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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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CHINO VALLEY UNIFIED SCHOOL DISTRICT, et al.,)	Case No. 2:24-CV-01941-DJC
)	
Plaintiffs,)	Sacramento, California
v.)	December 19, 2024, 2:18 p.m.
)	
GAVIN NEWSOM, et al.,)	Re: Motion to Dismiss
)	
Defendants.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DANIEL J. CALABRETTA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:	LIBERTY JUSTICE CENTER MS. EMILY KATE RAE 13341 W. U.S. Highway 290, Building 2 Austin, Texas 78737
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1 SACRAMENTO, CALIFORNIA, THURSDAY, DECEMBER 19, 2024

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3 (In open court.)

4 THE CLERK: Calling civil case 24-1941, Chino Valley
5 Unified School District, et al. vs. Newsom, et al.

6 THE COURT: Good afternoon, Counsel. Could you please
7 state your appearances, please, for the record.

8 MS. RAE: Your Honor, Emily Rae with the Liberty
9 Justice Center on behalf of plaintiffs.

10 MS. BUNSHOFT: Jennifer Bunshoft from the Attorney
11 General's office on behalf of defendants.

12 THE COURT: All right. Good afternoon. This matter's
13 set for defendant's motion to dismiss. I assume you all saw
14 the Court's minute order limiting today's argument to the
15 motion to dismiss for lack of subject matter jurisdiction. If
16 ultimately -- well, lack of jurisdiction.

17 If ultimately I conclude I do have jurisdiction, I
18 would certainly schedule a further oral argument on the merits,
19 but I thought it would be helpful to take this one chunk at a
20 time.

21 I know this is defendants' motion, but actually I'm
22 going to start with plaintiff. As you could probably tell with
23 my minute order, I have significant concerns about standing in
24 this case. I'm going start with you to give you an opportunity
25 to tell me where I'm wrong, and then I'll give you a chance for

1 rebuttal after I hear from the AG's office.

2 MS. RAE: Sure. I just have one clarifying question:
3 I know your order said to focus specifically on standing, but
4 their 12(b)(1) motion also has Eleventh Amendment immunity and
5 no private right of action for FERPA. Do you want us to focus
6 specifically on standing?

7 THE COURT: No. I think all of those issues -- for
8 your purposes, I don't think that you're trying to bring a
9 cause of action for FERPA, so that's something I'll talk with
10 defense about. I don't agree with that argument, but for your
11 purposes, yeah, I would like to hear about why you think the
12 individual plaintiffs have standing, why there's standing for
13 the school boards to sue the State consistent with Ninth
14 Circuit precedent and then the Eleventh Amendment argument
15 against Governor Newsom.

16 MS. BUNSHOFT: Your Honor, if I may, just to keep you
17 from having to argue something, with the clarification that
18 plaintiffs provided that they were not trying to have parents
19 bringing a claim based on FERPA, but rather that it was a
20 preemption claim, we withdraw the private right of action
21 argument.

22 THE COURT: That's how I read your complaint. So that
23 makes perfect sense. So, go ahead, Counsel.

24 MS. RAE: Your Honor, plaintiffs have standing to
25 bring their claims because they have properly alleged that AB

1 1955, which makes parental notification policies illegal,
2 violates the constitution and federal law. Governor Newsom is
3 an appropriate defendant in this case because the Eleventh
4 Amendment does not give him immunity.

5 The parent plaintiffs have standing to pursue their
6 First, Fourteenth Amendment, and FERPA claims. The parent
7 plaintiffs all currently have children in school districts that
8 have passed parental notification policies informing plaintiffs
9 if their child requests to socially transition their gender at
10 school or to change their records at school. These school
11 districts include Chino Valley, Anderson Union, Temecula Valley
12 and Orange.

13 The injury that gives rise to standing in this case is
14 not that the plaintiffs' children will certainly socially
15 transition behind their parents' back if AB 1955 is
16 implemented, the injury is that these parents currently have
17 under both the constitution and their district policies the
18 right to know if their child is being socially transitioned or
19 changes their records.

20 THE COURT: But if their child isn't trying to
21 socially transition, and there's no indication they are, what
22 is the harm?

