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Hon. Rob Bonta, Chair
Assembly Health Committee
State Capitol, Room 6005
Sacramento, California 95814

Re: SB 277, Repeal of Personal Belief Exemption to
Vaccination; the constitutional implications

Dear Chairman Bonta:

I write this letter to follow up on correspondence from myself¹ and other attorneys. I am a signatory on a recent letter from "Lawyers Opposed to California SB277;" that missive alone ought to furnish compelling reasons not to pass SB277. In particular it demonstrates the legitimate concern among vaccine attorneys nationwide that California will be the birthplace of a movement to create a draconian regime of medical dictatorship. SB277 would set a terrible example for America and the world.

I submit that there is a constitutional right to decline prophylactic vaccination, both as a matter of liberty rights, as well as by virtue of the freedom of conscience enshrined in the Free Exercise and Establishment clauses of the First Amendment. Whether Senator Pan and the proponents of SB277 admit it or not, they are endorsing a radical expansion of the Police Power. If the "police power" of the State overcomes the rights to direct a child's education, it also overcomes the right of every citizen to walk down the street without submitting to forced medical intervention.

The State of California cannot possibly use a bigger stick against those who choose not to vaccinate, than it is allowed to use in its efforts to prevent abortion. I submit that under the United States Constitution, no state can ban a class of children from participation

¹I wrote in March of this year to Senators Liu and Jackson, and their respective committees, Health and Education, *inter alia* to point out the verifiable reality of vaccine injury.

in public education purely to promote a policy, no matter how important the state views that policy to be. The Police Power does not extend that far, absent an actual emergency.

I have represented many families in religious freedom litigation in the federal courts. In this Civil Rights litigation I have seen how the courts define religious freedom. I can assure you that SB 277 would offend the vast body of the relevant Supreme Court and federal court precedents. The Assembly contemplates the statutory “repeal” of recognized, vested, constitutional rights.

The belief has gathered currency that American courts do not recognize the right of informed consent, and that the “police power” justifies state-imposed vaccination. In this vein, I strongly disagree. The only United States Supreme Court case **ever** to squarely address state-mandated vaccination (*Jacobson v. Massachusetts*), is now over one hundred and ten years old. It came to the Supreme Court from Boston, which had declared a smallpox emergency, decades before the era of Substantive Due Process. The Supreme Court was presented with only a 14th Amendment Claim. In the ensuing decades, the 14th Amendment alone has been the basis for extensive elucidation of individual rights. Many “fundamental rights,” including parental rights, the right to die, and the right to abortion on demand, have been enshrined, and recognized many times since that 1904 case.

However, the Assembly could benefit from a less esoteric analysis than debating the scope of “personal rights.” It is self-evident that *if* the repeal of all personal objections is in a strict legal sense the repudiation of constitutional rights, then the Legislative Branch has no business taking such steps. As the “Lawyers Opposed” letter suggests, there are many “liberty” interests protected by the constitution, which SB277 terribly offends. But property rights are also at stake. The Constitution prevents government from depriving citizens of their property rights. Participation in public education is the largest bundle of separate property rights that one can imagine.

The public school experience provides a lifetime of economic benefit to a California child. Home schooling cannot provide such an array of opportunities. Participation in public schooling is a source of unique opportunity, with enormous economic impact on the students. What would a gifted athlete lose? What would being banned from school do to the career prospects of a gifted musician? Query, how could SB277 **not** discriminate against the entire membership of any certain religious body that declines the insult of being injected with disease proteins and adjuvants, and who as a result must retreat into a tiny “school” enclave? The prospect of stigmatized (“unvaccinated”) children being relegated to their separate school facilities recalls the fiction of “Separate But Equal” rejected six decades ago.

There are hundreds of federal court decisions that find an undue burden on religious

freedom, whenever the scheme in question forces people to choose between their religious beliefs and the acceptance of public benefits. It will not require debate about nebulous “fundamental” liberty rights, in order for a legal challenge to SB277 to be imbued with the necessary standing and damages. Loss of public education will fit the test for “irreparable harm.”

In the Twentieth Century the Supreme Court reviewed every permutation of religious freedom claim under the First Amendment. The Court has consistently prohibited discrimination against religious belief, and has many times prohibited state governments from burdening Free Exercise. Thus, the rights of religious Californians to decline prophylactic medical treatment for their children and themselves is a “hybrid” right with numerous underpinnings in the Constitution. And the Police Power would be powerful indeed were it to trump the right of medical freedom as the California Legislature has already, and wisely, undertaken to protect it.

My point is, that even if the outer layer of 14th Amendment freedom recognized in the Personal Belief Exemption were stripped away, the core freedom of the First Amendment right to Free Exercise would remain. And this would entitle California citizens to invoke strict judicial scrutiny over any State-sponsored effort to mandate medical treatment, whether it be vaccination, or any other procedure. SB277 cannot withstand strict scrutiny.

