

FROM THE DESK OF
Richard Pan, MD, MPH, FAAP
SACRAMENTO, CALIFORNIA

Via: TrueFiling

January 30, 2023

Chief Justice Patricia Guerrero and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: Letter in Support of Request for Depublication of
Let them Choose, et al. v. San Diego Unified School District
Appellate Case No. D079906
California Supreme Court Case No. S278233

Dear Chief Justice Guerrero and the Justices of the Supreme Court of California:

My name is Dr. Richard Pan. I am a board-certified pediatrician, I possess a Master of Public Health from the Harvard T.H. Chan School of Public Health, and I have more than 35-years of experience in health policy and public health, including extensive experience working with school districts and schools on student health and on education policy. Between 2010 and 2022, I served in the California Legislature, and most recently in the State Senate. I chaired the Committees on Health in the Assembly and Senate, respectively, and was a member of the Senate Committee on Education, among other committees. During my time in the Legislature, I authored key school vaccination legislation, including Senate Bill (“SB”) 277 (2015), which eliminated statutory provisions under prior law allowing for student exemption from school immunization requirements based on personal beliefs claims. I am proud to have received the 2021 Child Health Advocate Award from the American Academy of Pediatrics, and the 2019 Beverlee A. Myers Award from the California Department of Public Health for leadership and accomplishments in public health in California, among other honors, and I am a long-standing member of the American Academy of Pediatrics Council on School Health.

I am submitting this letter under Rule of Court 8.1125(b) in support of the January 20, 2023 request for depublication of the Court of Appeal’s opinion in *Let Them Choose v. San Diego Unified School District*, filed under Case No. S278233 (the “Depublication Petition”). I am a nonparty to that case, and have no employment or pecuniary

relationship to the parties or the petitioners seeking depublication. My support for depublication is made to protect public health interests in California, as the author of vaccination legislation that was misconstrued in the opinion, as an expert on California school vaccine laws, regulation, and policy, and as a physician who understands the critical role that vaccination plays in mitigating against disease outbreaks that are both dangerous and highly disruptive to all aspects of everyday life.

The premise of the opinion is that by implication, the California Legislature intended that local school districts and schools could not impose greater vaccination requirements for campus and classroom access beyond those set by the Legislature and through the regulatory process of the California Department of Public Health (“CDPH”). **This is simply not correct.** The authors of vaccine legislation, including myself, and the Legislature at large, chose not to include “preemption” language nor bar more rigorous school vaccination policies. The purpose of California’s vaccine laws is to set baseline school vaccination requirements statewide, not to preclude school districts and schools from exercising their traditional roles in setting campus health policies that they deem to be appropriate for their communities. There were no discussions in legislative matters in which I was involved, and no references in the written legislative history, suggesting any intent to preempt local school districts and schools from implementing campus vaccination requirements for diseases not on the State’s immunization schedule.

As support for its conclusion, the opinion cites to my statement in the legislative history for SB 277 describing the need for a “statewide standard,” but this statement was clearly in the context of a response to opponents of SB 277 who argued that personal belief exemptions to *State-required vaccinations* should be maintained, and at most, eliminated locally based on local vaccination levels and conditions. The statewide standard at issue was a *minimum standard*, that all children in California admitted to school should be required to be vaccinated against *at least* the State-specified diseases, and shall not be exempted based on personal beliefs as part of that minimum standard. Judge Chalfant was correct in his analysis in the decision attached to the Depublication Petition that California’s school vaccinations laws are a “minimum” standards statute, not a “maximum” standards statute.

In fact, having sat on the Senate Committee on Education for eight years, including when SB 277 came before it, I confirm that SB 277 was drafted to be complimentary to California’s longstanding policy of local school board control and discretion to set local rules, regulations, and policies for the schools and students they are directly responsible for, so long as those policies meet state minimums. This responsibility is embodied in Education Code Section 49300, that “[t]he governing board of any school district shall give diligent care to the health and physical development of pupils...” SB 277 was drafted with a specific understanding of California education policy on local control and responsibility, including Education Code Section 35160, which provides that “the governing board of any school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the

purposes for which school districts are established,” and Section 351601.1, that “school districts ... have diverse needs unique to their individual communities and programs,” and “in addressing their needs, common as well as unique, school districts ... should have the flexibility to create their own unique solutions,” that “it is the intent of the Legislature to give school districts, county boards of education, and county superintendents of schools broad authority to carry on activities and programs,” and “that Section 35160 be liberally construed to effect this objective.” California’s school vaccine laws were drafted with these local control principles in place, and SB 277 was reviewed and passed by the Senate Committee on Education based on the same. Given the absence of a preemption clause and the lack of legislative intent to preempt, California’s school admission immunization laws must be construed to set a minimum standard and allow for higher local campus vaccination standards as Judge Chalfant correctly found.

