No. _____

In the Supreme Court of the United States

WE THE PATRIOTS USA, INC., JANE DOE, ON HER OWN BEHALF AND ON BEHALF OF CHILD 1,

Applicants,

v.

VENTURA UNIFIED SCHOOL DISTRICT, ANTONIO CASTRO, IN HIS OFFICIAL CAPACITY ONLY, ERIK NASARENKO, IN HIS OFFICIAL CAPACITY ONLY, SARA BRUCKER, IN HER OFFICIAL CAPACITY ONLY, TONY THURMOND, IN HIS OFFICIAL CAPACITY ONLY, ERICA PAN, IN HER OFFICIAL CAPACITY ONLY,

Respondents.

To the Honorable Elena Kagan
Associate Justice of the United States Supreme Court
And Circuit Justice for the Ninth Circuit

EMERGENCY APPLICATION FOR WRIT OF INJUNCTION

RELIEF REQUESTED BY SEPTEMBER 19, 2025

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September 11, 2025

QUESTION PRESENTED

Jane Doe religiously objects to deriving any benefit from abortion. California requires children to receive certain vaccinations to attend public and private schools. California's required vaccinations are tested or developed using cell lines derived from aborted fetuses. The Respondents — California public health and educational officials — recognized a religious exemption for Jane Doe's son for two years more than they should have under California law. In January 2025, they excluded him from school and criminally prosecuted Jane Doe in May 2025 because of her faith. Jane Doe tried everything to get her son back into school — alternative immunizations, a special education exemption, etc. — but the Respondents will only be satisfied with requiring her to violate her conscience. As the new school year is underway, Jane Doe's son remains excluded from school because of his mother's unwavering faith.

Lower courts denied Jane Doe's pleas for relief and have trapped her in limbo by staying her case pending the Ninth Circuit's resolution of similar cases filed earlier in time. Her son's future depends on getting relief from this Court.

The question presented is:

1. Whether California Health and Safety Code violates Jane Doe's First Amendment right to direct her son's religious upbringing by excluding him from every California school unless he receives vaccinations in violation of Jane Doe's faith?

2. Whether California Health and Safety Code § 120335 lacks general applicability because it permits medical exemptions, but not religious exemptions?

PARTIES TO THE PROCEEDING

The Applicants are We The Patriots USA, Inc. and Jane Doe. They are the Plaintiffs in the United States District Court for the Central District of California and the appellants before the United States Court of Appeals for the Ninth Circuit.

The Respondents are Ventura Unified School District ("VUSD"), Antonio Castro (VUSD's superintendent), Erik Nasarenko (Ventura County District Attorney), Sara Brucker (Ventura County Deputy District Attorney), Tony Thurmond (California State Superintendent of Public Instruction), and Erica Pan (Director of the California Department of Public Health). They are the Defendants in the United States District Court for the Central District of California and the appellees before the United States Court of Appeals for the Ninth Circuit.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

We The Patriots USA, Inc., does not have any parent entities, and no parent entity or publicly held company owns 10% or more of its stock.

DECISIONS BELOW

The United States Court of Appeals for the Ninth Circuit's decision denying an injunction pending appeal is entitled *We The Patriots USA, Inc. et al. v. Ventura Unified School District, et al.*, No. 25-05239 (C.A.9 Sept. 9, 2025) and is reproduced at App.2. The United States District Court for the Central District of California's decision denying the Applicants' renewed emergency application for a temporary restraining order and a preliminary injunction is entitled *We The Patriots USA, Inc. et al. v. Ventura Unified School District, et al.*, No. 2:25-cv-04659-AB-JC (C.D. Cal. Aug. 15, 2025) and is reproduced at App.4-6. The district court's order denying the

Applicants' emergency application for an injunction pending appeal is reproduced at App.8-9. The district court's order granting Respondent Pan's motion to stay the underlying case is reproduced at App.11-16.

JURISDICTION AND TIMING

The district court had federal question jurisdiction under 28 U.S.C. § 1331.

The United States Court of Appeals for the Ninth Circuit had appellate jurisdiction over the district court's denial of the Applicants' motion for a preliminary injunction under 28 U.S.C. 1292(a)(1). The Respondents challenged the Ninth Circuit's appellate jurisdiction on the basis that the district court only denied a non-appealable temporary restraining order and that the Applicants failed to properly notice a motion for a preliminary injunction. That is incorrect. The district court explicitly denied the Applicants' application for a preliminary injunction. App.6. Even if it did not, the district court converted the denial of the temporary restraining order into a preliminary injunction denial by staying the case, which denied the Applicants the chance to seek a noticed preliminary injunction. App.11-16.

This Court has jurisdiction over this application and petition under 28 U.S.C. § 1254(1) and 28 U.S.C. § 1651.

The Applicants have acted diligently to protect their rights. They filed their complaint on May 22, 2025. The district court denied their request for a temporary restraining order on June 17, 2025. The Applicants renewed their application for emergency and preliminary injunctive relief on August 12, 2025, and the district court denied it on August 15, 2025. The Applicants appealed on August 18, 2025. Doe

then sought an injunction pending appeal from the district court, which the district court denied on August 29, 2025. The same day, the district court stayed the underlying action pending the Ninth Circuit's decisions in *Royce v. Pan*, No. 25-2504 (C.A.9); and *Doescher v. Aragon*, No. 25-4531 (C.A.9), thus effectively eliminating any possibility of pursuing injunctive relief in the district court. The Ninth Circuit denied the Applicants' Emergency Motion for An Injunction Pending Appeal on September 9, 2025. The Applicants filed this Emergency Application less than 48 hours later.

