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JONATHAN ZACHRESON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

PROTECT KIDS CALIFORNIA and JONATHAN ZACHRESON, Individually and on behalf of PROTECT KIDS CALIFORNIA Petitioners, v. ROB BONTA, in his official capacity as Attorney General of the State of California and DOES 1–50, inclusive, Respondents.	Case No. 24WM000034 Dept.: 36 Judge: Honorable Stephen Acquisto **PETITIONERS' OPENING BRIEF ON VERIFIED PETITION FOR WRIT OF MANDATE, DECLARATORY RELIEF, VIOLATION OF FREE SPEECH (CAL. CONST., ART. 1, SEC. 2), VIOLATION OF FREE SPEECH (U.S. CONST., AMEND. I)** [*Request for Judicial Notice; Declaration of C. Erin Friday; [Proposed] Order filed concurrently herewith*] **Action filed: February 13, 2024** **Hearing Date: April 12, or April 19, 2024** **Time: 2:30 p.m. or 1:30 p.m.** **Dept.: 36**

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I. INTRODUCTION

Petitioners PROTECT KIDS CALIFORNIA and JONATHAN ZACHRESON (hereinafter collectively "Petitioners") seek to qualify for the 2026 ballot a measure that would (a) require parents to be notified when their minor student is experiencing gender dysphoria; (b) repeal Education Code 221.5(f) that permits students to participate in sex-segregated school activities, changing rooms, and bathrooms based on their gender identity; limit female sports teams for grades 7 and above to biological females; and define the terms "female" and "male" in biological terms; and (c) safeguard minors' natural bodies, their fertility and sexual function by prohibiting any sex-altering medical interventions.

In preparing a circulating title and summary for the measure, Respondent, Attorney General ROB BONTA ("Respondent") failed in his duties under the Elections Code and violated Petitioners' freedom of speech under both the California Constitution, Article 1, section 2 and the First Amendment of the U.S. Constitution, by providing a misleading, false, and prejudicial title and summary that contains inaccurate, blatantly argumentative, and confusing language that does not accurately state the "chief purposes and points of the proposed measure," as required under Elections Code section 9004(a). The measure's current title and summary is "likely to create prejudice … against the proposed measure," in contravention of Elections Code section 9051(d).

Respondent purposely provided a negative title, using language that tips the scales in his favor. Respondent (1) omitted one of the chief purposes - to define the terms "male" and "female"; (2) replaced Petitioners' name for the initiative, "PROTECT KIDS OF CALIFORNIA ACT OF 2024," with "RESTRICTS RIGHTS OF TRANSGENDER YOUTH" in an obvious ploy to negatively influence voters; (3) misled voters by stating that youth have rights that they do not; (4) used the confusing term "transgender female" when referencing female sports; (5) untruthfully stated there are no exceptions for student safety relating to parental notification; and (6) falsely

stated that **all** gender affirming health care would be banned, without exception, when the measure in fact would only restrict sterilizing medical procedures and treatments for children seeking so-called sex changes. ("Initiative"). Government cannot take sides on a ballot initiative, or bestow an unfair advantage on one of several competing factions, but that is precisely what the Respondent has done with the title and summary. (*See Citizens for Responsible Gov't v. City of Albany* (1997) 56 Cal.App.4th 1199, 1227-28.)

Respondent did not overcome his conflict of interest as a plaintiff in a lawsuit involving parental notification policies, his numerous amicus brief filings and press releases that clearly demonstrate his bias and distain for every aspect of Petitioners' Initiative. Polling shows that, based on its actual substance, Californians would vote in favor of the measure regardless of party affiliation. (*See* Erin Friday Declaration ("Friday Decl."), at ¶ 3.) Therefore, Respondent wrote a biased and untruthful title and summary to rip from Petitioners the opportunity to exercise their critical constitutional right to propose and enact statutes representing important interests that the majority of voters support under Article II, section 8 of the California Constitution because their "elected representatives" will not do so.

II. FACTUAL BACKGROUND

On September 25, 2023, Petitioners submitted the ballot initiative entitled "Protect Kids of California Act of 2024" to Respondent and requested a circulating title and summary of the chief purpose and points of the initiative. (Petition, Ex. A.) On November 29, 2023, Respondent's office prepared the title and summary. (Petition, Ex D.) Under normal circumstances, the signatures for the measure must be filed with the county elections official not later than 180 days from the date of the official summary, or May 28, 2024. (*See* Elec. Code § 9014.)

Respondent's prepared title and summary is as follows:

> **RESTRICTS RIGHTS OF TRANSGENDER YOUTH. INITIATIVE STATUTE.** • Requires public and private schools and colleges to: restrict gender-segregated facilities like bathrooms to persons assigned that gender at birth; **prohibit transgender female**

> **students (grades 7+) from participating in female sports.** Repeals law allowing students to participate in activities and use facilities consistent with their gender identity. • Requires schools to notify parents whenever a student under 18 asks to be treated as a gender differing from school records **without exception for student safety**. • **Prohibits gender-affirming health care** for transgender patients under 18, even if parents consent or treatment is medically recommended. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Potentially minor savings in state and local health care costs of up to millions of dollars annually from no longer paying for prohibited services for individuals under the age of 18. These savings could be affected by many other impacts, such as individuals seeking treatment later in life. Minor administrative and workload costs to schools, colleges, and universities, up to several millions of dollars initially. Potential, but unknown, cost pressures to state and local governments related to federal fiscal penalties if the measure results in federally funded schools, colleges, universities, or health care providers being deemed out of compliance with federal law. (23-0027A2, emphasis added.) (Petition, Ex. D.)

Respondent's prepared title and summary violates Elections Code sections 9004(a) and 9051(d), as it is branded with a misleading, false, and prejudicial title and summary designed to prejudice the measure. For several years, Respondent has repeatedly revealed his personal bias against the issues in the Initiative, culminating in the misleading title and summary.

A. Respondent's Explicit Bias Against Notifying Parents and Guardians of Their Children's Mental Health Issues

Respondent has filed a civil rights action against a California school district that approved a policy notifying parents when their children are suffering from gender confusion in *The People of the State of California, et al. v. Chino Valley Unified School District*, Case No. CIV SB 2317301 ("CVUSD lawsuit"). (Petition, Ex. E.) He has intervened as an amicus in the California case that challenged a board policy requiring parents to be notified when their student is requesting to be treated as a gender that is not aligned with his or her biological sex. (*Mae M. et al v. Komrosky et al*., Case No. CVSW2306224 ("*Mae*").) He publicly rebuked its policy as well as four other school district's notification policies, and intervened in a California case. (*See* Petition, Exs. K-R.) He also issued a letter to all superintendents and school board members that schools are **not** to inform parents about their child's gender dysphoria. (*Id.*, Ex. I.) Any success of the Initiative in qualifying for the ballot would adversely affect Respondent's lawsuit against CVUSD, his positions as amicus in related matters, his status and interests as a named defendant in a California lawsuit, as well as his publicly announced positions and reputation. (*See* Petition, Ex. G.)

B. Sex-Based Bathrooms, Changing/Shower Rooms and Sports

Respondent's disdain for private changing rooms, bathrooms and sports that are solely accessible to females (humans whose bodies are developed to produce large gametes) is equally apparent, making it predictable for him to provide a purposely confusing summary on this aspect of the Initiative. Respondent joined in an amicus brief in a Florida case to advocate for a trans-identified female to use the male bathroom at school and joined in an amicus brief in Idaho in support of bathroom use by gender identity as opposed to sex. (Petition, Exs. S-T.) Respondent joined amicus briefs in Arizona, West Virginia, Indiana and Connecticut in support of placing males on female sports team, dispensing with biological reality. (Petition, Exs. U, X-Z.) He also restricted state-funded travel to 13 states with sex-segregated sports laws. (*Id.*, Exs. V-W.)

C. Protections Against Sex-Change Interventions on Children

Respondent has publicly denounced any constraints on minor children engaging in irreversible medical interventions to change their body to resemble a body that does not align with their biological sex. Respondent did not overcome his implicit and explicit bias so as give a neutral, accurate, and complete title and summary. Respondent has led or joined amicus briefs in Arkansas, Florida, Oklahoma, Indiana, and Alabama opposing these states' law that prevent changes to children's secondary sex characteristics through irreversible puberty blockers, hormones and surgeries. (Petition, Exs. AA-EE.)

D. Respondent's Unlawful Title and Summary Are Actually Deterring Potential Supporters of the Initiative

On January 14, 2024, Korey Wells emailed Protect Kids California asking "How do you expect this to have any chance to win with a title that says 'restrict rights'? Where is your lawsuit challenging this title? . . . nobody will support something that's framed as a negative." (Friday Decl., at ¶4.) Mr. Wells was alarmed when he read the title and summary. Mr. Wells supports the Initiative and embarked on gathering signatures from his contacts; however, many refused to sign and/or donate because they did not believe that the substance of the Initiative could be so different from the title and summary. (Declaration of Korey Wells to Petition ("Wells Decl."), at ¶ 7.) Robert Lee contacted Scott Davison, a member of the Protect Kids California Executive Team,

about the title and summary of the Initiative. (Friday Decl., at ¶ 5.) Many people with whom Lee spoke changed their minds about signing the Initiative because of the title and summary, and it was clear that very few people approve of the idea of "restricting rights" of anyone, despite favorable polling for the Initiative. (Declaration of Robert Lee to Petition ("Lee Decl."), at ¶¶ 8-9.) In February of 2024, Erin Friday had several meetings with high value potential donors who informed her that—because of the unfavorable title and summary—they did not want to donate to the endeavor, regardless of the fact that they agreed with the Initiative. (Friday Decl., at ¶ 6.)

III. LEGAL ARGUMENT

A. The People's Right to Utilize the Initiative Power Must Be Jealously Guarded.

The California Supreme Court held in *Associated Home Builders etc., Inc. v. City of Livermore* (1976)18 Cal.3d 582, 591 that the initiative process was "[d]rafted in light of the theory that all power of government ultimately resides in the people," and that "the duty of the courts [is] to jealously guard this right of the people." To promote the democratic process, the power should be liberally construed, as the people's initiative power has long been recognized as one of the most precious rights of our democracy: "The ballot box is the sword of democracy." (*Forty-Niners v. Nishioka* (1999) 75 Cal. App.4th 637, 643 (cert. denied); *Amador Valley Jt. Un. High Sch. v. State Bd. of Equal* (1978) 22 Cal.3d 208, 219-220, 248.) "[O]bjectively inaccurate and false information and calculated untruths that substantially mislead and misinform a reasonable voter is unlawful under the Elections Code." (*Id.* at 643.) "[C]ourts are charged to construe the Elections Code to favor the people's awesome initiative power, 'the statutes [are] designed to protect the elector from confusing or misleading information . . . so as to guarantee the integrity of the process.'" (*Id*. at 644. (internal citations omitted).)

B. Respondent Had a Duty to Provide a True, Impartial, Neutral Title and Summary That Was Not Likely to Cause Prejudice and Explained the Points and Purposes of the Initiative.

Prior to the circulation of an initiative for signatures, the Attorney General is obligated to prepare a title and summary of the proposed measure that is true, impartial, neutral, unlikely to create prejudice, and explains the chief purposes and points of the measure. (Elec. Code §§ 9002,

9004(a) ["the Attorney General shall prepare a circulating title and summary of the **chief purposes and points** of the proposed measure" (emphasis added)], 9051(d) ["the Attorney General shall provide **a true and impartial statement of the purpose of the measure in such language that the ballot title and summary shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure**" (emphasis added)]; *see also* Cal. Const., art. II, § 10(d); *see Costa v. Superior Court* (2006) 37 Cal.4th 986, 1023.)

Potential signatories must be provided the title and summary that is an accurate and objective description of the general subject matter of the initiative and its main points. The term "impartial" as it relates to initiatives is defined as language that is written in a manner that would not greatly prejudice voters in favor or against a measure. (*McDonough v. Superior Court* (2012) 204 Cal.App.4th 1169, 1173.)

Courts favor titles and summaries that are "essentially verbatim recitation[s] of the operative terms" of the initiative. (*Lungren v. Superior Court* (1996) 48 Cal.4th 435, 440-441.) In *Lungren*, the court approved an Attorney General title and summary because it "added nothing, omitted nothing and the words used are all subject to common understanding. The electorate [could] hardly be deceived by this essentially verbatim recital of the straightforward text of the measure itself." (*Id.*) That is certainly not what the Respondent did in the case at bar.

The title and summary are of utmost importance and can tip the scale. According to the National Conference of State Legislatures, "[t]he ballot title and summary are arguably the most important part of an initiative in terms of voter education. Most voters never read more than the title and summary of the text of initiative proposals. Therefore, it is of critical importance that titles and summaries be concise, accurate and impartial."[1]

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[1] Ballot Title," Ballotpedia, https://ballotpedia.org/Ballot_title#cite_note-1 (citing National Conference of State Legislatures, https://web.archive.org/web/2/http:// www.ncsl.org/programs/legismgt/elect/PrepTtlSumm.htm).

i. Respondent Failed to Provide a Summary of the Chief Purposes and Points of the Initiative.

