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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

THE PEOPLE OF THE STATE OF CALIFORNIA, EX. REL. ROB BONTA, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, Plaintiff, **v.** **CHINO VALLEY UNIFIED SCHOOL DISTRICT,** Defendant, and **NICHOLE VICARIO ET AL.,** Defendants-Interveners.	Case No. CIVSB2317301 **THE PEOPLE OF THE STATE OF CALIFORNIA'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS, OR, IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION** Date: July 31, 2024 Time: 8:30 a.m. Dept: S-28 Judge: Hon. Michael A. Sachs Trial Date: Action Filed: Aug. 28, 2023

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INTRODUCTION

The Attorney General, the State Superintendent of Public Instruction, and parents, teachers, and students informed the Chino Valley Unified School District ("the District" or "CVUSD") that enacting Board Policy 5020.1 ("Policy 5020.1" or "Policy")[1] would unlawfully single out and discriminate against transgender and gender nonconforming students, causing them psychological, emotional, and physical harm.[2] The District chose not to heed these requests, passing its facially discriminatory Policy 5020.1. In doing so, the District's Board announced its discriminatory motivations to the public: the goal was to "put a stop" to transgender identity, which it viewed as a "mental illness." In the weeks following the District's passage of Policy 5020.1, several school districts followed suit, enacting forced disclosure policies in multiple counties in California—some with policies identical to Policy 5020.1.

Following the People's suit filed against Policy 5020.1 and this Court's preliminary injunction order, on March 7, the District rescinded the provisions that were enjoined. Yet, a live and continuing controversy remains, warranting final relief from this Court: nothing prevents the District from reenacting its discriminatory Policy 5020.1 if this case is dismissed, and the possibility it will do so is real, as evidenced by the District's insistence that Policy 5020.1 is legal and wise, and its previous persistence in seeking to implement this forced disclosure policy despite the Court's orders. Even if the case were moot, final adjudication is still appropriate and necessary given the significant and important issues in this case, as well as the existence of similar policies in other localities across the State. Accordingly, the People ask this Court to issue final injunctive and declaratory relief to guarantee that the District's transgender and gender nonconforming students are protected from discrimination, provide clarity to other school

[1] Specifically, the People's complaint challenges the forced disclosure provisions in subdivisions 1.(a) through 1.(c) of Policy 5020.1, and subdivision 5 of Policy 5020.1 insofar as it implements subdivisions 1.(a) through 1.(c). (Compl., ¶¶ 1-2.) As the Court observed during the October 19, 2023 preliminary injunction hearing, an injunction against subdivisions 1.(a) through 1.(c) would functionally award the People the relief requested. (Nugent Decl., Ex. 25 at vol. 1, p. 39.) References to Policy 5020.1 throughout this brief refer to the challenged provisions.

[2] By "gender nonconforming," the People include those who identify as gender non-binary, i.e., neither fully male nor female.

districts proceeding with the same unlawful policy, and reaffirm that policies that discriminate against these marginalized students violate the law.

STATEMENT OF FACTS

I. DESPITE CONCERNS RAISED BY MANY, CHINO VALLEY UNIFIED SCHOOL DISTRICT ENACTS BOARD POLICY 5020.1, WHICH SINGLES OUT TRANSGENDER AND GENDER NONCONFORMING STUDENTS FOR DISCRIMINATORY TREATMENT

A. Two-and-a-Half Weeks Before the Start of School, the CVUSD School Board Enacts Board Policy 5020.1's Forced Disclosure Provisions

Despite repeated warnings that Policy 5020.1 violated the rights of transgender students and would endanger them, on July 20, 2023, the District School Board ("Board") adopted Policy 5020.1, which required, in part, that a school's "[p]rincipal/designee, certificated staff, and school counselors" shall notify parents or guardians "in writing, within three days" whenever "any District employee, administrator, or certificated staff, becomes aware" that a student is:

> (a) Requesting to be identified or treated, as a gender . . . other than the student's biological sex or gender listed on the student's birth certificate or any other official records. This includes any request by the student to use a name that differs from their legal name (other than a commonly recognized diminutive of the child's legal name) or to use pronouns that do not align with the student's biological sex or gender listed on the student's birth certificate or other official records.
>
> (b) Accessing sex-segregated school programs and activities, including athletic teams and competitions, or using bathroom or changing facilities that do not align with the student's biological sex or gender listed on the birth certificate or other official records.
>
> (c) Requesting to change any information contained in the student's official or unofficial records.