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EMERGENCY APPLICATION FOR INJUNCTIVE RELIEF PENDING APPEAL

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States:

Pursuant to Rules 22 and 23 of this Court and 28 U.S.C. § 1651(a), the Applicants respectfully request an injunction preventing enforcement of Cal. Health & Safety Code § 120335's school vaccination requirement against Jane Doe and all similarly situated members of We The Patriots USA, Inc. until the timely filing and disposition of a petition for a writ of certiorari. In the alternative, the Applicants suggest that this application be treated as a petition for certiorari and granted so that the Court can promptly address the important issues presented here on its merits docket. In either case, the Applicants request an administrative stay during the emergency briefing and deliberations on this application.

The First Amendment does not permit California to exile children from public school because their parents seek to raise them in accordance with their religious beliefs. *Mahmoud v. Taylor*, 145 S.Ct. 2332 (2025). That principle protects parents' right to opt their children out of LGBTQ+ school curricula. *Id.* It also protects parents' right to opt their children out of an act that would render them complicit in abortion. The district court in this case did not see it that way and threw procedural roadblocks in front of the Applicants to deny them relief without engaging with the merits and to frustrate their chances of obtaining review. App.4-6. The Ninth Circuit did not

explain whether it engaged with the merits, although its citation of the preliminary injunction standard suggests that it did. App.2.

This case now tests the promises of the Court's precedents. The Constitution's promise of religious freedom does not end "'at the schoolhouse gate.'" *Mahmoud*, 145 S.Ct. at 2350 (quoting *Tinker v. Des Moines Ind. Comm. School Dist.*, 393 U. S. 503, 506–507 (1969)). Courts must "apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization." *West Virginia State Bd. Of Ed. v. Barnette*, 319 U.S. 624, 641 (1943). In particular, the First Amendment protects against "coercive elimination of dissent." *Id*. These principles apply even in public health emergencies where governments act for the collective interest. *See e.g., Tandon v. Newsom*, 141 S.Ct. 1294 (2021); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S.Ct. 63 (2020).

Unfortunately, this judicially promised land — where parents are free to raise their children in their religion free from undue state interference — is proving hard to reach for parents of diverse religious backgrounds who share one common minority view: an adamant religious objection to childhood vaccines. In some states, such parents still find themselves faced with an unenviable choice: obey their God and sacrifice their children's futures, or cave to the state and sacrifice something of their souls and their children's sanctity. This is so, because lacking a specific mandate from this Court regarding the constitutionality of school vaccine mandates under the First Amendment, lower courts are too often treating school vaccine mandates as neutral and generally applicable laws that do not compel vaccination and do not target

religious dissenters — often dismissing suits at early stages without giving plaintiffs a fair chance to demonstrate otherwise. *See*, *e.g.*, *We The Patriots USA, Inc. v. Connecticut Office of Early Childhood Development*, 76 F.4th 130 (C.A.2 2023); *Miller v. McDonald*, 130 F.4th 258 (C.A.2 2025). Failing to apply strict scrutiny leaves dissenting parents and their powerless children in the very kind of no-win scenario the First Amendment is supposed to prevent.

Jane Doe's case is one of the starkest examples of this no-win scenario. Because of her religious objection to vaccines, her teenage son has been barred from school for more than eight months and she herself faced prosecution (until prosecutors thought better of taking on a First Amendment challenge in criminal court). Her son cannot attend school ever again in California unless she violates her religious beliefs about vaccines. Without injunctive relief, she faces the prospect that her son will reach adulthood without a high school education. At the very least, he will continue to miss month after month of educational and social opportunities available to his peers while his life remains on hold indefinitely. The ruination of a young man's future is not a price anyone in this supposedly free land should have to pay for obedience to her God, as she understands Him. Alternatively, Doe can disobey her religious convictions and vaccinate her son, thus permanently destroying any possibility that his religious development will be in accordance with her beliefs about vaccines and teaching the exact lesson no sincere religious parent want their child to learn: that the will of God is optional whenever your back is to the wall. Jane Doe respectfully requests the

Court grant this application to prevent this unconstitutional result from occurring while litigation is pending.

STATEMENT OF THE CASE

I. California School Vaccination Laws

In 2015, California repealed its longstanding "personal beliefs exemption" to its school vaccination law. Stats.2015, c. 35 (S.B.277). The "personal beliefs exemption" stood as a catch-all exemption for objections to California's school vaccination requirements — covering both religious objections and non-medical secular objections.

As it stands today, California's school vaccination law requires, by statute, children to be vaccinated for ten statutorily specified diseases and any other diseases that the California Department of Public Health concludes must be vaccinated against. Cal. Health & Safety Code § 120335(b). It grants the California Department of Public Health full authority to specify the appropriate vaccinations and the manner in which they may be administered. Cal. Health & Safety Code § 120335(e).