23 They're not being -- the school district isn't failing
24 to notify them of anything because there's nothing to notify
25 of, so how are they being harmed?

1 MS. RAE: Right, but the threat of injury, the threat
2 that this could happen and parents will never know, that is the
3 injury in and of itself.

4 To basically sum up what the injury is, on December 31
5 of this year, each of these parents will have the right to know
6 under their district policies. As of January 1, because of AB
7 1955, Governor Newsom, Attorney General Bonta and
8 Superintendent Thurmond say that they will no longer have that
9 right under California law.

10 So, I understand that the Fourth Circuit and the
11 Seventh Circuit have focused on the injury of the child being
12 socially transitioned in secret, but we are putting forth that
13 the constitutional right includes the parents' right to know,
14 that inherent right to know whether it's happening or not, as
15 in parents involved, when a policy has the possibility of
16 harming the plaintiffs, which is the case here, standing can be
17 established.

18 THE COURT: So, how do you square that understanding
19 of the *Seattle* case with *Clapper*?

20 MS. RAE: Well, it's interesting you should ask.
21 *Clapper* was authored by Justice Alito. In just a week and a
22 half Justice Alito issued an opinion in another parental
23 notification case. The Supreme Court chose not to take that
24 case, but Justice Alito stated --

25 THE COURT: I'm very aware of his statement. It's

1 also his opinion, it's not a majority. *Clapper*, his opinion,
2 is a majority opinion.

3 MS. RAE: That's true.

4 THE COURT: How do I square *Clapper* with your
5 understanding of the *Seattle* case?

6 MS. RAE: I think it's important that we take Alito's
7 opinion on the matter into consideration. I understand it's
8 not a majority opinion, but it does signal how the Supreme
9 Court is leaning.

10 THE COURT: It signals how Justice Alito is leaning.
11 If the majority agreed with him, they would have granted cert
12 presumably.

13 MS. RAE: We argue that the *Parents Involved* case is
14 the better authority here when it comes to, you know,
15 analogizing the facts of this case to either *Clapper* or *Parents*
16 *Involved*.

17 *Parents Involved* allege similar facts; school policy
18 that was illegal. Parents argued that it could negatively
19 impact their children, and the Supreme Court said that that is
20 enough to confer standing.

21 THE COURT: I felt that Fourth Circuit's, the majority
22 opinion distinguishing the *Seattle* case was interesting. The
23 way I at least understand what the Fourth Circuit was saying is
24 that, you know, issues of race are different and unique, and
25 that in the race context it's the classification itself that

1 gives rise to the injury. So, the mere fact that you are
2 being -- that the student is being classified by the law,
3 that's the injury. I don't know of any case outside the
4 context of race where the courts have said that.

5 MS. RAE: Well, the *Parents Involved* case did not say
6 that it was limited to equal protection. I understand that
7 that was the Fourth Circuit's interpretation of it; however,
8 that is not limited in the opinion itself.

9 The Supreme Court did not say given the, you know,
10 considerations of the equal protection claim, this is how we're
11 ruling on standing, it simply made the argument. So we would
12 argue that the Fourth Circuit got it wrong.

13 THE COURT: What's your best case for this kind of
14 broad interpretation of *Seattle* outside the facts of it?

15 What case would you point to to say the Fourth Circuit
16 got it wrong because here's an example of the case outside of
17 the race context where there was this broad interpretation of
18 *Seattle*?

19 MS. RAE: Well, Your Honor, I think in the context of
20 parental notification policies like we're talking about here,
21 this is such a new issue that courts across the country have
22 not had an opportunity yet to interpret this, with the
23 exception of obviously the Fourth and Seventh Circuit. The
24 Ninth Circuit has not addressed this argument yet, nor have any
25 of the other circuits. It's so new that we believe the Fourth

1 and Seventh Circuit got it wrong. We think that it was a way
2 too narrow view of standing and that parents' right to know
3 what is happening to their children at school regardless of
4 whether that actually materializes, the focus should be on the
5 right to know, and that in itself gives the parent standing
6 here.