Respondent completely ignored a chief purpose of the Initiative, which is to define the terms "female" and "male." The importance and effect of Respondent's decision to exclude this purpose from the circulating title and summary of the Initiative cannot be overstated, since neither term is defined in any California code or regulation, as admitted by the California Legislative Analyst's Office. (*See* Petition, Ex. C, p. 3.)

A title and summary should fairly represent the initiative and not mislead the public, but as long as only auxiliary or subsidiary matters are omitted, they are considered to be in substantial compliance. (*Brennan* v. *Board of Supervisors* (1981) 125 Cal. App. 3d 87, 96.) Respondent cannot omit essential features of the measure. (*Id.*) In *Boyd* v. *Jordon* (1934) 1 Cal.2d 468, 469, the Court held that an essential feature of the initiative, namely that the initiative relates to a tax, was not indicated in the title – "Initiative Measure to be Submitted Directly to the Electors." (*See also Clark* v. *Jordan,* (1936) 7 Cal.2d 248 (misleading title because it failed to indicate that initiative was also a taxing measure).)

The Initiative's establishment of definitions of "male" and "female" is of supreme importance and essential—but Respondent's title and summary make no reference to them. Historically the definitions of female and male were commonly understood, but the advent of new gender ideology theories requires clear definitions in the law. Respondent is burying the lede—statutorily defining "male" and "female" would have a profound effect on California jurisprudence and sex-based rights. Indeed, **four** states (Oklahoma, Tennessee, Kansas and Montana) have passed legislation since 2023 to define "female" and "male," illustrating the urgency and importance of this issue. (Petition, at Exs FF-II.)

ii. Respondent Failed to Provide a False, Baised, Inflammatory Statement of the Purpose of the Measure that Has Caused Petitioners Prejudice.

Respondent failed to provide "a true and impartial statement of the purpose of the measure in such language that the ballot title and summary shall neither be an argument, **nor be likely to create prejudice,** for or against the proposed measure." (Elec. Code § 9051(d) (emphasis added).)

The title is neither true nor impartial. Instead, it is an argument intended to, and which does, prejudice the voters of California against supporting the petition.

In *McDonough*, *supra*, 204 Cal.App.1169, the San Jose City Council issued a proposed measure entitled "PENSION REFORM" that would modify city employees' retirement benefits. The court held that this title was "impermissibly partisan" since the word "reform" connoted a "removal of defects or wrongs" that would influence voters to believe the extant pension system was defective, and changed the title to "PENSION MODIFICATION." (*Id.* at 1175.)

Likewise, in *Huntington Beach City Council v. Superior Court* (2002) 94 Cal.App.4th 1417, 1433, the court found that the title "Amendment of Utility Tax by Removing Electric Power Plant Exemption" was "insufficiently neutral to appear in the *title* of the measure" because "exemption" has a "whiff of privilege about it" and was "advocacy by other means." The court mandated the city to replace it with "exclusion." (*Id.* at 1435.)

In the instant matter, as in the above cases, Respondent chose a title designed to influence voters against the initiative. The title presented by Petitioners is "PROTECT KIDS OF CALIFORNIA ACT OF 2024." The title prepared by Respondent is "RESTRICTS RIGHTS OF TRANSGENDER YOUTH. INITIATIVE STATUTE." The contrast is immediately apparent: Petitioners' title **affirmatively** denotes that the Initiative will protect kids, while Respondent's title **negatively** paints the Initiative as restricting kids' rights. The diametrically opposed characterizations of the Initiative reveal Respondent's desire to create prejudice against the Initiative, contravening state and federal law. Additionally, Respondent's framing of the Initiative itself as a "restriction" instead of a "protection" is a striking anomaly in the context of legislation and initiatives, which are customarily written with affirmative or unbiased language. The following examples illustrate the standard legislative practice of preparing a bill title that either engenders public support by utilizing positive language about its intended impacts or a bill title that uses neutral language to avoid framing restrictions or limitations in a negative way, especially for acts which affect children:

(a) California's "restrictions on the rights" of youth smoking was titled the "Stop Tobacco Access to Kids Enforcement Act." (*See* Bus. & Prof Code, §22950.)

(b) The 2022 referendum to "restrict the right of minors" to buy flavored tobacco was named by Respondent the "Referendum Challenging a 2020 Law Prohibiting Retail Sale of Certain Flavored Tobacco Products."[2]

(c) Assembly Bill 734 (2023) that would "restrict the rights of children" under 12 from playing tackle football has a nondescript title of "Youth Tackle Football."

(d) Respondent publicly supports Assembly Bill 1949 (2024), the "**Protecting Kids** from Social Media Addiction Act" (emphasis added) to prohibit social media and online platforms from sending minors addictive social media feeds and notifications during overnight or school hours without the consent of a parent or guardian. (*See* Petition, Ex. JJ.) Not only is AB1949's title positive and **nearly identical** in form and structure to Petitioners' proposed Initiative language, but Respondent's support of AB1949 shows undeniable bias against Petitioners' Initiative.

(e) To date, 23 states have passed legislation that safeguards children's natural bodies, sexual function, and ability to procreate. The titles of the acts or laws are all framed in a neutral or positive manner – highlighting that the bills are protecting children. (Friday Decl., ¶7.)

Respondent knows the importance of language in persuading the public. He believes that social media is harmful to children, so he is supporting a bill called "Protecting Kids from Social Media Addiction Act"—a title strikingly similar to the name of Petitioners' "Protect Kids of California Act." But when it comes to any safeguards for biological females; the rights for children to grow up with their natural unaltered bodies; and the well-settled, fundamental, constitutionally protected rights and duties of parents and guardians to care for their children without state interference, Respondent chose "Restrict" instead of "Protect."

Framing an issue as a "restriction" or a "protection" is a widely known strategy to bias public opinion against or for a particular issue. The Public Policy Institute of California ("PPIC")

[2] https://ballotpedia.org/California_Proposition_31,_Flavored_Tobacco_Products_Ban_Referendum_(2022)#cite_note-sos-7

conducted a survey of 1,539 California adult residents from January 13-20, 2023. The results, published by PPIC, indicated that 74% of adults surveyed supported laws to "*protect* transgender individuals from *discrimination*," even though a subsequent national Gallup poll in May 2023 found that 69% of voters agreed that transgender athletes should only be allowed to play on sports teams that match their birth gender.[3] The most likely explanation for broad majority support of these contrasting ideas is the influence of the affirmative language used in the PPIC poll. Thus, replacing Petitioners' title with language describing that the Initiative "restricts rights" is a deliberate attempt by Respondent to create prejudice based on well-known strategies to manipulate public opinion.

In 2021, the Public Broadcasting Service ("PBS") commissioned a poll asking respondents if they "support or oppose legislation that would **prohibit** gender transition-related medical care for minors" – 66% opposed it.[4] However, in a separate poll in 2022, when asked if "minors should be required to wait until they are adults to use puberty blockers and undergo permanent sex change procedures" – 78.7% agreed.[5] This demonstrates that language that uses a negative framework such as "prohibit" creates prejudice against the issue, just as Respondent's title to "restrict rights" creates prejudice against the Initiative.

Research conducted on the overall issue of language used to frame a ballot initiative also confirms the results of the sample polls. Multiple studies have confirmed that framing of the title and summary in a ballot initiative to restrict rights "drastically reduced" support for one measure,

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[3] PPIC Statewide Survey: Californians and Their Government, February 2023; available at https://www.ppic.org/publication/ppic-statewide-survey-californians-and-their-government-february-2023/ (accessed January 29, 2024 [emphasis added]); Jeffrey Jones, *More Say Birth Gender Should Dictate Sports Participation*, available at https://news.gallup.com/poll/507023/say-birth-gender-dictate-sports-participation.aspx (accessed February 8, 2024).

[4] *See* "New poll shows American overwhelmingly oppose anti-transgender laws," PBS News Hour, April 16, 2021; available at https://www.pbs.org/newshour/politics/new-poll-shows-americans-overwhelmingly-oppose-anti-transgender-laws (accessed January 29, 2024 [emphasis added]).).

[5] *See* The Trafalgar Group & Convention of States Action, Nationwide Issues Survey, October 2022; available at https://www.thetrafalgargroup.org/wp-content/uploads/2022/10/COSA-Minors-Full-Report-1014.pdf (accessed January 29, 2024).

and that even experienced voters are susceptible to framing effects.[6] Social science research has shown that framing a ballot title as taking away rights compared to protecting rights causes a significant decrease in support for the initiative.[7] The same is true for ballot text. (*See* Craig M. Burnett & Vladimir Kogan, *When Does Ballot Language Influence Voter Choices? Evidence from a Survey Experiment*, 32 Political Communication 109 (2015) (finding that "the language used to describe a ballot measure does indeed have the potential to affect election outcomes, including measures dealing with contentious social issues affecting individual rights"); Ted D. Rossier, *Voter Experience and Ballot Language Framing Effects: Evidence from a Survey Experiment*, 201 Social Science Quarterly 2955 (2021).)

California's Attorney Generals also have a history of preparing misleading and prejudicial initiative titles and are no doubt aware of the research and effects of biased language to improperly influence the initiative process in California. This pattern of bias is notorious and even widely acknowledged in the press, including in editorials from the Los Angeles Times[8], San Diego Union Tribune[9], CalMatters[10], and San Francisco Chronicle. In fact, it is so concerning, just a few months ago in October 2023 **the San Francisco Chronicle Editorial Board suggested to "transfer the**

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[6] Rossier, Voter experience and ballot language framing effects: Evidence from a survey experiment, 102 Social Science Quarterly 2955, Sept. 15, 2021, https://doi.org/10.1111/ssqu.13068); Craig M. Burnett & Vladimir Kogan, *When Does Ballot Language Influence Voter Choices? Evidence from a Survey Experiment*, 32 Political Communication 109 (2010, last revised 2014), available at https://ssrn.com/abstract=1643448 (accessed on Feb. 8, 2024) (finding that "the language used to describe a ballot measure does indeed have the potential to affect election outcomes, including measures dealing with contentious social issues affecting individual rights").

[7] *See* Jeff Hastings & Damon Cann, *Ballot Titles and Voter Decision Making on Ballot Questions*, 46 State & Local Gov't Rev. 118, (2014), available at https://doi.org/10.1177/0160323X14535410 (accessed on Feb. 8, 2024).

[8] LA Times Editorial Board: Editorial: California voters need unbiased ballot information. Instead Becerra is playing favorites. Date 8/4/2020 available at https://www.latimes.com/opinion/story/2020-08-04/editorial-ballot-measure-titles-becerra (accessed March 19, 2024).

[9] San Diego Union-Tribune, Editorial Board: California needs to take this job away from Attorney General Xavier Becerra ASAP Date 7/30/2020, available at https://www.sandiegouniontribune.com/opinion/editorials/story/2020-07-30/becerra-slanted-ballot-language-prop-15-property-tax-hike-12-billion (accessed March 19, 2024).

[10] CalMatters, Ben Christopher, Critics demand fairer prop ballot labels and summaries, but lawsuits tend to flame out. Date 8/6/2020 https://calmatters.org/politics/2020/08/california-proposition-descriptions-lawsuits-attorney-general/ (accessed March 19, 2024.)

power to write ballot measure titles and summaries – ***which play a critical role in influencing voters*** – from the elected, partisan attorney general…" because "[h]aving a partisan official – who since 1999 has been a Democrat – control perhaps the most consequential language on the ballot is a clear conflict of interest."[11]

Respondent's circulating title is also misleading in that it claims the Initiative restricts rights that do not exist. There is no law that provides a right to privacy for a minor's gender identity with respect to their parents. In fact, the inverse is true, as "[a] parent's right to make decisions concerning the care, custody, control, and medical care of their children is one of the oldest of the fundamental liberty interests that Americans enjoy." (*See,* Petition at Ex. KK.) Three rulings now exist in which courts have found that children do not have a privacy right to keep secrets from parents when they are experiencing gender dysphoria, and one that states that a parental notification policy similar to that which is proposed in this Initiative, does not violate the equal protection clause. (*See Id.*; CVUSD lawsuit, and *Mae*.)[12]

Thus, by replacing Petitioners' title with language asserting that the Initiative "restricts rights," Respondent is deliberately attempting to create prejudice based on well-known strategies to manipulate public opinion and mislead the voters. Respondent's drafting of a misleading and prejudicial circulating title is a wholesale violation of Elections Code section 9051(d).

iii. Respondent's Summary Is Inaccurate and Misleading.

Respondent is required to provide an accurate and true summary. (Elec. Code § 9051(d).) Upon clear and convincing proof that the ballot information is false and misleading, the Court must mandate revisions. "No elector can intelligently exercise his rights under the initiative law without knowledge of the petition which he is asked to sign[.]" (*Boyd*, 1 Cal.2d at 475.) The main purpose of the title and summary is to provide the citizens with accurate information that is not

[11] San Francisco Chronicle Editorial Staff, *California Desperately needs ballot measure reform. Will Democrats ever find the courage to do it*?" date October 14, 2023 available at https://www.sfchronicle.com/opinion/editorials/article/california-ballot-measure-reform-democrats-18360315.php [emphasis added] (accessed on February 5, 2024).