The law contains five major exemptions. First, California permits students who have a physician-approved medical exemption to attend school while they are unvaccinated. Cal. Health & Safety Code § 120370. Second, California preserves "personal beliefs exemptions" for any disease that is not specified in the statute and for which the California Department of Public Health determines vaccination is appropriate. Cal. Health & Safety Code § 120338. Third, California allows students receiving special education to continue to access those services regardless of their

vaccination status or the reasons that they might be unvaccinated. Cal. Health & Safety Code § 120335(h). Fourth, California permits the temporary admission of foster children whose vaccination records are not available or are missing — even if they may be unvaccinated. Cal. Health & Safety Code § 120341. Fifth, California permits unvaccinated students to attend school if they submitted a personal beliefs exemption prior to January 1, 2016 for grade spans (birth to preschool, kindergarten to grade 6, and grades 7 to 12). Cal. Health & Safety Code § 120335(g). These children must become vaccinated by the time they reach the next grade span. *Id.* (This time has passed, though. For a kindergartener in 2016, the next checkpoint was the seventh grade, or 2023).

California has also statutorily articulated its interests in this vaccination scheme as being in "the eventual achievement of total immunization of appropriate age groups" against various contagious diseases. Cal. Health & Safety Code § 120325. In SB276's amendments to its immunization requirements, California's legislature made further findings as to California's interests. It found that "[i]mmunizations are public health measures to ensure protection against debilitating and sometimes fatal diseases." 2019 Cal. Legis. Serv. Ch. 278 (S.B. 276), § 1(a). It then found that "[i]mmunization requirements have led to greatly diminished or eliminated debilitating childhood diseases, such as measles. 2019 Cal. Legis. Serv. Ch. 278 (S.B. 276), § 1(b). California's legislature also recognized that "herd or community immunity" — as the result of "effective immunization" — "not only protect[s] immunized individuals from disease, but also [has] the ability to provide indirect

protection for which immunizations are not effective or safe." 2019 Cal. Legis. Serv. Ch. 278 (S.B. 276), § 1(f). Lastly, it found that "[h]erd immunity successfully occurs if and when a sufficient portion of the community is immune. Herd immunity prevents sustained transmission of disease even when immunization coverage is below 100 percent." 2019 Cal. Legis. Serv. Ch. 278 (S.B. 276), § 1(g).

II. Jane Doe

Jane Doe is a practicing Christian who holds Judeo-Christian religious beliefs that abortion is sinful, that to benefit from an abortion — no matter how remote in time that abortion occurs — would be a sin before God, and that the Christians have a religious duty before God to keep their bodies pure as the temple of the Holy Spirit. App.18-19, ¶¶ 1, 3-5. She is raising her son, Child 1, in accordance with these religious beliefs. App.19, ¶ 6.

Child 1 has been a student in the VUSD since 2014-15. App.19, ¶ 9. In March 2015, Doe received a "personal beliefs exemption" from VUSD that exempted Child 1 from California's school immunization requirements. App.19, ¶ 9. Doe sought this exemption because she understood that all of the school immunizations required by California law are researched, developed, tested, and/or produced using cell lines artificially developed from aborted fetuses and contain products that could result in harm to a human recipient. App.19, ¶ 7.

Because Doe knew that the Respondents would accommodate her religious beliefs only until Child 1 began seventh grade, she obtained homeoprophylaxis immunizations for him, beginning in 2020, because they did not violate her religious

beliefs. App.19, ¶¶ 11-12. She completed this process in and submitted proof of it to VUSD in August 2022. App.19, ¶ 13. VUSD accepted the proof of immunization, admitted Child 1 to seventh grade, and did not raise an objection until December 2024. App.20, ¶¶ 14-15. On December 12, 2024, VUSD informed Doe that it would exclude Child 1 from school effective January 7, 2025 due to his inadequate immunization status. App.20, ¶ 16. His last full day of attendance was December 20, 2024. App.20, ¶ 18.

VUSD then excluded him from school. App.20, ¶ 18. Doe made multiple, unsuccessful efforts to resubmit immunization records and religious objections to the required immunizations. App.20, ¶¶ 18-23. VUSD ultimately summoned Doe and her husband to a mandatory School Attendance Review Board (SARB) meeting on March 12, 2025. App.20, ¶ 24. There, Respondent Brucker threatened Doe with criminal prosecution for truancy if she did not cooperate and send her son to school with the required immunizations. App.21, ¶¶ 26-35. At an April 21 SARB meeting, Brucker again threatened Doe with prosecution for truancy if she did not abandon her religious beliefs and vaccinate Child 1. App.21, ¶ 37. When Doe refused, Brucker ordered Ventura Police Officer Matthew Thompson to issue Doe a criminal citation for truancy. App.22, ¶ 38.

The impact on Doe's son has been devastating. He struggles with social development because of disabilities, and has gone from an honor roll student who regularly received "A" and "B" grades to receiving "F" grades on all of his coursework. App.22, ¶¶ 39-42. Doe cannot afford to send her son to private school even if it were

an option and cannot homeschool him because both she and her husband work. App.22, ¶¶ 43-44.

Doe's son is currently enrolled in public school in Ventura Unified School District for the 2025-2026 school year, and Doe intends for him to receive instruction there. App.22, ¶ 48. The Defendants will not permit him to attend unless he receives the vaccinations to which Doe religiously objects. App.22-23, ¶ 49.

III. Procedural History

The Appellants filed the underlying action on May 22, 2025 and moved for emergency relief on May 24, 2025. The district court denied the application because the school year was almost at an end and because it found Jane Doe waited too long to seek judicial relief. The Applicants renewed their application for emergency relief on August 12, 2025, and the district court denied it on August 15, 2025. App.6 The Applicants appealed on August 18, 2025. Doe then sought an injunction pending appeal from the district court, which was denied on August 29, 2025. App.8-9. That same day, the district court stayed the underlying action pending the Court's decisions in *Royce v. Pan*, No. 25-2504 (C.A.9); and *Doescher v. Aragon*, No. 25-4531 (C.A.9). App.11-16.