7 THE COURT: And how is that distinguishable?

8 I know you don't like *Clapper*, but how does that
9 square with *Clapper*?

10 I mean, the whole point there was there was no way
11 they could know whether or not their communications were being
12 intercepted.

13 I understand the plaintiffs' problem here, right?
14 It's hard to say, you know, you're not going to know if your
15 rights are being violated because the whole point is the
16 secrecy, right, but that was also the issue in *Clapper*.

17 MS. RAE: I think that discovery may be helpful in
18 this case here.

19 We are aware of school districts across the state, and
20 we intend to establish this in discovery, that just, for
21 example, if a parent makes a FERPA request, that those schools
22 have placed any gender-related document, such as gender support
23 plans, into a separate file, a secret side file, that these
24 school districts then use as a justification to not give that
25 information to parents pursuant to a FERPA request. Chino

1 Valley is one of those school districts that used to engage in
2 that process prior to the parental notification policy.

3 So in terms of the right to know --

4 THE COURT: I thought you were bringing that as a
5 facial challenge?

6 MS. RAE: I'm sorry?

7 THE COURT: I thought you were bringing a facial
8 challenge, not an as-applied challenge?

9 MS. RAE: For a FERPA claim?

10 THE COURT: For any claims. I guess I'm wondering why
11 the specific practice in specific districts is all that
12 relevant given that this is a facial challenge not an as
13 applied one.

14 MS. RAE: I think it goes to show that this practice
15 of violating FERPA by not handing documents over to parents has
16 been ongoing, and that AB 1955 does nothing to change that
17 practice, and, in fact, makes it so school districts are
18 emboldened to continue that practice of hiding this information
19 from parents given the language of consent and
20 anti-retaliation.

21 THE COURT: Give me one second. I wanted to look
22 because I was intrigued by your characterization of how the
23 Fourth Circuit was responding or characterizing their claim.

24 I mean, the Fourth Circuit says, "The parents claim
25 they have a fundamental right in the rearing of their children,

1 and that implementing a gender support plan and withholding
2 information about such a plan from parents interferes with that
3 right in violation of the Constitution's due process laws."

4 It seems similar to the claim you are asserting here,
5 and why you're trying to distinguish it, that it's about the
6 parents' right to know. It seems like that's how the Fourth
7 Circuit view the claim at issue here.

8 MS. RAE: Yes, Your Honor. We're arguing simply that
9 the Fourth Circuit got it wrong; same with the Seventh Circuit.
10 We believe that those courts did not apply the correct standing
11 standard and that they are attempting to avoid the contentious
12 constitutional questions using doctrine of article free
13 standing.

14 THE COURT: Ultimately, I think a point that I think
15 it's important to make clear, you may well be able to bring
16 this suit in state court, right? California courts have a much
17 broader view of standing -- and they have taxpayer standing --
18 than the federal courts do. So, you may well be able to bring
19 this suit, I'm just not convinced you could bring it in federal
20 court because we are a limited jurisdiction.

21 MS. RAE: I believe under *Lujan*, we haven't gotten
22 into LEA plaintiffs, but the parents have met that standard.
23 Their injury is actual and imminent. The second AB 1955 is
24 implemented they have lost their right to know that they
25 currently have, underwrote the constitution, but more

1 importantly for our purposes, under the parental notification
2 policies that exist in their districts.

3 THE COURT: Let's talk about the LEA plaintiffs.

4 I think -- I understand your point that there are,
5 again, some judges in the Ninth Circuit who have been critical
6 of that doctrine, and I think you point out to several Ninth
7 Circuit judges who've called for rehearing *en banc* to
8 reconsider that determination. Unless and until they do, I'm
9 bound by it.

10 So, help me understand how that document doesn't apply
11 here. Maybe this is the vehicle where you reconsider it, but I
12 think at this point as a district judge I'm not sure I have any
13 leeway there.

14 MS. RAE: Yes, Your Honor, I understand that. Our
15 argument is primarily because when intervening Supreme Court
16 authority is clearly irreconcilable with prior circuit
17 authority, district courts should consider themselves bound by
18 the intervening higher authority and reject the prior opinion
19 of the Court as being effectively overruled.

