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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

MAE M., through her guardian ad !item Anthony M.; SUSAN C., through her guardian ad litem Sabrina; C.; GWEN S., through their guardian ad litem Ramona S.; CARSON L., through his guardian ad litem Nancy L.; DAVID P., through his guardian ad litem RACHEL P.; VIOLET B., through her guardian ad litem INEZ B.; STELLA B., through her guardian ad item INEZ B.; TEMECULA VALLEY EDUCATORS ASSOCIATION, AMY EYTCHISON, KATRINA MILES, JENNIFER SCHARF, and DAWN SIBBY,

Plaintiff(s)

v.

JOSEPH KOMROSKY, JENNIFER WIERSMA, DANNY GONZALEZ, ALLISON BARCLAY, and STEVEN SCHWARTZ, in their official capacities as members of TEMECULA VALLEY UNIFIED SCHOOL DISTRICT BOARD OF TRUSTEES, TEMECULA VALLEY UNIFIED SCHOOL DISTRICT, and DOES 1 - 20,

Defendant(s)

Case No.: CVSW2306224

DEFENDANTS' NOTICE OF RULING ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

TO EACH PARTY AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 23, 2024, at the hearing on Plaintiffs' Motion for Preliminary Injunction, the Court adopted its tentative ruling, attached as Exhibit A, denying Plaintiffs' request for a preliminary injunction as to both the Policy and the Resolution.

DATED: February 26, 2024

ADVOCATES FOR FAITH & FREEDOM

By: Mariah Gondeiro

Mariah R. Gondeiro, Esq.
Attorneys for Defendant **Temecula Valley Unified School District**

EXHIBIT “A”

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.

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.

PROOF OF SERVICE

I am an employee in the County of Riverside. I am over the age of 18 years and not a party to the within entitled action; my business address is 25026 Las Brisas Road, Murrieta, California 92562.

On February 26, 2024, I served a copy of the following document(s) described as **DEFENDANTS' NOTICE OF RULING ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** on the interested party(ies) in this action as follows:

SEE ATTACHED SERVICE LIST

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I transmitted copies of the above-referenced document(s) on the interested parties in this action by electronic transmission. Said electronic transmission reported as complete and without error.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am an employee in the office of a member of the bar of this Court who directed this service.

Susan Y. Kenney

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