No. 25-3686

In the United States Court of Appeals

FOR THE NINTH CIRCUIT

CHINO VALLEY UNIFIED SCHOOL DISTRICT, a local educational agency, ET AL.;

Plaintiffs–Appellants

v.

GAVIN NEWSOM, in his official capacity as Governor of the State of California, ET AL.,

Defendants–Appellees

On Appeal from the United States District Court for the Eastern District of California; No. 2:24-cv-01941-DJC-JDP
Hon. Judge Daniel J. Calabretta

APPELLANTS' OPENING BRIEF

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INTRODUCTION

This case seeks to enjoin Assembly Bill 1955 ("AB 1955"), a California law that prohibits public schools from mandating that certain information be shared with parents about their children—including information correlated with an increased risk of psychological, emotional, and physical harm, and high rates of suicide and suicide attempts.

Specifically, AB 1955 states that a "school district . . . shall not enact or enforce any policy, rule, or administrative regulation that would require an employee or a contractor to disclose any information related to a pupil's . . . gender identity[] or gender expression to any other person without the pupil's consent . . . ." Thus, under AB 1955, no matter how young a child is, a school may not adopt a policy requiring notification to the child's parents that the school is socially transitioning their child without the minor's "consent."

The suit brought four distinct claims. *First*, the Parent Plaintiffs[1] claimed that AB 1955 violated their right under the Fourteenth

[1] A group of California parents (the "Parent Plaintiffs") and several local educational agencies, including Chino Valley Unified School District ("CVUSD"), Anderson Union High School District ("AUHSD"), and the Orange County Board of Education ("OCBE") (the "LEA Plaintiffs," and, together with the Parent Plaintiffs, "Plaintiffs") filed this suit against

Amendment of the U.S. Constitution to "to make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66 (2000). *Second*, the Parent Plaintiffs claimed the law violated the Free Exercise Clause of the First Amendment to the U.S. Constitution, which guarantees parents a right to "control the religious upbringing and education of their minor children." *Wisconsin v. Yoder*, 406 U. S. 205, 231 (1972). *Third*, Plaintiffs claimed that AB 1955 violated the Family Educational Rights & Privacy Act ("FERPA"), which governs communications between a school and the parents of a student regarding that student's education and educational records. 20 U.S.C. § 1232g. *Finally*, the LEA Plaintiffs brought a claim under 28 U.S.C. § 2201(a) that, by requiring them to enforce AB 1955, the governor and his co-defendants were forcing schools to violate federal law.

The merits of these claims have not been litigated. Instead, the district court dismissed each of the claims under Rule 12(b)(1), reasoning that it did not have subject matter jurisdiction to hear them.

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their governor, attorney general, and state superintendent of instruction ("Defendants") to prevent the enforcement of AB 1955.

The district court dismissed the Parent Plaintiffs' constitutional claims, contending that they had not demonstrated an "injury in fact" to establish standing. But the fact AB 1955 requires schools to adopt policies that allow them to hide important information from parents about their own children is an injury that confers standing. This is especially true in light of the Supreme Court's recent decision in *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025), which was issued after the district court's order and reiterates the important role that parents play in directing the upbringing and education of their children.

Further, the district court held that, as "political subdivisions" of the state, the LEA Plaintiffs lacked standing to sue state officials for constitutional or federal law violations. LEA Plaintiffs ask this Court to overrule its *South Lake Tahoe* decision, which served as the basis for the lower court's ruling, because it is in conflict with both Supreme Court and other circuit court precedents.

The district court also erred in holding that Governor Newsom (but not his co-defendants) was entitled to Eleventh Amendment immunity. But Governor Newsom himself has declared he has enforcement power

over school board policies with which he disagrees. Therefore, he is not protected by Eleventh Amendment immunity.

Finally, the district court dismissed Plaintiffs' FERPA claim due to a perceived "federal carveout" in AB 1955 that the court found negated any conflict between the two laws, despite their seemingly contradictory text. But the district court's decision dismissing Plaintiff's FERPA claims for lack of standing was actually a decision on the merits, and therefore inappropriate at the pleadings stage.

This appeal challenges the district court's dismissal order.

JURISDICTIONAL STATEMENT

This action raises claims under 42 U.S.C. § 1983 that Defendants deprived Plaintiffs of their constitutional right to free exercise of religion under the First Amendment to the U.S. Constitution and right to parent under the Fourteenth Amendment to the U.S. Constitution. Further, under the Supremacy Clause of the U.S. Constitution (art. VI, § 2), this action raises claims under 28 U.S.C. § 2201(a) and 20 U.S.C. § 1232g that the U.S. Constitution and FERPA preempt AB 1955. Accordingly, the district court has federal question jurisdiction under 28 U.S.C. § 1331 and § 1343.

On May 9, 2025, Appellants filed a timely Notice of Appeal from the district court's April 17, 2025 order, which granted Defendants' motion to dismiss under Rule 12(b)(1). This appeal is from a final order that disposes of all parties' claims. *See* ER-04–19.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

This case presents the four following issues for review:

1. Whether the district court erred in holding that Parent Plaintiffs—who (1) hold a fundamental right to direct and control the upbringing and medical care of their children and (2) hold religious beliefs that God created men and women as distinct, immutable genders and that AB 1955 violates these sincerely held religious beliefs—did not have standing.
2. Whether the district court erred in holding that the LEA Plaintiffs could not challenge state law on constitutional grounds in federal court as political subdivisions of the state.
3. Whether the district court erred in holding that Governor Newsom was entitled to Eleventh Amendment immunity even though he has enforcement power over school districts by withholding (or threatening to withhold) state funding.

4. Whether the district court erred in deciding the merits of Plaintiffs' claim under the Family Educational Rights and Privacy Act in an order on a Federal Rules of Civil Procedure 12(b)(1) motion.

STATUTORY & REGULATORY AUTHORITIES

The relevant California statutes are attached in an Addendum affixed to the end of this brief.

STATEMENT OF THE CASE

On July 15, 2024, Defendant Governor Newsom signed AB 1955 into law. ER-143 at ¶ 25. AB 1955 makes several changes to the California Education Code regarding the treatment of children who request to "socially transition" their gender at school, which refers primarily to adopting a new name and/or pronouns that differ from one's natal sex. Cal. Ed. Code §§ 220.3, 220.5.