[12] A true and correct copy of the tentative ruling that was adopted in the preliminary injunction ruling in *Mae* is attached as Exhibit 1 to Friday Decl. at ¶8.

misleading. (*Becerra v. Superior Court of Sacr. Cnty* (2017) 19 Cal.App.5th 967.).

The court in *Forty-Niners*, *supra*, 75 Cal.App.4th 637, found that even though the misleading and false information was contained in the notice of intention, and not in the title and summary, the petition could not qualify for the ballot, recognizing that false language will unduly influence the voters. "An initiative petition which contains objectively inaccurate information and calculated untruths that substantially mislead and misinform a reasonable voter is unlawful under the Elections Code." (*Id.* at 643.)

The summary is inaccurate, confusing and obtuse. Respondent's summary is unclear and confusing in its use of the term "transgender female." The circulating summary states that the Initiative would "prohibit transgender female students (grade 7+) from participating in female sports." That could, and has been interpreted to, mean that biological females – that is, individuals born with bodies developed to produce large gametes – who identify as transgender cannot play on sports teams with other biological females. This is the antithesis of what the Initiative does. The confusion with the use of the term "female" is more glaring given that the measure defines "female" as "a person whose body is developed for production of large gametes whether or not eggs are produced. Female humans typically have a vagina at birth and XX chromosomes." (*See* Petition Ex. B-1.) Therefore, the summary and the Initiative use differing and inconsistent definitions of "female."

The California legislature is well aware of the confusion with the ever-changing lexicon. It clarified the terms "transgender female" when passing regulations related to transgender individuals. *California Code of Regulations,* title 4, section 831 states: "(a) transgender female **(male to female)** athletes who are not undergoing hormone therapy and without gonadectomy are eligible for licensure and participation in men's events." (Emphasis added.) The clarification recognizes that the term "transgender female" needs an explanation. Respondent chose an opaque term to mislead the voters.

Further, evidence of Respondent's word games is the fact that California has 185 regulations that use the term "female," and they all appear to use the term to relate to those persons or animals whose bodies are developed for production of large gametes. (*See* Friday Decl., ¶ 9.)

There are 153 California statutes that use the term "female" to refer to humans whose bodies are developed to produce large gametes. (*See* Friday Decl., ¶ 10.) The most common understanding of the term "female" relates to biological sex rather than gender identity. Some citizens reviewing the summary of the Initiative have already expressed confusion as to Respondent's use of the term "transgender female." (*See* Friday Decl., at ¶ 11.)

Respondent's circulating summary inaccurately states that schools must notify the parents when a student under the age of 18 asks to be treated as a gender that differs from his or her school records "**without exception for student safety**." Respondent's assertion that there is no exception for student safety is false and misleading. The plain language of the Initiative, directly states that it does not obviate the confidentiality provisions set forth in the Education Code section 49602, Family Code section 6924, and Health and Safety Code section 124260, and that all these codes remain in effect. These codes provide for confidentiality between a child aged 12 and above and a mental health counselor if such counselor believes that there is a reason to exclude the parents from the child-counselor conversation. Education Code section 49602 states in relevant part, "a school counselor shall not disclose information deemed to be confidential pursuant to this section to the parents of the student when the school counselor has reasonable cause to believe that the disclosure would result in a clear and present danger to the health, safety, or welfare of the student."

The Initiative does not revise or repeal California's mandated reporting codes for abuse and neglect. These provisions of California law require that, when there is an indication of abuse of the child, the school's mandated reporters are obligated to report such abuse or neglect. (*See* Pen. Code § 11165, et seq.) Therefore, there **are** exceptions for student safety.

Respondent's summary states that the measure "[p]rohibits gender-affirmative care for transgender patients under 18[.]" This statement is also patently false. Additionally, Respondent ignores that there are exceptions that permit some children to undergo medical gender interventions, even though with gender dysphoria.

"Gender-affirmative care" includes both mental health care and medical interventions. Cal. Fam. Code § 3453.5 states:

> (a) A law of another state that authorizes a state agency to remove a child from their parent or guardian based on the parent or guardian allowing their child to receive **gender-affirming health care** or **gender-affirming mental health care** is against the public policy of this state and shall not be enforced or applied in a case pending in a court in this state. . . .
>
> (b) For the purpose of this subdivision, "**gender-affirming health care**" and "**gender-affirming mental health care**" shall have the same meaning as provided in Section 16010.2 of the Welfare and Institutions Code." (Emphasis added.)

Welfare and Institutions Code section 16010.2 also distinguishes "gender affirming health care" from "gender affirming mental health care."

C. Respondent Violated Petitioners' Freedom of Speech.

California Constitution Article I, section 2 provides that "[e]very person may speak freely, write, and publish his or her sentiments on all subjects. . . A law may not restrain or abridge liberty of speech or press." (Cal. Const. art. I § 2.) California's free speech protections are broader than those provided by the First Amendment of the U.S. Constitution. (*City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 421 n.11.)

Government action, including that which may influence the outcome of an election, falls within Petitioners' free speech rights, and the government may not "take sides" in the electoral process, including with ballot initiatives. (*See Citizens*, *supra,* 56 Cal.App.4th at 1227-28.) "The use of the ballot or the ballot form to favor a particular side in the election directly conflicts with the legislative intent to submit the measure to the voters in a concise and neutral manner." (*Id.*) Initiative petition circulation "is core political speech for which First Amendment protection is at its **zenith**, political speech in the election arena is still subject to regulation to promote fair and honest elections." (*Forty-Niners, supra*, 75 Cal.App.4th 637, 647 (internal citation omitted) [emphasis added].)

While the state has a legitimate and compelling interest in preserving the integrity of the ballot measure process, this compelling interest does not permit the government to trample upon a proponent's right to engage in a constitutionally and statutorily-protected and the most sacrosanct democratic process. Respondent has no compelling government interest for providing a biased and

misleading title and summary language. Respondent wielded his power to place impediments in the path of Petitioners' Initiative because the measure is directly against Respondent's agenda and his interests as a plaintiff, defendant, and amicus in numerous recent and pending lawsuits.

Forcing Petitioners to utilize false, misleading, confusing, incomplete, and biased language of Respondent for a petition that they proffered to the electorate is unconstitutional compelled speech. The government cannot force an individual to "speak the government's message." (*See Rumsfeld v. Forum for Academic & Institutional Rights, Inc*. (2006) 547 U.S. 47, 63.) By infringing the soliciting of signatures and compelling ideological speech, Respondent's actions doubly trigger strict scrutiny and his actions cannot survive that lofty bar.

"California could inform [voters] about [the state's viewpoint on the initiatives] without burdening a speaker with unwanted speech." (*Nat'l. Inst. of Family & Life Advocates v. Becerra* (2018) 138 S.Ct. 2361, 2376.) "Most obviously, it could inform the [voters themselves] with a public-information campaign." (*Ibid*. [internal citations omitted].) However, "**California cannot co-opt the [ballot summary and title] to deliver its message for it.**" (*Ibid*. (emphasis added).)

Respondent cannot argue that persons soliciting signatures can use their own speech to counter his speech. Petitioners are losing potential supporters before they even know they exist, and even if they do reach them, it is virtually impossible for a lay person to comprehend – let alone believe – that ***the*** government official charged with upholding the State's constitutions and laws would so brazenly violate them. Even the voices of one thousand well-intentioned, informed and trained signature gatherers cannot overcome the impact of Respondent's official title and summary. (*See, e.g.*, *Meyer v. Grant* (1988) 486 U.S. 424.)

Similarly, Respondent has infringed on Petitioners' First Amendment rights under the U.S. Constitution. (*See* U.S. Const., amend. I.) That amendment is incorporated against the states through the United States Constitution's Fourteenth Amendment. (*See Prete v. Bradbury* (9th Cir. 2006) 438 F.3d 949, 961.) Political speech and ideological speech are protected by the First Amendment. (*Schad v. Mount Ephraim* (1981) 452 U.S. 61, 65; *see Wilson v. Superior Court* (1975) 13 Cal.3d 651, 658.)

/ / /

In *Meyer*, *supra*, 486 U.S. at 422 n.5, the Supreme Court recognized that "the solicitation of signatures for a petition involves protected speech." The mere fact that Petitioners "remain free to employ other means to disseminate their ideas "does not take their [preferred means of] speech through [the initiative process] outside the bounds of First Amendment protection." (*Id.* at 424.) "[E]ven though the initiative and referendum process is not guaranteed by the United States Constitution, [California]'s choice to reserve it does not leave the state free to condition its use by impermissible restraints on First Amendment activity." (*Am. Const. L. Found., Inc. v. Meyer* (10th Cir. 1997) 120 F.3d 1092, 1100 (*aff'd sub nom. Buckley v. Am. Const. L. Found., Inc.* (1999) 525 U.S. 182); *see also Taxpayers United for Assessment Cuts* (6th Cir. 1993) 994 F.2d 291, 295 (states with initiative processes cannot impose restrictions that violate the federal Constitution).)

California courts have already held that where "the inclusion of language, overtly favoring a partisan position, which implicated interests protected by the constitutional guarantee of … freedom of expression," was unlawful. (*Citizens*, 56 Cal.App.4th 1199, 1227-28.) The state may not compel a person "to be an instrument for fostering public adherence to an ideological point of view he finds unacceptable." (*Wooley v. Maynard* (1997) 430 U.S. 705, 715.) "In doing so, the State 'invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.'" (*Id.* [quoting *W. Va. State Bd. of Educ. v. Barnette* (1943) 319 U.S. 624, 642].) "[D]irect regulation of the petition process" triggers strict scrutiny. (*Wirzburger v. Galvin* (1st Cir. 2005) 412 F.3d 271, 277.). For the same reasons, stated above, Respondents cannot meet that burden.

IV. RECOMMENDED REVISIONS TO CIRCULATING TITLE AND SUMMARY

Petitioners request that Respondent be ordered to revise the title and summary as follows:

> **PROTECT KIDS CALIFORNIA ACT. INTIATIVE STATUTE.** Requires schools to notify parents when their minor student asks to be treated as a gender differing from school records, with limited exceptions. Permits only students observed female at birth to use female sex-segregated spaces, bathrooms and changing rooms, and to participate in sports designed for females (grades 7+ through university). Defines "female" and "male". Repeals law allowing students to participate in activities and use facilities consistent with their gender identity. Prohibits use of puberty blockers, hormones, and surgeries on minors under 18 if for the purpose of treating gender dysphoria, with limited exceptions.

V. CONCLUSION

Respondent's partisanship and his explicit bias are abundantly clear from his actions related to treatment of gender confused students, children, males and their families. He has joined more than 14 lawsuits as Attorney General with positions that directly contradict the purpose and effect of this Initiative, and is a party-in-interest due to his status as a plaintiff and amicus in California lawsuits related to schools' parental notification policies. His conflict of interest is undeniable and his circulating title and summary were crafted to cause confusion, distort the true purpose and impact of the Initiative, and create prejudice against the Initiative. His calculated and unlawful use of negative and deceptive language have been and are impeding Petitioners from obtaining support for the Initiative. To wit:

a. Respondent's title is not an "impartial statement," but rather an attempt to unfairly paint the Initiative in a negative light and create prejudice against the measure as one which "restricts rights," the opposite of Petitioners' submitted title to "protect kids." Additionally, Respondent's circulating title is misleading, as it claims that the Initiative "restricts rights" when several of those purported rights do not exist.

b. Respondent is deceptive in his summary related to school notification, falsely stating in the summary that there is no exception for student safety. The Initiative clearly does not affect three codes that permit counselors to withhold information from the parents about gender identity issues where the child is in a clear and present danger. Nor does the Initiative obviate the mandated reporting obligations of schools for suspected abuse.

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Petitioners request a writ issue directing Respondent to (1) rescind his November 29, 2023 circulating title and summary; (2) take no further action on said title and summary except as stated herein; (3) approve the proffered title and summary herein; and (4) request the Secretary of State to extend the 180-day deadline from the date of this court's order or for the amount of time which Petitioner has been restricted with the use of the Respondent's biased title and summary.

Dated: March 20, 2024

LAW FIRM OF NICOLE PEARSON

Erin Friday

Nicole Pearson, Esq.
C. Erin Friday, Esq.
Attorneys for Petitioners PROTECT KIDS CALIFORNIA, JONATHAN ZACHRESON

PROOF OF SERVICE

I am over the age of 18 and not a party to the within action. My business address is 3421 Via Oporto, Suite 201, Newport Beach, Calif. 92263. On Wednesday, March 20, 2024, I served the following document(s) on the interested parties in the following manner(s) as follows:

PETITIONERS' OPENING BRIEF ON PETITION FOR WRIT OF MANDATE, DECLARATORY RELIEF, VIOLATION OF FREE SPEECH (CAL. CONST., ART. 1, SEC. 2), VIOLATION OF FREE SPEECH (U.S. Const., amend. I)

Malcolm Brudigam
DEPUTY ATTORNEY GENERAL
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Sacramento, CA 94244-2550
Malcolm.Brudigam@doj.ca.gov
Counsel for Respondent ROB BONTA

/ X / Via Electronic Transmission. Pursuant to written agreement between the parties, by personally e-mailing the document(s) to the persons at the e-mail address(es). No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission. A physical copy will be provided upon request only.