20 I understand that since *Lujan* has been issued, the
21 Ninth Circuit has continued to follow *South Lake Tahoe*. We're
22 arguing that you should follow *Lujan* instead.

23 THE COURT: Well, if the Ninth Circuit thinks that its
24 own precedent is not irreconcilable with the Supreme Court, I
25 think I'm bound by that determination even.

1 MS. RAE: Understandable, Your Honor.

2 THE COURT: So, let's talk about the Eleventh
3 Amendment argument against the Governor.

4 I want to focus on his appointment of the members of
5 the Board of Education. You are welcome to, you know, push
6 back on this, but the fact that he has a role in the budget
7 process, and I would emphasize, it's a role, he proposes the
8 budget. It's ultimately the legislature that enacts it. He
9 signs it, but I think if the mere fact that he proposes money
10 is sufficient under the Eleventh Amendment for him to be sued,
11 then the Governor is a plaintiff in every single lawsuit
12 involving the State of California because he proposes the
13 budget for every department and agency in California and that
14 doesn't seem to be the law. But if you want to push back,
15 that's my view on that.

16 The Board, I think, maybe is more interesting to me.
17 I'm still skeptical of it, though. Maybe the Board is the
18 proper defendant here, not the Governor. Do you know if he has
19 the right to remove the Board at will; are they for term?

20 MS. RAE: I do not know that standing here today, Your
21 Honor, but you've spoken about the Board and the budget. I
22 think it's really important to emphasize it's not just about
23 proposing the budget. Utilizing more than simply his
24 supervisory powers, Governor Newsom has the specific power to,
25 or at least he believes he has the specific power to personally

1 punish plaintiffs for violating AB 1955 without relying on the
2 Attorney General or the Department of Education because he can
3 unilaterally decide to impose fines or restrict fundings to the
4 LEA plaintiffs. The reason we know this or believe this is
5 just last year Newsom announced that he would impose a
6 \$1.5 million fine on a California school district that stated
7 it would not approve the state-approved curriculum on certain
8 issues.

9 THE COURT: Where is that in the complaint?

10 MS. RAE: That is not in our complaint.

11 THE COURT: I would be very -- this is not the first
12 time where I've been cited a press release by Governor Newsom
13 in this kind of argument. It's not in the complaint, so I
14 can't consider it, but if I dismiss with leave to amend, one
15 thing to consider is I would want to know if that's hyperbole
16 or not. Oftentimes politicians engage in hyperbole and say
17 things they don't actually have the authority to do, but fair
18 point.

19 MS. RAE: Yes, Your Honor. This was widely covered by
20 the media at the time. He was successful in manipulating the
21 school district to reverse its policies because at least the
22 school district believed that he would follow through.

23 So, the fact that -- whether he would have followed
24 through with that or not I guess we'll never know, but
25 according to him, he believes that he can. For that reason,

1 this is a way to enforce AB 1955 that goes outside of Attorney
2 General Bonta's duties and Superintendent Thurmond's duties.

3 THE COURT: But to be clear, that's not in the
4 complaint yet.

5 MS. RAE: No, Your Honor.

6 THE COURT: It sounds like if I granted you leave to
7 amend, it would be something you would put in there?

8 MS. RAE: Absolutely.

9 THE COURT: Anything you want to add; otherwise, I'm
10 going to turn to defendant, and then I'll give you an
11 opportunity to respond.

12 MS. RAE: No, I believe that's it, Your Honor.

13 THE COURT: Okay. All right. Let's start with
14 *Parents Involved in Community Schools* versus *Seattle*, because
15 that's certainly the best case for plaintiffs here, and I could
16 certainly see why they're citing it.

17 It's a school district policy that may or may not
18 apply to the student. They don't know in advance if they're
19 going to have to go on a waitlist or if they're just going to
20 be admitted, or even if the school they're going to apply to in
21 the future is going to be oversubscribed. So why doesn't
22 *Parents Involved* apply here?

