

# THE RUTHERFORD INSTITUTE

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June 19, 2015

Via Facsimile

California State Assembly  
Sacramento, CA 95814

**RE: SB No. 277 / Elimination of Religious Accommodation from Mandatory  
Vaccinations**

Dear Assembly Member:

With the increasing assaults upon the ability of Americans to exercise freedom of conscience, The Rutherford Institute<sup>1</sup> finds it disheartening that the California State Legislature is considering eliminating a nearly uniformly-accepted accommodation of religious liberty.

SB No. 277, which was passed by the Senate and is before the Assembly for consideration, would repeal Cal. Health & Safety Code § 120365, which provides parents with a religious and personal belief exemption from the requirement that a child be vaccinated against at least 10 diseases before the child may be admitted to a school.

In light of previous Supreme Court rulings, our historic protection of religious freedom, data regarding “herd immunity”, and the cost of forcing parents to choose between their deeply held religious beliefs or a public education for their children, we strongly urge that the California state assembly **reject SB No. 277**.

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<sup>1</sup> The Rutherford Institute is a non-profit civil liberties organization dedicated to the defense of Americans’ constitutional rights that provides free legal representation to individuals whose civil rights are threatened and/or infringed.

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## All states save two recognize the need for religious exemptions to vaccination requirements

This accommodation of the religious beliefs and practices of families follows from this nation's salutary tradition of respecting the rights of persons of faith not to be compelled to violate their beliefs, except when a compelling governmental interest would be threatened. Indeed, all states, save two, recognize that a religious objection to child vaccination requirements is wise public policy protecting the freedom of individuals without inordinate risk to public health.

## SB 277 is a shortsighted overreaction to an isolated outbreak limited to a single instance and is unnecessary to protect the public health and welfare

California should not forsake this nationwide commitment to freedom of conscience by enacting SB 277. Such a move would be a shortsighted overreaction to an isolated outbreak limited to a single instance and is unnecessary to protect the public health and welfare. Enactment of SB 277 would instead have a permanent and harmful effect on the liberty of citizens to exercise their fundamental rights of religion and conscience, and we urge those charged with establishing policy in the State of California to reject the attempt to eliminate the exemption from vaccinations set forth in Cal. Health & Safety Code § 120365.

## Historic predilection supports religious accommodations

Government accommodation of the religious beliefs of individuals that are in conflict with the requirements of general law is a fundamental aspect of the traditions of a nation that was founded by those seeking religious freedom and liberty. George Washington took special note of the importance of accommodating religious beliefs soon after the United States was established:

[I]n my opinion the conscientious scruples of all men should be treated with great delicacy and tenderness; and it is my wish and desire, that the laws may always be as extensively accommodated to them, as a due regard to the protection and essential interests of the nation may justify and permit.<sup>2</sup>

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<sup>2</sup> Letter from George Washington to the Religious Society Called Quakers (Oct. 1789), in George Washington on Religious Liberty and Mutual Understanding 11 (E. Humphrey ed.1932) (quoted in *City of Boerne v. Flores*, 521 U.S. 507, 562 (1997) (O'Connor, J., dissenting)).

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## The U.S. Supreme Court has recognized the importance of religious accommodations

When the government takes due regard for and makes allowances for the religious beliefs and practices of individuals, as the Supreme Court has ruled, “it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups.”<sup>3</sup>

Traditionally, the allowance for freedom of belief and conscience has been affected through exemptions from laws which impose a substantial burden on persons unless a compelling governmental interest would be demonstrably harmed by the exemption; this is a sensible test for striking a balance between religious liberty and competing prior governmental interests.<sup>4</sup>

## S.B. 277 is an unjustified response to an isolated outbreak of measles

While California and 47 other states have embraced this sensible principle when it comes to mandatory childhood vaccinations, SB 277 threatens to reverse this pro-liberty policy without a compelling justification. Apparently, the elimination of the exemption for personal beliefs is a reaction to an outbreak of measles that has been traced to Disneyland.<sup>5</sup> But to wholly eliminate an exemption grounded in a long history of respect for religious liberty and recognized throughout the United States is a disproportionate response to a single outbreak of measles. Indeed, there has not been a single death in the United States from measles in over a decade.<sup>6</sup> While the Centers for Disease Control report some spotty outbreaks of the disease nationally, the number of outbreaks and amount of people affected certainly do not amount to an epidemic, which would warrant eliminating the law allowing for the accommodation of religious beliefs.

