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*Fee Exempt Pursuant to Government
Code § 6103*

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 22 2024

By Wimala Blanchard
WIMALA BLANCHARD, Deputy

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN BERNARDINO**

13 **THE PEOPLE OF THE STATE OF**
14 **CALIFORNIA, EX REL. ROB BONTA,**
15 **ATTORNEY GENERAL OF THE STATE**
OF CALIFORNIA,

16 Plaintiff,

17 v.

18 **CHINO VALLEY UNIFIED SCHOOL**
19 **DISTRICT,**

20 Defendant,

21 and

22 **NICHOLE VICARIO, ET AL.,**

23 Defendants-Intervenors.
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Case No. CIVSB2317301

**[PROPOSED] AMENDED
PRELIMINARY INJUNCTION ORDER**

Date: October 19, 2023
Time: 8:30 a.m.
Dept: S-28
Judge: Hon. Michael A. Sachs
Trial Date:
Action Filed: August 28, 2023

1 On October 19, 2023, the Court held a hearing on the Court’s Order to Show Cause as to
2 Why a Preliminary Injunction Should Not Issue. Present at the hearing were Plaintiff People of
3 the State of California (“Plaintiff”), Defendant Chino Valley Unified School District
4 (“Defendant”), Intervenors Nichole Vicario et al. (“Intervenors”), Amici Curiae Elizabeth
5 Mirabelli and Lori Ann West; Amicus Curiae California Department of Education; and Amici
6 Curiae American Civil Liberties Union of Southern California and American Civil Liberties
7 Union of Northern California, et al.

8 As stated during the October 19, 2023 hearing, the Court has reviewed the papers and
9 evidence submitted to the Court, including: Plaintiff’s Complaint; Plaintiff’s Ex Parte Application
10 for Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction
11 (“Plaintiff’s Ex Parte Application”); Plaintiff’s Memorandum of Points and Authorities in
12 Support of Plaintiff’s Ex Parte Application; Plaintiff’s Request for Judicial Notice in Support of
13 the Plaintiff’s Ex Parte Application; Plaintiff’s Declarations in support of Plaintiff’s Ex Parte
14 Application; Defendant’s Opposition to Plaintiff’s Ex Parte Application; Defendant’s
15 Declarations in support of Defendant’s Opposition to Plaintiff’s Ex Parte Application;
16 Defendant’s Objections to the Evidence Filed in Support of Plaintiff’s Ex Parte Application;
17 Defendant’s Request for Judicial Notice; Plaintiff’s Reply to Defendant’s Opposition; Plaintiff’s
18 Responses to Defendant’s Objections; Plaintiff’s Objections to Evidence Filed in Support of
19 Defendant’s Opposition to Plaintiff’s Ex Parte Application; the Court’s September 6, 2023
20 Temporary Restraining Order and Order to Show Cause as to Why a Preliminary Injunction
21 Should Not Issue; Defendant’s Opposition to Preliminary Injunction; Defendant’s Declarations in
22 support of Defendant’s Opposition to Preliminary Injunction; Defendant’s Evidentiary Objections
23 to Plaintiff’s Motion for Preliminary Injunction and Supporting Documents; Plaintiff’s Reply in
24 support of Preliminary Injunction; Plaintiff’s Declarations in support of Preliminary Injunction;
25 Plaintiff’s Supplemental Request for Judicial Notice; Plaintiff’s Responses to Defendant’s
26 Evidentiary Objections; Plaintiff’s Evidentiary Objections to Evidence in Support of Defendant’s
27 Opposition to Preliminary Injunction; and Plaintiff’s Evidentiary Objections to Dr. Erica E.
28 Anderson Declaration.

1 The Court has also reviewed and considered the papers and evidence submitted to the
2 Court, including: Intervenor’s Ex Parte Application to Intervene (“Application to Intervene”);
3 Intervenor’s Memorandum of Points and Authorities in Support of Application to Intervene;
4 Intervenor’s Declarations in support of Application to Intervene; Plaintiff’s Opposition to
5 Application to Intervene; Intervenor’s Reply in Support of Application to Intervene; Intervenor’s
6 Notice of Supplemental Authorities in Support of Application to Intervene; Plaintiff’s Sur-Reply
7 in Opposition to Application to Intervene; Intervenor’s Proposed Opposition to Preliminary
8 Injunction; Plaintiff’s Proposed Reply to Intervenor’s Proposed Opposition to Preliminary
9 Injunction; Intervenor’s Objections to Plaintiff’s Supplemental Declarations and Request for
10 Judicial Notice; Plaintiff’s Responses to Intervenor’s Objections to Plaintiff’s Supplemental
11 Declarations and Request for Judicial Notice; the Ex Parte Application to File an Amicus Brief
12 for Elizabeth Mirabelli and Lori Ann West; the Amicus Brief by Elizabeth Mirabelli and Lori
13 Ann West; the Ex Parte Application for Leave to File an Amicus Brief by the California
14 Department of Education; the Amicus Brief by the California Department of Education; the Ex
15 Parte Application for Leave to File an Amicus Brief by the American Civil Liberties Union of
16 Southern California and the American Civil Liberties Union of Northern California and over
17 twenty other organizations (collectively, “ACLU Amici”); the Amicus Brief by ACLU Amici.

