable diseases, like hepatitis A and chickenpox, remain common in the U.S. Without vaccines, your child is at risk for getting seriously ill and suffering pain, disability and even death from these diseases.
- Other diseases prevented by vaccine are no longer common in this country because of vaccines. However, if we stop vaccinating, even the few cases we have in the U.S. could very quickly become tens to hundreds of thousands of cases.
 - In 2008, a total of 140 measles cases was reported, the largest annual total since 1996. Persons younger than 20 years of age accounted for 76% of the

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cases; 91% were in persons who were unvaccinated (most because of personal or religious beliefs) or of unknown vaccination status.

Benefit of Vaccination

- Vaccines can prevent infectious diseases that once killed or harmed many infants, children and adults.
- Vaccines reduce the risk of infection by working with the body's natural defenses to help it safely develop immunity to disease.
- Some diseases that are prevented by vaccines, like pertussis and chickenpox, remain in the United States but other diseases are no longer common in this country primarily due to safe and effective vaccines.
- Remember – If we stopped vaccinating, even the few cases of disease we have in the United States could quickly become thousands of cases.
- A child is far more likely to be seriously injured by a vaccine-preventable disease than by any vaccine.
 - Before the MMR Vaccine, Mumps made approximately 200,000 people sick each year in the U.S.
 - Before the Varicella Vaccine, the U.S. reported:
 - An estimated 4 million cases of chickenpox a year
 - Leading to approximately 11,000 hospitalizations and 100 deaths

- Vaccines not only protect your family, but also help prevent the spread of these diseases to your friends and loved ones.

Information regarding Religions

Resource found at Immunization Action Coalition

<http://www.immunize.org/journalarticles/concrelig.asp>

Journal Article: What the World's religions teach, applied to vaccines and immune globulins.

John D. Grabenstein

<http://www.ncbi.nlm.nih.gov/pubmed/23499565>

Jainism, Buddhism, Hinduism (linked via ahimsa):

- Respect for all life, favoring nonviolence.
- Recognize the need to sustain human life, with regretful acceptance of cooking food, boiling water, using antibiotics and vaccines.

Judaism:

- Consider the duty to protect one's children and one's neighbors; do not stand idly by.
- Dietary kosher limitations on medications with porcine components apply to oral administration, but not to injection. Even so, consider the importance of medicine in preserving life.

Christianity:

- Vaccines with remote fetal implications are morally acceptable (with a duty to protect children), unless alternative products are available.

App. 81

- Jehovah's Witnesses may accept certain blood derivatives, including immune globulins, interferons, coagulation factors, erythropoietin, and others.
- Concern that 'the body is a temple not to be defiled' contrasts with other Scripture passages and modern quality-control requirements for vaccines and immune globulins.

Christian Science:

Relationship with Western medicine

It's up to each person who practices Christian Science to choose the form of health care he or she wants. Many Christian Scientists decide to pray first about every challenge - including health issues - and find it effective. Many health care professionals today are recognizing options outside of conventional medicine. Christian Scientists recognize and respect the interests of medical professionals and don't oppose them. We all care about the preventive and curative aspects of health care. Like all systems of healing, the track record for Christian Science isn't perfect. But, over 80,000 Christian Science healings have been published throughout the past 140 years, including severe cases. <http://christian-science.com/>

Islam:

- Consider the law to protect life, the principle of preventing harm (izalat al-dharar), and the principle of the public interest (maslahat al-ummah).

App. 82

- Vaccines are intended for important medicinal purpose, not diet.
- Vaccines help protect others.
- Consider the law of necessity, whether alternative vaccines are available.

Further resource that reviews religious groups:

Every Child by Two

Religious Views of Vaccination At-A-Glance

http://www.vaccinateyourbaby.org/pdfs/religion_at_a_glance.pdf

Response to Concerns about Vaccines Made Using Fetal Tissues

- Vaccines do not contain fetal tissue, but a few vaccines involve growing the viruses in human cell culture.
- Two cell lines provide the cultures needed to produce vaccines.
- These cell lines were developed from two fetuses in the 1960s.
 - The fetal cells used to grow the vaccine viruses were isolated from two elective abortions (aborted for medical reasons not for the purpose of producing vaccines).
- The fetal cell lines have an indefinite life span, which means that no new aborted fetuses are ever used.
 - The same two cell lines are reproduced and used repeatedly so that no new fetal cells are required in the ongoing production of vaccines.

App. 83

- Fetal cells are used to make five vaccines: rubella, varicella (chickenpox), hepatitis A, zoster (shingles) and rabies.
- The purpose for using fetal cells:
 - Viruses, unlike bacteria, require cells to grow and human cells are often better than animal cells at supporting the growth of human viruses.
 - Fetal cells are different from other types of cells in that they are virtually immortal, meaning they can reproduce many, many times before dying.
 - Other cells only reproduce a limited number of times before they die.
- This means no fetal tissue is included in the vaccines, so children are not injected with any part of an aborted fetus.
- The use of vaccines has been questioned by people whose religious beliefs are against abortions.
 - In 2005, Pope Benedict XVI addressed this question. It was determined that parents who chose not to give vaccines derived from these cells would be in “more proximate cooperation with evil” than those who gave their children the vaccines in question because of the life-saving nature of vaccines.
 - Similarly, the National Catholic Bioethics Center determined that use of vaccines grown in fetal cells isolated from historic abortions was morally acceptable.