AB 1955 prohibits any California school district from "enact[ing] or enforc[ing] any policy, rule, or administrative regulation that would require an employee or a contractor to disclose any information related to a pupil's . . . gender identity[] or gender expression to any other person without the pupil's consent, unless otherwise required by state or federal law." *Id.* at § 220.5. AB 1955 also declares that "[a]ny policy, regulation,

guidance, directive, or other action of a school district . . . that is inconsistent with" the previous section "is invalid and shall not have any force or effect." *Id.* AB 1955 includes within its scope all students in California school districts—including students in preschool and kindergarten. *See id.*

Oscar Avila; Monica Botts; Jason Craig; Kristi Hays; Cole Mann; Victor Romero; Gheorghe Rosca, Jr.; and Leslie Sawyer are all California residents and parents of California public schoolchildren. ER-141–42 at ¶¶ 13–20. Each of these parents holds a deeply held religious conviction that God created man and woman as distinct, immutable genders and object on both conscience and religious grounds to their children's schools enabling their children to adopt a new, covert gender identity without consulting them. ER-142 at ¶ 21.

LEA Plaintiffs Chino Valley Unified School District, Anderson Union High School District, and Orange County Board of Education are local educational agencies as defined by California Education Code Section 56026.3. ER-140–41 at ¶¶ 10–12. The LEA Plaintiffs' responsibilities include crafting and implementing policies for their districts' or county's employees and students within their jurisdiction. *Id.* CVUSD's Board

Policy 5010 and AUHSD's Board Policy 5010.11, which AB 1955 prohibits, provide, in relevant part, that parents be notified "in writing, within three days from the date any District employee, administrator, or certified staff, becomes aware that a student is requesting to change any information contained in the student's official or unofficial records." ER-148 at ¶ 59.

OCBE's Board Policy 600-2 provides, in relevant part, that "[p]arents/guardians should have the right to access, participate in, and be notified regarding all aspects of their children's educational program," including the right "to be notified of their children's preferred use of gender pronouns." ER-148 at ¶ 61.

To the extent that a child requests that their school facilitate socially transitioning the student by, for example, changing their preferred name or pronouns that are reflected on official or unofficial records, the LEA Plaintiffs' policies require that parents be notified of that change to their child's records. ER-148 at ¶ 60–61.

On July 16, 2024, the aforementioned parents and CVUSD brought suit against Defendants Governor Gavin Newsom, Attorney General Robert Bonta, and State Superintendent Tony Thurmond challenging AB

1955. ER-155–69. Plaintiffs later filed an amended complaint adding AUHSD and OCBE as plaintiffs. ER-138–54.

In their First Amended Complaint ("FAC"), Parent Plaintiffs alleged AB 1955 violates their Fourteenth Amendment parental substantive due process rights and the Free Exercise Clause of the First Amendment. ER-149–51 at ¶¶ 65–78. LEA Plaintiffs brought a claim under 28 U.S.C. § 2201(a) for federal constitutional preemption, arguing that if the law's enforcement was not enjoined, the districts would be compelled to violate parents' First and Fourteenth Amendment rights. ER-152–53 at ¶¶ 87–96. Finally, Plaintiffs brought a claim alleging that FERPA preempts AB 1955. ER-151–52 at ¶¶ 79–86.

On October 7, 2024, Defendants moved to dismiss under both Rule 12(b)(1) and Rule 12(b)(6), which was fully briefed. ER-102–37. On April 17, 2025, the district court granted the Defendants' 12(b)(1) motion on all counts, declining to decide the Rule 12(b)(6) motion. ER-04–19. The district court held that the Parent Plaintiffs had not demonstrated an "injury in fact" to satisfy the standing requirements of Article III of the U.S. Constitution and held the LEA Plaintiffs lacked standing as political

subdivisions of the state. ER-05, 16. The district court also held that Governor Newsom possessed Eleventh Amendment immunity. ER-16–17.

Despite dismissing the case on standing grounds under Rule 12(b)(1), the district court's order included a two-paragraph ruling addressing the merits of the FERPA claim, holding that the federal parental rights statute did not preempt AB 1955. ER-17–18. At no point in the order, though, did the district court indicate it was converting the Defendants' 12(b)(1) motion to a motion for summary judgment. *Id.*

Plaintiffs filed a timely notice of appeal on May 9, 2025. ER-170.

SUMMARY OF THE ARGUMENT

The district court's order dismissing Plaintiffs' complaint should be reversed for multiple reasons.

First, the district court erred with respect to Parent Plaintiffs' First and Fourteenth Amendment claims. Parent Plaintiffs have properly alleged injuries sufficient to satisfy Article III standing requirements. Parent Plaintiffs have standing regardless of whether their children have socially transitioned at school, as they have alleged that the mere act of hiding this information constitutes an injury in-and-of itself.

Second, LEA Plaintiffs have filed this appeal to urge this Court to revisit its ruling in *South Lake Tahoe v. California Tahoe Regional Planning Agency*, 625 F.2d 233 (9th Cir. 1980), because it is inconsistent with precedent from the Supreme Court—and other circuit courts of appeal—recognizing limited political subdivision standing.

Third, the district court erred in dismissing all claims against Defendant Newsom because Governor Newsom's self-described enforcement power over school district funding, which includes funding for districts that choose to violate AB 1955, negates his limited Eleventh Amendment immunity.

Finally, the district court erred in dismissing Plaintiffs' FERPA claim, both because Plaintiffs have standing for the same reason they have standing to bring their other claims, but also because the district court improperly addressed the merits of the claim without allowing the parties to argue Defendants' Rule 12(b)(6) motion.

STANDARD OF REVIEW

A complaint must not be dismissed when it contains allegations that "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,

570 (2007)). "At the motion to dismiss phase, the trial court must accept as true all facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff." *Tracht Gut, LLC v. L.A. Cnty. Treasurer & Tax Collector*, 836 F.3d 1146, 1150 (9th Cir. 2016). "[D]ismissal is a harsh penalty and, therefore, it should only be imposed in extreme circumstances." *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998) (cleaned up) (quoting *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992)).

The Ninth Circuit will "review a district court's dismissal under Rule 12(b)(1) for lack of standing de novo." *Bowen v. Energizer Holdings, Inc.*, 118 F.4th 1134, 1142 (9th Cir. 2024) (quoting *Unified Data Servs., LLC v. Fed. Trade Comm'n*, 39 F.4th 1200, 1209 (9th Cir. 2022)).

ARGUMENT

Plaintiffs in this case have standing for each of their claims. The Parent Plaintiffs have standing for their First and Fourteenth Amendment claims because AB 1955 directly violates their constitutional rights to direct the upbringing and education of their children and raise their children in accordance with their sincerely held religious beliefs. Further, to the extent this Court's decision in *South Lake Tahoe*

contradicts the standing conferred to LEA Plaintiffs under Supreme Court precedent, *South Lake Tahoe* must be reversed. And Governor Newsom is not entitled to Eleventh Amendment immunity, as he has direct enforcement power over any local educational agency that violates AB 1955. Finally, Plaintiffs have standing to pursue their FERPA claim for the same reasons they have standing to pursue their other claims and, regardless, the district court's ruling addressing the merits of their FERPA claim was erroneous.