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

Executed on March 20, 2024 Newport Beach, California.

Nicole Pearson

(Signature)

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PROTECT KIDS CALIFORNIA and
JONATHAN ZACHRESON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

PROTECT KIDS CALIFORNIA and JONATHAN ZACHRESON, Individually and behalf of PROTECT KIDS CALIFORNIA Petitioners, v. ROB BONTA, in his official capacity as Attorney General of California and DOES 1–50, inclusive, Respondents.	Case No. 24WM000034 Dept.: 36 Judge: Honorable Stephen Acquisto **DECLARATION OF C. ERIN FRIDAY IN SUPPORT OF PETITIONERS' OPENING BRIEF ON VERIFIED PETITION FOR WRIT OF MANDATE, DECLARATORY RELIEF, VIOLATION OF FREE SPEECH (CAL. CONST., ART. 1, SEC. 2), VIOLATION OF FREE SPEECH (U.S. CONST., AMEND. I)** [*Opening Trial Brief; Request for Judicial Notice; [Proposed] Order filed concurrently herewith*] **Action filed: February 13, 2024** **Hearing Date: April 12, or April 19, 2024** **Time: 2:30 p.m. or 1:30 p.m.** **Dept.: 36**

DECLARATION OF C. ERIN FRIDAY

I, C. Erin Friday declare as follows:

1. I am an adult over 18 years of age and am an attorney duly licensed to practice law before all courts of the State of California. I am counsel for Petitioners, PROTECT KIDS CALIFORNIA and JONATHAN ZACHRESON (hereinafter collectively, "Petitioners") in this action. This declaration is submitted as in support of Petitioners' Opening Brief on Verified Writ of Mandate. The following facts are within my personal knowledge and, if called as a witness herein, I can and will competently testify thereto.

2. I am a member of the executive committee for the Protect Kids of California Ballot Initiative that has been given the title "RESTRICTS RIGHTS OF TRANSGENDER YOUTH" and designation 23-0027A2 (the "Initiative").

3. Polling shows that Californians would vote in favor of the Initiative regardless of party affiliation. Attached hereto as Exhibit 1a is a true and correct copy the June 2023 Rasmussen/Real Impact Poll without ads removed. Attached hereto as Exhibit 2a is a true and correct copy of the poll from the November 2023 Spry Strategies polling Californians on issues related to the Initiative. (*See* Request for Judicial Notification ("RJN") at ¶¶ 2-3.)

4. On January 14, 2024, Korey Wells emailed Protect Kids California asking "How do you expect this to have any change to win with a title that says 'restrict rights? Where is your lawsuit challenging this title? . . . nobody will support something that's framed as a negative." (*See* Exhibit 1, the Declaration of Erin Friday to Petition.)

5. Robert Lee contacted Scott Davison, a member of the Protect Kids California Executive Team about the title and summary of the Initiative.

6. In February of 2024, I had several meetings with high value potential donors who informed me that, because of the Respondent's unfavorable title and summary, they did not want to donate to the endeavor, regardless of the fact that they agreed with the Initiative.

7. To date, I am aware of 23 states (with a 24th state likely to follow suit) in the nation

have passed legislation that safeguards children's natural bodies, sexual function and ability to procreate. The titles of the acts or laws are all framed in a neutral or in a positive manner – highlighting that the bills are protecting children.

8. A true and correct copy of the tentative ruling that was adopted in *Mae M. et. Al v. Komrosky et al.* (Case No. CVSW2306224) is attached as Exhibit 3a to this Declaration.

9. In February of 2024, I performed legal research using Casetext. I searched the term "female" in the California Regulations. The search engine located 185 Regulations that use the term "female" and they all appear to use the term relative to those persons or animals whose bodies are developed for production of large gametes whether or not eggs are produced.

10. In February of 2024, I performed legal research using Casetext. I searched the term "female" in the California codes. The search engine located 153 statutes that use the term "female". The usage of the term "female" in these statutes relate to those humans with biological female bodies whose bodies are developed to produce large gametes, including but not limited to Welfare and Institutions Code § 1753.7 [addressing female and menstrual products]; Insurance Code § 790.03 [referencing life insurance annuities for females as distinguished from males]; the Penal Code § 318.6 [addressing exposure of female breasts for crimes related to sexual infractions]; and Cal. Pen. Code § 273.4, an act penalizing those for female genital mutilation, which means "the excision or infibulation of the labia majora, labia minora, clitoris, or vulva"—body parts only related to females.

11. I had conversations with people wanting to sign the petition who did not understand the term "transgender female" and thought that girls who believe that they are males, must use the male's bathrooms, changing rooms and play on their sports' team.

12. Exhibit 4a is a true and accurate copy of the Ballot Title," Ballotpedia, https://ballotpedia.org/Ballot_title#cite_note-1 (citing National Conference of State Legislatures, https://web.archive.org/web/2/http://www.ncsl.org/programs/legismgt/elect/PrepTtlSumm.htm).

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///

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 20th day of March 2024 in Redwood City, California.

Erin Friday

C. Erin Friday, Esq.
Attorneys for Petitioners
PROTECT KIDS CALIFORNIA,
JONATHAN ZACHRESON

EXHIBIT 1a

POLITICS

California Voters Support Parental Rights by Overwhelming Margins

Monday, June 12, 2023

Parents don't lose their rights at the schoolhouse door, according to an overwhelming majority of California voters, most of whom also support laws requiring schools to notify parents if a student identifies as transgender.

A new telephone and online survey by Rasmussen Reports and Real Impact finds that 82% of California Likely Voters disagree with the statement, "A person loses their parental rights when a child enters public school," including 69% who Strongly Disagree. Only 12% think parental rights are lost when children enter public school. (To see survey question wording, click here.)

Eighty-four percent (84%) of California voters would support a local law that required parents to be notified of any major change in a child's physical, mental, or emotional health or academic performance, including 66% who would Strongly Support such a law. Only 12% would oppose a law requiring parental notification.

If such a law included notifying parents of a child identifying, requesting to identify, or being treated as a gender that doesn't align with their biological sex, 62% of California voters would be more likely to support it, including 46% who would be Much

Top Stories

1. Daily Presidential Tracking Poll
2. Biden Approval Declines Again in June

More Likely to support the parental notification law. Twenty-seven percent (27%) would be less likely to support it.

"The data clearly shows that California parents support transparency and accountable policies, making it mandatory for the school administrations to inform parents if their child is facing any of these challenges or lifestyle changes," said Gina Gleason, Executive Director of Real Impact. "Parents are attending school board meetings in droves to show that despite what the education establishment thinks, children, their well-being, and upbringing are not the responsibility of the school or state, it's the responsibility of the parents."

(Want a free daily e-mail update? If it's in the news, it's in our polls). Rasmussen Reports updates are also available on Twitter or Facebook.

The survey of 1,305 U.S. Likely Voters was

3. Happy Independence Day!

4. ABC News: 'Answer Our Questions -- Or Else!'

conducted on May 18, 2023 by Rasmussen Reports and Real Impact. The margin of sampling error is +/- 3 percentage points with a 95% level of confidence. Field work for all Rasmussen Reports surveys is conducted by Pulse Opinion Research, LLC. See methodology.

At a White House event in April, President Joe Biden said, "There's no such thing as someone else's child. Our nation's children are all our children."

Sixty-four percent (64%) of California voters disagree with that statement, including 48% who Strongly Disagree. Twenty-nine percent (29%) agree with Biden's statement, including 13% who Strongly Agree.

Sixty-nine percent (69%) support schools notifying parents if their child identifies or requests to be identified or treated as a gender that doesn't align with their biological sex, including 55% who Strongly Support parental notification in such cases. Only 23% are opposed.

Among other findings of the Rasmussen Reports/Real Impact survey of California voters:

– Ninety-one percent (91%) believe parents, not the government, have the bigger responsibility to raise a child.

– Eighty-eight percent (88%) support parental notification by school officials if their child has a change in mental conditions, like showing symptoms of depression or suicidal thoughts.

– Sixty-eight percent (68%) oppose teachers and school administrators keeping information about a child's gender identity secret from the parents, including 55% who Strongly Oppose such secrecy. Only 24% support schools keeping students' gender identity secret from parents.

– Seventy-one percent (71%) don't believe a person under 18 is mature enough to make important life decisions on their own. Only 14% think someone under age 16 is mature enough to make such decisions. Majorities of every racial, political and demographic category – including 60% of Democrats, 84% of Republicans and 78% of voters not affiliated with either major party – believe a person must be 18 to be mature enough to make

important life decisions on their own. The only category in which less than a majority agree is among voters who Strongly Approve of Biden's job performance as president, 49% of whom think a person under 18 is not mature enough to make major decisions on their own.

– Only 24% of California voters believe that, at 12 years of age, a child is mature enough to consent to mental health treatment, counseling, or shelter services without their parents knowing. Sixty-three percent (63%) disagree, while 12% are not sure.

– A majority oppose transgender treatment for children under age 16. Asked by what age a child is mature enough to make a decision about what their gender is, only 29% think a child is mature enough before age 16, while another 31% think children are mature enough to make such a decision before age 18, and 32% answer "never." Only 21% approve of transgender hormonal treatment before age 16, and just 10% approve of transgender surgery before age 16.

– Fifty-seven percent (57%) agree with the statement, "A teacher not following a law to notify

parents about changes in a student's physical, mental or emotional health should lose their jobs," including 39% who Strongly Agree. Thirty-seven percent (37%) disagree, including 19% who Strongly Disagree.

– On some questions, minority voters in California are more conservative than whites. For example, while 51% of whites Strongly Support schools notifying parents if their child identifies or requests to be identified or treated as a gender that doesn't align with their biological sex, that number reaches 57% among black and Hispanic voters, and 62% among other minorities.

– Democrats are much more supportive of childhood transgenderism than other California voters. For example, 28% of Democrats think a child under age 12 is mature enough to make a decision about what their gender is, compared to just five percent (5%) of Republicans and 10% of unaffiliated voters. Similarly, while 33% of Democrats believe it is appropriate for a child under 16 to receive transgender hormone treatment, only six percent (6%) of Republicans and 14% of unaffiliated voters share that belief.

In its analysis of the survey results, Real Impact said: “School districts across California are faced with decisions affecting how school administrators communicate with a student’s parents regarding a child’s exposure to materials and activities while at school – and most California parents want to be notified and retain decision making power over their child’s education and communication with the school.”

June is LGBTQ “Pride” month, which has made the popular Target discount store chain a focus of controversy this year, and almost half of regular Target shoppers believe corporations go overboard in celebrating Pride month.

By a 3-to-1 margin, Americans believe there are only two genders, and a majority support laws against transgender treatment for minors.

Additional information from this survey and a full

EXHIBIT 2a

SPRY Strategies

WBOR California Nov 2023

Tables Only

Prepared by SPRY Stategies
The WBOR California Nov 2023 Survey was conducted by IVR and Online (Text-to-Web) Interviews from November 9 - November 13 among a random sample of 1000 likely general election voters. The survey has a margin of error of +/- 3.1 percentage points. Results are weighted. Some percentages in crosstab reports for this poll may not add to 100% due to rounding.