18 Based upon the Court’s review of the papers submitted in this action; argument presented
19 to the Court at hearings; and upon sufficient cause being shown thereby, the Court hereby FINDS
20 and ORDERS as follows:

21 **PRELIMINARY INJUNCTION ORDER**

22 The Court finds that Plaintiff, the People of the State of California, meets the standards to
23 obtain a preliminary injunction under Code of Civil Procedure section 526, subdivision (a), with
24 respect to subdivisions 1.(a) and 1.(b) of Chino Valley Unified School District (“Policy 5020.1”) as follows:

- 25 • Plaintiff has demonstrated a likelihood that it will prevail on the merits of its
26 Complaint with respect to subdivisions 1.(a) and 1.(b) of Policy 5020.1, as
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subdivisions 1.(a) and 1.(b) are unconstitutional under the Equal Protection Clause (Cal. Const. Art. 1, § 7.)

- Plaintiff has also demonstrated that the relative balance of harms weighs in favor of a preliminary injunction with respect to subdivisions 1.(a) and 1.(b) of Policy 5020.1, as it is well-established that if a plaintiff demonstrates a likelihood of success related to a constitutional violation and injury, such a showing usually demonstrates irreparable harm, no matter how brief the violation. (*Baird v. Bonta* (9th Cir. 2023) 81 F.4th 1036, 1041.)

The Court finds that Plaintiff meets the standard to obtain a preliminary injunction under Code of Civil Procedure section 526, with respect to subdivision 1.(c), only as applied to students 18 years of age or older, as follows:

- Plaintiff has demonstrated a likelihood that it will prevail on the merits of its Complaint with respect to subdivision 1.(c) of Policy 5020.1, as applied to students 18 years of age or older, as these students have a protectable privacy interest, a reasonable expectation of privacy in that interest, disclosure under subdivision 1.(c) would constitute a serious invasion, and Defendant has shown neither a compelling interest nor set of interests that outweighs the privacy interest of students 18 years of age or older. (Cal. Const. Art. 1, § 1; *Mathews v. Becerra* (2019) 8 Cal.5th 756, 769.)
- Plaintiff has also demonstrated that the relative balance of harms weighs in favor of a preliminary injunction with respect to subdivisions 1.(c) of Policy 5020.1 as applied to students 18 years of age or older, as it is well-established that if a plaintiff demonstrates a likelihood of success related to a constitutional violation and injury, such a showing usually demonstrates irreparable harm, no matter how brief the violation. (*Baird v. Bonta, supra*, 81 F.4th at p. 1041.)

As a threshold inquiry under equal protection, the Court considers whether a classification affects two or more similarly situated groups in an unequal matter. *Taking Offense v. State* (2021)

1 66 Cal.App.5th 696, 722, review on other grounds granted Nov. 10, 2021, S270535.) Under this
2 inquiry, the Court should not examine whether the persons are similarly situated for “all
3 purposes,” but whether they are similarly situated “for purposes of the law challenged.” (*Ibid.*,
4 citations omitted.)

5 The Court finds that transgender and gender nonconforming students are similarly situated
6 compared to their cisgender peers, for purposes of subdivisions 1.(a) and 1.(b) of the Policy. For
7 example, Defendant does not refute the proposition that all students, regardless of gender identity,
8 may suffer suicidal ideation or social emotional health concerns.

9 The Court finds that subdivisions 1.(a) and 1.(b) of the Policy, on their face, discriminate
10 on the basis of sex. (*Sail'er Inn, Inc. v. Kirby* (1971) 5 Cal.3d 1, 17; *Woods v. Horton* (2008) 167
11 Cal.App.4th 658, 674.)

12 While Defendant asserts that these subdivisions would apply equally to a student that is
13 transitioning and a student that is detransitioning, the Court finds that, even in this hypothetical
14 scenario, subdivisions 1.(a) and 1.(b) are still only implicated based upon gender difference
15 between the student's then-existing gender identity and a student's records. The Policy's use of
16 and reliance upon discriminatory classifications is highlighted by the fact that a cisgender male
17 student wanting to be called by a different, stereotypically male name—even the same name that
18 a detransitioner seeks to use—would not be subjected to subdivisions 1.(a) and 1.(b) of the
19 Policy. Discrimination based on gender classifications is built into the operative language of the
20 Policy.