23 MS. BUNSHOFT: Well, as Your Honor noted, it's a case
24 that arose in the equal protection context which is not at
25 issue here. As the *J and J Parent 1* case decided that was

1 distinguishable, and, really, the facts and the standing found
2 in that particular case was very specific to the equal
3 protection context.

4 The association's members could establish injury based
5 on, quote, being forced to compete in a race-based system that
6 ultimately could prejudice their members' children. That's
7 very different from here where there's just this theoretical
8 concern or worry based on zero facts about the plaintiffs'
9 children ever coming within the scope of a school's policy
10 requesting any sort of, you know, desire or a request to the
11 school district that they be referred to with gender-consistent
12 names and pronouns, or even that they are non-conforming or
13 transgender and that simply fails to establish an injury in
14 fact here.

15 THE COURT: Is there a case, I mean, aside from the
16 Fourth Circuit case we've been talking about, is there any case
17 by the Supreme Court or in the Ninth Circuit that expressly
18 says that the *Seattle* case should be limited to cases involving
19 equal protection?

20 MS. BUNSHOFT: The Ninth Circuit, I'm not aware of a
21 Ninth Circuit case that says that. I'm also not aware of a
22 case that refers to *Parents Involved* outside of the equal
23 protection context to find standing.

24 THE COURT: Or that limits it to equal protection?

25 MS. BUNSHOFT: Aside from the *J and J Parents* case,

1 and I believe short of I think it was a *District of New Jersey*
2 case also, and specifically in the context of gender identity
3 school ordinances, they also distinguished that case as not
4 being applicable. So, that's another court that distinguished
5 it and found that it didn't apply in the context of similar
6 sorts of ordinances or school regulations governing students'
7 gender identity plans and that part.

8 THE COURT: One question I also wanted to ask, and,
9 Ms. Rae, I've forgotten to ask you when we were talking the
10 first time, so I'll also ask you this question on rebuttal: I
11 think the plaintiffs point to several First Amendment cases
12 that have what is stated as a broader view of standing, and I
13 don't think you really responded to that in your brief. Does
14 that line of cases apply to free exercise claim, or are they
15 limited to free speech claims?

16 MS. BUNSHOFT: They have traditionally been limited
17 just to free speech claims certainly because of the rationale
18 behind it because of this chilling effect on speech that would
19 happen if there had to be an imminent course of effect.

20 It appears that some cases where there have been both
21 a First Amendment free speech and a free exercise claim have
22 sort of had somewhat of a loosened standard, so it's not
23 completely care, but traditionally it is limited to the free
24 speech context.

25 But even if there was a more relaxed standing, there

1 still is a minimum threshold of showing a substantial risk that
2 the purported religious belief would be hampered here on the
3 allegations about their children, which are limited just to
4 they attend public school in a particular school district, and
5 their grade level falls far short of any threshold of showing
6 standing.

7 THE COURT: Okay. Turning to the LEA defendants.
8 Let's start with the Governor. This may be an unfair question
9 because it wasn't in the complaint, so if you just say "I don't
10 know," that's fine.

11 Are you aware of the press release that Ms. Rae was
12 talking about where the Governor threatened funding for a
13 school district?

14 MS. BUNSHOFT: It sounds vaguely familiar, but I am
15 not because it was not in the complaint or ever raised, so I
16 have not analyzed it.

17 THE COURT: Fair enough. So, turning to the LEA
18 context, I thought it was an interesting point, and I'm curious
19 if you agree with the premise, I don't know how this would come
20 to federal court, but could the constitutional issue be raised
21 as a defense by an LEA?

22 So, I understand the point under Ninth Circuit case
23 law that it appears an LEA cannot bring a constitutional claim
24 against the state since it's a subdivision, so it's effectively
25 suing itself under the federal constitution. Can it raise it

1 as a defense if that were in federal court?

2 MS. BUNSHOFT: I'm not aware of a Ninth Circuit case
3 that specifically addresses that, but it does seem like that
4 would violate the underlying premise of the rule that there
5 really shouldn't be political subdivisions suing the state, you
6 know, about a state statute saying it's unconstitutional.