I. Parent Plaintiffs have standing to pursue their First Amendment claim.

The Parent Plaintiffs have suffered two forms of injury—one ongoing and one imminent—that meet the Article III standing requirements for their First Amendment claim.

"'The essence of the standing question, in its constitutional dimension, is whether the plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf.'" *Oregon Advocacy Ctr. v. Mink*, 322 F.3d 1101, 1108 (9th Cir. 2003) (cleaned up) (quoting *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 260–61 (1977)); *see also* U.S. Const. art. III, § 2

(laying out role of the American judiciary). Standing requires that a person has suffered an "injury-in-fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (cleaned up) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)). "Because 'constitutional challenges based on the First Amendment present unique standing considerations,' plaintiffs may establish an injury in fact without first suffering a direct injury from the challenged restriction." *Lopez v. Candaele*, 630 F.3d 775, 785 (9th Cir. 2010) (cleaned up) (quoting *Arizona Right to Life Political Action Comm. v. Bayless*, 320 F.3d 1002, 1006 (9th Cir. 2003)). The question of standing asks only whether the plaintiffs are the proper parties to assert the claims: it makes no determination on their claims' merit. *Eng v. Cooley*, 552 F.3d 1062, 1068 (9th Cir. 2009).

The Supreme Court's recent decision in *Mahmoud v. Taylor* reiterated that "[a] government burdens the religious exercise of parents when it requires them to submit their children to instruction that poses 'a very real threat of undermining' the religious beliefs and practices that the parents wish to instill." 145 S. Ct. 2332, 2342 (2025) (quoting *Wisconsin*

v. Yoder, 406 U. S. 205, 218 (1972)). Furthermore, "a government cannot condition the benefit of free public education on parents' acceptance of such instruction." *Mahmoud*, 145 S. Ct. at 2342.

The Parent Plaintiffs clearly meet these standing requirements because they suffer two different injuries. First, they are injured by the uncertainty of not knowing whether the school is currently transitioning their students behind their back—a harm in-and-of itself. Separately, they face an imminent harm that their children could be secretly transitioned in the future. Both these injuries clearly fall within First Amendment free exercise concerns—each of the Parent Plaintiffs has attested to their sincerely held religious belief that sex is immutable. Both injuries are real and particular to them, and not merely conjectural.

The Parent Plaintiffs' injuries here are strikingly similar to those of the plaintiff parents in the Supreme Court case *Parents Involved in Community Schools v. Seattle School District No. 1. See* 551 U.S. 701, 718–19 (2007). In that case, parents sued because their city's high school placement formula heavily factored race in its consideration process. *Id.* The defendants argued there was no standing as the plaintiffs' children were currently enrolled in elementary and middle school, and it was

merely hypothetical that, when they reached high school, their placement would be impacted by race. The Court rejected this defense, finding the plaintiffs suffered an injury if they alleged they would be "forced to compete in a race-based system." *Id.* at 719. The Court determined that the mere possibility that students "may" be discriminated against when matriculating to high school was sufficient for standing purposes, explaining that the "fact that it is possible that children of group members will not be denied admission to a school based on their race—because they choose an undersubscribed school or an oversubscribed school in which their race is an advantage—does not eliminate the injury claimed." *Id.* at 718–19.

The same holds true for the Parent Plaintiffs here. Just as being forced to compete in a system "'that uses race as a deciding factor'" was an injury regardless of whether one's individual child was evaluated by race, being relegated to a system that hides gender transitions from one's parents presents a concrete injury. *Id.* at 719. This holds true even if a Parent Plaintiff's child never ends up suffering gender dysphoria or requests that their school socially transition them.

Separately, just as the possibility that a child "may" be discriminated against was enough to generate standing in *Parents Involved*, the possibility that a child "may" be secretly transitioned is standing enough here. The fact that it is *possible* the child will not be transitioned does not negate the injury.

In fact, in this case, standing is even more apparent than in *Parents Involved* because there the city had suspended its allegedly discriminatory practices after litigation began and said it was unsure whether it would reinstate them. *Id.* Here, in contrast, AB 1955 remains very much in effect, and the Defendants have made no indication they will relax those standards or refrain from enforcing them.

Further, the Supreme Court has affirmatively directed circuit courts to find standing in cases where the harm was far more hypothetical than that in *Parents Involved*. "In *Massachusetts v. EPA*, for example, no one could say that the relief sought—reconsideration by the EPA of its decision not to regulate the emission of greenhouse gases—would actually remedy the Commonwealth [of Massachusetts's] alleged injuries, such as the loss of land due to rising sea levels." *Murthy v. Missouri*, 603 U.S. 43, 97 (2024) (Alito, J., dissenting); *see also Massachusetts v. EPA*,

549 U.S. 497, 526 (2007). The Court gave the Commonwealth standing anyway, even though "there was no way to know with any degree of certainty that any greenhouse gas regulations that the EPA might eventually issue would prevent the oceans from rising." *Murthy*, 603 U.S. 97–98 (2024) (Alito, J., dissenting).

"Similarly, in *Department of Commerce* [*v. New York*], no one could say with any certainty that [a] decision barring a citizenship question from the 2020 census questionnaire would prevent New York from losing a seat in the House of Representatives, and in fact that result occurred" despite a favorable ruling for the state. *Murthy*, 603 U.S. at 98 (Alito, J., dissenting) (cleaned up); *see also Dep't of Commerce v. New York*, 588 U.S. 752, 767 (2019). Nevertheless, the Court found New York had standing to (successfully) challenge the federal government's inclusion of a citizenship question all the same. *Dep't of Commerce*, 588 U.S. at 767.

The Supreme Court's decision in *Mahmoud*, issued after the district court's order here, adds further credence to Parent Plaintiffs' standing argument. If "a government cannot condition the benefit of free public education on parents' acceptance of" policies that undercut "the religious beliefs and practices that the parents wish to instill," and the parents

have alleged a policy—in this case, AB 1955—would do just that, then parents have standing to pursue First Amendment claims like the one at issue in this appeal. *See Mahmoud*, 145 S. Ct. at 2342.

The Parent Plaintiffs have two very real injuries. They have been injured by suffering the uncertainty of not knowing whether the school is currently transitioning their students behind their back. Separately, they face an imminent harm that their children could be secretly transitioned in the future. Their allegations are more than sufficient to meet Article III standing requirements.