The Applicants then moved the Ninth Circuit for an injunction pending appeal, which was denied without explanation on September 9, 2025. App.2.

REASONS FOR GRANTING THE APPLICATION

Under the All Writs Act, this Court "may issue all writs necessary or appropriate" that aid its jurisdiction and are permitted by law. 28 U.S.C. § 1651(a).

An injunction pending disposition of a petition for a timely writ of certiorari is permissible where the "applicants have clearly established their entitlement to relief pending appellate review." *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S.Ct. 63, 66 (2020) (granting injunctions pending appeal to application filed under 28 U.S.C. § 1651(a)). The Applicants make this showing when they demonstrate "that their First Amendment claims are likely to prevail, that denying them relief would lead to irreparable injury, and that granting relief would not harm the public interest." *Id.* (citing *Winter v. Natural Res. Def. Council*, 55 U.S. 7, 20 (2008)).

I. The Applicants Show A Likelihood of Success On The Merits.

A. *Mahmoud v. Taylor* requires strict scrutiny for laws that burden parents' right to raise their children in their religious beliefs.

Mahmoud v. Taylor, 145 S.Ct. 2332, 2341 (2025), held that parents who sought religious exemptions to the inclusion of "LGBTQ+ inclusive" storybooks in a school curriculum were entitled to a preliminary injunction which would permit them to have their children excused from instruction from the books. *Mahmoud* reaffirmed that parents have the right "direct the religious upbringing of their children." 145 S.Ct. at 2350 (cleaned up). "[G]overnment policies that substantially interfere with the religious development of children" violate that right. *Id.* (cleaned up). The First Amendment protects "the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of religious acts." *Id.* at 2351 (cleaned up).

The Court's analysis examined the religious practices and how they were burdened. It noted that, "for many Christians, Jews, Muslims, and others, the religious education of children is not merely a preferred practice but rather a religious obligation." *Id.* at 2351. The *Mahmoud* parents fell within this category, as "they all believe[d] they ha[d] a 'sacred obligation' or 'God-given responsibility' to raise their children in a way that is consistent with their religious beliefs and practices." *Id.* at 2351 (citation to record omitted). The First Amendment's protections on this score extend to choices "outside the home." *Id.* at 2351. Lastly, the Court found that, "due to financial and other constraints…, many parents have no choice but to send their children to a public school." *Id.* at 2351 (cleaned up). Thus, the First Amendment limits "the government's ability to interfere with a student's religious upbringing," even "in a public school setting." *Id.* at 2351.

Mahmoud instructs courts to conduct a fact-intensive inquiry into whether "a law substantially interferes with the religious development of a child." *Id.* at 2353 (cleaned up). The focus of the inquiry is the "very real threat of undermining the religious beliefs that the parents wish to instill in their children" posed by the requirement at issue. *Id.* at 2361 (cleaned up).

The Court held that the books used by the Montgomery School Board did pose a "objective danger" to free exercise because they imposed "upon children a set of values and beliefs that are hostile to their parents' religious beliefs" and "exert upon children a psychological pressure to conform to their specific viewpoints." *Id.* at 2355 (cleaned up). Further, the presentation of the books by authority figures and the

normative discussions that would take place would substantially interfere with the parents' ability to direct their children's religious upbringing. *Id.* at 2355.

Lastly, the Court soundly rejected the notion that religiously objecting parents have the option to homeschool their children and that this claimed "option" makes the burden of the law less substantial. It noted that education is expensive and that "[i]t is both insulting and legally unsound to tell parents that they must abstain from public education in order to raise their children in their religious faiths, when alternatives can be prohibitively expensive and they already contribute to financing the public schools." *Id.* at 2360.

The burden to Doe in this case is comparable to, if not greater than, the burden in *Mahmoud*. Doe avers that she is raising her son in her religious beliefs regarding the sanctity of life and the purity of the body as the temple of the Holy Spirit. App.18-19, ¶¶ 1-6. Doing so is "a sacred and God-given obligation" for her, App.19, ¶ 6, just as inculcating their religions' teachings on sexuality were God-given obligations for the *Mahmoud* parents.

Vaccinating her son would undermine her religious teaching to her son in a way that she could never explain well enough to allay any doubts he would have as to the sincerity of that teaching. App.23, ¶¶ 50-51. Doe explained in her declaration that she can muster no good answers to the question of "Why was it religiously appropriate for you to vaccinate me to go to school and benefit from abortion to send me to school, but it is not religiously appropriate to have anything to do with abortion?" App.23, ¶ 52. Any answer she gives will be a lie or undermine "the

sincerity, the truth, and the moral imperative of the religious beliefs…" she is teaching him. App.23, ¶¶ 51-54. Additionally, compromising here will undermine all of the religious teaching Jane Doe provides to her son by showing that faith can be easily discarded when adhering to it becomes inconvenient. App.23, ¶¶ 55-57.

If anything, the "objective danger" to Doe's right to direct her son's religious development is more invidious and urgent than the danger identified in *Mahmoud*. Ideas can be opposed with other ideas. Lessons may be forgotten or ignored. Whether in school or out, all people must learn to navigate ideological hostility. And yet, *Mahmoud* protects parents' right to remove their children from a school's frontal assault on the religious values they seek to instill in their children. Still more must the First Amendment protect the right of a parent to say no to a school mandate that will permanently and physically deprive her child of the ability to live consistently with the beliefs she seeks to inculcate. While a child who embraces an LGBTQ+ ideology as a result of psychological pressure might nevertheless renounce it one day, Child 1 cannot become unvaccinated once vaccinated. For the rest of his life, he will be stuck with the fact he was vaccinated against his mother's religion and will never be able to live the way she instructed him. He will never overcome the glaring evidence of the insincerity and faithlessness that his mother displayed. That burden — placed on Doe — is precisely the kind of burden that *Mahmoud* subjects to strict scrutiny.