7 THE COURT: Well, here it's the state -- I don't know
8 how this gets in federal court, so putting that aside, but
9 let's say a state sues an LEA for violating this law, can the
10 LEA assert as a defense, well, the law violates the
11 constitution? I mean, it seems like they could.

12 MS. BUNSHOFT: They certainly could in state court.
13 I'm not sure that they really could in federal court, but in
14 any event, that's not what's at issue here. So, it's an
15 interesting hypothetical, but not directly relevant.

16 THE COURT: Okay. Any other points that you want to
17 make?

18 MS. BUNSHOFT: I certainly agree with what Your Honor
19 said in terms of the fact that the Ninth Circuit has reaffirmed
20 the *South Lake Tahoe* standing doctrine in many cases since
21 *Lujan*, and although there have been some concurring or
22 dissenting opinions saying that this should be something we
23 viewed *en banc*, the Ninth Circuit has not as recently as the
24 *City of Huntington Beach versus Newsom* case, which was very
25 recently, applied the *South Lake Tahoe* standing doctrine to bar

1 the City of Huntington Beach from bringing a claim like the one
2 here where they alleged federal constitutional claims to a
3 state law. And, therefore, as Your Honor noted, the district
4 court is bound by the Ninth Circuit precedent, and that really
5 seems to be something that there should not be leave to amend
6 because there's really nothing that could be alleged.

7 THE COURT: You must be reading my mind because I was
8 about to ask you about leave to amend. I hear the point on
9 potentially the LEA plaintiffs.

10 Do you have a position on leave to amend if I were to
11 grant the motion to dismiss for lack of jurisdiction on the
12 individual plaintiffs? You know, my typical practice is this
13 is the first time the initial complainant -- it's the first
14 amended, but I think it's the first time there would be a court
15 ruling on a complaint, and typically my practice at that point
16 is to allow leave to amend because it's the first time they're
17 hearing my views on the matter. Do you have any thoughts on
18 leave to amend?

19 MS. BUNSHOFT: Well, I think it's interesting that
20 counsel in the opposition brief and even here today has not
21 said, Oh, we could allege some specific facts about the
22 students of the plaintiffs to say something, some concrete,
23 specific, not generalized sort of fact that would show that
24 there is any sort of imminent or concrete risk that the policy
25 could apply to them and that they would be faced with the

1 application of the statute. So, in this particular case I
2 would say that it would seem appropriate to dismiss without
3 prejudice. So should things change in the future they would
4 certainly be welcome to come back to court, but I'm not sure
5 what -- it does seem futile to grant leave to amend now in the
6 absence of anything that would change their fundamental
7 argument, which does not comport with the law and standing.

8 THE COURT: Anything else that you want to --

9 MS. BUNSHOFT: You were curious about, with respect to
10 the Governor, about the power to appoint SBE members, and
11 that's really our head hearing here because the statute doesn't
12 grant enforcement power to SBE over AB 1955, and really that's
13 the key inquiry under *Ex Parte Young* in the context of a
14 challenge to a statute is that there must -- the officer must
15 have a direct role with respect to enforcing the law to
16 overcome Eleventh Amendment immunity, and I would direct Your
17 Honor to the *Los Angeles County Bar Association v. Eu* case.

18 So, even where there was an issue about -- a question
19 about appointment power that says general supervisory power
20 over persons responsible for enforcing the challenge position
21 will not subject the official to suit, and here it's not even
22 enforcement power over the parties that have the statutory
23 authority to enforce it, so that should -- that is just an
24 irrelevant point about the SBE.

25 THE COURT: Thank you for that.

1 All right, Ms. Rae, why don't we go backwards. Let's
2 start with leave to amend. I think you articulated new facts
3 regarding the Governor. Would there be any of the facts you
4 can allege if I find that the individual plaintiffs don't have
5 standing?

6 MS. RAE: Well, I think one of our main goals in this
7 litigation is to show that in these parental notification
8 cases, that parents have standing based on their right to know
9 alone.