II. Parent Plaintiffs have standing to pursue their Fourteenth Amendment claim.

Parent Plaintiffs have Fourteenth Amendment standing regardless of whether their children transition at school because they have alleged that the mere ability for schools to hide this information is a Fourteenth Amendment violation on its own. *See T.F. v. Kettle Moraine Sch. Dist.*, No. 21-cv-1650, (Wis. Cir. Ct., Waukesha Cnty., Oct. 3, 2023)[2] (finding that socially transitioning a child without parental consent is "undisputedly a medical and healthcare issue" constituting "an

[2] Available at: https://www.dailysignal.com/wp-content/uploads/2023/10/T.F.-v.-Kettle-Moraine-School-District-Decision.pdf.

infringement against the parental autonomy right to direct the care for their child" requiring the application of strict scrutiny).

"For prospective relief to redress a Fourteenth Amendment procedural due process injury, [a plaintiff] must demonstrate 'that he was accorded a procedural right to protect his interests and that he has concrete interests that are threatened.'" *Klee v. Int'l Union of Operating Eng'rs*, 2025 U.S. App. LEXIS 1247, at *6 (9th Cir. 2025) (cleaned up) (quoting *Wright v. SEIU*, 48 F.4th 1112, 1120–21 (9th Cir. 2022)). This means the standing analysis for Fourteenth Amendment claims mirrors that of First Amendment claims: the plaintiff must "alleg[e] such a personal stake in the outcome of the controversy as to warrant [their] invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on [their] behalf.'" *Oregon Advocacy*, 322 F.3d at 1108. Therefore, the question of standing asks only whether the plaintiffs are the proper parties to assert such claims; it makes no determination on the claims' merit. *Eng*, 552 F.3d at 1068.

AB 1955's prohibition of parental notification policies violates "the right of parents to make important medical decisions for their children, and of children to have those decisions made by their parents rather than

the state." *Wallis ex rel. Wallis v. Spencer*, 202 F.3d 1126, 1141 (9th Cir. 2000). Whether a child actually chooses to transition or not transition at school is irrelevant to the Fourteenth Amendment standing analysis in this context, as the injury here is that parents' *right to know* if and when their child transitions has been trampled. Regardless of whether Parent Plaintiffs' children have experienced a school-facilitated social transition, the parents' inability to gain access to that information is enough to demonstrate standing.

Parents Involved is particularly on point, as it also involves a Fourteenth Amendment violation claim. Just as the plaintiff parents of *Parents Involved* had standing because their children attended a district where they "may" be subjected to constitutional violations, Parent Plaintiffs here similarly established standing. 551 U.S. at 718–19.

When public schools are required to have policies that allow them to hide vital information from parents about their own children, parents' due process rights are violated and they have standing to enforce their parental rights.

III. The district court erred in dismissing LEA Plaintiffs for lack of standing based on *South Lake Tahoe* because Supreme Court precedent is to the contrary.

The district court dismissed LEA Plaintiffs' claims because it believed it was bound by this Court's ruling in *South Lake Tahoe v. California Tahoe Regional Planning Agency*. 625 F.2d 231 (9th Cir. 1980). But subsequent Supreme Court precedent and other circuit court decisions compel the opposite conclusion.

"Starting with *South Lake Tahoe*," this Court has repeatedly "held that political subdivisions lack standing to challenge state law on constitutional grounds in federal court." *City of San Juan Capistrano v. Cal. Pub. Util. Comm'n*, 937 F.3d 1278, 1280 (9th Cir. 2019); *see also South Lake Tahoe*, 625 F.2d at 233. "*South Lake Tahoe* offered no independent reasoning for its per se standing rule. But it cited Supreme Court and Second Circuit decisions that rejected cities' constitutional challenges to state law, characterizing political subdivisions as 'creature[s]' and states as their 'creators.'" *San Juan Capistrano*, 937 F.3d at 1280 (cleaned up) (quoting *South Lake Tahoe*, 625 F.2d at 233–34).

South Lake Tahoe has been controversial since its inception. Justice White harshly criticized that court for acknowledging that its *South Lake Tahoe* ruling conflicted with the Supreme Court's decision in *Board of Education of Central School District v. Allen*, but choosing to issue the decision anyway based on the erroneous notion that the Supreme Court had "*sub silentio* overruled *Allen*." *South Lake Tahoe v. Cal. Tahoe Reg'l Planning Agency*, 449 U.S. 1039, 1039 (1980) (denial of cert.) (White, J., dissenting); *see also Board. of Educ. of Cent. Sch. Dist. v. Allen*, 392 U.S. 236, 241 n.5 (1968). As Justice White explained, *Allen* held that plaintiffs possess standing if they allege they face "a choice between violating their oaths of office to support the United States Constitution or refusing to comply with the statutory requirements." *South Lake Tahoe*, 449 U.S. at 1039 (White, J., dissenting).

This Court recognized its mistake shortly after Justice White's admonishment, backpedaling from the decision the following year. *See San Diego Unified Port Dist.*, 651 F.2d 1306, 1309 n.7 (9th Cir. 1981) ("While there are broad dicta that a political subdivision may never sue its maker on constitutional grounds, we doubt that the rule is so broad.") (citation to *South Lake Tahoe* omitted).

While more recent decisions from this Circuit have indicated *South Lake Tahoe* remains good law, *see City of Huntington Beach v. Newsom*, 2024 U.S. App. LEXIS 27528, at *2–3 (9th Cir. 2024), other circuit courts have instead tried to reconcile their political subdivision standing doctrine with *Allen*. For decades, the Tenth Circuit has established that while "a political subdivision may not bring a federal suit against its parent state based on rights secured through the Fourteenth Amendment," it does have "standing to bring a constitutional claim against its creating state when the substance of its claim relies on the Supremacy Clause and a putatively controlling federal law." *Branson Sch. Dist. RE-82 v. Romer*, 161 F.3d 619, 628 (10th Cir. 1998); *see also Rogers v. Brockette*, 588 F.2d 1057, 1061 (5th Cir. 1979) (citing *Allen* to hold that a "school board members' oath to support Constitution gives them standing to challenge [the] constitutionality of statute they must administer"). And the Third Circuit has held "that a political subdivision may sue its creator state in federal court under the Supremacy Clause." *Ocean Cty. Bd. of Comm'rs v. AG of N.J.*, 8 F.4th 176, 181 (3d Cir. 2021) (distinguishing from First Amendment claims); *accord Tweed-New Haven Airport Auth. v. Tong*, 930 F.3d 65, 73 (2d Cir. 2019) ("In reaching

this conclusion we join the Fifth and Tenth Circuits."). The Supreme Court of Colorado recently determined that its own "political subdivision doctrine," which mirrored the one in *South Lake Tahoe*, merely "generated unnecessary confusion" and should be abandoned. *Colo. State Bd. of Educ. v. Adams Cnty. Sch. Dist. 14*, 537 P.3d 1, 4 (Colo. 2023).