Health and Safety Code Section 120335(b) is phrased in recognition of this minimum standard, that a school’s “governing authority shall not unconditionally admit any person as a pupil of any ... school ... unless, prior to his or her first admission to that institution, he or she has been fully immunized...” Under the statewide standard, schools may not admit students if they do not meet the minimum immunization requirements, but schools are not required to admit them either simply because they meet the minimum vaccination requirements, much less, allow them to attend class in-person. Nothing in Section 120335 precludes school districts and schools from imposing additional vaccination requirements as a condition for participation in on-campus classes and programs, particularly during a pandemic or local health crisis warranting additional requirements. This is especially true of a pandemic disease like COVID-19, as distinguished from “childhood diseases” which are the subject of California school vaccination laws. (See Health and Safety Code Section 120325 [“In enacting this chapter ... it is the intent of the Legislature to provide ... [a] means for the eventual achievement of total immunization of appropriate age groups against the following childhood diseases...”])

CDPH’s regulations should be read under this same lens, that the purpose of California’s school vaccinations laws is to set minimum standards and not maximum standards. Any interpretation of CDPH’s regulations as mandating that schools provide all students with access to classrooms and on-campus activities just because they have been immunized against at least the ten State-specified childhood diseases, and that schools cannot set more rigorous campus access requirements, is not accurate. The principal purpose of CDPH’s regulation, 17 CCR Section 6025, was to specify vaccines and doses (e.g., five doses of DTaP) to protect against the diseases identified in Section 120335, and the ages at which the doses must be received for admission eligibility under *State minimum standards* – not to prohibit more rigorous campus health policies on the subject of vaccination under school health policies. The point of requiring schools to check student vaccination records at the point of enrollment is to ensure high levels of vaccination in California for at least ten childhood diseases, not to prevent higher levels of immunization for classroom access that may be locally required after the point of admission.

Further, the fact that SB 277 provided for immunization requirements added by CDPH (rather than the Legislature) to be subject to personal beliefs exemptions does not detract from the discretion left to local school districts and schools to impose campus access policies based on higher vaccination standards, as Judge Chalfant correctly held. Currently, if CDPH adds an additional disease to the State immunization schedule, a student may qualify for an exemption from the *State's minimum requirements for admission*, but this would not preclude a local school district or school from implementing a campus access policy based on more rigorous standards.

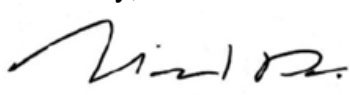
In closing, the opinion should be depublished because it misconstrues California's school vaccine laws and their legislative history, and risks causing unintended consequences on public health for local communities and statewide.

School vaccinations requirements are a proven and critical tool in preventing death, severe illness, and disability, and slowing and stopping the spread of illness. In schools in particular, high levels of vaccination ensure that students, their teachers, and their families remain as healthy as possible, and minimize absence and disruption to learning (among other community and societal consequences). In a fast moving health crisis, like a pandemic, local communities and those responsible for the health and safety of children must act swiftly to minimize infection. When there is local will to condition access to in-person school activities on immunization against a new or rapidly spreading disease, the school vaccine laws do not stand in the way of school districts and schools seeking to protect their students and staff, and the opinion should not serve to do so either.

The opinion should be depublished because it risks frustrating school initiatives that are prudent in response to an array of unforeseeable health challenges and circumstances, including and beyond COVID-19. California's school vaccine laws do not require schools to wait for permission from the Legislature or CDPH before they implement policies to protect the health of their communities. Vaccines undergo rigorous safety evaluation before they are ever put out into the market, and thus, if a vaccine is approved for use in children and is being distributed in California, there is no public health or policy rationale for why an individual school district or school could not require it of students participating in in-person programs to minimize the spread of disease.

Thank you very much for your consideration of my letter in support of the Depublication Request.

Sincerely,



Richard Pan, MD, MPH, FAAP

DECLARATION OF SERVICE
State of California, County of Sacramento

I, Vanessa Littlejohn, declare the following: I am over the age of 18 and not a party to the within action. My address is 655 University Ave., Ste.150, Sacramento, CA 95825.

On the date set forth below I served the foregoing document described as a **SUPORT LETTER TO THE REQUEST FOR DEPUBLICATION OF FOURTH DISTRICT APPELLATE OPINION RE LET THEM CHOOSE V. SAN DIEGO UNIFIED SCHOOL DISTRICT** on interested parties in this action addressed as follows:

- (VIA ELECTRONIC TRANSMISSION)** to Supreme Court of California, Sixth Appellate District, using TrueFiling (<https://www.truefiling.com>). All interested parties listed below, registered with TrueFiling, will be electronically served through TrueFiling.
- (VIA U.S. MAIL)** I caused such document to be placed in the U.S. Mail at Sacramento, California with postage thereon fully prepaid. I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 30, 2023 at Sacramento, California.



Vanessa R. Littlejohn

SERVICE LIST

LET THEM CHOOSE V. SAN DIEGO UNIFIED SCHOOL DISTRICT
FOURTH APPELLATE CASE NO.: D079906
SAN DIEGO COUNTY SUPERIOR COURT
CASE No.: 37-2021-00043172

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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **LET THEM CHOOSE v. SAN DIEGO UNIFIED SCHOOL DISTRICT**

Case Number: **S278233**

Lower Court Case Number: **D079906**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **rpan@drRichardpan.com**

3. I served by email a copy of the following document(s) indicated below:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

1/30/2023

Date

/s/Richard Pan

Signature

Pan, Richard (Other)

Last Name, First Name (PNum)

Law Firm