Q1 : Registered Voter

Are you 18 years of age and registered to vote in the state of California?
Sample Size: 1,000

Value	Frequency	Percent
Yes	1,000	100%
Total	**1,000**	**100%**

Q2 : Biden Approval

Do you approve or disapprove of the job Joe Biden is doing as President?
Sample Size: 1,000

Value	Frequency	Percent
Strongly Approve	292	29.2%
Somewhat Approve	189	18.9%
Somewhat Disapprove	85	8.5%
Strongly Disapprove	396	39.6%
Unsure or no opinion	38	3.8%
Total	**1,000**	**100%**

Q3 : Women's Rights Priority

Since the Supreme Court Dobbs decision to overturn Roe V Wade, many in the US are very concerned about women's rights. How important are women's concerns and rights to you in the 2024 election?
Sample Size: 1,000

Value	Frequency	Percent
Very Important	585	58.5%
Somewhat Important	170	17%
Very Unimportant	100	10%
Somewhat Unimportant	95	9.5%
Unsure/Refuse	50	5%
Total	**1,000**	**100%**

Q4 : Binary Gender

Do you believe sex is binary, i.e., male or female?
Sample Size: 1,000

Value	Frequency	Percent
Strongly believe	489	48.9%
Somewhat believe	139	13.9%
Strongly disbelieve	136	13.6%
Somewhat disbelieve	87	8.7%
Unsure	149	14.9%
Total	**1,000**	**100%**

Q5 : Define Woman

What is the definition of a woman?
Sample Size: 1,000

Value	Frequency	Percent
Biologically born female	704	70.4%
Someone born male, but went through hormones and surgery to try to change their sex	41	4.1%
Anyone who feels or says they are	143	14.3%
Biologically born females OR someone born male, but went through hormones and surgery to try to change their sex	112	11.2%
Total	**1,000**	**100%**

Q6 : Parental Notification

A school board voted to notify parents if their child identifies as transgender or the opposite sex. The Attorney General is suing that school district. Do you agree parents should be notified if their child identifies as transgender in school?
Sample Size: 1,000

Value	Frequency	Percent
Strongly agree	581	58.1%
Somewhat agree	140	14%
Strongly disagree	150	15%
Somewhat disagree	64	6.4%
Unsure	65	6.5%
Total	**1,000**	**100%**

Q7 : Sports Teams/Facilities

Generally speaking, would you support or oppose legislation that restricts people who are biologically male, but who now identify as women, from playing on girl's sports teams and from sharing facilities that have traditionally been reserved for women?
Sample Size: 1,000

Value	Frequency	Percent
Strongly Support	455	45.5%
Somewhat Support	135	13.5%
Somewhat Oppose	91	9.1%
Strongly Oppose	195	19.5%
Unsure or No Opinion	124	12.4%
Total	**1,000**	**100%**

Q8 : Changing Rooms

A biological male who identifies as female, should be allowed to use female changing rooms where women and girls are changing and/or showering.
Sample Size: 1,000

Value	Frequency	Percent
Strongly agree	120	12%
Somewhat agree	145	14.5%
Somewhat disagree	115	11.5%
Strongly disagree	525	52.5%
Unsure or No Opinion	95	9.5%
Total	**1,000**	**100%**

Q9 : Prison Sharing

Someone who is biologically male but identifies as a woman who is sentenced to prison should be able to serve their sentence in a women's prison; i.e, sharing cells and showers with a woman.
Sample Size: 1,000

Value	Frequency	Percent
Strongly agree	123	12.3%
Somewhat agree	127	12.7%
Somewhat disagree	106	10.6%
Strongly disagree	491	49.1%
Unsure or No Opinion	152	15.2%
Total	**1,000**	**100%**

Q10 : Domestic Abuse

Biologically male sex offenders or domestic abusers who identify as women or non-binary should be allowed to serve their sentence in a women's prison, and be allowed to share a cell with a woman.
Sample Size: 1,000

Value	Frequency	Percent
Strongly agree	64	6.4%
Somewhat agree	102	10.2%
Somewhat disagree	113	11.3%
Strongly disagree	571	57.1%
Unsure or No Opinion	150	15%
Total	**1,000**	**100%**

Q11 : Homeless/DV Shelters

A biological male who now identifies a woman should be admitted to women-only homeless or domestic violence shelters where there may be communal sleeping or showering areas.
Sample Size: 1,000

Value	Frequency	Percent
Strongly agree	101	10.1%
Somewhat agree	137	13.7%
Somewhat disagree	93	9.3%
Strongly disagree	516	51.6%
Unsure or No Opinion	153	15.3%
Total	**1,000**	**100%**

Q12 : Healthcare Provider

If women request a female healthcare provider when undergoing intimate medical examinations or procedures, it is acceptable for the facility to assign a doctor or nurse that was born male but identifies as a female.
Sample Size: 1,000

Value	Frequency	Percent
Strongly agree	117	11.7%
Somewhat agree	147	14.7%
Somewhat disagree	107	10.7%
Strongly disagree	419	41.9%
Unsure or No Opinion	210	21%
Total	**1,000**	**100%**

Q13 : Child Medication/Surgeries

Do you agree or disagree that children who say they identify as transgender should be allowed to undergo surgeries to try to change them to the opposite sex or take off-label medications and hormones?
Sample Size: 1,000

Value	Frequency	Percent
Strongly agree	93	9.3%
Somewhat agree	114	11.4%
Somewhat disagree	104	10.4%
Strongly disagree	531	53.1%
Unsure or No Opinion	157	15.7%
Total	**1,000**	**100%**

Q14 : Custody Rights

Do you agree or disagree that parents should lose custody for refusing to allow children to undergo surgeries to try to become the opposite sex or take off-label medications and hormones?
Sample Size: 1,000

Value	Frequency	Percent
Strongly agree	50	5%
Somewhat agree	72	7.2%
Somewhat disagree	124	12.4%
Strongly disagree	554	55.4%
Unsure or No Opinion	201	20.1%
Total	**1,000**	**100%**

Q15 : Pronouns in School

Do you agree or disagree that children should be encouraged to explore their gender, decide their gender for themselves and identify their pronouns as early as kindergarten?
Sample Size: 1,000

Value	Frequency	Percent
Strongly agree	100	10%
Somewhat agree	97	9.7%
Strongly disagree	351	35.1%
Somewhat disagree	340	34%
Unsure	112	11.2%
Total	**1,000**	**100%**

Q16 : Employee Pronouns

Should employees be required to use preferred pronouns such as she/her, he/him, they/them, as opposed to the biological gender assigned to their sex?
Sample Size: 1,000

Value	Frequency	Percent
Strongly Agree	193	19.3%
Somewhat agree	147	14.7%
Strongly disagree	222	22.2%
Somewhat disagree	245	24.5%
Unsure	194	19.4%
Total	**1,000**	**100%**

Q17 : Women Defined by Law

Do you feel the word 'woman' needs to be defined in law to protect women's rights?
Sample Size: 1,000

Value	Frequency	Percent
Yes	540	54%
No	224	22.4%
Unsure or no opinion	237	23.7%
Total	**1,000**	**100%**

Q18 : Party

Are you a registered Republican, Democrat or Independent?
Sample Size: 1,000

Value	Frequency	Percent
Republican	262	26.2%
Democrat	486	48.6%
Independent, Non Partisan Preference, or Decline to State	235	23.5%
Other party	18	1.8%
Total	**1,000**	**100%**

Q19 : Ideology

What is your political ideology?
Sample Size: 1,000

Value	Frequency	Percent
Very conservative	182	18.2%
Somewhat conservative	159	15.9%
Moderate	340	34%
Somewhat liberal	177	17.7%
Very liberal	141	14.1%
Total	**1,000**	**100%**

Q20 : Gender

What is your gender?
Sample Size: 1,000

Value	Frequency	Percent
Male	446	44.6%
Female	529	52.9%
Non-binary	10	1%
Something Else	4	0.4%
Unsure	10	1%
Total	**1,000**	**100%**

Q21 : Ethnicity

What is your ethnicity? Are you...
Sample Size: 1,000

Value	Frequency	Percent
Caucasian	523	52.3%
Hispanic	181	18.1%
Native American	29	2.9%
African-American	87	8.7%
Asian	103	10.3%
Other ethnicity	78	7.8%
Total	**1,000**	**100%**

Q22 : Age

What is your age? Are you...
Sample Size: 1,000

Value	Frequency	Percent
18-26	123	12.3%
27-42	180	18%
43-59	242	24.2%
60 or over	456	45.6%
Total	**1,000**	**100%**

Q23 : Education

What is your highest level of education?
Sample Size: 1,000

Value	Frequency	Percent
Less than high school	35	3.5%
High School Graduate or GED	116	11.6%
Some college	183	18.3%
Technical or Vocational Degree	68	6.8%
Associate Degree	74	7.4%
Bachelor's Degree	272	27.2%
Master's or Professional Degree	189	18.9%
Doctoral Degree (PhD or MD)	63	6.3%
Total	**1,000**	**100%**

Q24 : DMA

DMA
Sample Size: 997

Value	Frequency	Percent
BAKERSFIELD	8	0.8%
CHICO-REDDING	27	2.7%
EUREKA	6	0.7%
FRESNO-VISALIA	45	4.6%
LOS ANGELES	369	37%
MEDFORD-KLAMATH FALLS	3	0.3%
MONTEREY-SALINAS	18	1.8%
PALM SPRINGS	7	0.7%
SACRAMNTO-STKTON-MODESTO	142	14.3%
SAN DIEGO	98	9.8%
SAN FRANCISCO-OAK-SAN JOSE	248	24.8%
SANTABARBRA-SANMAR-SANLUOB	26	2.6%
Total	**997**	**100%**

EXHIBIT 3a

Tentative Rulings for February 23, 2024
Department 6

To request oral argument, you must notify Judicial Secretary Charmaine Ligon at (760) 904-5722 and inform all other counsel no later than 4:30 p.m.

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department 6 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear telephonically, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

TELEPHONIC APPEARANCES: On the day of the hearing, call into one of the below listed phone numbers, and input the meeting number:

- Call-in Numbers: 1 (833) 568-8864 (Toll Free), 1 (669) 254-5252 ,
  1 (669) 216-1590, 1 (551) 285-1373, or
  1 (646) 828-7666
- Meeting Number: 161 830 3643

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

For additional information and instructions on telephonic appearances, visit the court's website at https://www.riverside.courts.ca.gov/PublicNotices/remote-appearances.php.

Riverside Superior Court provides official court reporters for hearings on law and motion matters only for litigants who have been granted fee waivers and only upon their timely request. (See General Administrative Order No. 2021-19-1) Other parties desiring a record of the hearing must retain a reporter pro tempore.

1.

CVRI2101382	BERNAL VS BERRY	MOTION FOR LEAVE TO AMEND COMPLAINT ON COMPLAINT FOR BREACH OF CONTRACT/WARRANTY

Tentative Ruling:

This motion is unopposed. Motion is granted. Plaintiff is ordered to file the First Amended Complaint within 14 days of this order.

2.

CVRI2101992	HOME, CARE ASSISTANCE OF CALIFORNIA, LLC vs SCRUTON	Motion to Compel Production of Documents re: Deposition Subpoena for Production of Business Records

Tentative Ruling:

This motion is unopposed. Motion is granted. Defendant/Cross-Complainant is ordered to file a proposed order for the Court's signature. Moving party to provide notice of ruling.

3.

CVRI2304998	THE BENNIE G. TRAPP, JR vs MAHAM CORP	Motion to Strike Complaint on 1st Amended Complaint for Other Complaint

Tentative Ruling:

This is a malicious prosecution action. Plaintiffs Bennie G. Trapp, Jr. ("Trapp") and The Bennie G. Trapp, Jr. Special Needs Trust allege that Trapp is a quadriplegic veteran of the US Army and US Air Force who is paralyzed from the neck down, save for minimal use of his hands. On December 29, 2016, Trapp entered into a Residential Lease Agreement ("Lease") with defendant Maham Corp. to rent property located at 12860 Perris Blvd., Unit D-7 in Moreno Valley, where Trapp had lived for 24 years prior. The Lease contained two options to purchase the property. Trapp exercised both options to purchase the property, the first in 2018 for $110,000 and then a second in 2019 for $169,000, both of which Maham breached. Trapp filed a civil lawsuit seeking specific performance for the sale of the property ("Civil Action").

In retaliation, Maham filed a meritless unlawful detainer action to evict Plaintiffs, *Maham Corp. v. Trapp*, UDMV 2200659 ("UD Action"), based on allegations that the defendants knew were false at the time they were made. In the UD Action, Maham claimed Trapp tampered with the circuit breaker box without any evidence whatsoever and was harboring an illegal subtenant despite knowing that the subtenant was Trapp's lawful live-in caregiver pursuant to the ADA and the Fair Housing Act. Maham lost the UD Action and then lost the Civil Action.

Plaintiffs allege defendants Sayid Ali and Jawad Afzal are the owners of Maham and that they were represented in the UD Action by counsel William E. Windham ("Windham" or "Defendant") of the Law Office of William E. Windham ("Windham APC"). Plaintiffs filed the original complaint on September 20, 2023, and the operative First Amended Complaint ("FAC") on October 5, 2023 alleging: 1) malicious prosecution; 2) abuse of process; and 3) treble damages (Civil Code § 3345(a), (b).) Plaintiffs seek punitive damages.

Defendant Windham now moves to strike punitive damages, arguing that there are insufficient facts showing oppression, fraud or malice as the FAC only alleges conclusory facts. Plaintiffs oppose, arguing that there are sufficient facts showing malice. In the Reply, Defendant

argues that he was not counsel to Maham in the Civil Action and refutes the allegations in the FAC.

Analysis:

I. Meet and Confer Requirement

Defendant has satisfied its obligation to meet and confer in accordance with CCP § 435.5 and has filed an appropriate declaration in accordance with CCP § 435.5(a)(3).

II. On the Merits

The court may, upon a motion made pursuant to CCP §435:

(a) Strike out any irrelevant, false, or improper matter inserted in any pleading.

(b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.

(CCP § 436.) On a motion to strike, as with a demurrer, "the court treats as true the material facts alleged in the complaint, as well as any facts which may be implied or inferred from those expressly alleged." (*Washington Int'l Ins. Co. v. Superior Court* (1998) 62 Cal. App. 4th 981, 984, n. 2).

Defendant moves to strike punitive damages. A motion to strike is the proper vehicle to attack a punitive damage claim where facts alleged may not rise to the level of fraud, malice or oppression. (CCP §§ 435-436; *Truman v. Turning Point of Central Calif., Inc*. (2010) 191 Cal.App.4th 53, 63.) Plaintiffs may recover exemplary or punitive damages where it is proven that "the defendant has been guilty of oppression, fraud or malice." (Cal. Civ. Code §3294(a).)

