No. 25A322

In the Supreme Court of the United States

WE THE PATRIOTS USA, INC., *et al.*,
Applicants,

v.

VENTURA UNIFIED SCHOOL DISTRICT, *et al.*,
Respondents.

STATE RESPONDENTS' OPPOSITION TO EMERGENCY APPLICATION FOR WRIT OF INJUNCTION

ROB BONTA
Attorney General of California
SAMUEL T. HARBOURT
Solicitor General
HELEN H. HONG
Principal Deputy Solicitor General
CHERYL L. FEINER
Senior Assistant Attorney General

CHRISTOPHER D. HU*
Deputy Solicitor General
JENNIFER G. PERKELL
Supervising Deputy Attorney General
JACQUELYN YOUNG
KATHERINE GRAINGER
Deputy Attorneys General

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
(415) 510-3917
Christopher.Hu@doj.ca.gov
**Counsel of Record*

October 1, 2025

(Additional counsel listed on signature page)

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INTRODUCTION

Plaintiffs ask this Court to enjoin enforcement of a California law that requires students to obtain immunizations against highly infectious diseases, including measles, polio, whooping cough, and diphtheria. Plaintiffs cannot satisfy the demanding standard for obtaining that relief. This Court has repeatedly acknowledged the constitutionality of laws of this nature. *See, e.g.*, *Prince v. Massachusetts*, 321 U.S. 158, 166-167 (1944); *Zucht v. King*, 260 U.S. 174, 176 (1922) (citing *Jacobson v. Massachusetts,* 197 U.S. 11 (1905)). The equitable considerations overwhelmingly weigh against an injunction. And this application would be a uniquely unsuitable vehicle for considering extraordinary injunctive relief because, as a result of plaintiffs' procedural choices, this Court lacks jurisdiction and the lower courts have never addressed the constitutional merits or plaintiffs' factual contentions.

Plaintiff Jane Doe is a parent who has religious objections to immunizing her son. In December 2024, school officials made clear that he could not attend school without immunization. Five months later, Jane Doe, joined by We The Patriots USA, Inc., sued to challenge the immunization law on First Amendment grounds. In the four months since filing suit (and the nine months since Jane Doe's son last attended school), plaintiffs have never sought a preliminary injunction. Instead, plaintiffs have pursued ill-timed and procedurally irregular requests for temporary restraining orders.

The application before this Court arises from plaintiffs' attempt to appeal the denial of one of those requests. The appellate courts lack jurisdiction to

review that non-appealable order. And jurisdictional problems aside, there would be no basis to grant injunctive relief. Because of plaintiffs' procedural choices, the lower courts have never addressed the merits of plaintiffs' First Amendment claim. To grant relief, this Court would have to consider plaintiffs' claim in the first instance.

Plaintiffs provide no basis for such a significant departure from the Court's normal practices. To obtain "emergency relief from this Court," *e.g.*, *South Carolina v. Doe*, No. 25A234, 2025 WL 2610400, at *1 (U.S. Sept. 10, 2025), an applicant must show a clear entitlement to relief and that "the most critical and exigent circumstances" demand an injunction, Shapiro et. al., Supreme Court Practice § 17.4, p. 17–9 (11th ed. 2019). Plaintiffs have not satisfied those standards. Although immunization requirements have long been subject to serious controversy and debate, and the First Amendment protects the rights to adopt, discuss, and promote beliefs on either side of that debate, those rights are not unlimited. As relevant here, they do not provide an entitlement to opt out of laws that are "neutral and generally applicable." *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021). Indeed, this Court has long recognized that "[t]he right to practice religion freely" does not allow a parent to "claim freedom from compulsory vaccination for [one's] child" under a neutral, generally applicable immunization law. *Prince*, 321 U.S. at 166.

The remaining equitable factors—in particular, the weighty public interest in safeguarding the public's health—also tip sharply against the

extraordinary relief requested by plaintiffs. Over the past 30 years alone, nine common vaccines—each required under the law challenged here—have saved an estimated 1.1 million children's lives in the United States.[1] But in recent years, immunization rates across the country have decreased significantly, leaving communities vulnerable to the resurgence of deadly diseases. Texas has experienced a significant outbreak of measles this year. There is a growing outbreak in Arizona and Utah. And the CDC has reported more than 1,500 measles cases across the country so far in 2025, the highest number of annual cases since the United States declared measles eliminated in 2000.[2] In these circumstances, the relief requested by plaintiffs would be neither equitable nor prudent. The application should be denied.

STATEMENT

A. Legal Background

All fifty States, including California, require students to be immunized against certain diseases. *State Vaccine Requirements for Children*, Kaiser Family Found., https://tinyurl.com/5xc76zbd. California's law dates back to at least 1889, when the state legislature mandated student vaccinations against smallpox. *See Abeel v. Clark*, 84 Cal. 226, 227-231 (1890). The legislature

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[1] Zhou et al., *Health and Economic Benefits of Routine Childhood Immunizations in the Era of the Vaccines for Children Program—United States, 1994-2023*, U.S. Ctrs. for Disease Control and Prevention (Aug. 8, 2024), https://perma.cc/XN3V-672S.