LEA Plaintiffs are not asserting First or Fourteenth Amendment rights of their own. Instead, they raise two claims, both under the Supremacy Clause. The first, under 28 U.S.C. § 2201(a), argues that AB 1955 forces them to violate the U.S. Constitution. The second challenge argues that enforcing AB 1955 would improperly require LEA Plaintiffs to violate FERPA. Just like the officials in *Allen*, LEA Plaintiff officials face "a choice between violating their oaths of office to support the United States Constitution or refusing to comply with the statutory requirements." *South Lake Tahoe*, 449 U.S. at 1039 (White, J., dissenting); *see also Allen*, 392 U.S. at 241 n.5. These claims are more than sufficient to demonstrate standing under the Supreme Court's decision in *Allen* and in other circuits. *See id.*

To the extent that it conflicts with the Supreme Court's decision in *Allen*, this Court should formally overrule *South Lake Tahoe* and join its sister circuits in recognizing limited political subdivision standing.

IV. Governor Newsom is not entitled to Eleventh Amendment immunity as he has direct enforcement power.

Governor Newsom has direct enforcement power for AB 1955 and is actively coercing third parties to violate Plaintiffs' rights. Thus, he is not entitled to Eleventh Amendment immunity from this suit.

The Eleventh Amendment generally shields states and state officials from suits brought by private individuals in federal court. U.S. Const. amend. XI. However, the *Ex parte Young* doctrine is an exception to this immunity, allowing federal courts to grant prospective relief against state officials acting in their official capacities to prevent violations of federal law. This doctrine is rooted in the principle of a "need to promote the supremacy of federal law." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 105 (1984); *see also Ex parte Young*, 209 U.S. 123, 155–56 (1908).

Ex parte Young may apply when the state official has "some connection with the enforcement of the act." *Ex parte Young*, 209 U.S. at 157. The Ninth Circuit has specified that the connection "must be fairly direct; a

generalized duty to enforce state law or general supervisory power over the persons responsible for enforcing the challenged provision will not subject an official to suit." *L.A. Cnty. Bar Ass'n v. Eu*, 979 F.2d 697, 704 (9th Cir. 1992).

Under the California Constitution, "[t]he supreme executive power of this State is vested," not in the attorney general or the school superintendent, but "in the Governor." Cal. Const. art. V, § 1. Accordingly, California law states: "To the extent necessary to avoid a loss or delay of funds or services from the federal government that would otherwise be available to the state, [t]he Governor may . . . [s]uspend, in whole or in part, any administrative adjudication provision of the Administrative Procedure Act [or] adopt a rule of procedure that will avoid the loss or delay[.]" 41A California Forms of Pleading and Practice–Annotated § 473.16 (2024).

Further, the governor holds statutory authority over the state education budget. He is required to submit a budget to the legislature, which includes a detailed plan of proposed expenditures and estimated revenues for the ensuing fiscal year, "includ[ing] a section that specifies the percentages and amounts of General Fund revenues that must be set

aside and applied for the support of school districts[.]" Cal. Gov't Code § 13337.

Lest there be any doubt about the plain text of these California constitutional and statutory provisions, in *California School Boards Association v. Brown*, the California Court of Appeals held that under the California Constitution, the governor has the power to exercise veto on reimbursements for mandates that impact school districts. *California School Boards Ass'n v. Brown*, 192 Cal. App. 4th 1507, 1522–24 (2011). The court highlighted that while the legislature is required to appropriate funds or suspend mandates for each fiscal year, the governor can suspend a funding mandate and release school districts from implementing it. *Id.* at 1512–13.

Indeed, just two years ago, Governor Newsom proudly announced in an official government press release from his office—not the superintendent's office or the attorney general's office—that he had stripped $1.5 million in funding from the Temecula Valley Unified School District for not using a curriculum he favored. Press Release, Office of Governor Gavin Newsom, Governor Newsom Announces Contract to

Secure Textbooks for Students in Temecula (July 19, 2023), https://www.gov.ca.gov/2023/07/19/temecula-contract/.

Plaintiffs made direct reference to this press release during the motion to dismiss oral argument and were eager to include these allegations in an amended complaint. ER-32–33. ("The Court: It sounds like if I granted you leave to amend, it would be something that you would put [in an amended complaint]? Ms. Rea: Absolutely." (discussing Defendant Newsom's enforcement power)). The district court, however, did not allow Plaintiffs to amend their complaint to include this information, and instead dismissed Governor Newsom as a defendant with prejudice. ER-16–17, 18. At the very least, Plaintiffs should have been given the opportunity to amend their complaint to include allegations sufficient to show Governor Newsom is not entitled to Eleventh Amendment immunity. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) ("Absent prejudice, or a strong showing of any of the remaining *Foman* factors, there exists a *presumption* under Rule 15(a) in favor of granting leave to amend." (emphasis in original)). The district court denied leave to amend as to Defendant Newsom without any explanation as to why dismissal with

prejudice was warranted, which constitutes an abuse of discretion. *Id.* ("A simple denial of leave to amend without any explanation by the district court is subject to reversal. Such a judgment is 'not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.'").

Governor Newsom is not entitled to Eleventh Amendment immunity. He has direct enforcement power over AB 1955 in that he can withhold funding—and has previously threatened to withhold funding—from any school district that adopts a parental notification policy in violation of AB 1955.

V. The Rules of Civil Procedure necessitate reversing the district court's merit-based ruling on Plaintiffs' FERPA claim.

The district court's order discussing the merits of Plaintiffs' FERPA claim is not compatible with a Rule 12(b)(1) ruling, which must be limited to jurisdictional issues.

Rule 12(b)(1) holds that "by motion," a defendant may assert a "lack of subject-matter jurisdiction" as a defense to the claims against him or her. "If the 'existence of jurisdiction turn[s] on disputed factual issues,' and those 'jurisdictional disputes [are] not intertwined with the merits of the

claim,' then 'it falls to the district court to resolve those factual disputes itself.'" *Bowen*, 118 F.4th at 1143 (9th Cir. 2024) (cleaned up) (quoting *Friends of the Earth v. Sanderson Farms, Inc.*, 992 F.3d 939, 944 (9th Cir. 2021)). "Conversely, when jurisdictional issues are 'intertwined with an element of the merits of the plaintiff's claim,' the court must treat the motion like a motion for summary judgment and 'leave the resolution of material factual disputes to the trier of fact.'" *Bowen*, 118 F.4th at 1143 (cleaned up) (quoting *Leite v. Crane Co.*, 749 F.3d 1117, 1122 (9th Cir. 2014)).