The Respondents below disputed that *Mahmoud* applies in this case. They will invite the Court to limit *Mahmoud* to curriculum issues. But *Mahmoud* itself warns

against treating its holdings as *sui generis*, as many courts treated *Wisconsin v. Yoder*. Instead, *Mahmoud* and *Yoder* proclaim as a general principle that school policies simply may not trample the right of parents to direct the religious development of their children. "We have never confined *Yoder* to its facts. To the contrary, we have treated it like any other precedent. We have at times relied on it as a statement of general principles…. And we have distinguished it when appropriate." *Mahmoud*, 145 S.Ct. at 2357. Courts are not to be stingy with the First Amendment rights of parents. Whether a school is injecting anti-religious ideas into a child's head or defiling substances into a child's body makes no difference, as both activities interfere with the child's religious development. The First Amendment surely affords protection from physical threats to free exercise if it protects against abstract ones.

For these reasons, *Mahmoud* requires the application of strict scrutiny, which California Health and Safety Code § 120335 does not survive as explained below.

B. The Appellants Are Entitled To Strict Scrutiny Under A Traditional Free Exercise Analysis.

Even if *Mahmoud* did not require strict scrutiny, traditional free exercise analysis shows strict scrutiny should apply and that Doe is likely to prevail for two reasons. First, *Tandon v. Newsom* establishes that a law is not generally applicable when it permits any secular activity that undermines its interest the same way religious activity would. California's medical exemption to California Health and Safety Code § 120335 does just that. Second, under the comparability standard

adopted by several of the circuits, the Appellants show that medical exemptions historically substantially outnumbered religious exemptions in California.

C. California's school vaccination mandate lacks general applicability because it permits comparable secular activity that undermines California's public health interest the same way religious exemptions could.

"[L]aws incidentally burdening religion are ordinarily not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable…." *Fulton v. City of Philadelphia, Pennsylvania*, 141 S.Ct. 1868, 1876 (2021) (cleaned up). "[G]overnment regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 141 S.Ct. 1294, 1296 (2021).

"[W]hether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id*. Courts must compare "the risks various activities" pose to the government's asserted interest, not the reasons for those activities. *Id*. A law is not generally applicable when it "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, 141 S.Ct. at 1877. "Comparability is concerned with the risks various activities pose, not the reasons why people gather." *Tandon*, 141 S.Ct. at 1296.

Comparability does not consider why an exemption is wise, only the risks that exemptions pose to the law's generally applicable object.

California made findings as to its interests in amendments to California's immunization requirements. "Immunizations are public health measures to ensure protection against debilitating and sometimes fatal diseases." 2019 Cal. Legis. Serv. Ch. 278 (S.B. 276), § 1(a). "Immunization requirements have led to greatly diminished or eliminated debilitating childhood diseases, such as measles. 2019 Cal. Legis. Serv. Ch. 278 (S.B. 276), § 1(b). California also recognized that "herd or community immunity" – as the result of "effective immunization" — "not only protect[s] immunized individuals from disease, but also [has] the ability to provide indirect protection for which immunizations are not effective or safe." 2019 Cal. Legis. Serv. Ch. 278 (S.B. 276), § 1(f). "Herd immunity successfully occurs if and when a sufficient portion of the community is immune. Herd immunity prevents sustained transmission of disease even when immunization coverage is below 100 percent." 2019 Cal. Legis. Serv. Ch. 278 (S.B. 276), § 1(g). California clearly stated that its interest in the immunization requirement is to prevent the spread of specific childhood diseases and mitigate their consequences.

Medical and religious exemptions pose identical risks to this interest. A medically exempt child undermines herd immunity and the prevention of contagion spread in the same way a religiously exempt child does. No childhood disease will weigh whether a child is not immunized for medical or religious reasons before it infects them. No childhood disease will carefully consider whether an unvaccinated

child is not immunized for medical reasons or for religious reasons before it spreads from them to others. The risks posed to and by each child are identical. *Tandon* requires courts to compare the risks posed to and by a medically exempt child and a religiously exempt child on a one-to-one basis. Those risks to California's interests are identical. Thus, Cal. Health and Safety Code § 120335 lacks general applicability because of its medical exemption. Accordingly, strict scrutiny should apply.

D. Strict scrutiny should apply even under the Ninth Circuit's aggregate-impact approach to comparability.

Some circuit courts have not conducted this straightforward analysis, however. Instead, they have adopted a comparability analysis that compares the aggregate impact of medical and religious exemptions. *See Doe v. San Diego Unified School District*, 19 F.4th 1173, 1177-78 (C.A.9 2021) ; *Miller v. McDonald*, 130 F.4th 258, 267-68 (C.A.2 2025); *Spivack v. City of Philadelphia*, 109 F.4th 158, 174-177 (C.A.3 2024) .