[2] *Measles Cases and Outbreaks*, U.S. Ctrs. for Disease Control and Prevention (Sept. 24, 2025), https://perma.cc/V2AD-6JMD.

enacted the modern form of California's school immunization law in the 1960s, starting with a requirement to be vaccinated against polio. *See* 1961 Cal. Stat. 2117-2118. At present, California requires immunization against ten diseases, including measles, whooping cough, and diphtheria, among others. Cal. Health & Safety Code §§ 120325(a), 120335(b).

California's law covers students attending public or private school in a classroom setting. Cal. Health & Safety Code § 120335(b), (f). As relevant here, students are medically exempt from the requirement if a licensed physician determines that "the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe." *Id.* § 120370(a)(1). California's Department of Public Health is charged with implementing the law in consultation with the California Department of Education. *Id.* § 120330.

California previously authorized a "personal beliefs exemption," which parents could invoke if they had either secular or religious objections to the school immunization requirements. *See, e.g.*, App'x 19, 28-29. But by 2015, there had been a dramatic increase in the rate of personal beliefs exemptions, which placed the State's "communities at risk for the rapid spread of entirely preventable diseases." Assem. Floor, SB 277, Bill Analysis 3 (June 18, 2015), https://tinyurl.com/hz8j5kcj. In some parts of the State, exemption rates were higher than 20 percent. *Id.*; *see id.* at 5. Legislators were particularly alarmed by an outbreak of measles in which nearly half of all infected patients were

unvaccinated and one-fifth had to be hospitalized. *Id.* at 5-6. In response to these concerns, the legislature eliminated the personal beliefs exemption. *See* 2015 Cal. Legis. Serv. Ch. 35 (S.B. 277); Cal. Health & Safety Code § 120335(g)(3).

Shortly after California repealed the personal beliefs exemption, the rate of medical exemptions increased. App'x 62, 102, 144, 184. The legislature grew concerned that the medical exemption was being abused by "a small number of unethical physicians [who] monetized their license by selling medical exemptions for profit." Sen. Rules Comm., SB 276, Bill Analysis 8 (Sept. 3, 2019), https://tinyurl.com/b7tepbmv. To address that problem, the legislature enacted reforms to ensure that only students with legitimate medical needs may invoke the medical exemption. *See* 2019 Cal. Legis. Serv. Ch. 278 (S.B. 276). Medical exemptions must now be submitted using a standardized form on which the child's physician must provide a "description of the medical basis for which the exemption for each individual immunization is sought." Cal. Health & Safety Code § 120372(a)(2)(F). The California Department of Public Health must also review medical exemption forms for compliance with the law and monitor schools that have unusually high rates of exemption. *Id.* § 120372(c)-(d). Medical exemption rates soon declined, and as reflected in the data that appears in the appendix to plaintiffs' application, the statewide

medical exemption rate for kindergarteners currently stands at about 0.1 percent. App'x 220, 245, 270.[3]

B. Procedural History

1. Applicant Jane Doe is the parent of a public school student. App'x 18. She has strongly held religious objections to the immunizations that California requires. *Id.* at 19. Her son has never been immunized with vaccines that meet the State's standards. *Id.* In 2015, when Jane Doe's son was in elementary school, she obtained a personal beliefs exemption that was based on her religious beliefs. *Id.* When California repealed the personal beliefs exemption, it phased out the exemption by allowing elementary school students with existing exemptions to retain them until they transitioned to seventh grade. Cal. Health & Safety Code § 120335(g). Jane Doe used this provision to keep the personal beliefs exemption for her son until 2022, when he started seventh grade. *See* Appl. 6-7.

Before Jane Doe's son started seventh grade, he received "homeoprophylaxis immunizations." App'x 19. Homeoprophylaxis involves the use of homeopathic medicine for purposes of immunization. It does not meet state requirements because medical experts do not consider homeopathic vaccines effective in preventing the transmission of disease. *See, e.g.*, *Requirements FAQs*, Cal. Dep't of Public Health, https://tinyurl.com/ycympujb.

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[3] The State collects the most comprehensive data on medical exemption rates with respect to children in kindergarten. *See, e.g.,* App'x 258-262.

Jane Doe nonetheless reports that the school initially accepted these records as proof of immunization and allowed her son to enroll in 2022. App'x 19-20. In December 2024, the school district sent Jane Doe a letter stating that her son would no longer be able to attend school without the required immunizations. *Id.* at 20. Jane Doe's son last attended school at the end of December 2024. *Id.*

2. Jane Doe and We The Patriots USA, Inc., filed this lawsuit in late May 2025. App'x 4. The complaint named as one of several defendants the California Department of Public Health, which was sued through its director, Dr. Erica Pan. *Id.* Two days after filing the complaint, plaintiffs sought a temporary restraining order to block enforcement of the immunization law against Jane Doe and "all similarly situated parents and children." *Id.* at 4-5. The district court denied the request. *Id.* at 5. Plaintiffs had failed to explain why the court should consider an emergency request for relief when Jane Doe's son had been out of school for several months. D. Ct. Dkt. 22 at 3. Plaintiffs also failed to justify their need for "imminent" relief in June, "when school is presumably out for the summer." *Id.* The court did not address the merits of plaintiffs' free exercise challenge. *Id.*