21 In California, discrimination against transgender individuals, specifically, is subject to
22 strict scrutiny. (See *Taking Offense, supra*, 66 Cal.App.5th at pp. 721-726.) Under strict scrutiny,
23 a defendant must show that it has a compelling interest that justifies the discriminatory
24 classification and that the classification is necessary and narrowly tailored to further the
25 compelling interest. (*People v. Son* (2020) 49 Cal.App.5th 565, 590.) Generally, a policy is
26 narrowly tailored if there is no alternative means of adequately serving the compelling interest
27 that would impose a lesser burden on the constitutional interest. (*Ibid.*) Only the “most exact
28 connection between the justification and classification” will suffice. (*Woods v. Horton, supra*,

1 167 Cal.App.4th at p. 675.) The classification must appear “necessary rather than convenient,”
2 and the availability of gender neutral alternatives—“or the failure of the legislative body to
3 consider such alternatives”—will be “fatal to the classification.” (*Ibid.*)

4 The Court finds that Defendant does not meet its burdens under strict scrutiny. Defendant
5 has asserted that Policy 5020.1 is intended to promote parental involvement and foster trust by
6 informing them of student welfare concerns. With respect to concerns about student welfare, the
7 fact that transgender or gender nonconforming students may have more mental health concerns as
8 opposed to others is not sufficient to provide a compelling interest justifying a suspect
9 classification. (*Woods v. Horton, supra*, 167 Cal.App.4th at p. 676 [“The greater need for services
10 by female victims of domestic violence does not provide a compelling state interest in a gender
11 classification”].) The Court further finds that the expert evidence submitted in this case
12 establishes that there is nothing inherently wrong or pathologically wrong with being transgender
13 or gender nonconforming; no evidence in the record supports the claim that being transgender is,
14 in and of itself, a mental health problem.

15 The Court also finds that subdivisions 1.(a) and 1.(b) of Policy 5020.1 are not narrowly
16 tailored because Defendant did not consider any gender-neutral alternatives, and there are sex-
17 neutral alternatives and other narrowly tailored options to accomplish Defendant’s purported
18 goals. For example, Defendant could have adopted gender neutral policies directly tailored to
19 existing problems related to bullying, mental health, and psychological distress, instead of
20 singling out a protected group. These kinds of neutral alternatives are analogous to the less
21 restrictive, gender-neutral funding alternatives recognized in *Woods v. Horton, supra*, 167
22 Cal.App.4th at pp. 674-676, which the Court of Appeal found sufficient to establish that a
23 discriminatory policy failed strict scrutiny.

24 Because the Court finds that subdivisions 1.(a) and 1.(b) of Policy 5020.1 violate equal
25 protection, the Court need not reach Plaintiff’s privacy or other arguments with respect to these
26 two subdivisions.

27 With respect to subdivision 1.(c) of Policy 5020.1, the Court finds that this subdivision is
28 neutral on its face with respect to gender, as it applies to any student’s request to change their

1 official or unofficial records. Additionally, the Court finds that while children generally have a
2 right to privacy that covers the information disclosed under the Policy, the Court finds no
3 reasonable expectation of privacy—nor serious invasion of privacy—with respect to subdivision
4 1.(c)'s application to minor students because this subdivision triggers when students make a
5 voluntary decision to change their school records. The Court finds that subdivision 1.(c) of Policy
6 5020.1 is rationally related to legitimate government interests.

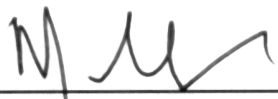
7 It is **ORDERED** that, pending final judgment in this action, Defendant and its agents,
8 employees, assigns, and all persons acting in concert with it are restrained and enjoined from
9 adopting, implementing, enforcing, or otherwise giving effect to: (1) Defendant's Board Policy
10 5020.1, subdivisions 1.(a) and (b) of the Policy in full; and (2) subdivision 1.(c) of the Policy,
11 insofar as it applies to students 18 years of age or older.

12 Defendant is also **FURTHER ORDERED** to provide written notice of this order to all of
13 Defendant's agents, employees, assigns, and all persons acting in concert with it and attach this
14 Order thereto no later than 5 p.m. Pacific time on the first business day following issuance of this
15 order. Defendant must promptly file a notice with the Court and serve it on all parties, indicating
16 that Defendant has provided notice of this order and attaching a copy of the communication that
17 Defendant provided.

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Dated: 4-22-24

SO ORDERED.



Hon. Michael A. Sachs
San Bernardino Superior Court