Doe still prevails under this aggregate impact analysis based on California's own data. The California Department of Public Health collected detailed statistics on kindergartner immunization rates, medical exemptions and "personal belief exemptions" for the 2014-15 and 2015-16 school years. California intentionally did not track the reasons for personal beliefs exemptions, which also covered secular objections to vaccinations. App.28. Instead, California purported to track the number of exemptions where parents opted out of a statutorily mandated consultation with a healthcare provider for religious reasons. App.28. That data is the only publicly

available data showing the aggregate comparability of religious and medical exemptions. Anything else constitutes speculation.

In 2014-15, California reported a 90.4% kindergartner immunization rate in public and private schools. App.31 (Table 1). Exemptions based on a religious refusal to consult with a healthcare provider ("religious exemptions") were 0.19% of exempted students. *Id.* Exemptions based on beliefs that California did not track and were likely secular were 1.81%. *Id.* In other words, secular exemptions — "permanent medical exemptions" and "health care practitioner counseled" — were 1.83% of exempt California students. This percentage was more than 3 times the percentage of religiously exempt students. *Id.* In 2015-16, California reported a 92.9% kindergartner immunization rate in public and private schools. *Id.* Religious exemptions were 0.56% of exempt students. *Id.* Secular exemptions accounted for 1.98% of exempt students — again more than 3 times the number of religiously exempt children. *Id.*

The data shows that, before California's repeal of the personal belief exemption (including religious exemptions) in 2016, religious exemptions had far less of an impact on California's immunization rates than secular exemptions did. Thus, secular exemptions posed a far greater risk to California's interest in preventing the spread of contagious diseases than religious exemptions did.

In 2015-16, Ventura County schools, including VUSD, reported a 94.2% kindergartner immunization rate in public and private schools. App.35 (Table 4). Permanent medical exemptions were 0.2% of exempt students. *Id.* Healthcare

provider advised exemptions accounted for 1.94% of exempt students. App.43 (Table 6). In other words, secular exemptions accounted for 2.14% of exemptions in Ventura County. Conversely, religious exemptions accounted for 0.54% of exempt students. App.43, (Table 6). That means that secular exemptions outnumbered religious exemptions by more than 4 times.

After California stopped reporting detailed data as to personal belief exemptions in 2016-17, California and VUSD reported the following percentages of permanent medical exemptions for kindergarteners for every year that data is available since 2015-16:

Year	**California**	**VUSD**
2016-17	0.5%[1]	0.6%[2]
2017-18	0.7%[3]	1.0%[4]
2018-19	0.9%[5]	1.2%[6]
2019-20	1%[7]	1.1%[8]
2020-21	0.6%[9]	0.7%[10]

[1] App.62 (Table 1).
[2] App.66 (Table 3).
[3] App.102 (Table 1).
[4] App.106 (Table 3).
[5] App.144 (Table 1).
[6] App.148 (Table 3).
[7] App.184 (Table 1).
[8] App.188 (Table 3).
[9] App.220 (Table 1).
[10] App.226 (Table 3).

2021-22	0.3%[11]	0.2%[12]
2022-23	0.2%[13]	0.2%[14]
2023-24	0.1%[15]	0.1%[16]

California and VUSD tolerate an aggregate percentage of medical exemptions that fluctuated from being less than the number of religious exemptions claimed in 2015-16 to being double the number of religious exemptions claimed in 2015-16. In other words, they permit secular exemptions that, in the aggregate, do twice as much to undermine its interest in preventing the spread of contagious childhood diseases as religious exemptions did. Thus, religious and medical exemptions *are comparable* in the aggregate, and Cal. Health and Safety Code § 120335 must be subjected to strict scrutiny.

E. California Health and Safety Code § 120335 Cannot Survive Strict Scrutiny.

"Strict scrutiny requires the [government] to further interests of the highest order by means narrowly tailored in pursuit of those interests." *Tandon*, 141 S.Ct. at 1298 (cleaned up).

[11] App.245 (Table 1)
[12] App.251 (Table 3).
[13] App.270 (Table 1).
[14] App.251 (Table 3).
[15] App.270 (Table 1).
[16] App.271 (Table 2).

The Respondents' interests are not "of the highest order." First, the Respondents are not inflexible in preventing the spread of contagious diseases. They show ample flexibility when it comes to granting permanent or long-lasting medical exemptions — both by discretionary acts and by Cal. Health and Safety Code § 120335. They extend conditional admission to unvaccinated children if they catch up to California's immunization requirements by a given time period. Cal. Health & Safety Code § 120340. They extend unconditional admission to foster children whose immunization records are missing. Cal. Health Safety Code § 120341. They do not exclude children who receive special education services pursuant to an individualized education program. Cal. Health and Safety Code § 120335(h). Cal. Health & Safety Code § 120338 provides personal belief exemptions from other immunizations the California Department of Public Health may elect to impose over and above the requirements of § 120335. In sum, California creates substantial flexibility in how the Respondents may pursue California's interests. That flexibility belies that these interests are of such a high order as to restrict religious exercise without violating the First Amendment.

Second, the Respondents accepted Jane Doe's son's alternative immunizations and permitted him to continue attending school for over two and a half years before excluding him. They took no steps to protect California's interests from the supposed threat that Child 1 posed. That indifference also belies that the Respondents' interests are "of the highest order."