One day before the start of the school year in mid-August, and some two months after the district court's initial June ruling, plaintiffs filed a renewed application for a temporary restraining order seeking immediate relief. App'x 5. The district court denied the application based on "a litany of procedural

violations," including plaintiffs' failure to provide notice to the other parties before filing their ex parte application and their failure to include with their application certain filings required under the local rules. *Id.* The court also pointed out that plaintiffs "essentially" sought reconsideration of the court's prior ruling without addressing the standard for reconsideration. *Id.* at 6. And it concluded that plaintiffs' two-month delay in seeking relief after the denial of their first request for a temporary restraining order "belies their characterization that their need for relief is an emergency." *Id.* The district court did not address the merits. *See id.* At that point, nearly three months after filing suit, plaintiffs had yet to serve the complaint on the California Department of Public Health. *Id.* at 4 n.1.

Plaintiffs filed a notice of appeal with respect to the denial of the temporary restraining order and asked the district court for an injunction pending appeal. App'x 9. The district court denied that application on procedural grounds and stayed proceedings pending resolution of two appeals presenting similar issues. *Id.* at 9, 16.[4] Plaintiffs then sought an injunction pending appeal from the court of appeals. C.A. Dkt. 15.1. That court denied the motion in a brief order. App'x 2.

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[4] Those appeals are *Royce v. Pan* (9th Cir. No. 25-2504) and *Doescher v. Pan* (9th Cir. No. 25-4531). At the time that the district court stayed proceedings, plaintiffs still had not properly served the California Department of Public Health. App'x 16 n.4; D. Ct. Dkt. 67.

Plaintiffs' appeal is subject to an expedited briefing schedule in the court of appeals. C.A. Dkt. 2.1 at 3. They filed their opening brief on September 16. C.A. Dkt. 34.1. Because plaintiffs have purported to appeal the denial of a temporary restraining order, the court of appeals has asked the parties to address the issue of appellate jurisdiction. C.A. Dkt. 4.1. Under the schedule, briefing will be complete by November.

ARGUMENT

A request for injunctive relief from this Court in the first instance requires a showing that the "legal rights at issue" are "'indisputably clear.'" *Lux v. Rodrigues*, 561 U.S. 1306, 1307 (2010) (Roberts, C.J., in chambers); *see also A.A.R.P. v. Trump*, 145 S. Ct. 1034, 1035-1036 (2025) (Alito, J., dissenting). An applicant must demonstrate that the Court is likely to grant certiorari and reverse. *See Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring in the denial of injunctive relief). And as with injunctive relief generally, the applicant must show "that [it] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

Plaintiffs cannot satisfy those requirements. Several procedural problems make this an inappropriate case to consider the extraordinary relief requested by plaintiffs. And even if the Court entertained plaintiffs' request, they would have no clear entitlement to relief because the challenged immunization law is "neutral and generally applicable," *Fulton*, 593 U.S. at

533—just like similar state laws that the Court has previously refused to treat as constitutionally infirm. The equities also weigh heavily against relief because the State has a compelling interest in protecting against the spread of measles, polio, and other dangerous diseases.

I. PLAINTIFFS' PROCEDURAL CHOICES DEPRIVE THIS COURT OF JURISDICTION AND MAKE THIS AN EXCEPTIONALLY POOR VEHICLE FOR CONSIDERING PLAINTIFFS' CLAIM ON THE MERITS

1. Appellate courts "generally lack appellate jurisdiction over appeals from TROs." *Dep't of Educ. v. California*, 604 U.S. 650, 651 (2025); *see Off. of Pers. Mgmt. v. Am. Fed'n of Gov't Emps., AFL-CIO*, 473 U.S. 1301, 1303-1304 (1985) (Burger, C.J., in chambers) (same for TRO denials). Although that rule is not absolute, its exceptions have been construed "narrowly." *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 84 (1981); *see also Abbott v. Perez*, 585 U.S. 579, 595 (2018). One exception exists where a TRO "carries many of the hallmarks of a preliminary injunction." *Dep't of Educ.*, 604 U.S. at 651. Here, those hallmarks are absent. *See* App'x 4-6. In denying the request for a TRO that plaintiffs seek to challenge, the district court applied the "legal standard that [governs] TRO applications," *id.* at 5; observed that plaintiffs' filing was not a "regularly-noticed motion," but "an ex parte Application for a TRO," *id.*; and denied the application on procedural grounds just three days after it was filed and without full briefing or a hearing, *id.* at 4-6.

Plaintiffs' principal argument in support of appellate jurisdiction is that their inclusion of the term "preliminary injunction" in the title of their filing—"Renewed Emergency Application for Temporary Restraining Order and

Preliminary Injunction"—shows that the district court "explicitly denied" such an injunction. Appl. iii; *see* App'x 4. Plaintiffs are wrong. For the reasons just discussed, the district court's ruling makes clear that the court understood it was deciding a TRO request. *See* App'x 4-6. And plaintiffs submitted a proposed order that would have granted an "emergency application for a temporary restraining order," while allowing *future* "briefing and a hearing on the Plaintiffs' motion for a preliminary injunction." D. Ct. Dkt. 50-12 at 1, 4. In any case, the title of a document is not dispositive. *Cf. Abbott*, 585 U.S. at 594 ("the label attached to an order is not dispositive").

