Tentative Opinion June 28, 2018 Calendar Division Eight B279936– Sharon Brown et al. v. State of California We have received a request for oral argument from one or more of the parties to this appeal. Here is a summary of the court's tentative opinion. We are inclined to affirm the judgment. First, we grant defendant's request for judicial notice of the safety and effectiveness of vaccinations. Courts have taken judicial notice "of the nature, purpose, and effects of vaccination" since 1925, and have also permitted judicial notice of scientific facts that are widely accepted by experts and specialists and can be verified by "persons learned in the subject matter." This necessarily means we do not accept as true plaintiffs' allegation that "all vaccines are unavoidably unsafe," because we disregard allegations that are contrary to judicially noticed facts. Second, plaintiffs mischaracterize the high court's holding in Bruesewitz. The court there held the National Childhood Vaccine Injury Act pre-empted all design-defect claims against vaccine manufacturers brought by plaintiffs seeking compensation for injury or death caused by vaccine side effects. Bruesewitz does not hold all vaccines are unavoidably unsafe. No doubt injuries and deaths have been caused by vaccines, and there are cases of "unavoidable, adverse side effects." This does not change the pertinent point, stated in Bruesewitz, that "the elimination of communicable diseases through vaccination was 'one of the greatest achievements' of public health in the 20th century," and that even brief disruptions in vaccination programs can lead to children's deaths. It has been settled since Jacobson in 1905 that it is within the police power to provide for compulsory vaccination, and nothing in Bruesewitz changes these principles. Third, none of plaintiffs' five causes of action states a claim for relief. Objections based on personal rather than religious beliefs are not covered by the free exercise of religion clause. Setting that point aside, the Second Circuit held in Phillips that mandatory vaccination as a condition for admission to school does not violate the free exercise clause. The high court in Prince likewise observed that the right to practice religion freely "does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death." Even if we were to assume that laws requiring vaccination merit strict scrutiny, plaintiffs' claim fails. In Workman, the Fourth Circuit held West Virginia's mandatory immunization program withstood strict scrutiny, and prevention of the spread of communicable diseases constituted a compelling interest (citing cases). We agree with these authorities. The right to attend school is a fundamental interest under Serrano, but here there is no suspect classification. Even if we assume the strict scrutiny test should be applied, Senate Bill No. 277 would pass that test. The federal district court in Whitlow has already so held, and we agree with its analysis. The state's interest in fighting the spread of contagious diseases through mandatory vaccination "is equally compelling whether it is being used to prevent outbreaks or eradicate diseases." Plaintiffs' assertion there are less restrictive alternatives (such as alternative means (unspecified) of immunization, and quarantine) fails, as compulsory immunization has long been recognized as the gold standard for preventing the spread of contagious diseases. As the legislative history indicates, studies have found that when belief exemptions to vaccination are permitted, vaccination rates decrease, and community immunity wanes if large numbers of children do not receive required vaccinations. We agree with Whitlow that the right of education is no more sacred than other fundamental rights that give way to the state's interest in protecting the health and safety of its school children. Plaintiffs' claims of equal protection violations based on "vaccination status" and the various exemptions in Senate Bill No. 277 also fail. No authorities

support these claims. French v. Davidson long ago rejected a 14th amendment challenge to the state's mandatory vaccination law, finding "no element of class legislation." The statutory classifications and exemptions plaintiffs dispute do not involve similarly situated children, or are otherwise entirely rational classifications. Nor is Senate Bill No. 277 void for vagueness under California's due process clause. We have no difficulty perceiving the legislative goal. The goal of "total immunization" has been stated in Health and Safety Code section 120325 since its passage in 1995. As for the claim of vagueness in the medical exemption, plaintiffs make no argument at all, and offer no authorities or analysis of how vagueness principles of constitutional law could apply to their claims. They do not. A statute is void for vagueness if persons of common intelligence must guess as to its meaning and differ as to its applications. The medical exception on its face is sufficiently clear to give fair warning of what is required. Finally, plaintiffs' claim of a violation of Health and Safety Code section 24175, prohibiting medical experiments without the subject's informed consent, is patently erroneous. The applicable authorities – legal and scientific – clearly show that immunization is reasonably related to maintaining the health of the subject of the immunization as well as the public health. Plaintiffs' request for leave to amend is untimely as it was not made in their opening brief, and in any event plaintiffs do not explain how they could amend the complaint to cure its defects.