Litigation over such “state action” falls ideally into the procedures provided by § 1983 of the Civil Rights Act. Most of the abortion cases were litigated under § 1983, and I have litigated successful on behalf of many persons who objected to vaccinations, in order to challenge discriminatory policies, regulations and statutory enactments. Section 1983 provides a declaratory judgment procedure, and grants the accompanying power of federal courts to grant injunctive relief. I have won such cases by getting federal courts to set aside state statutes. This will no doubt happen in California, if SB277 passes.

The abortion jurisprudence establishes limitations on governmental power to impose unwanted health care decisions on American citizens. The key to the abortion cases is that legislation must not encroach upon fundamental rights (and California law views public education as a fundamental right). The abortion jurisprudence has refined the limitations on the power of state governments, over and over. SB277 seeks to give the public health bureaucracy a bigger stick than the constitution would allow.

When I appeared before Senator Liu’s Education Committee, I was astounded at how illogical and divorced from the medical facts the pro-SB277 testimony was. The proponents of SB277 portrayed “unvaccinated” children as the modern equivalent of Typhoid Mary, a danger to the rest of the community, and especially to the “immunocompromised.” This is

utter nonsense. The odds of common viral infection in the school setting are thousands of times greater than the odds of contracting measles or whooping cough. The Common Cold is a vastly more significant threat to such school children. Simple math (and common sense) indicates that an immuno-compromised school child is nowhere near as “endangered” by his unvaccinated mates as he is by simply being in school, surrounded by children who always have colds. Moreover, the reality of vaccine injury extends to measles vaccine. During my 25 years of litigation in the “Vaccine Court,” measles vaccine was adjudicated as the cause of numerous deaths, and a huge number of profound neurologic injuries.

With the fearmongers’ principal argument invalidated, it is clear that SB277 promises no benefit from the proposed elimination of informed consent. Its only “benefit” would be in increasing drug company profits and expanding the reach of the public health bureaucracy. SB277 would be detrimental to the personal and religious freedom of California citizens, and a disaster to the education system. With the great success of the vaccine program in obtaining the current high percentage of vaccination, SB277 might do no real good at all.

Privacy and liberty rights involved with medical decision-making are widely protected by Supreme Court case law. Your committee cannot help but appreciate already how philosophically abhorrent it is for government to force people into unwanted medical procedures. There is a consensus in the western democracies that informed consent is an essential element of modern medicine, and such influential sources as the Mayo Clinic caution against subverting these values in favor of universal vaccination.² Supreme Court Justice Sandra Day O’Connor has cited the Nuremberg Code for the proposition that due process embraces the right to voluntary and informed consent. And make no mistake, because vaccines are not required to undergo clinical trials, but only adverse event reporting, every new vaccine’s introduction is a clinical trial in itself. Some fail.³ American citizenship includes the right to refuse such insults, without fear of sanction.

The elimination of religious exemption rights infringes on the religious liberty of

²See, for instance, Gregory A. Poland, MD, Mayo Vaccine Research Group. Editorial, “Vaccine Safety: Injecting a Dose of Common Sense” from the Mayo Clin Proc, 2000; 75:135-139. Dr. Poland writes, “Informed refusal must remain an acceptable choice in a free democracy, and the culture of informed consent, with both religious and philosophical exemption, must be maintained.” He concludes, “Coupled with informed debate, we must use science, technology, and common sense to our maximum advantage, while maintaining rights of freedom of choice...”

³A notable modern vaccine failure was a rotavirus vaccine, Rota-Shield, abruptly recalled in 1999 after it caused intussusception in numerous babies.

citizens in many ways. Commonly, religious exemption claims are scriptural⁴; and in my experience, the most typical objection is very prevalent⁵ in American life. Only a very few objections are religiously “mainstream⁶,” yet the vocal opponents of religious exemption loudly protest that persons claiming exemption are not “sincere” because they cannot point to a written teaching or formal doctrine stating that if you vaccinate, you are going to hell.

The constitutional implications of this legislation must be confronted. Senator Wieckowski stated his belief in the Judiciary Committee hearing that the Police Power amounts to “absolute authority” and **already** would allow forced vaccination of even adults. Meanwhile the “mandatory” vaccines listed in SB277 already include several designed to prevent non-communicable diseases, like tetanus and Hepatitis B, which are not contagious in the least. The ascendance of “police power” would literally mean that **any** vaccine (and any medical treatment) could be mandated for **all** citizens. If you want a California where such police power would hold sway, that is one thing, but it is certainly folly to pretend that the legislation means something else.

With thanks for your consideration in this matter, I am

Yours Truly,



Robert T. Moxley
For the Firm

RTM/hs

⁴A well-known collection of Judeo-Christian scriptures characterize the body as the temple of the Lord, and prohibit defiling that temple. The New Testament book of Romans, along with the Apostle Paul’s letters to the Corinthians, are replete with such passages.

⁵There are many, many quietly religious people who rely on prayer to guide them in their important decisions. Most Christian religions describe the confidence people have in their decisions, arrived-at after prayer and meditation, as the “indwelling of the Holy Spirit.”

⁶Many national denominations have doctrines that might cast doubt on an individual’s submission to vaccination; Christian Scientists are often cited as “legitimate” objectors, by even those who insist on universal vaccination. Presumably children in such religions benefit from public education the same as anybody else.