10 So, if we were to be granted leave to amend, I don't
11 believe that we would change the facts to say that we expect
12 that our children will socially transition, or that that is a
13 foregone conclusion if AB 1955 is implemented. Our point here
14 rests in the Fourteenth Amendment that includes parents' rights
15 to know important medical treatment and mental health
16 information about their children. It's that knowledge right
17 alone that's so important and that parents are suing over and
18 that we believe confers standing. The Seventh and Fourth
19 Circuit notwithstanding, the Ninth Circuit has an opportunity
20 to get this right, or this court in the Ninth Circuit has the
21 opportunity to get it right. So we don't believe that there is
22 a need to add those facts that the Fourth and Seventh Circuit
23 say are necessary.

24 THE COURT: So, would you -- if I were -- if I
25 disagree with you and conclude that that is not sufficient to

1 give rise to standing, would you not want leave to amend?

2 MS. RAE: We would appreciate leave to amend to
3 explore other theories that may confer standing beyond that.

4 THE COURT: All right, understood. And then I'll ask
5 the question I forgot to ask you, which is, you know, the cases
6 that you cite for kind of what I would say a broader view of
7 standing in the First Amendment context, are all free speech
8 cases. It sounds like at least defense counsel thinks there's
9 cases where there have been both. Are you aware of any cases
10 where I'll say any circuit or the Supreme Court has
11 acknowledged broader standing principles in the free exercise
12 context specifically?

13 MS. RAE: Standing here today I cannot think of any
14 specifically, not to say that we believe none exists. I
15 just am drawing a blank at the moment, but we move that the
16 principle that there is a broader standing requirement for
17 First Amendment claims extends to both free speech and the free
18 exercise of religion. Both of these concepts are put into the
19 First Amendment. So, it doesn't really make sense that the
20 standing would be broader for one as opposed to the other.

21 THE COURT: I mean, I certainly understand why the
22 policies underlying that line of cases might apply to free
23 exercise, but it would be striking if no case had ever applied
24 that in the free exercise context. Do you know if there is a
25 free exercise claim in either the Seventh or Fourth Circuit

1 cases, because I know they didn't have this broader --

2 MS. RAE: I believe there is in at least one. I
3 cannot recall exactly which one, but I do remember them talking
4 about a free exercise claim in one of the two.

5 THE COURT: If you want, I'd be happy to give you all
6 seven days to file -- or 14 given the holidays -- to file
7 supplemental brief on the issue of whether there's any cases
8 that apply this broader standing principle to free exercise
9 specific claims.

10 I want to be very clear, I think lot of these cases
11 talk about the First Amendment, and my concern is, you know,
12 was the Court being a bit inarticulate in using "First
13 Amendment" to mean "free expression"?

14 So, I'm most interested in the case where it's
15 expressly applied to a free exercise claim, because I was
16 unable to find any. I will give you 14 days if you want to
17 file it. Please, just a list of authorities and at most a
18 parenthetical. I don't want supplemental briefing on it.

19 I will give you a few minutes to respond to anything
20 else that you want to, and I will try not to interrupt. Take
21 your time.

22 MS. RAE: The only other point that we wanted to make
23 is that AB 1955 does not make any exception for parents who
24 affirmatively ask if their child is being socially transitioned
25 at school, which essentially permits these government employees

1 to not only actively mislead parents, but also flatout lie to
 2 parents if they were to ask, and we know that this has happened
 3 in the past. We know that under AB 1955, that this idea is
 4 going to strengthen the ability of teachers who don't want to
 5 tell parents, and, you know, kind of give them backing and
 6 legal protection in order to lie to parents about their
 7 children, so that's one other point that we wanted to make.

8 THE COURT: Okay. All right. Thank you very much.
 9 Very helpful argument, I appreciate it.

10 We'll take the matter under submission and try to get
 11 you an answer as soon as we can. I'll say the matter will be
 12 submitted 14 days from now or upon the receipt of both your
 13 briefs.

14 Thank you very much.

15 (Proceedings concluded at 2:51 p.m.)


16

17 C E R T I F I C A T E

18

19 I certify that the foregoing is a true and correct
 20 transcript of the proceedings in the above-entitled matter.

21

22 

23 MARYANN VALENOTI, RMR, CRR
 24 Official Court Reporter
 CA CSR #11266

May 2, 2025
 DATE

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