Cal. Health & Safety Code § 120335 also fails narrow tailoring. It imposes a sweeping mandate that provides no flexibility, accommodation, or understanding to conscientious objectors. Conscientious objectors are faced with a choice between violating their religious beliefs or being excluded from public and private schools in California. For many, including Doe, their only option is relocation. "Forced migration of religious minorities[, however,] was an evil that lay at the heart of the Religion Clauses." *Wisconsin v. Yoder*, 406 U.S. 205, 218 n.9 (1972). *Yoder* makes clear that laws and conduct that force migration are highly unlikely to survive a narrow tailoring analysis. Cal. Health and Safety Code § 120335 is no different. It is frankly shocking that Doe may have to literally flee California to live out her religion. The prospect should cause great dismay to this Court.

Unlike Jane Doe, California is not stuck between a rock and a hard place. There are many ways to accommodate conscientious objectors without unduly jeopardizing the state's interests. One option would be to exclude vaccine-exempt children from school during a contagious disease outbreak. This solution would allow the children of conscientious objectors to enjoy the same public education as their peers while containing the spread of contagious disease. Another option would be to identify a herd immunity percentage for schools, counties, and/or the state of California and divided exemptions equally between medical exemptions and religious exemptions, thus accommodating both religious and medical exemptions. A third option would be to provide for alternative immunization practices of the kind that

Doe sought. This option could be coupled with the others. Other solutions are conceivable.

But not only has California not tried to accommodate conscientious objectors, the Respondents also reversed course on the one alternative they provided Doe through the eighth grade. There is no evidence that alternative forms of immunization are not a reasonable alternative to facilitate California's interests. Yet, Respondents deprived Doe of even this option.

Because the Respondents did not provide any of these reasonable alternatives, or any alternative at all to violating her religious beliefs, Cal. Health and Safety Code § 120335 cannot survive strict scrutiny.

II. The Applicants Are Suffering, And Will Continue To Suffer, Irreparable Injury Without Injunctive Relief

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also Tandon*, 141 S.Ct. at 1297 (same). As discussed at length above, Cal. Health and Safety Code § 120335 and the Respondents' enforcement of it is depriving Jane Doe, her son, and all similarly situated members of We The Patriots USA, Inc. of their First Amendment rights. Thus, the Applicants are entitled to the finding of irreparable harm that *Tandon* and *Elrod* confer.

Doe also shows irreparable harm as a practical matter. If she holds true to her faith, every day that passes is a day of education lost to her son forever — a highly distressing burden on a loving mother. App.22, ¶¶ 39-44. Her disabled son is losing

the valuable social experience associated with public schooling that is critical for his social development. App.,22, ¶ 40. His continued exclusion from school is causing harm to him that will follow him for the rest of his life.

If Doe picks the alternative — vaccinating her son, she will suffer the permanent loss of her moral authority to raise her son in her faith. App.24, ¶ 59.

Monetary damages are also unavailable to Doe, and, even if they were available, they would be inadequate. Qualified immunity shields the defendants from damages claims. The Eleventh Amendment bars damages claims against California, and a *Monell* claim is unlikely to succeed against VUSD. Doe's only hope for justice is injunctive relief.

The district court declined to find irreparable harm because it faulted Jane Doe for waiting as long as she did to seek relief, and the Ninth Circuit remained silent as to its view of that finding. That finding does not merit denying relief. Jane Doe is no activist. She is a simple, everyday mother who tried everything she could to get her son back to school without making a federal case out of her situation. Her efforts met with a criminal citation for truancy, which opened her eyes to the fact that she was in a legal war with unreasonable laws being enforced by unreasonable people. Only then did she realize that a federal case was the only way to get her son back to school. If decent people unfamiliar with the legal remedies available can be denied judicial relief in their direst moments simply because they tried to do the decent thing and work out a compromise, then the Court will only hasten our society's decent into bitter political and legal fights.

When Jane Doe realized she was in a bitter legal fight, it took her time to obtain counsel because she lacked the financial means to hire a lawyer. Once she did find counsel to pursue this case, she did so as fast as she could — only for the district court to criticize her for waiting until the end of the school year and to deny her application for a preliminary injunction. When Doe reapplied for preliminary relief before the district court, the district court moved the goalposts and accused her of seeking reconsideration and waiting too long to seek relief. The district court did not even leave the door open for her to seek relief on a normal litigation timetable. It stayed the case before it pending the Ninth Circuit's decisions in *Royce v. Pan*, No. 25-2504 (C.A.9); and *Doescher v. Aragon*, No. 25-4531 (C.A.9).

In sum, every conceivable procedural obstacle has been erected and thrown at Jane Doe to deny her relief. No court has ever engaged with the indisputable facts that she and her son are facing actual, ongoing irreparable harm.

The Court should not so cavalierly brush aside the devastating impact that the Respondents' treatment of her has had on her family, and it should recognize her plight for what it is: the infliction of irreparable harm in a manner that is unconscionable and inconsistent with our constitutional freedoms.

III. Granting Relief Would Serve The Public Interest.

Granting the Applicants an injunction pending appeal would serve the public interest by protecting their First Amendment rights until the timely filing and disposition for a petition for a writ of certiorari. An injunction pending appeal also would not harm the Respondents' interests because they cannot show "that public

health would be imperiled by employing less restrictive measures" to protect public health. *Tandon*, 141 S.Ct. at 1297 (cleaned up). As discussed above, the Respondents have options to tolerate and accept Jane Doe's son and all similarly situated members of We The Patriots USA, Inc. in their schools that would still allow them to protect public health.

If the Court wants to tailor relief more narrowly, however, only permitting Jane Doe's son to return to school in the same manner as he did with the Respondents' for two and a half years after their interest supposedly became compelling poses no great burden to public health or the Respondents' interest. The Respondents would remain free to manage his attendance during an outbreak of contagious disease, and his singular presence would pose no greater of a threat than if he had a medical exemption or any of the other secular exemptions that the Respondents recognize.