Plaintiffs also argue that this Court has jurisdiction because the district court later held the case in abeyance, thus denying plaintiffs "the chance to seek a noticed preliminary injunction." Appl. iii. But they cite no support for their position that "the district court converted the denial of the temporary restraining order into a preliminary injunction denial" by subsequently "staying the case." *Id.* Plaintiffs have made no effort to seek reconsideration of the stay, nor have they asked the district court to lift the stay to consider a properly noticed preliminary injunction motion. Those choices are consistent with plaintiffs' pattern of litigation in this case more generally. They filed the lawsuit in late May, roughly five months after Jane Doe was notified her son could no longer attend school. App'x 4; D. Ct. Dkt. 22 at 3. After their initial delay, plaintiffs still had months to seek a preliminary injunction before the start of the school year in August. Yet they never filed a properly noticed

preliminary injunction motion, electing to file serial requests for temporary restraining orders instead.

2. Jurisdiction aside, plaintiffs' procedural choices make this an inappropriate case for the Court to consider issuing injunctive relief—and an unsuitable case for any form of further review by this Court. The Court ordinarily prefers to consider important constitutional questions with "the benefit of a well-developed record and a reasoned opinion on the merits." *Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 80 (1988). The Court is one "of review, not of first view." *Moyle v. United States*, 603 U.S. 324, 337 (2024) (Barrett, J., concurring). And here, because of plaintiffs' procedural choices, the lower courts did not issue reasoned decisions; indeed, they did not address the merits at all. App'x 2, 6, 9; D. Ct. Dkt. 22 at 3.[5] The factual basis for plaintiffs' arguments on the equitable factors is also underdeveloped: apart from court orders and publicly available state reports on immunization rates, the record presented to this Court consists solely of a short declaration from Jane Doe that was attached to her request for a TRO. *See* App'x 17-26.

Another procedural barrier to relief is that plaintiffs failed to properly serve their complaint on one of the main defendants, the California

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[5] Plaintiffs assert that the court of appeals might have considered the merits when denying their motion for an injunction pending appeal. Appl. 1-2. But nothing in the order "suggests" (*id.* at 2) that the court did so. The order contains no First Amendment analysis. App'x 2. And there is no other indication that the court of appeals reached the merits, as opposed to denying relief because of equitable considerations or plaintiffs' procedural deficiencies. *See Winter*, 555 U.S. at 20; *infra* pp. 13-14, 26-28.

Department of Public Health. *See, e.g.*, App'x 16 n.4; C.A. Dkt. 22.1 at 7; D. Ct. Dkt. 77 at 4-5. That defect is no mere technicality. Without service, "a court ordinarily may not exercise power over a party the complaint names as defendant." *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999). For that reason, the district court issued an order to show cause why the case should not be dismissed based on plaintiffs' failure to prosecute. D. Ct. Dkt. 69. When plaintiffs filed this application on September 11, they still had not properly served the Department. *See* D. Ct. Dkt. 77, 81. Plaintiffs did not complete service until September 26. It would be highly irregular for this Court to grant injunctive relief or a writ of certiorari in a case where the applicant sought the Court's intervention *before* serving a key defendant.

Plaintiffs' application makes no effort to show that this Court would likely overlook those jurisdictional and procedural problems, grant certiorari, and reverse the judgment below. *See Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam) (requiring a "reasonable probability" that the Court will later grant certiorari, as well as a "fair prospect" of reversal). Applicants should not be allowed to "use the emergency docket to force the Court to give a merits preview in cases that it would be unlikely to take—and to do so on a short fuse without benefit of full briefing and oral argument." *Does 1-3*, 142 S. Ct. at 18 (Barrett, J., concurring in the denial of injunctive relief). Plaintiffs do not dispute that the district court denied their request for a temporary restraining order based on a "litany of procedural violations" without reaching

the merits of the First Amendment claim. App'x 5-6; *see All. for the Wild Rockies v. Petrick*, 68 F.4th 475, 490 n.4 (9th Cir. 2023) (court of appeals generally does "not resolve issues that the district court did not first reach"). And the court of appeals has asked the parties to address its jurisdiction over plaintiffs' appeal. C.A. Dkt. 4.1. This case, in this procedural posture, is not a suitable one to resolve the First Amendment question that plaintiffs seek to present, either in the context of an injunction pending appeal or through a petition for a writ of certiorari before judgment.

II. PROCEDURAL PROBLEMS ASIDE, PLAINTIFFS ARE NOT ENTITLED TO INJUNCTIVE RELIEF

Plaintiffs' constitutional challenge to the State's school immunization law fails under settled standards for evaluating free exercise claims. And the remaining equitable factors—in particular, the strong public interest in maintaining high immunization rates to protect our Nation's children from devastating diseases like measles—counsel strongly against the extraordinary relief that plaintiffs request. *See, e.g.*, *NetChoice, LLC v. Fitch*, 145 S. Ct. 2658 (2025) (Kavanaugh, J. concurring) (emphasizing the need to "demonstrate[] that the balance of harms and equities favors [relief]").