Here, not only are the merits of Plaintiffs' FERPA claim not intertwined with a jurisdiction question, but it is not clear how the Court's ruling on FERPA answers a jurisdictional question *at all*. Plaintiffs argued that AB 1955 is preempted by FERPA, which governs communications between a school and the parents of a student regarding that student's education and educational records. 20 U.S.C. § 1232g. Schools receiving federal funds must guarantee parental access to student education records and the ability to contest and correct errors within those records. *See id.* at (a)(1)(a). Any record created by a school pertaining to a child's gender transition would necessarily be a record

that "contain[s] information directly related to a student" and is "maintained by an educational agency" and therefore would fall within the coverage of FERPA. *Id.* at (a)(4)(a). AB 1955 commands school districts to do the exact opposite of what FERPA requires and instead maintain policies that only allow for the release such information with the consent of the child. *Compare* 20 U.S.C. § 1232g(a)(1–4), *with* Cal. Ed. Code § 220.5.

Though Defendants filed a joint Rule 12(b)(1) and 12(b)(6) motion to dismiss, the district court only permitted the parties to argue the Rule 12(b)(1) motion before issuing its decision. ER-44. The district court's order indicated it was only an order regarding (and granting) Defendants' Rule 12(b)(1) motion. ER-07. Indeed, every other section in the order discussed questions of standing—except the section discussing Plaintiffs' FERPA claim. ER-04–19. There, the district court did not even *use the word* "standing." Instead, in a brief, six-sentence section, it determined that a so-called "carveout" for "federal law" in AB 1955 negates the preemption issue Plaintiffs raised. ER-17–18. Had Plaintiffs been permitted to argue this issue, they would have shown that AB 1955's alleged "carveout" essentially defeats the entire purpose of the law as it

pertains to LEA Plaintiffs' parental notification policies, because those policies only require parental notification when a child requests to change their official or unofficial school records—an act that is always associated with a child requesting to socially transition at school. ER-151 at ¶¶ 83–85.

A decision on the merits of the FERPA question is appropriate on summary judgment or perhaps on a Rule 12(b)(6) motion, but Rule 12(b)(1) does not allow the district court to decide tough legal questions of conflicting state and federal law that do not involve jurisdictional disputes.

For the same reasons Plaintiffs have standing on their other claims, Plaintiffs have standing to assert their FERPA preemption claim. Therefore, this Court should reverse the lower court's dismissal of Plaintiffs' FERPA claim on 12(b)(1) grounds.

* * *

CONCLUSION

Plaintiffs respectfully request that the Court reverse the lower court's Rule 12(b)(1) dismissal.

Respectfully Submitted,

Dated: September 2, 2025 LIBERTY JUSTICE CENTER

By: Emily Rae

Emily Rae

Attorneys for Plaintiffs–Appellants

STATEMENT OF RELATED CASES

Appellants are aware of one other related proceeding challenging AB 1955 pending before the Ninth Circuit (*City of Huntington Beach v. Newsom*, No. 25-3826). Appellants are aware of one additional case challenging AB 1955 pending in the Southern District of California (*Mirabelli v. Olson*, No. 3:23-cv-00768-BEN-VET).

Dated: September 2, 2025 LIBERTY JUSTICE CENTER

By: Emily Rae

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word limit of Cir. R. 32-1 because this brief contains 6,359 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

Dated: September 2, 2025 LIBERTY JUSTICE CENTER

By: Emily Rae

Emily Rae

Attorneys for Plaintiffs–Appellants

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2025, I electronically filed the foregoing Appellants' Opening Brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF System. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: September 2, 2025 LIBERTY JUSTICE CENTER

By: Emily Rae

Emily Rae

Attorneys for Plaintiffs–Appellants

STATUTORY ADDENDUM

Statutes

20 USCS § 1232g

(a) Conditions for availability of funds to educational agencies or institutions; inspection and review of education records; specific information to be made available; procedure for access to education records; reasonableness of time for such access; hearings; written explanations by parents; definitions

(1)

(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each

educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) No funds under any applicable program shall be made available to any State educational agency (whether or not that agency is an educational agency or institution under this section) that has a policy of denying, or effectively prevents, the parents of students the right to inspect and review the education records maintained by the State educational agency on their children who are or have been in attendance at any school of an educational agency or institution that is subject to the provisions of this section.

(C) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of post-secondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters

or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (D), confidential recommendations—

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(D) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (C), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who

are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4)

(A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—

(i)contain information directly related to a student; and

(ii)are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term "education records" does not include—

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of

treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5)

(A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping

(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests,

including the educational interests of the child for whom consent would otherwise be required;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C)

(i) authorized representatives of (I) the Comptroller General of the United States, (II) the Secretary, or (III) State educational authorities, under the conditions set forth in paragraph (3), or (ii) authorized representatives of the Attorney General for law enforcement purposes under the same conditions as apply to the Secretary under paragraph (3);

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute adopted—

(i) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve the student whose records are released, or

(ii) after November 19, 1974, if—

(I) the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve, prior to adjudication, the student whose records are released; and

(II) the officials and authorities to whom such information is disclosed certify in writing to the educational agency or institution that the information will not be disclosed to any other party except as provided under State law without the prior written consent of the parent of the student.[1]

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such

information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of title 26;

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons;

(J)

(i) the entity or persons designated in a Federal grand jury subpoena, in which case the court shall order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished to the grand jury in response to the subpoena; and

(ii) the entity or persons designated in any other subpoena issued for a law enforcement purpose, in which case the court or other issuing agency

may order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena;

(K) the Secretary of Agriculture, or authorized representative from the Food and Nutrition Service or contractors acting on behalf of the Food and Nutrition Service, for the purposes of conducting program monitoring, evaluations, and performance measurements of State and local educational and other agencies and institutions receiving funding or providing benefits of 1 or more programs authorized under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) for which the results will be reported in an aggregate form that does not identify any individual, on the conditions that—

(i) any data collected under this subparagraph shall be protected in a manner that will not permit the personal identification of students and their parents by other than the authorized representatives of the Secretary; and

(ii) any personally identifiable data shall be destroyed when the data are no longer needed for program monitoring, evaluations, and performance measurements; and

(L) an agency caseworker or other representative of a State or local child welfare agency, or tribal organization (as defined in section 5304 of title 25), who has the right to access a student's case plan, as defined and determined by the State or tribal organization, when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student, provided that the education records, or the personally identifiable information contained in such records, of the student will not be disclosed by such agency or organization, except to an individual or entity engaged in addressing the student's education needs and authorized by such agency or organization to receive such disclosure and such disclosure is consistent with the State or tribal laws applicable to protecting the confidentiality of a student's education records.

Nothing in subparagraph (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection, unless—

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) except as provided in paragraph (1)(J), such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency, except when a parent is a party to a court proceeding involving child abuse and neglect (as defined in section 3 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 note)) or dependency matters, and the order is issued in the context of that proceeding, additional notice to the parent by the educational agency or institution is not required.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, or (C) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs: Provided, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)

(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational

agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student. If a third party outside the educational agency or institution permits access to information in violation of paragraph (2)(A), or fails to destroy information in violation of paragraph (1)(F), the educational agency or institution shall be prohibited from permitting access to information from education records to that third party for a period of not less than five years.