IV. In The Alternative, The Court Should Issue An Administrative Stay And Treat This Application As A Petition For A Writ Of Certiorari Prior To Judgment.

First Amendment issues are often difficult to resolve on an expedited basis although the Court has done so once already this year. *See TikTok Inc. v. Garland*, 145 S.Ct. 57 (2025). Although the Applicants submit that the issues presented by this case are relatively straightforward, the Court may desire more time to consider them in the ordinary course of its merits docket. Thus, in the alternative to granting this application, the Applicants respectfully suggest that the Court treat this application as a petition for a writ of certiorari before judgment and grant a stay of the

enforcement of Cal. Health and Safety Code § 120335 against Jane Doe pending the disposition of that writ of certiorari. 28 U.S.C. § 2101(f); Sup. Ct. R. 23. Such a stay is appropriate upon a showing that there is a "fair prospect" that the lower court decision will be reversed, a likelihood of "irreparable harm," and "a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari." *Hollingsworth v. Perry*, 588 U.S. 183, 190 (2010) .

As discussed previously, there is more than a "fair prospect" that the lower court decisions will be reversed, given their conflict with the Court's decisions, the obvious irreparable harms that the Applicants face, and equitable considerations that weigh in their favor. Furthermore, in light of the Court's recent decision in *Mahmoud* and multiple three justice dissents in religious exemption to vaccination cases, there is at least a "reasonable probability" that a fourth justice will consider the questions presented sufficiently worthy of certiorari. *See Dr. A. v. Hochul*, 142 S.Ct. 552 (2021); *Does 1-3 v. Mills*, 142 S.Ct. 17 (2021).

This case also presents a split among the courts of appeals and state supreme courts that trigger the Court's traditional criteria for granting certiorari. Sup. Ct. R. 10. This split concerns the appropriate standard for comparability and has been persistent and enduring for decades.

The First, Sixth and Eleventh Circuits as well as the Iowa Supreme Court have all held that laws permitting secular exemptions, but not religious exemptions, fall outside *Employment Division v. Smith*, 494 U.S. 872 (1990), and do not survive strict scrutiny because of the exemptions' impact on the target of the law's regulation. *See*

Lowe v. Mills, 68 F.4th 706 (C.A.1 2023) (permitting a Free Exercise challenge to Maine's healthcare workers' COVID vaccination requirement to proceed); *Monclova Christian Academy v. Toledo-Lucas County Health Department*, 984 F.3d 477 (C.A.6 2020) (striking down a county resolution closing all schools, including religious schools, during the COVID-19 pandemic, but permitting a variety of secular buildings to remain open); *Midrash Sephardi, Inc. v. Surfside*, 366 F.3d 1214 (C.A.11 2004) (holding that a zoning ordinance that permitted private clubs in a business district, but not churches and synagogues, violated the Free Exercise Clause); *Mitchell County v. Zimmerman*, 810 N.W.2d 1 (Iowa 2012) (holding that a county ordinance that permitted school buses to use tire chains or steel tire studs, but denied that exemption to Amish buggy owners who needed them for religious reasons, violated the Free Exercise Clause).

The Second, Third, and Ninth Circuits have looked at whether secular exemptions serve a broad governmental interest and apply rational basis scrutiny if they do. *Miller v. McDonald*, 130 F.4th 258 (C.A.2 2025) (upholding New York's school vaccination mandate because the medical exemption served a broadly asserted state interest in protecting public health); *Spivack v. City of Philadelphia*, 109 F.4th 158 (C.A.3 2024) (holding that a district attorney's office's COVID-19 vaccination mandate was generally applicable because the medical exemption served the broadly asserted interest in protecting public health, but remanding for unrelated factual findings); *Doe v. San Diego Unified School Dist.*, 19 F.4th 1173 (C.A.9 2021) (denying

an injunction pending appeal because medical exemptions furthered a broad school interest in protecting public health while religious exemptions did not).

These cases demonstrate that there is a solid foundation for the Court's intervention through a writ of certiorari, particularly here where the data supporting a conclusion on either standard is judicially noticeable and readily available to both sides.

Additionally, the Court's intervention will provide relief for thousands of parents and children in California, New York, Connecticut, and Maine who have been denied public education because of their faithful refusal to receive vaccinations connected with the religiously objectionable act of abortion. Cal. Health & Safety Code § 120335; Me. Stat. tit. 20-A, § 6355; N.Y. Pub. Health Law § 2164; Conn. Gen. Stat. § 10-204a. Their plight is worthy of the Court's attention through a writ of certiorari.

CONCLUSION

Religious obedience can come at devastating cost, even in America. Despite the First Amendment's unequivocal promise of religious liberty, it often falls to this Court to protect minority religious views because of their unpopularity. Jane Doe and her son are average people who seek the Court's intervention as a last resort to protect their faith and his future. Both matter under the rule of law and the First Amendment's promises. Those promises protect Jane Doe's faith against California devaluing it to the point of sacrificing her son's future to eradicate it.

If Jane Doe is denied relief in this case, those promises are broken, and Doe's faith and her son's future are simply too insignificant or marginal to receive First Amendment protection. The Court should not chart that course. It should grant Doe an injunction pending appeal. In the alternative, the Applicants respectfully suggest that the Court grant certiorari and schedule this case for a speedy merits determination.

Respectfully submitted,

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APPENDIX