A. Plaintiffs Cannot Establish a Clear Right to Relief

As this Court has long recognized, the Free Exercise Clause does not provide a right to "claim freedom from compulsory vaccination for [one's] child." *Prince*, 321 U.S. at 166; *cf. Zucht*, 260 U.S. at 177 (upholding compulsory vaccination laws for schoolchildren against a Fourteenth Amendment

challenge). Although some aspects of free exercise doctrine have evolved in the decades since the Court made that pronouncement, nothing in this Court's modern precedent supports the relief that plaintiffs seek here.

1. The "protections of the Free Exercise Clause" apply if a law or policy "discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 532 (1993). But laws are "ordinarily *not* subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable." *Fulton*, 593 U.S. at 533 (emphasis added). That makes good sense: if "strict scrutiny would apply whenever a neutral and generally applicable law burdens religious exercise," many "garden-variety laws" long viewed as constitutional would be subject to challenge. *Id.* at 543-544 (Barrett, J., concurring) (citing *Emp. Div., Dep't of Human Res. of Ore. v. Smith*, 494 U.S. 872, 888-889 (1990)). Because compulsory-vaccination laws for schoolchildren are a perfect example of such "garden-variety laws," *see Smith*, 494 U.S. at 888-889, plaintiffs cannot show the indisputably clear right to relief necessary to justify injunctive relief from this Court in the first instance. *Supra* p. 9.

Plaintiffs do not argue that California's law reflects "governmental hostility" to religion and thus lacks neutrality. *Lukumi*, 508 U.S. at 534. They focus instead on the law's medical exemption, which, in plaintiffs' view, "permits secular activity that undermines its interest the same way religious

activity would" and thus establishes that the law "is not generally applicable." Appl. 13. "A law . . . lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, 593 U.S. at 534. Plaintiffs assert that medical and religious exemptions present "identical risks" and undermine the State's interest in "the same way" because both result in some children being unvaccinated. Appl. 15-16.

That argument misconceives the State's interests. While the State's legislature has expressed its intent to "achieve full and timely immunization of children," Cal. Health & Safety Code § 120325(e), that goal is in service of the broader aim of protecting "the overall public health of [California's] citizens." Assem. Floor, SB 277, Bill Analysis 10 (June 18, 2015), https://tinyurl.com/hz8j5kcj. The State's medical exemption furthers that public health interest by exempting children from vaccination requirements when "the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe." Cal. Health & Safety Code § 120370(a)(1); *see id.* § 120325(c). This medical exemption serves the "small number of individuals" for whom immunizations are unsafe. 2019 Cal. Legis. Serv. Ch. 278, § 1(e) (S.B. 276). For example, medical exemptions may be warranted for students who are severely immunocompromised or who have had serious adverse reactions to vaccines. *See Contraindications and Precautions*, U.S. Ctrs. for Disease Control and

Prevention (July 25, 2024), https://perma.cc/GF8H-2FKL. At the same time, requiring immunization for students who *can* be safely immunized helps the State reach "herd" immunity, which "occurs if and when a sufficient portion of the community is immune." 2019 Cal. Legis. Serv. Ch. 278, § 1(g) (S.B. 276). By limiting or eliminating the spread of disease, herd immunity protects both vaccinated and unvaccinated individuals. Although immunization provides protection against debilitating or deadly forms of disease, it does not provide full protection. "[B]reakthrough infections (when someone becomes infected after they have been vaccinated) can occur, especially in communities experiencing an outbreak where high levels of measles virus are circulating." *Measles Cases and Outbreaks*, U.S. Ctrs. for Disease Control and Prevention (Sept. 24, 2025), https://perma.cc/V2AD-6JMD. Only herd immunity can prevent such "breakthrough" infections.

Viewed in that light, California's medical exemption is not comparable to plaintiffs' proposed religious exemption. Allowing a religious exemption would "detract from the State's interest in promoting public health by increasing the risk of transmission of vaccine-preventable diseases among vaccinated and unvaccinated students alike." *We The Patriots USA, Inc. v. Conn. Off. of Early Childhood Dev.*, 76 F.4th 130, 153 (2d Cir. 2023), *cert. denied*, 144 S. Ct. 2682 (2024) (No. 23-643). Conversely, declining to allow a religious exemption serves public health goals because it "decreases 'to the greatest extent medically possible' the number of unvaccinated students and thus the risk of

disease." *Miller v. McDonald*, 130 F.4th 258, 267 (2d Cir. 2025), *pet. pending*, No. 25-133 (quoting *We The Patriots*, 76 F.4th at 153). Accordingly, "religious and medical exemptions are not comparable." *We The Patriots*, 76 F.4th at 155. "Allowing students for whom vaccination is medically contraindicated to avoid vaccination while requiring students with religious objections to be vaccinated does, in both instances, advance the State's interest in promoting health and safety." *Id.* at 153; *see also, e.g.*, *Spivack v. City of Philadelphia*, 109 F.4th 158, 176 (3d Cir. 2024) (recognizing this "common-sense distinction" between medical and religious exemptions); *Royce v. Pan*, 2025 WL 834769, at *8 (S.D. Cal. Mar. 17, 2025) (adopting same reasoning in rejecting challenge to California's school immunization law).[6]