Response to Concerns about Gelatin

- Some vaccines contain gelatin as a stabilizer. Stabilizers are added to vaccines to protect the active ingredients from degrading during manufacture, transport and storage.
- A list of vaccines and their ingredients can be found at: <http://www.cdc.gov/vaccines/pubs/pinkbook/downloads/appendices/B/excipient-table-2.pdf>
- FluMist does contain hydrolyzed porcine gelatin but there are other flu vaccines available without gelatin. See complete list of vaccines and the ingredients at the link in the previous bullet.
- Gelatin is made from the skin or hooves of pigs. It can alternatively be derived from a bovine source.
- Some religious groups, including Jews, Muslims, and others, follow dietary rules that prohibit pig products.
 - This is concerning to some parents.
- Some religious groups have approved the use of gelatin-containing vaccines for their followers for several reasons:
 - Vaccines are injected, not ingested (the exception to this would be the rotavirus vaccine, which does not contain gelatin).
 - Gelatin in vaccines has been highly purified and hydrolyzed (broken down by water).
 - It is much smaller than that found in nature; therefore, religious leaders believe it to be different enough that it does

not break the religious dietary laws.

- Leaders from these religious groups believe that the benefits of receiving vaccines outweigh adherence to religious dietary laws.
- Religious scholars have determined that the transformation of pork products into gelatin alters them sufficiently to make it permissible for observant Muslims to receive vaccines containing pork gelatin and to take medicine packaged in gelatin capsules.
- According to Jewish laws, there is no problem with porcine or other animal derived ingredients in non-oral products.
 - This includes vaccines.
- Some people are allergic to gelatin.
 - Refer to “Gelatin” under the Waiver Education *Ingredients* handout.

Response to Concerns about Fetal Bovine Serum

- Fetal bovine serum is used in growth media in the production of some vaccines. Because it is a by-product of the process, it is present in minuscule quantities.
- The cells are a source of nutrition, which in some instances may be provided by fetal bovine serum.
- Once the viruses are harvested, they undergo multiple processing and purification steps before the final product is released to the market.

App. 86

- According to Jewish laws, there is no problem with porcine or other animal-derived ingredients in non-oral products.
 - This includes vaccines.

Resources (*Available in Spanish)

Centers for Disease Control (CDC)

Vaccine Excipients and Media Summary

<http://www.cdc.gov/vaccines/pubs/pinkbook/download/s/appendices/B/excipient-table-2.pdf>

Website - Common Immunization Questions

<http://www.cdc.gov/vaccines/vac-gen/common-faqs.htm>

Food and Drug Administration

<http://www.fda.gov/BiologicsBloodVaccines/SafetyAvailability/VaccineSafety/ucm187810.htm>

Children's Hospital of Philadelphia

*Vaccine Ingredients - what you should know

<http://vec.chop.edu/export/download/pdfs/articles/vaccine-education-center/vaccine-ingredients.pdf>

Immunization Action Coalition

Website - IAC's Vaccine Concerns

Religious and Ethical Concerns Resources

<http://www.immunize.org/concerns/religious.asp>

Facts about Childhood Vaccine Ingredients

<http://www.immunize.org/concerns/vaccine-components.pdf>

American Academy of Pediatrics

Questions and Answers about Vaccine Ingredients

<http://www2.aap.org/immunization/families/faq/Vaccineingredients.pdf>

Every Child by Two

Religious Views of Vaccination At-A-Glance

http://www.vaccinateyourbaby.org/pdfs/religion_at_a_glance.pdf

Specific Resources on Fetal Tissue:

Letter from Vatican

<http://www.immunize.org/concerns/vaticandocument.htm>

Congregation for the Doctrine of the Faith

http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20081208_dignitas-personae_en.html

Website - Christian Medical and Dental Associated

Immunization Ethics Statement

<http://www.cmda.org/resources/publication/immunization-ethics-statement>

Website - Catholic News Service

Vatican: Parent may allow kids to get vaccines linked to abortion

<http://www.catholicnews.com/data/stories/cns/0806245.htm>

Institute for Vaccines

Moral Reflections on Vaccines Prepared From Cells Derived From Aborted Human Foetuses

http://www.lifeissues.net/writers/doc/doc_40vaccinesfoetuses.html

Consenting to vaccination for Rubella

<http://www.cdc.gov/vaccines/imz-managers/laws/rubella-cathnews.html>

Specific Resources on Gelatin

WHO

Statement from the Seminar held by the Islamic Organization for Medical Sciences Concerning the Use of Pork Gelatin

<http://www.immunize.org/concerns/porcine.pdf>

UK National Health Services

Statement from Rabbi Alder Concerning the Use of Porcine and Animal Products in Vaccines

http://www.immunize.org/concerns/concerns_observant_Jews.pdf

Institute for Vaccine Safety

<http://www.vaccinesafety.edu/Porcine-vaccineapproval.htm>

Specific Resources on Bovine

UK National Health Services

Statement from Rabbi Alder Concerning the Use of Porcine and Animal Products in Vaccines

http://www.immunize.org/concerns/concerns_observant_Jews.pdf

Food and Drug Administration

<http://www.fda.gov/BiologicsBloodVaccines/SafetyAvailability/ucm111476.htm>

LHD resource

BMC Health Services Research

How healthcare professionals respond to parents with religious objection to Vaccination: a qualitative study

<http://www.biomedcentral.com/content/pdf/1472-6963-12-231.pdf>