(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any

federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

(6)

(A) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing, to an alleged victim of any crime of violence (as that term is defined in section 16 of title 18), or a nonforcible sex offense, the final results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime or offense with respect to such crime or offense.

(B) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence (as that term is defined in section 16 of title 18), or a nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense.

(C) For the purpose of this paragraph, the final results of any disciplinary proceeding—

(i) shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student; and

(ii) may include the name of any other student, such as a victim or witness, only with the written consent of that other student.

(7)

(A) Nothing in this section may be construed to prohibit an educational institution from disclosing information provided to the institution under section 14071 [2] of title 42 concerning registered sex offenders who are required to register under such section.

(B) The Secretary shall take appropriate steps to notify educational institutions that disclosure of information described in subparagraph (A) is permitted.

(c) Surveys or data-gathering activities; regulations

Not later than 240 days after October 20, 1994, the Secretary shall adopt appropriate regulations or procedures, or identify existing regulations or procedures, which protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities

conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) Students' rather than parents' permission or consent

For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) Informing parents or students of rights under this section

No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution effectively informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) Enforcement; termination of assistance

The Secretary shall take appropriate actions to enforce this section and to deal with violations of this section, in accordance with this chapter, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with this section, and he has determined that compliance cannot be secured by voluntary means.

(g) Office and review board; creation; functions

The Secretary shall establish or designate an office and review board within the Department for the purpose of investigating, processing, reviewing, and adjudicating violations of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

(h) Disciplinary records; disclosure

Nothing in this section shall prohibit an educational agency or institution from—

(1) including appropriate information in the education record of any student concerning disciplinary action taken against such student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community; or

(2)disclosing such information to teachers and school officials, including teachers and school officials in other schools, who have legitimate educational interests in the behavior of the student.

(i) Drug and alcohol violation disclosures

(1) In general

Nothing in this Act or the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.] shall be construed to prohibit an institution of higher education from disclosing, to a parent or legal guardian of a student, information regarding any violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance, regardless of whether that information is contained in the student's education records, if—

(A) the student is under the age of 21; and

(B) the institution determines that the student has committed a disciplinary violation with respect to such use or possession.

(2) State law regarding disclosure

Nothing in paragraph (1) shall be construed to supersede any provision of State law that prohibits an institution of higher education from making the disclosure described in subsection (a).

(j) Investigation and prosecution of terrorism

(1) In general

Notwithstanding subsections (a) through (i) or any provision of State law, the Attorney General (or any Federal officer or employee, in a position not lower than an Assistant Attorney General, designated by the Attorney General) may submit a written application to a court of competent jurisdiction for an ex parte order requiring an educational agency or institution to permit the Attorney General (or his designee) to—

(A) collect education records in the possession of the educational agency or institution that are relevant to an authorized investigation or prosecution of an offense listed in section 2332b(g)(5)(B) of title 18, or an act of domestic or international terrorism as defined in section 2331 of that title; and

(B) for official purposes related to the investigation or prosecution of an offense described in paragraph (1)(A), retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such records, consistent with such guidelines as the Attorney General, after consultation with the Secretary, shall issue to protect confidentiality.

(2) Application and approval

(A) In general.—

An application under paragraph (1) shall certify that there are specific and articulable facts giving reason to believe that the education records are likely to contain information described in paragraph (1)(A).

(B) The court shall issue an order described in paragraph (1) if the court finds that the application for the order includes the certification described in subparagraph (A).

(3) Protection of educational agency or institution

An educational agency or institution that, in good faith, produces education records in accordance with an order issued under this subsection shall not be liable to any person for that production.

(4) Record-keeping

Subsection (b)(4) does not apply to education records subject to a court order under this subsection.

28 USCS § 1292

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

(2) Interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property;

(3) Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed.

(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such

order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

(c) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction—

(1) of an appeal from an interlocutory order or decree described in subsection (a) or (b) of this section in any case over which the court would have jurisdiction of an appeal under section 1295 of this title [28 USCS § 1295]; and

(2) of an appeal from a judgment in a civil action for patent infringement which would otherwise be appealable to the United States Court of Appeals for the Federal Circuit and is final except for an accounting.

(d)

(1) When the chief judge of the Court of International Trade issues an order under the provisions of section 256(b) of this title [28 USCS § 256(b)], or when any judge of the Court of International Trade, in issuing any other interlocutory order, includes in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals for the Federal Circuit may, in its discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order.

(2) When the chief judge of the United States Court of Federal Claims issues an order under section 798(b) of this title [28 USCS § 798(b)], or when any judge of the United States Claims Court [United States Court of Federal Claims], in issuing an interlocutory order, includes in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate

termination of the litigation, the United States Court of Appeals for the Federal Circuit may, in its discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order.

(3) Neither the application for nor the granting of an appeal under this subsection shall stay proceedings in the Court of International Trade or in the Claims Court [Court of Federal Claims], as the case may be, unless a stay is ordered by a judge of the Court of International Trade or of the Claims Court [Court of Federal Claims] or by the United States Court of Appeals for the Federal Circuit or a judge of that court.

(4)

(A) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of an appeal from an interlocutory order of a district court of the United States, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, granting or denying, in whole or in part, a motion to transfer an action to the United States Claims Court [United States Court of Federal Claims] under section 1631 of this title [28 USCS § 1631].

(B) When a motion to transfer an action to the Claims Court [Court of Federal Claims] is filed in a district court, no further proceedings shall be taken in the district court until 60 days after the court has ruled upon the motion. If an appeal is taken from the district court's grant or denial of the motion, proceedings shall be further stayed until the appeal has been decided by the Court of Appeals for the Federal Circuit. The stay of proceedings in the district court shall not bar the granting of preliminary or injunctive relief, where appropriate and where expedition is reasonably necessary. However, during the period in which proceedings are stayed as provided in this subparagraph, no transfer to the Claims Court [Court of Federal Claims] pursuant to the motion shall be carried out.

(e) The Supreme Court may prescribe rules, in accordance with section 2072 of this title [28 USCS § 2072], to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for under subsection (a), (b), (c), or (d).

28 USCS § 1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 USCS § 1343

Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section—

(1) the District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 USCS § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

28 USCS § 2201

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986 [26 USCS § 7428], a proceeding under section 505 or 1146 of title 11 [11 USCS § 505 or 1146], or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(9) of the Tariff Act of 1930 [19 USCS § 1516a(f)(9)]), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act [21 USCS §§ 355 or 360b], or section 351 of the Public Health Service Act [42 USCS § 262].