(Compl., ¶ 67; Declaration of Edward Nugent ("Nugent Decl."), Ex. 1.)[3]

Dozens of community members spoke at the Board's July 20 public meeting concerning Policy 5020.1. Those opposing the Policy included LGBTQ+ students, teachers, parents, mental health professionals, advocates, and state officials who warned that the Policy would endanger students. A current CVUSD student stated, "[t]his policy threatens my safety" and "tells me I don't belong." (Compl., ¶ 43; Nugent Decl., Ex. 7 at p. 80:22-24.) The student explained:

[3] Exhibits 1-29 of the Nugent Declaration are subject to judicial notice. (See People's Suppl. Request for Judicial Notice.) This Court previously took judicial notice of Exhibits 1-6 of the Nugent Declaration on October 19, 2023 (Nugent Decl., Ex. 25 at vol. 1, pp. 36-37)—those Exhibits are provided again for the Court's convenience.

> 52 percent of trans kids feel accepted at school, but only 35 percent feel accepted at home. That leaves a large gap there of kids who feel welcome at school but not at home. Feeling safe at school lessens suicide risk. If a student isn't out to their parent, [the Policy] shoves them "in the closet" at school.

(Compl., ¶ 43; Nugent Decl., Ex. 7 at pp. 79:23-80:1-4.) Another current LGBTQ+ CVUSD student added, "[t]his policy will destroy the lives of kids who should not have to live in fear for being their true selves." (Compl., ¶ 44; Nugent Decl., Ex. 7 at p. 84:13-15.)

Explaining the consequences of forced disclosure, a recent graduate from a CVUSD high school, who self-identified as gender nonconforming, stated that "[Students] could be kicked out or attacked by their parents both physically and verbally. Their home life may become a living hell because of that [disclosure]." (Compl., ¶ 46; Nugent Decl., Ex. 7 at p. 92:5-8.) Citing statistics, one current CVUSD student, who self-identified as queer, testified that "LGBTQ youth who experience parental rejection are eight times more likely to attempt suicide and six times more likely to report major depressive symptoms." (Compl., ¶ 45; Nugent Decl., Ex. 7 at p. 137:10-13.)

Parents of current CVUSD students also opposed the Policy. One parent, who was also a "public school educator with 22 years of experience," identified the Policy as "a flagrant attempt to isolate, shame, and otherwise alienate our LGBTQIA students, creating a hostile environment for them in public schools." (Compl., ¶ 50; Nugent Decl., Ex. 7 at p. 81:7-14.) Another parent and former educator stated, "[t]his policy breaks down trust between parents, teachers, and students and exposes our most vulnerable students . . . mak[ing] all kids feel less safe. Kids cannot learn if they do not feel safe, period." (Compl., ¶ 51; Nugent Decl., Ex. 7 at p. 83:8-14.) One former educator "know[s] students who left the district because they were outed," cautioning that "[t]hey will be put in . . . risky situations; they will be unhoused; they will have . . . suicidal tendencies if this policy is passed." (Compl., ¶ 52; Nugent Decl., Ex. 7 at p. 147:16-22.)

Also opposing the Policy, a school counselor on the Board of the National Association of Social Workers' California Chapter warned that the Policy "directly contradicts" social workers' "oath to do no harm in [their] work with students," including social workers' commitment to "put

[their] students' safety and trust first." (Compl., ¶ 53; Nugent Decl., Ex. 7 at p. 93:3-25.) Sounding similar notes, another individual referenced research showing that "if parent notification was mandated," youth are "*less* likely to seek . . . counseling or medical services." (Compl., ¶ 54; Nugent Decl., Ex. 7 at p. 125:11-25, emphasis added.) As one CVUSD teacher put it starkly: "This policy will out a student . . . putting them into a hostile household, which will further their mental degradation to the point where they will harm themselves. . . . This policy will kill somebody." (Compl., ¶ 55; Nugent Decl., Ex. 7 at pp. 129:24-130:1-4.)

