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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION
12

13 **DEVON TORREY-LOVE; S.L.;**
14 **COURTNEY BARROW; A.B.;**
15 **MARGARET SARGENT; M.S.;**
16 **W.S.; and A VOICE FOR CHOICE,**
INC. on behalf of its members,

17 Plaintiffs,

18 v.

19 **STATE OF CALIFORNIA,**
DEPARTMENT OF EDUCATION;
20 **STATE OF CALIFORNIA, BOARD**
OF EDUCATION; TOM
21 **TORLAKSON, in his official capacity**
as Superintendent of the Department
22 **of Education; STATE OF**
CALIFORNIA, DEPARTMENT OF
23 **PUBLIC HEALTH; DR. KAREN**
SMITH, in her official capacity as
24 **Director of the Department of Public**
Health; EDMUND G. BROWN JR.,
25 **in his official capacity as Governor of**
California; KAMALA HARRIS, in
26 **her official capacity as Attorney**
General of California,

27 Defendants.
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5:16-cv-2410 DMG (DTBx)

**DEFENDANTS' NOTICE OF
MOTION AND MOTION TO
DISMISS PLAINTIFFS'
COMPLAINT**

[Fed. R. Civ. P. 12(b)(1), (6)]

**[Filed Concurrently with
Defendants' Memorandum of Points
and Authorities; Request for Judicial
Notice; and Proposed Order]**

Date: January 13, 2017
Time: 9:30 a.m.
Courtroom: 8C, 8th Floor
Judge: The Honorable Dolly M.
Gee
Trial Date: None Set
Action Filed: November 21, 2016

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on January 13, 2017, at 9:30 a.m., or as soon
3 thereafter as the matter may be heard in Courtroom 8C of the above-entitled Court,
4 located at 350 West 1st Street, Los Angeles, California 90012, Defendants
5 California Department of Education; California State Board of Education; Tom
6 Torlakson, in his official capacity as the Superintendent of Public Instruction for the
7 State of California; California Department of Public Health; Karen Smith, in her
8 official capacity as Director of the California Department of Public Health; Edmund
9 G. Brown Jr., in his official capacity as the Governor of the State of California; and
10 Kamala Harris, in her official capacity as the Attorney General of California
11 (collectively Defendants), will move this Court for an order dismissing Plaintiffs'
12 Complaint without leave to amend, pursuant to Rules 12(b)(1) and 12(b)(6) of the
13 Federal Rules of Civil Procedure.

14 This motion is made on the following grounds:

15 1. Plaintiffs' First Cause of Action, alleging that the elimination of the
16 personal belief exemption in California Senate Bill No. 277 (SB 277) violates
17 Plaintiffs' due process rights under the federal and state constitutions, fails to state a
18 plausible claim on which relief may be granted because Plaintiffs fail to plausibly
19 assert, and cannot amend to plausibly assert, that SB 277 is not rationally related to
20 a legitimate state interest and/or narrowly tailored to serve a compelling state
21 interest.

22 2. Plaintiffs' Second Cause of Action, alleging a violation of the Equal
23 Protection Clause of the Fourteenth Amendment, fails to state a plausible claim on
24 which relief may be granted because Plaintiffs have failed to allege, and cannot
25 amend to plausibly allege, that SB 277 is not rationally related to a legitimate state
26 interest and/or narrowly tailored to serve a compelling state interest.

27 3. Plaintiffs' Third Cause of Action, alleging a violation of 42 U.S.C. §
28 1983 fails to state a plausible claim on which relief may be granted because

1 Plaintiffs have failed to allege, and cannot amend to plausibly allege, a violation of
2 any rights protected under the Fourteenth Amendment.

3 4. To the extent that Plaintiffs claim that SB 277 violates their right to a
4 public education under the California Constitution, Article IX, section 5, Plaintiffs
5 fail to state a plausible claim on which relief may be granted because Plaintiffs have
6 failed to allege, and cannot amend to plausibly allege, that SB 277 is not rationally
7 related to a legitimate state interest and/or narrowly tailored to serve a compelling
8 state interest.

9 5. The Court lacks subject matter jurisdiction of the federal and any state law
10 claims asserted against Defendants California Department of Education, the
11 California State Board of Education, the California Department of Public Health,
12 Governor Brown and Attorney General Harris, on the grounds that Plaintiffs'
13 claims against these agencies and officials of the State of California are barred
14 under the Eleventh Amendment and the doctrine of sovereign immunity.

15 6. To the extent that Plaintiffs assert state law claims against Defendants Tom
16 Torlakson, Karen Smith, Edmund G. Brown Jr., and Kamala Harris in their official
17 capacities, the Court lacks subject matter jurisdiction and the Complaint fails to
18 state claims upon which relief can be granted, because Plaintiffs' claims against
19 these state officials are barred by the Eleventh Amendment to the U.S. Constitution
20 and the doctrine of sovereign immunity.

21 7. The Complaint as a whole fails to state a claim upon which relief can be
22 granted because the Complaint alleges no cognizable legal theory.

23 8. Plaintiff A Voice for Choice lacks standing to bring its claims.

24 This motion is made after the meet-and-confer between counsel for State
25 Defendants and Plaintiffs, required under Local Rule 7-3, which occurred on
26 December 9 and 13, 2016.

27 This motion is based on this Notice of Motion and Motion, the concurrently-
28 filed Memorandum of Points and Authorities and Request for Judicial Notice, the

1 pleadings and papers on file herein and upon such argument as may be presented to
2 the Court at the time of the hearing.

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4 Dated: December 15, 2016

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
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JACQUELYN Y. YOUNG
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9

/s/ Jonathan E. Rich
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