Plaintiffs' additional argument (at 16-19) about the numerical comparability of students who would claim medical and religious exemptions is flawed several times over. There is no need to compare the numbers because the two exemptions are fundamentally dissimilar: the medical exemption furthers the State's interest in public health while a religious exemption does not. *Supra* pp. 16-18. Plaintiffs' data also conflates two categories of students, thereby creating substantial uncertainty about the numerical claims in the

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[6] Plaintiffs overlook another important distinction. Unlike their proposed religious exemption—which would apply indefinitely to all immunizations—medical exemptions in California may be temporary and do not extend beyond the specific immunization that is medically contraindicated. *See* Cal. Health & Safety Code § 120372(a)(2)(G); Cal. Code Regs. tit. 17, §§ 6035(a)(3), 6050(a), 6051(a); *see also Miller*, 130 F.4th at 267-268.

application.[7] And plaintiffs inaccurately assert that the medical exemption rate has "fluctuated" (Appl. 19), when it has in fact steadily declined since the state legislature enacted reforms to limit the exemption to students with genuine medical need, *supra* pp. 5-6. Findings credited by other courts cast further doubt on plaintiffs' numerical claims. *See, e.g.*, *We The Patriots*, 76 F.4th at 154 (in Connecticut, "more than ten times as many kindergartners claimed religious exemptions compared to medical exemptions"); *Royce*, 2025 WL 834769, at *8 ("the number of students that have a medical exemption is much smaller than the number of students likely to seek a religious exemption"). At a minimum, plaintiffs' claims should be subjected to adversarial testing before this Court evaluates them. Due to the procedural problems discussed above, *supra* pp. 10-14, no court has considered plaintiffs' claims, let alone concluded that they are empirically valid.

2. Relying on this Court's recent decision in *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025), plaintiffs also argue that they may sidestep the "traditional free exercise" analysis because the school vaccination requirements "substantially interfere[] with the religious development of a child." Appl. 10,

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[7] The application features a series of claims based on the supposed rate of "religious exemptions" in California. *E.g.*, Appl. 17. But as plaintiffs acknowledge (at 16), California did not track how many students were covered by the personal beliefs exemption due to their parents' religious beliefs, so there is no official data on religious exemptions in California. The figures on which plaintiffs rely reflect a different category of students: children of parents who declined to consult with a doctor before seeking a personal beliefs exemption, based on "a religious objection to seeking medical advice or treatment from authorized health care practitioners." App'x 28.

13. In *Mahmoud*, this Court held that a school district burdened parental free exercise rights where it subjected "young children" to "unmistakably normative" books that "explicitly contradict[ed] their parents' religious views" and encouraged teachers "to reprimand any children who disagree[d]" or "express[ed] a degree of religious confusion." 145 S. Ct. at 2353, 2355 n.8, 2356. The Court stressed "the potentially coercive nature of classroom instruction," explaining that the books "impose[d] upon children a set of values and beliefs" and exerted "psychological pressure to conform to their specific viewpoints." *Id.* at 2355 (internal quotation marks omitted). And the Court determined that the specific burdens imposed by the "educational requirement or curricular feature[s] at issue" were of a "special character" that substantially interfered with the religious development of the parents' children. *Id.* at 2353, 2361.

California's school immunization law is not remotely similar. It has nothing to do with curriculum, books, or any other aspect of classroom instruction with the "potentially coercive" features discussed in *Mahmoud*. The law challenged here sets certain requirements for enrolling in school but has no impact on what students will be taught once they are on campus. *See* Cal. Health & Safety Code §§ 120325 et seq. For that reason, the law does not exert "psychological pressure to conform to . . . specific viewpoints" in a way that is comparable to the practices at issue in *Mahmoud*. 145 S. Ct. at 2355 (internal quotation marks omitted). And unlike the disputed curriculum in *Mahmoud*, the immunization requirement is not limited to "young children,"

id.; it generally applies to all students under 18, including Jane Doe's teenage son. *See* Cal. Health & Safety Code §§ 120335(b), 120360.

As the Sixth Circuit recently recognized, *Mahmoud* does not "stand[] for the broad proposition that strict scrutiny is automatically triggered when a school does not allow religious students to opt out of any school policy that interferes with their religious development, including general operational policies that involve no instruction." *Doe No.1 v. Bethel Loc. Sch. Dist. Bd. of Educ.*, No. 23-3740, 2025 WL 2453836, at *7 n.3 (6th Cir. Aug. 26, 2025). To construe *Mahmoud* otherwise would lead to untenable results. For example, many schools have policies barring students from engaging in unlawful drug use. *See, e.g.*, Cal. Educ. Code § 48900(c)(1); *cf. Morse v. Frederick*, 551 U.S. 393, 407-408 (2007). Under plaintiffs' understanding of *Mahmoud*, a parent would have a right to opt a child out of those policies to use illegal drugs for religious reasons. *See, e.g.*, Appl. 9-13. But under this Court's precedent, the parent himself or herself would have no right to engage in the same form of religiously inspired drug use. *See, e.g.*, *Smith*, 494 U.S. at 890. Plaintiffs provide no logical reason why the Free Exercise Clause would distinguish between parents and children in that way.