"Not only must there be circumstances of oppression, fraud or malice, but facts must be alleged in the pleading to support such a claim." (*Grieves v. Superior Court* (1984) 157 Cal. App. 3d 159, 166.) "[A] conclusory characterization of defendant's conduct as intentional, willful and fraudulent is a patently insufficient statement of 'oppression, fraud, or malice, express or implied,' within the meaning of section 3294." (*Brousseau v. Jarrett* (1977) 73 Cal. App. 3d 864, 872.) "Malice" means either defendant intended to cause injury to plaintiff or defendant's conduct was "despicable" and carried on with a willful and conscious disregard of the rights and safety of others. (Civil Code § 3294(c)(1).) "Oppression" is "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. (Civil Code § 3294(c)(2).) "Despicable conduct" is conduct that is "so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people." (*Scott v. Phoenix Schools, Inc.* (2009) 175 Cal.App.4th 702, 715.) The pleading must contain factual allegations of wrongful motive, intent, or purpose. (*Cyrus v. Haveson* (1976) 65 Cal. App. 3d 306, 317.)

Punitive damages may be awarded in a civil action for malicious prosecution. (*Bertero v. National General Corp.* (1974) 13 Cal.3d 43, 65 (flagrant abuse of the judicial process by the filing of fabricated claims in order to force the settlement or abandonment of a legitimate claim, is precisely the type of tortious conduct that an award of punitive damages is designed to deter).)

In this case, Plaintiffs allege the defendants, including Windham, knowingly and intentionally filed a meritless UD Action in retaliation for Plaintiffs having filed the Civil Action, to prevent Plaintiffs from exercising their option to purchase the subject property, and to evict Trapp – a disabled and quadriplegic veteran - from his residence of 24 years. (FAC, ¶¶ 22-27.) In the UD Action, Maham falsely alleged Trapp tampered with the circuit breaker box despite having no evidence in support, and falsely alleged Trapp was harboring an illegal subtenant despite knowing that the subtenant was Trapp's lawful live-in caregiver pursuant to the ADA and the Fair Housing Act. (FAC, ¶¶ 28-32.) Plaintiffs allege: "All Defendants, including but not limited to Windham and

Windham APC, knew or should have known that trying to evict a disabled quadriplegic tenant, who is current on rent and not otherwise in breach, solely or primarily due to the presence of a legally protected caregiver as the disabled tenant's subtenant shocks the conscience, is outrageous, is knowingly and patently malicious, as it is designed to expose an innocent disabled tenant to the potentially life-threatening conditions that attend and follow upon eviction." (FAC, ¶ 31.) These facts are sufficient to support malice and punitive damages.

Defendant Windham argues that he was not involved in the Civil Action, disputes what happened in the Civil Action, denies that he had actual notice of the status of Trapp's caregiver, and contends that he did in fact believe that the UD Action had merit. Defendant improperly relies on extrinsic facts set forth in his own declaration which are outside the four corners of the pleading. In ruling on a motion to strike, the trial court assumes the truth of the allegations in the complaint. (*Clause v. Sup. Ct. (Pedus Services, Inc.)* (1998) 67 Cal.App.4th 1253, 1255.)

DENY the motion.

4.

CVRI2306995	INLAND EMPIRE HEALTH PLAN vs MICHELLE BAASS	Hearing on Preliminary Injunction

Tentative Ruling:

Inland Empire Health Plan and San Francisco Health Plan (collectively "Plaintiffs") have healthcare plans in California. They assert that the California Department of Health Care Services ("Department") has enacted regulations regarding how Medi-Cal patients are assigned health care plans when the Medi-Cal beneficiary has not personally selected a health plan. They assert that under the rules currently applied by the Department, they are auto-assigned rates exceeding 70 percent in Riverside County and 60 percent in San Bernardino County. They allege that the Department unveiled a new auto-assignment algorithm that will result in Defendants receiving far fewer Medi-Cal members. They argue that these changes were not made pursuant to the requirements in the Administrative Procedure Act ("APA").

The complaint asserts the following causes of action: (1) injunctive relief, (2) writ of mandamus, and (3) declaratory relief.

Plaintiffs seek a preliminary injunction enjoining Department from implementing the changes to the auto-assignment algorithm. They argue that there is no harm in keeping the status quo. They contend that they will be irreparably harmed if the relief sought is not granted. Plaintiffs contend they will likely prevail on their claims because Department failed to comply with the APA when adopted its changes to the auto-assignment algorithm. In supplemental points and authorities filed by Plaintiffs, they argue that the quality metrics proposed by Department to determine how to auto-assign new Medi-Cal beneficiaries to plans is improper because they were not adopted in compliance with the APA.

In the oppositions, Department contends the new algorithm is already being used and granting the request for preliminary injunction would alter the status quo. It argues that Plaintiffs have failed to establish harm because they do not establish that they are entitled to any number of auto-assignments and their claim of monetary harm is speculative. It asserts that the Department's Health Plan Enrollment system must be programed at least 6 weeks prior to enrollment being effective. As such, it asserts that it cannot just stop the auto-assignment program percentages already programmed from January through March. It contends it cannot revert to the earlier iteration of the program because new plans have been added and have left the region at issue. In the supplemental opposition, it argues that mandatory relief is sought and Plaintiffs cannot meet the heightened requirements for such relief. It asserts that Plaintiffs get a higher

percentage of plans now than under the old rules. Department argues that the APA is not applicable.

In reply, Plaintiffs contend that they do not need to satisfy the heightened requirements for mandatory injunctive relief because they are only seeking to maintain the status quo. They reassert that the APA applies and that Department's argument that the APA is inapplicable lacks merit.

Analysis:

The purpose of a preliminary injunction is to preserve the status quo pending trial on the merits. In order to issue a preliminary injunction, the Court must balance the parties' interests. In balancing the parties' interests, the Court must exercise discretion "in favor of the party most likely to be injured . . . ." *Robbins v. Superior Court* (1985) 38 Cal.3d 199, 205. The Court is to consider two interrelated factors: (1) the injury to plaintiff in absence of the injunction verses the injury the defendant is likely to suffer if an injunction is issued (*Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 633); and (2) is there a reasonable probability that plaintiffs will prevail on the merits at trial. *Robbins*, *supra*, 38 Cal.3d at 206. "The trial court's determination must be guided by a 'mix' of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction." *Butt v. State of California* (1992) 4 Cal.4th 668, 678. It is the plaintiff's burden to "show all elements necessary to support issuance of a preliminary injunction." *O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1481. "An injunction properly issues only where the right to be protected is clear, injury is impending and so immediately likely as only to be avoided by issuance of the injunction." *E. Bay Mun. Util. Dist. v. Cali. Dep't of Forestry & Fire Prot.* (1996) 43 Cal.App.4th 1113, 1126. "[I]n order to obtain injunctive relief the plaintiff must ordinarily show that the defendant's wrongful acts threaten to cause irreparable injuries, ones that cannot be adequately compensated in damages." *Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1352.

While the parties disagree about whether the injunction sought is prohibitory or mandatory and whether the APA applies or does not apply to the Department's auto-assignment, they both agree that the new auto-assignment formula used by the Department results in Plaintiff being assigned more individuals to their plan in 2024 than in 2023. An injunction is only properly issued where injury is impending. *E. Bay Mun. Util. Dist., supra,* 43 Cal.App.4th at 1126. No injury is impending. They will receive more new patients/clients under the new auto-assignment formula than the old formula. Plaintiffs argue that this formula may be changed in the future but this is speculative at most. They provide no evidence that Department is planning on changing the formula anytime soon. Due to this, the motion for preliminary injunction is denied because no injury is impending.

5.

CVSW2306224	M. VS KOMROSKY	MOTION FOR PRELIMINARY INJUNCTION

Tentative Ruling:

Motion for Preliminary Injunction

Defendants argue that the Teacher Plaintiffs lack standing to pursue this claim. This argument does not have merit. "Standing concerns a specific party's interest in the outcome of a lawsuit." (*Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1247.) "To have standing, a party must be beneficially interested in the controversy; that is, he or she must have 'some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.'" (*Holmes v. California Nat. Guard* (2001) 90

Cal.App.4th 297, 315.) "This interest must be concrete and actual, and must not be conjectural or hypothetical." (*Iglesia Evangelica Latina, Inc. v. S. Pac. Latin Am. Dist. Of the Assemblies of God* (2009) 173 Cal.App.4th 420, 445; *Associated Builders and Contractor, Inc. v. San Francisco Airports. Com.* (1999) 21 Cal.4th 352, 362.) In this case, the Plaintiffs have a concrete and actual interest in the constitutional validity of the Resolution and Policy 5020.01 as they are directly impacted by each.

A decision to grant or deny a preliminary injunction is not an ultimate adjudication of the dispute, but simply a provisional remedy intended to preserve the status quo pending a trial on the merits. (*Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528; *Hunt v. Superior Court* (1999) 21 Cal.4th 984, 999; *Jamison v. Department of Transportation* (2016) 4 Cal.App.5th 356, 361.) The decision to grant or deny a request for a preliminary injunction rests in the sound discretion of the trial court, and its decision will not be reversed on appeal absent a showing of abuse of discretion. (*14859 Moorpark Homeowner's Assn. v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1402-03; *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286.) When deciding whether to issue preliminary injunctions, the trial court considers two interrelated factors: the interim harm the applicant is likely to sustain if the injunction is denied as compared to the harm to the defendant if it issues, and the likelihood the applicant will prevail on the merits at trial. (*White v. Davis* (2003) 30 Cal.4th 528, 554; *Cohen* v. *Board of Supervisors* (1985) 40 Cal.3d 277, 286; *Robbins v. Superior Court* (1985) 38 Cal.3d 199, 205-06.) "The trial court's determination must be guided by a 'mix' of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction." (*Butte v. State of California* (1992) 4 Cal. 4th 668, 678.)

A. Probability of Success

A preliminary junction is proper if it is "reasonably probable that the moving party will prevail on the merits." (*San Francisco Newspaper Printing Co., Inc. v. Sup. Ct. (Miller)* (1985) 170 Cal.App.3d 438, 442 (abuse of discretion to grant injunction where plaintiff lacks standing to sue); *Costa Mesa City Employees' Ass'n v. City of Costa Mesa* (2012) 209 Cal.App.4th 298, 309 (no injunction may issue unless there is at least "some possibility" of success).) In their moving papers, Plaintiffs argue they will prevail on the merits invalidating the Resolution under Count I (void-for-vagueness), Count II (infringement of right to receive information), and Count III (infringement of right to education) of the complaint, and they will prevail on the merits invalidating the Policy under Count VIII (gender discrimination).

1. The Resolution (Count I)

Teacher Plaintiffs allege the Resolution violates Article I, § 7(a) of the California Constitution because it is unconstitutionally vague. (FAC, ¶¶ 110-118, 152-156.) A person may not be deprived of life, liberty or property without due process of law. (Cal. Cont., art. I, § 7(a); see also U.S. Const., amend. XIV.) The void-for-vagueness doctrine, which derives from the due process concept of fair warning, bars the government from "enforcing a provision that 'forbids or requires the doing of an act that is so vague' that people of 'common intelligence must necessarily guess at its meaning and differ as to its application.' [Citations.]" (*People v. Hall* (2017) 2 Cal.5th 494, 500.) "A law is unconstitutionally vague if it fails to meet two basic requirements: (1) The regulations must be sufficiently definite to provide fair notice of the conduct proscribed; and (2) the regulations must provide sufficiently definite standards of application to prevent arbitrary and discriminatory enforcement." (*Snatchko v. Westfield LLC* (2010) 187 Cal.App.4th 469, 495.)

"Only a reasonable degree of certainty is required, however." (*Ibid.*) "The analysis begins with 'the strong presumption that legislative enactments must be upheld unless their unconstitutionality clearly, positively, and unmistakability appears. A statute should be sufficiently certain so that a person may know what is prohibited thereby and what may be done without violating its provisions, but it cannot be held void for uncertainty if any reasonable and practical

construction can be given to its language. [Citations.]'" (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1107.)

Plaintiffs raise a facial challenge to the Resolution based on the void-for-vagueness doctrine. A facial challenge to the constitutional validity of a statute or ordinance considers only the text of the measure itself, not its application to the particular circumstances of an individual. (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084.) A plaintiff seeking to void a statute as a whole for facial unconstitutionality cannot prevail "by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the statute. Rather, the plaintiff must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions." (*Vergara v. State of California* (2016) 246 Cal.App.4th 619, 643.) Here, Plaintiffs do not attempt to establish that the Resolution applied unconstitutionally to a particular person, the type of challenge made in an as-applied case. Instead, Plaintiffs seek to enjoin Defendants from "adopting, implementing, enforcing or otherwise giving effect" to the Resolution, i.e., from applying the Resolution to any person in any circumstance.