## With over 97% of students being vaccinated prior to entering Kindergarten, “herd immunity” protects California

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<sup>3</sup> *Van Orden v. Perry*, 545 U.S. 677, 684 (2005) (quoting *Zorach v. Clausen*, 343 U.S. 306, 313-14 (1952)).

<sup>4</sup> *Gonzales v. O Centro Espirita Beneficente Uniao de Vegetal*, 546 U.S. 418, 436 (2006).

<sup>5</sup> <http://www.csmonitor.com/USA/USA-Update/2015/0515/Vaccinations-California-Senate-eliminates-religious-personal-exemptions>

<sup>6</sup> <http://healthimpactnews.com/2015/zero-u-s-measles-deaths-in-10-years-but-over-100-measles-vaccine-deaths-reported/>

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Additionally, the number of children who are not vaccinated because of their families' beliefs do not create the danger of outbreaks. This is because of "herd immunity," the recognized principle that a whole community will be protected from a disease even in the absence of 100% immunization if a critical mass of community members are vaccinated. "By breaking the chain of an infection's transmission, vaccination can also protect people who haven't been immunized."<sup>7</sup> In the case of measles, the "critical mass" of vaccination is 95%, while for the less-contagious polio, herd immunity is achieved at about 85%.<sup>8</sup>

Recently published data of the California Department of Public Health shows that for the 2014-15 school year, only 2.54% of all Kindergartners entering California schools are lacking a vaccination (but not necessarily wholly unvaccinated) due to the personal belief exemption, and of those only 0.52% are due to a religious belief exemption.<sup>9</sup> With respect to the pertussis booster vaccination required of 7<sup>th</sup>-graders by California law, only 2.09% of students did not have the booster vaccination due to personal beliefs, of which 0.82% were religious exemptions.<sup>10</sup> Thus, herd immunity and protection of public health is not compromised by the personal belief exemption that S.B. No. 277 would eliminate.

S.B. No. 277 would force parents to sacrifice either their deeply-held beliefs or their right to a public education for their children

What would be jeopardized if S.B. No. 277 is enacted are the fundamental constitutional rights of parents and students. Religious liberty is unquestionably a fundamental right, but so is the right to a public education in California. Under the California Constitution, children have an enforceable right to attend such a school within the State's system of common schools and to participate without paying fees in all of the educational activities—curricular or extracurricular—offered by such schools.<sup>11</sup> If S.B. No. 277 is enacted, it will place families in the dilemma of adhering to their deeply-held beliefs or forgoing the opportunity of a public education. The state should not ask citizens to make this kind of sacrifice except where the threat to public welfare is clear and present.

That is not the case here and we urge that S.B. No. 277 be rejected. Doing so will prevent further erosion of the precious liberties that have been lost in recent years at the

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<sup>7</sup> <http://www.pbs.org/wgbh/nova/body/herd-immunity.html>

<sup>8</sup> Id.

<sup>9</sup> <http://www.cdph.ca.gov/programs/immunize/Documents/2014-15%20CA%20Kindergarten%20Immunization%20Assessment.pdf>

<sup>10</sup> <http://www.cdph.ca.gov/programs/immunize/Documents/2014-15%20CA%20Seventh%20Grade%20Immunization%20Assessment.pdf>

<sup>11</sup> *Levi v. O'Connell*, 144 Cal. App. 4<sup>th</sup> 700, 707 (3d Dist. 2006).

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hands of government overreach and will send a message that California is committed to defending the fundamental rights of its citizens.

Sincerely yours,

A handwritten signature in black ink, reading "John W. Whitehead". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John W. Whitehead  
President

cc: The Honorable Jerry Brown, Governor