The Court also emphasized in *Mahmoud*, 145 S. Ct. at 2357, that its holding followed from *Wisconsin v. Yoder*, 406 U.S. 205 (1972). In *Yoder*, the Court allowed Amish parents to opt their children out of mandatory school-attendance laws after eighth grade. 406 U.S. at 207. In reaching that

conclusion, the Court emphasized that school attendance would "substantially interfer[e] with the religious development of [an] Amish child" by "exposing [him] to worldly influences in terms of attitudes, goals, and values contrary to beliefs." *Id.* at 218. The Court stressed, however, that the challenged law did not implicate "any harm to the physical or mental health of the child or to the public safety, peace, order, or welfare." *Id.* at 230. The Court reaffirmed the settled principle that the Free Exercise Clause allows "governmental regulation of certain overt acts prompted by religious beliefs or principles," when the "conduct or actions so regulated . . . pose[] some substantial threat to public safety, peace or order." *Id.* To illustrate that principle, the Court invoked cases recognizing the authority of States to impose mandatory immunization policies. *Id.* (citing *Prince*, 321 U.S. 158, and *Jacobson*, 197 U.S. 11). As discussed above, *supra* pp. 16-17, those policies certainly protect "public safety, peace [and] order."

3. Because strict scrutiny does not apply, plaintiffs' free exercise claim is subject to rational-basis review. And plaintiffs do not dispute that the challenged law would satisfy that deferential standard. *Cf.* Appl. 19-22. Even if strict scrutiny were to apply, however, plaintiffs could not show that they have the type of indisputable right to relief that would support an extraordinary injunction from this Court.

This Court has repeatedly recognized that the government has a compelling interest in protecting public health by preventing the spread of

infectious diseases. *See, e.g.*, *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 18 (2020); *Zucht*, 260 U.S. at 176-177; *see also Jacobson*, 197 U.S. at 26 (recognizing States' authority to take appropriate action "essential to the safety, health, peace, good order, and morals of the community") (internal quotation marks omitted). Seeking to minimize the importance of that interest, plaintiffs allege that a school accepted proof of immunization for Jane Doe's son for two and a half years. Appl. 20. But a single school's failure to enforce state law in a timely manner does not undermine the compelling nature of the State's interest.

Plaintiffs also contend that the State extends "ample flexibility" to others in "granting permanent or long-lasting medical exemptions" and other forms of "conditional admission to unvaccinated children." Appl. 20. But plaintiffs' characterization of the relevant provisions is inaccurate. The medical exemption is limited to the small number of students for whom immunization is not safe. *Supra* pp. 16-17. And none of the other provisions invoked by plaintiffs provide the type of permanent exemption from the immunization requirement that they seek here. The conditional enrollment provision (Appl. 20) allows students to attend class while they complete their immunizations, but only for up to 30 school days. *See* Cal. Health & Safety Code § 120340; Cal. Code Regs. tit. 17, § 6035(d)(1). The provision addressing circumstances faced by certain "foster children" (Appl. 20) makes clear that it "shall not alter" a school's obligation to "obtain a foster child's immunization records" and "ensure

the immunization" of the child. Cal. Health & Safety Code § 120341. The provision for students with individualized education plans adopted pursuant to the federal Individuals with Disabilities Education Act (Appl. 20) does not exempt students from the immunization requirement in the manner that plaintiffs suggest. *Cf. Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1179-1180 (9th Cir. 2021) (analyzing similar provision). And while the statute at issue here allows personal beliefs exemptions if the State adds *new* immunizations to the required list (Appl. 20), the State has not added any such immunizations, so no personal beliefs exemptions are currently available.

California's law is also "narrowly tailored" to achieve its public health interests. *Fulton*, 593 U.S. at 541. The list of required immunizations is limited to "serious conditions that pose very real health risks to children." Assem. Floor, SB 277, Bill Analysis 5 (June 18, 2015), https://tinyurl.com/hz8j5kcj. And the narrow scope of exemptions under the law reflects the State's commitment to achieving and maintaining herd immunity. The State repealed the personal beliefs exemption in response to evidence showing that a sharp rise in the use of the exemption was threatening "the protective effect of herd immunity." *Id.* Later, when the legislature became aware that the medical exemption was being misused, it amended the law to toughen the exemption's requirements and enhance state oversight to ensure that the medical exemption works as intended. *Supra* pp. 5-6.

Plaintiffs argue that the law is not narrowly tailored by presenting three alternative proposals to accommodate religious objectors. Appl. 21-22. There are obvious problems with all three approaches. First, plaintiffs propose exempting religious objectors from the immunization requirement while allowing schools to keep exempt students home "during a contagious disease outbreak." Appl. 21. But the law aims to *prevent* outbreaks from happening in the first place. When "large numbers of children do not receive some or all of the required vaccinations," particularly if they are clustered in certain communities, it becomes "difficult to control the spread of disease" and may result "in the reemergence of vaccine preventable diseases." Assem. Floor, SB 277, Bill Analysis 5 (June 18, 2015), https://tinyurl.com/hz8j5kcj. The State amended its law in response to that very concern—in particular, evidence that rates of children without immunization were above 20 percent in some communities. *See id.* at 3. Unfortunately, public-health emergencies arising from outbreaks in communities without sufficiently high immunization rates are playing out across the country today. *See infra* pp. 27-28.