The Resolution states that the District values diversity, encourages culturally relevant and inclusive teaching practices, and condemns racism and "will not tolerate racism and racist conduct." The Resolution states Critical Race Theory ("CRT") is based on false assumptions, is fatally flawed, is a divisive and racist ideology, assigns generational and racial guilt, violates equal protection laws and views social problems as racial problems. The Resolution bans "Critical Race Theory or other similar frameworks" in the classroom and bans 13 concepts derived from CRT. (FAC, Ex. 1.) Topics that educators are prohibited from teaching include, for example, that "[r]acism is ordinary, the usual way society does business," "dominant society racializes different minority groups at different times, in response to different needs such as the labor market," "[i]ndividuals are either a member of the oppressor class or the oppressed class because of race or sex," or that "[a]n individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past or present by other members of the same race or sex," and "[a]n individual should feel discomfort, guilt, anguish or any other form of psychological distress on account of his or her race or sex." (Plaintiffs Compendium of Evidence ("Plaintiffs' COE"), Attachment A, Declaration of Mark Rosenblum ("Rosenblum Dec."), Ex. A, pp. 2-3.)

As referenced above, "A law is unconstitutionally vague if it fails to meet two basic requirements: (1) The regulations must be sufficiently definite to provide fair notice of the conduct proscribed; and (2) the regulations must provide sufficiently definite standards of application to prevent arbitrary and discriminatory enforcement." (*Snatchko v. Westfield LLC* (2010) 187 Cal.App.4th 469, 495.)

Defendant Joseph Komrosky ("Komrosky") states in his declaration that the Board used "precising definitions, to avoid vagueness and ambiguity" as shown by "the five elements and the eight doctrines", the "Resolution does not interfere with the teaching of ethnic studies, history, or any other subject," and teachers "can still teach on accurate historical events and individuals, such as Dr. Martin Luther King, the Holocaust, and slavery." (Komrosky Dec., ¶¶ 6, 9.)

Komrosky points to Board Policy 6144 on "Controversial Issues" as a guideline for "teachers, students, administrators and parents" on controversial topics such as CRT. (*Id.*, ¶ 14, Ex. A.) It states, for example, that when a controversial issue is raised, "teachers should help students separate fact from opinion and warn them from drawing conclusions from insufficient data."

Here, the Resolution sets out five specific elements of Critical Race Theory which cannot be taught and sets out eight specific doctrines derived from Critical Race Theory that cannot be taught. This Court finds that for the purposes of determining probability of success on the issue of void for vagueness, the resolution is sufficiently definite to provide notice of the conduct

proscribed and standards of application in that the Resolution specifically delineates what "cannot be taught." Additionally, it seems clear to the Court that a person of ordinary intelligence would have a reasonable opportunity to know what is prohibited as what is prohibited is set out specifically in the Resolution. If a reasonable and practical construction can be given, the law will not be held void for uncertainty. (*Wirick, supra,* 93 Cal.App.4th at p. 420, 112 Cal.Rptr.2d 919.) It seems to the Court that most laws may have some vagueness to them, but it is for the courts to interpret the law.

Defendants correctly distinguish the cases cited by Plaintiffs, *Santa Cruz Lesbian & Gay Cmty. Ctr. v. Trump* (N.D. Cal. 2020) 508 F.Supp.3d 521 and *Local 8027 v. Edelblut* (D.N.H. 2023) 651 F.Supp.3d 444 which are based on prohibitions in a statute/executive order that are similar, but not quite analogous to the prohibitions set forth in the Resolution. The cases also involve the federal due process clause, and are not binding on this Court. (*People v. Crittenden* (1994) 9 Cal.4th 83, 120 fn. 3 (decisions of lower federal courts are not binding).)

Plaintiffs have failed to present sufficient evidence showing probability of prevailing on Count I under the void-for-vagueness doctrine. In balancing the "potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction." (*Butte v. State of California* (1992) 4 Cal. 4th 668, 678.).

The Court, having found that Plaintiffs are not likely to succeed on the merits, the showing by Plaintiff of interim-harm must be great.

The plaintiff must offer evidence of "irreparable injury or interim harm that it will suffer if an injunction is not issued pending an adjudication of the merits." (White v. Davis (2003) 30 Cal.4th 528, 554.) A plaintiff must make a "significant" showing of immediate irreparable injury to enjoin a public agency from performing its duties. (*Tahoe Keys Property Owners' Assn. v. State Water Resources Control Board*, supra, 23 Cal.App.4th at p. 1471.).

The Court finds that the balancing of these two factors, probability of prevailing and interim harm, favors denying the request for a Preliminary Injunction on the grounds of vagueness.

2. The Resolution (Count II)

Student Plaintiffs, Plaintiffs Rachel P., Inez B., Teacher Plaintiffs allege the Resolution violates Article I, Section 2(a) of the California Constitution Infringement of Right to Receive Information (FAC, ¶¶ 157-161.)

Plaintiff argue that the free speech clause of the California Constitution protects students' right to receive information and ideas, and schools must make curriculum decisions in accord with these "transcendent" imperatives. *McCarthy v. Fletcher*, 207 Cal. App. 3d 130, 139, 144 (1989) (quoting *Bd. of Educ. v. Pico*, 457 U.S. 853, 864, 867–68 (1982)); *Pico*, 457 U.S. at 867 (right to receive information and ideas is "an inherent corollary of the rights of free speech and press" under U.S. Constitution). The California Constitution thus requires a school board's removal of reading materials or ***topics*** from the curriculum to be "reasonably related to legitimate educational concerns" (*McCarthy,* 207 Cal. App. 3d at 146.) *emphasis added.*

A school board's decision to restrict classroom materials as part of a curriculum implicates the balance between a student's First Amendment rights and a state's authority in education matters. (*Hazelwood Sch. Dist. v. Kuhlmeier* (1988) 484 U.S. 260, 266.) School boards have broad discretion in the management of school affairs. (*Board of Education v. Pico* (1982) 457 U.S. 853, 864.) The Board's conduct does not offend the First Amendment so long as it is "reasonably related to legitimate pedagogical concerns." (*Kuhlmeier*, supra, 484 U.S. at p. 571.)

Defense argues, California does not require the teaching of CRT, and that the Resolution states "Notwithstanding the above restrictions, social science courses can include instruction about Critical Race Theory, provided that such instruction plays only a subordinate role in the

overall course and provided further that such instruction focuses on the flaws in Critical Race Theory."

The Court in *McCarthy* (207 Cal.App.3d 130) reasoned that "Since the court's discussion in *Hazelwood School Dist.* v. *Kuhlmeier, supra*, 484 U.S. 260 [98 L.Ed.2d 592, 108 S.Ct. 562] is not limited to a school newspaper but rather refers to a wide variety of "curriculum " decisions, we believe the standard applied in that case should also be applied to the curriculum decision made here. This conclusion acknowledges the deference which is given to local school authorities regarding ordinary educational matters. "'[T]he courts have traditionally been reluctant to intrude upon the domain of educational affairs, not only in recognition of their lack of educational competence in such matters, but also out of respect for the autonomy of educational institutions.'" (*Seyfried v. Walton, supra*, 668 F.2d 214, 218 (conc. opn. of Rosenn, J.).)

It does not appear to this Court that the Resolution seeks to deny access to information. Rather the Resolution seeks to limit instruction on the subject of CRT to a subordinate role within a lager instructional framework. Additionally, the Resolution allows CRT to be discussed, but must include its flaws. The Court finds that the Resolution is reasonably related to a legitimate pedagogical concern. The Resolution allows instruction in CRT, but specifically prohibits instruction on theories such as "only individuals classified as "white" people can be racist because only "white" people control society," or "racism is ordinary, the usual way society does business," or "an individual, by virtue of his or her race or sex, is inherently racist and/or sexist" or finally, that "an individual is inherently morally or otherwise superior to another individual because of race or sex."

Theories such as these (and others banned by the Resolution) which are precepts taught within Critical Race Theory would seem to lack any legitimate pedagogical concern and would not be reasonably related to legitimate educational concerns.

CA Education Code section 233.5 states that (a) Each teacher shall endeavor to impress upon the minds of the pupils the principles of morality, truth, justice, patriotism, and a true comprehension of the rights, duties, and dignity of American citizenship, and the meaning of equality and human dignity, including the promotion of harmonious relations, kindness toward domestic pets and the humane treatment of living creatures, to teach them to avoid idleness, profanity, and falsehood, and to instruct them in manners and morals and the principles of a free government. (b) Each teacher is also encouraged to create and foster an environment that encourages pupils to realize their full potential and that is free from discriminatory attitudes, practices, events, or activities, in order to prevent acts of hate violence, as defined in subdivision (e) of Section 233.

Theories such as an individual is inherently morally or otherwise superior to another individual because of race or sex, or that individuals are either a member of the oppressor class or the oppressed class because of race or sex, or an individual, by virtue of his or her race or sex, is inherently racist and/or sexist would seem to be incongruous with the Legislatures clear intent found in California Education Code 233.5. Indeed, teachers are to impressed on students principals of truth, the dignity of American citizenship and the meaning of equality and human dignity which includes the promotion of harmonious relations free from discriminatory attitudes.

The Court agrees with Defense. It has not been shown to the Court's satisfaction how the prohibition of instruction on 13 precepts found within a Theory, while still allowing instruction on the Theory itself, would infringe on the rights of students to receive information.

The Court finds that the balancing of the two factors, probability of prevailing and interim harm, favors denying the request for a Preliminary Injunction on this ground.

3. The Resolution (Count III)

Student Plaintiffs, Plaintiffs Rachel P., Inez B., Teacher Plaintiffs allege a violation of Article I, Section 7 and Article IV, Section 16(a) of the California Constitution Equal Protection – Infringement of the Fundamental Right to Education (FAC, ¶¶ 162-165.)

Plaintiffs argue that the continued enforcement of Resolution 21 will cause Temecula's academic program, as a whole, to fall below prevailing statewide standards (Mot at p. 34.) That the California Constitution guarantees students the right to receive an education "basically equivalent to that provided elsewhere throughout the State." *Butt*, 4 Cal. 4th at 685. A student's education is not "basically equivalent" when "the actual quality of the [school's] program, *viewed as a whole*, falls fundamentally below prevailing statewide standards," thereby demonstrating "a real and appreciable impact on the affected students' fundamental California right to basic educational equality" (*emphasis added*.)

Defendants respond in their opposition at page 10 that "Plaintiffs swing vague, conclusory accusations against the Resolution, but fail to demonstrate how the Resolution actually deprives students of a right to education or how the Resolution falls below statewide standards. For instance, Plaintiffs argue that the "'continued enforcement of Resolution 21 will cause Temecula's academic program, as a whole, to fall below prevailing statewide standards.'" (Mot. at p. 34.) Despite this flawed conclusion, Plaintiffs offer no analysis as to how the Resolution does this other than repeating vague, unsupported arguments. They argue that the Resolution conflicts with Education Code section 51220(b)(1) which requires curricula "'provide a foundation for understanding . . . human rights issues, with particular attention to the study of the inhumanity of genocide, slavery, and the Holocaust, and contemporary issues.'" (Mot. at p. 18.) Yet, nothing in the Resolution prohibits teachers from teaching on these topics. (Komrosky Decl., ¶ 9.)"

Citing *Butt v. State of California*, Defendants argue that "a finding of constitutional disparity depends on the individual facts. Unless the actual quality of the district's program, *viewed as a whole*, falls fundamentally below prevailing statewide standards, no constitutional violation occurs." (Id. at pp. 686-87.)

In *Butt*, parents of school children enrolled in a unified school district filed a class action for injunctive relief against the state and the district's board of education, seeking to prevent the district from closing its schools six weeks before the official end of the school year due to a projected revenue shortfall. The Court in *Butt* stated that "even unplanned truncation of the intended school term will not necessarily constitute a denial of "basic" educational equality. A finding of constitutional disparity depends on the individual facts. Unless the actual quality of the district's program, *viewed as a whole*, falls fundamentally below prevailing statewide standards, no constitutional violation occurs" (*Butt v. State of California* (1992) 4 cal.4th 668, 686-687)

This Court finds the rationale in *Butt* helpful when considering the issues in the case at bar. The State Supreme Court in *Butts* noted that "of course, the Constitution does not prohibit all disparities in educational quality or service. Despite extensive State regulation and standardization, the experience offered by our vast and diverse public-school system undoubtedly differs to a considerable degree among districts, schools, and individual students. These distinctions arise from inevitable variances in local programs, philosophies, and conditions. "'[A] requirement that [the State] provide [strictly] 'equal' educational opportunities would thus seem to present an entirely unworkable standard requiring impossible measurements and comparisons. ...'" (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley* (1982) 458 U.S. 176, 198 [73 L.Ed.2d 690, 707, 102 S.Ct. 3034].) Moreover, principles of equal protection have never required the State to remedy all ills or eliminate all variances in service."

The Court agrees with the Defense that the showing by the Plaintiffs that actual quality of the district's program, *viewed as a whole*, has fallen fundamentally below prevailing statewide

standards is insufficient. Additionally, evidence that students have been harmed by the Resolution or are receiving disparate treatment by the terms of the Resolution is insufficient to demonstrate likelihood of success on the merits. Further this Court finds that the Plaintiffs' claims of harm are conclusory and unfounded.

The Court finds that the balancing of the two factors, probability of prevailing and interim harm, favors denying the request for a Preliminary Injunction on this ground.