Cal. Ed. Code § 220.3

(a) An employee or a contractor of a school district, county office of education, charter school, or state special school for the blind or the deaf shall not be required to disclose any information related to a pupil's sexual orientation, gender identity, or gender expression to any other person without the pupil's consent unless otherwise required by state or federal law.

(b) Subdivision (a) does not constitute a change in, but is declaratory of, existing law.

Cal. Ed. Code § 220.5

(a) A school district, county office of education, charter school, state special school for the blind or the deaf, or a member of the governing board of a school district or county office of education or a member of the governing body of a charter school, shall not enact or enforce any policy, rule, or administrative regulation that would require an employee or a contractor to disclose any information related to a pupil's sexual orientation, gender identity, or gender expression to any other person without the pupil's consent, unless otherwise required by state or federal law.

(b) Subdivision (a) does not constitute a change in, but is declaratory of, existing law.

(c) Any policy, regulation, guidance, directive, or other action of a school district, county office of education, charter school, or state special school for the blind or the deaf, or a member of the governing board of a school district or county office of education or a member of the governing body of a charter school, that is inconsistent with subdivision (a) is invalid and shall not have any force or effect.

Cal. Gov't Code § 13337

(a) The budget required by the State Constitution to be submitted by the Governor at each regular session of the Legislature shall be submitted within the first 10 days of each regular session and shall contain a complete plan and itemized statement of all proposed expenditures of the state provided by existing law or recommended by the Governor, and all of its institutions, departments, boards, bureaus, commissions, officers, employees, and other agencies, and of all estimated revenues, for the ensuing fiscal year, together with a comparison, as to each item of revenues and expenditures, with the actual revenues and expenditures for the last completed fiscal year, the estimated revenues, and

expenditures for the existing fiscal year and the budgeted revenue and expenditures for the next fiscal year.

(b) The budget shall, in accordance with Chapter 2 (commencing with Section 41200) of Part 24 of Division 3 of Title 2 of the Education Code, include a section that specifies the percentages and amounts of General Fund revenues that must be set aside and applied for the support of school districts, as defined in Section 41302.5, and community college districts, as required by subdivision (b) of Section 8 of Article XVI of the California Constitution.

(c) The Governor, or the Department of Finance acting on the Governor's behalf, shall make appropriate changes in the budget request to reflect any modification in the organization or functions of state government proposed under Article 7.5 (commencing with Section 12080) of Chapter 1 of Part 2 before the passage of the budget.

(d) The Governor's Budget shall be prepared in accordance with guidelines and instructions adopted by the Department of Finance.

(e) In order to provide meaningful comparisons, the Governor's Budget shall be prepared in such a manner that the information presented provides for such comparisons between the fiscal years.

(f) The Department of Finance shall submit to the committee in each house which considers appropriations and to the Joint Legislative Budget Committee copies of budget material submitted to it by agencies pursuant to Article 2 (commencing with Section 13320).

(g) The Governor's Budget shall also include a coding structure that indicates for each budget entity the categorization of expenditures and revenues.

(h) Before submitting the Governor's Budget to the Legislature, the Department of Finance may conduct public hearings regarding any portion of any budget.

(i) The Governor, or the Department of Finance acting on the Governor's behalf, shall, at the same time the Governor's Budget is submitted to the Legislature, submit to the Legislature copies of the material for the purposes of subdivision (j).

(j) The Department of Finance shall develop a fiscal information system that will provide timely and uniform fiscal data needed to formulate and monitor the budget, including, but not limited to, online inquiry capacity and the ability to simulate budget expenditures and forecast revenues. This system may include, among other things, data on encumbrances and

expenditures by line item, governmental unit, and fund source. The system shall also include expenditures and encumbrances by program, as required. This system shall also include a coding structure that indicates the categorization of expenditures and revenues. This system and the data shall be available to the legislative and executive branches. The system may contain separate programs accessible by only one branch, designed to provide for distinct application of the data, but the basic system data shall be available on an equal basis to the legislative and executive branches of government.

(k) The Department of Finance shall make available on the home page of its internet website access to the Governor's Budget in an electronic machine readable format.

Cal. Ed. Code § 56026.3

"Local educational agency" means a school district, a county office of education, a nonprofit charter school participating as a member of a special education local plan area, or a special education local plan area.

Cal. Gov't Code § 13337

(a) The budget required by the State Constitution to be submitted by the Governor at each regular session of the Legislature shall be submitted

within the first 10 days of each regular session and shall contain a complete plan and itemized statement of all proposed expenditures of the state provided by existing law or recommended by the Governor, and all of its institutions, departments, boards, bureaus, commissions, officers, employees, and other agencies, and of all estimated revenues, for the ensuing fiscal year, together with a comparison, as to each item of revenues and expenditures, with the actual revenues and expenditures for the last completed fiscal year, the estimated revenues, and expenditures for the existing fiscal year and the budgeted revenue and expenditures for the next fiscal year.

(b) The budget shall, in accordance with Chapter 2 (commencing with Section 41200) of Part 24 of Division 3 of Title 2 of the Education Code, include a section that specifies the percentages and amounts of General Fund revenues that must be set aside and applied for the support of school districts, as defined in Section 41302.5, and community college districts, as required by subdivision (b) of Section 8 of Article XVI of the California Constitution.

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(k) The Department of Finance shall make available on the home page of its internet website access to the Governor's Budget in an electronic machine readable format.

Rules

Fed. R. Civ. Pro. 12

(a) Time to Serve a Responsive Pleading. Unless another time is specified by a federal statute, the time for serving a responsive pleading is as follows:

(1) In General.

(A) A defendant must serve an answer:

(i) within 21 days after being served with the summons and complaint; or

(ii) if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(2) United States and Its Agencies, Officers, or Employees Sued in an Official Capacity. The United States, a United States agency, or a United

States officer or employee sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney.

(3) United States Officers or Employees Sued in an Individual Capacity. A United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.

(4) Effect of a Motion. Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) improper venue;

(4) insufficient process;

(5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted; and

(7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

(d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) Motion for a More Definite Statement. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) Joining Motions.

(1) Right to Join. A motion under this rule may be joined with any other motion allowed by this rule.

(2) Limitation on Further Motions. Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) Waiving and Preserving Certain Defenses.

(1) When Some Are Waived. A party waives any defense listed in Rule 12(b)(2)–(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) When to Raise Others. Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) Lack of Subject-Matter Jurisdiction. If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) Hearing Before Trial. If a party so moves, any defense listed in Rule 12(b)(1)–(7)—whether made in a pleading or by motion—and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

Constitutional Authorities

U.S. Const. art. III, § 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

U.S. Const. art. VI, § 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. Const. amend. XI

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

U.S. Const. amend. XIV § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Cal Const. art. V § 1

The supreme executive power of this State is vested in the Governor. The Governor shall see that the law is faithfully executed.