Second, plaintiffs suggest identifying the rates of immunization required for herd immunity, then dividing "exemptions equally between medical exemptions and religious exemptions." Appl. 21. That proposal could result in students being denied a medical exemption even if they have genuine medical reasons why immunization would be unsafe—for example, if they have had a serious adverse reaction to a similar vaccine in the past. Plaintiffs also fail to

explain how their proposed approach would work in practice. For example, they offer no guidance on how public officials would determine which students would receive religious exemptions if the number of religious objectors exceeds the number of available exemptions. Nor do plaintiffs identify any jurisdiction that has implemented this novel approach in the real world.

Third, plaintiffs propose allowing "alternative immunization practices," like the "homeoprophylaxis immunizations" that Jane Doe obtained for her son. Appl. 6, 21-22. These immunization practices do not meet state requirements because they have not been deemed effective by medical experts. *Supra* p. 6.[8] Allowing unproven immunization practices would not address the State's compelling interests in achieving herd immunity and safeguarding the public health against the transmission of deadly diseases.

B. Equitable Considerations Also Weigh Against Injunctive Relief

Plaintiffs also fail to show that denying them relief would lead to irreparable injury, or that the balance of equities tips in their favor and that an injunction is in the public interest. *See Winter*, 555 U.S. at 20. As the district court recognized, plaintiffs "appear to have delayed pursuing their rights in multiple ways." App'x 15. The "failure to act with . . . dispatch tends to blunt [any] claim of urgency and counsels against the grant of" relief.

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[8] *See also, e.g.*, Loeb et al., *A Randomized, Blinded, Placebo-Controlled Trial Comparing Antibody Responses to Homeopathic and Conventional Vaccines in University Students*, 36 Vaccine 7423 (2018), https://tinyurl.com/3vhn6swv.

Ruckelshaus v. Monsanto Co., 463 U.S. 1315, 1318 (1983) (Blackmun, J., in chambers). Indeed, Jane Doe's declaration shows that she knew by December 2024—or at the latest, early January—that school officials would no longer allow her son to attend school without obtaining immunizations that she opposes on religious grounds. App'x 20. Yet she failed to move for a preliminary injunction at any point in the following nine months. The district court was thus correct to conclude that plaintiffs failed to show "a genuine emergency not of Plaintiffs' own making," and that such delay "belies their characterization that their need for relief is an emergency." *Id.* at 6. And with respect to the other students for whom plaintiffs seek an injunction—"all similarly situated members of We The Patriots USA, Inc." (Appl. 1)—they have submitted *no* evidence of alleged harm.

Nor have plaintiffs shown that an injunction would serve the public interest. *See Winter*, 555 U.S. at 20. Immunization coverage among school-age children is declining in many places across the country. *See Vaccination Coverage and Exemptions Among Kindergartners*, U.S. Ctrs. for Disease Control and Prevention (July 31, 2025), https://perma.cc/7TAM-7Y37. As a result, the United States is increasingly experiencing outbreaks of measles—a deadly disease previously considered eliminated.[9] For now, however, rates of

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[9] *See, e.g.*, *Measles Outbreak*, Tex. Dep't of State Health Servs. (Aug. 12, 2025), https://tinyurl.com/4v2eccas; *U.S. Measles Cases Hit 1,514 on Fresh Outbreaks in Utah, Arizona*, Univ. of Nebraska Med. Ctr. (Sept. 24, 2025), https://tinyurl.com/532hhdt9.

immunization in California remain relatively high: about 96 percent. *See, e.g.*, App'x 260-261, 270. The "approximate threshold necessary to prevent the transmission of measles" is 95 percent. App'x 29-30. Any judicial relief that would threaten to bring the State's immunization rate below that level would disserve the weighty public interest in safeguarding the public's health.

Plaintiffs suggest that an injunction could be limited to Jane Doe and her son. Appl. 25. Plaintiffs contend that his "singular presence" at school poses a minimal threat to public health. *Id.* But of course, if the Court issues an injunction limited to one child, others would be able to seek similar treatment. That is why courts have rightly refused to assess risk in this context based on the threat posed by "an individual child who is unvaccinated." *We The Patriots*, 76 F.4th at 153. Instead, courts consider "aggregations of individual behaviors." *Id.* And when rates of exemption rise—particularly if clustered in certain schools and communities—it undermines the State's ability to "protect the public health of the community and prevent future outbreaks." Assem. Floor, SB 277, Bill Analysis 3 (June 18, 2015), https://tinyurl.com/hz8j5kcj.

CONCLUSION

The application for extraordinary injunctive relief should be denied.

Respectfully submitted,

ROB BONTA
Attorney General of California
SAMUEL T. HARBOURT
Solicitor General
HELEN H. HONG
Principal Deputy Solicitor General
CHERYL L. FEINER
Senior Assistant Attorney General
CHRISTOPHER D. HU
Deputy Solicitor General
JENNIFER G. PERKELL
Supervising Deputy Attorney General
JACQUELYN YOUNG
KATHERINE GRAINGER
Deputy Attorneys General
Counsel for Dr. Erica Pan, in her official capacity as Director of the California Department of Public Health

LEN GARFINKEL
General Counsel
California Department of Education
Counsel for Tony Thurmond, State Superintendent of Public Instruction

October 1, 2025