4. The Policy

Plaintiff Gwen S. and Teacher Plaintiffs allege the Policy violates the equal protection clause under Article I, § 7 of the California Constitution because it discriminates against transgender and gender nonconforming students. The equal protection clause requires the government "to treat all persons similarly situated alike or, conversely, to avoid all classifications that are 'arbitrary or irrational' and those that reflect 'a bare desire to harm a politically unpopular group.' [Citations]." (*Taking Offense v. State* (2021) 66 Cal.App.5th 696, 722.) Discrimination based on gender, which includes gender identity and gender expression, violates the equal protection clause, and is subject to strict scrutiny. (*Id.* at 723, 725-726; *Catholic Charities of Sacramento, Inc. v. Superior Court* (2004) 32 Cal.4th 527, 564; see also Educ. Code § 210.7; Gov. Code § 12926.) Under strict scrutiny, the government must show that it has a compelling interest that justifies the discriminatory classification and that the classification is necessary and narrowly tailored to further the compelling interest. (*In re Marriage Cases* (2008) 43 Cal.4th 757, 832; *People v. Son* (2020) 49 Cal.App.5th 565, 590.)

The Policy is a parental notification policy that requires District staff to notify parents/guardians when (among other things) a student is requesting to be treated or identified as a different gender, request to use a name that differs from their legal name, is physically injured on school property, is expressing suicidal ideation, and/or is being bullied, (FAC, Exhibit 2.) In the FAC, Plaintiffs challenge subsections 1(a)-(c) which requires written disclosure to parents or guardians when any District staff or employee learns that a student 1) is requesting to be identified or treated as a gender that differs from the student's biological sex or the gender listed on the student's birth certificate including any request by the student to use a name that differs from their legal name; 2) is accessing sex-segregated school programs and activities, including athletics, or using a bathroom, for a gender that differs from the student's biological sex or the gender listed on the student's birth certificate; and 3) is requesting to change any information contained in the student's records. (FAC, ¶ 141; Plaintiffs' COE, Attachment A, Rosenblaum Dec. Ex. B, at §§ 1(a)-(c).)

The first inquiry is whether a classification affects two or more similarly situated groups in an unequal manner. (*Taking Offense, supra,* 66 Cal.App.5th at 724.)

The concept of the equal protection of the laws compels recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment." (*In re Eric J.* (1979) 25 Cal.3d 522, 531, 159 Cal.Rptr. 317, 601 P.2d 549.) "The first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner." (*Id.* at p. 530) The use of the term "similarly situated" in this context refers only to the fact that "'[t]he Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same.'" (*In re Roger S.* (1977) 19 Cal.3d 921, 934, 141 Cal.Rptr. 298, 569 P.2d 1286.)

"The 'similarly situated' prerequisite simply means that an equal protection claim cannot succeed, and does not require further analysis, unless there is some showing that the two groups are sufficiently similar with respect to the purpose of the law in question that some level of scrutiny

is required in order to determine whether the distinction is justified." (*People v. Nguyen* (1997) 54 Cal.App.4th 705, 714, 63 Cal.Rptr.2d 173.)

In the case at bar, Policy 5020.01 requires school staff to notify in writing the parents of any student who makes a request under section 1(a)-(c). Notably, the Policy applies equally to all students within the district and does not apply disparately to two or more similarly situated groups. Plaintiffs' Motion does not address the issue of similarly situated.

The Amicus brief filed by the Chino Valley Unified School District argues that for discrimination claims, strict scrutiny only applies when a government "has adopted a classification that affects two or more similarly situated groups in an unequal manner." (*Woods v. Horton* (2008) 167 Cal.App.4th 658, 670.) And that in the present case "children requesting to be socially transitioned are not similarly situated to children not requesting to be socially transitioned. The former group raises important issues about their health that the latter group does not. The policy does not address children who don't ask to be socially transitioned, regardless of their gender identity, because that inaction doesn't invoke the same need to involve parents in medical decisions being made about their children (Amicus Brief pp. 8, ln. 1).

Examples of a few similarly situated groups can be found in the following cases:

In *Perry v. Schwarzenegger* (2010) 704 F.Supp.2d 921 United States District Court, N.D. California the Court held that same sex couples and heterosexual couples seeking to marry are similarly situated for equal protection analysis. In striking down Proposition 8 the court conducted an extensive "similarly situated" analysis as part of its equal protection review, but the opinion does not contain the exact phrase "similarly situated," concluding instead that same-sex and opposite-sex couples are "situated identically," meaning both groups are seeking to marry, but the law treated the two similarly situated groups differently, allowing one group to marry and the other not.

In *Eisenstadt v. Baird* (1972) 405 U.S. 438 the Court invalidated Massachusetts statutes prohibiting the sale of contraceptives to unmarried persons and explained that "by providing dissimilar treatment for married and unmarried persons who are similarly situated, (those individuals who want to purchase contraception) the statutes violated the Equal Protection Clause."

Concluding that a statute violated equal protection if it treated the spouses of male and female service members differently for the purpose of benefits, the Court in *Frontiero v. Richardson* (1973) 411 U.S. 677 explained that "any statutory scheme which draws a sharp line between the sexes, solely for the purpose of achieving administrative convenience, necessarily commands 'dissimilar treatment for men and women who are similarly situated."

And finally, in *Califano v. Goldfarb* (1977) 430 U.S. 199 the Court concluded that a provision of the Social Security Act providing survivors' benefits to widows but not widowers "disadvantages women contributors to the social security system as compared to similarly situated men."

In contrast to these and other examples of groups that have been found to be similarly situated, there is only one group affected by Policy 5020.01 – Students.

Had the Policy required school staff to report to parents only when a transgender or gender nonconforming student made a request under sections 1(a)-(c), but not when a cisgender student made the request, then the Policy would be treating two groups of similarly situated students differently, but that is not the case here.

With regard to subdivision 1(c), the Policy is gender neutral and does not expressly single out transgender or gender non-conforming students, as it applies to any student's request to change their school official or unofficial records. Using the example above, a cisgender male who

not only wants to be *called by* a different, stereotypical male name but wants his school records *changed* to reflect the name, the Policy requires the District to notify parents of such request.

Thus, the Policy applies equally to cisgender and transgender/gender nonconforming students. A gender-neutral enactment is subject to the "rational relationship" test, and the burden is on the party attacking the enactment to establish constitutional invalidity. (*In re Marriage Cases, supra,* 43 Cal.4th at 435.) In this case, the District's purpose in involving parents in the decision-making process and restoring trust is furthered by mandatory parental notification when a student makes any of the request in section 1(a)-(c) of the Policy. The Policy is rationally related to legitimate governmental interests.

In the notice of motion, Plaintiffs indicated in footnote 1 that they also seek to enjoin subsection (5) of the Policy "insofar as it applies to transgender or gender diverse students." Subsection (5) requires parental notification of student involvement in protests, acts of violence or any other substantial disruption in the classroom or campus. Problematically, subsection (5) is not mentioned anywhere in the FAC. Plaintiffs do not allege it is discriminatory, violates their privacy rights or otherwise seek to invalidate subsection (5). Other than a footnote in the notice of motion seeking relief, there is also no argument in the moving brief as to subsection (5).

On the merits, subsection (5) is gender neutral, as the Policy applies to all students, not just transgender or gender nonconforming students. For example, any student (whether cisgender, transgender, or nonbinary) can be involved in a student protest, whether it promotes LGBTQ rights or CRT or partisan interests. The District's purpose of involving parents in their students' education is furthered by parental notification of any disruption in the classroom or campus – whether a student protest or an act of violence. Subsection (5) of the Policy is rationally related to legitimate governmental interests.

Plaintiffs have not presented sufficient evidence showing a probability of prevailing on Count VIII for violation of equal protection as to subdivisions 1(a)-(c) of the Policy or to subsection (5).

B. Balance of Harms

The plaintiff must offer evidence of "irreparable injury or interim harm that it will suffer if an injunction is not issued pending an adjudication of the merits." (*White v. Davis* (2003) 30 Cal.4th 528, 554.) Irreparable harm is where someone will be significantly hurt in a way that cannot later be repaired. (*People ex rel. Gow v. Mitchell Brothers' Santa Ana Theater* (1981) 118 Cal.App.3d 863, 870-871.) A plaintiff must make a "significant" showing of immediate irreparable injury to enjoin a public agency from performing its duties. (*Tahoe Keys Property Owners' Assn. v. State Water Resources Control Board*, supra, 23 Cal.App.4th at p. 1471.)

As discussed above, it is this Court's finding that neither the Resolution nor Policy 5020.01 violate Plaintiffs' constitutional rights. Defense cites to *Maryland v. King* (212) 133 S. Ct. 1, 3 which holds that "[a]ny time a [government] is enjoined by a court from effectuating statutes enacted by the people, it suffers a form of irreparable injury."

Accordingly, the balance of harms weighs in favor of denying the request for a preliminary injunction as to both the Policy and the Resolution.

EXHIBIT 4a

SITE NAVIGATION
Ballotpedia's Sample Ballot
2024 Elections
2025 Elections
2023 elections
The Biden administration
Government
Public Policy
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Ballot title

A **ballot title** is the official language that a voter sees for a ballot measure on the ballot.

The National Conference of State Legislatures says, "The ballot title and summary are arguably the most important part of an initiative in terms of voter education. Most voters never read more than the title and summary of the text of initiative proposals. Therefore, it is of critical importance that titles and summaries be concise, accurate and impartial."[1]

HIGHLIGHTS

- In 2022, the Missouri Supreme Court ruled that prohibiting signature gathering for a veto referendum before the referendum's official ballot title is certified violates citizens' constitutional rights.
- For citizen initiated measures, states differ with whether the ballot title is determined by the state government or by the sponsors that are advocating for the measure.
- For citizen-initiated measures, states differ whether the measure is written before or after the circulation period.

Laws governing ballot measures

State
- Laws governing state initiative processes
- Laws governing state recall processes
- Changes to ballot measure law in 2024
- Difficulty analysis of changes to laws governing ballot measures

Local
- Laws governing local ballot measures

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« 2022 2024 »

Requirements by state for citizen-initiated measures

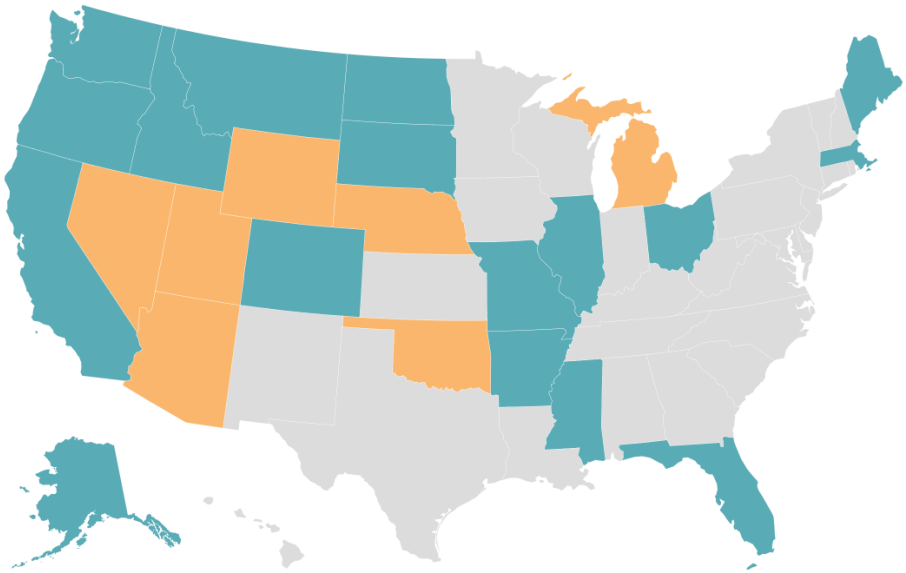
States differ in whether the ballot title is written *before* the circulation period or *after*.

States also differ with whether the ballot title is determined by the state government (a commission, a ballot title determination board, the Secretary of State, or some other Elections official) or whether the ballot title is determined by the sponsors that are advocating for the measure.

The following map provides information on ballot titles for states with citizen-initiated measures:

When ballot title is approved for citizen initiated measures

After signature circulation Before signature circulation



Map: Ballotpedia

BALLOTPEDIA

Ballot title information for citizen-initiated measures

PROOF OF SERVICE

I am over the age of 18 and not a party to the within action. My business address is 3421 Via Oporto, Suite 201, Newport Beach, Calif. 92263. On Wednesday, March 20, 2024, I served the following document(s) on the interested parties in the following manner(s) as follows:

DECLARATION OF C. ERIN FRIDAY IN SUPPORT OF PETITIONERS' OPENING BRIEF ON PETITION FOR WRIT OF MANDATE, DECLARATORY RELIEF, VIOLATION OF FREE SPEECH (CAL. CONST., ART. 1, SEC. 2), VIOLATION OF FREE SPEECH (U.S. Const., amend. I)

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/ X / Via Electronic Transmission. Pursuant to written agreement between the parties, by personally e-mailing the document(s) to the persons at the e-mail address(es). No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission. A physical copy will be provided upon request only.

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

Executed on March 20, 2024 Newport Beach, California.

Nicole Pearson

(Signature)