State officials, too, urged the District not to pass the policy. The Attorney General issued a letter to the District Board on July 20, explaining that Policy 5020.1's forced disclosure provisions would violate students' rights and put them at risk. (Nugent Decl., Ex. 28(D).) The State Superintendent of Public Instruction appeared in person, similarly warning about the harm that forced disclosure could cause to students. (Compl., ¶ 56; Nugent Decl., Ex. 7 at pp. 73:24-74:14.)

CVUSD rejected these concerns, proceeding to adopt its forced disclosure policy after Board Members made statements about transgender individuals based on animus, prejudice, and stereotypes. (Compl., ¶¶ 58-65; Nugent Decl., Ex. 7.) Board Member 1 stated, "there's always been man, woman; and then you have this transgender [identity] . . . it is really a dismantling of our humanity. And it is an illusion; it is a mental illness." (Compl., ¶ 59; Nugent Decl., Ex. 7 at p. 176:7-12.) He expressed fear that "women are being erased" and claimed that the Policy was needed to "sav[e] children" from transgender identities because "a lot of them are not going to be having children," likening the issues related to gender identity to a "death culture." (Compl., ¶ 60; Nugent Decl., Ex. 7 at pp. 176:23-25, 180:23-24.) Concluding, Board Member 1 proclaimed, "[i]t's not going to end with transgenderism. . . . You got to put a stop to it." (Compl., ¶ 60; Nugent Decl., Ex. 7 at p. 183:6-8.)

The Board President expressed "appreciat[ion]" for "each one of our board member's viewpoints," offering no repudiation of Board Member 1's comments. (Compl., ¶ 61; Nugent Decl., Ex. 7 at p. 194:22-23.) She asserted that transgender and gender nonconforming individuals needed "non-affirming" parental actions so that they can "get better" (Compl., ¶ 62;

Nugent Decl., Ex. 7 at p. 198:4-7); earlier in the meeting, she called the State Superintendent a "danger to our students" for "proposing things that pervert children." (Compl., ¶ 63; Nugent Decl., Ex. 7 at p. 75:1-6.) Board Member 2 agreed that the Policy was needed, supporting it to counter Karl Marx's call, in the *Communist Manifesto*, "for the abolition of the family" and prevent the creation of "the, quote and unquote, 'new man.'" (Compl., ¶ 64; Nugent Decl., Ex. 7 at pp. 185:25-186:9.) The Board voted 4-1 to approve Policy 5020.1. (Compl., ¶ 65.)

II. PROCEDURAL BACKGROUND

On August 4, 2023, the Department of Justice (DOJ) notified the District it was opening an investigation to determine the legality and effect of Policy 5020.1. (See Nugent Decl., Ex. 28 at p. 3 [Stipulation to Uncontested Facts and Issues]; Cal. Const., art. V, § 13; Gov. Code, §§ 11180 et seq.)[4] On August 14, DOJ issued a letter to the District requesting that the District temporarily halt implementation of Policy 5020.1; the District declined DOJ's request. (Nugent Decl., Exs. 28(G), 30.)

On August 28, DOJ filed a complaint seeking declaratory and injunctive relief against Policy 5020.1, due to its violation of the California equal protection clause, Education Code section 220, Government Code section 11135, and the California constitutional right to privacy. (See generally Compl.) A week later, the Court issued a temporary restraining order against Policy 5020.1 and an order to show cause as to why a preliminary injunction shall not issue. (Nugent Decl., Exs. 23-24.) Following an October 19 hearing, the Court issued a preliminary injunction against subdivisions 1.(a) and 1.(b) of Policy 5020.1 in full, and subdivision 1.(c) of the Policy—regarding requests to change any information in a student's official or unofficial records—only insofar as it applies to students eighteen years old and older.[5] (Nugent Decl., Ex. 27 at p. 7.)

[4] The parties filed their joint Stipulation to Uncontested Facts and Issues (attached here as Exhibit 28 to the Nugent Declaration) on February 26, 2024 as an attachment to the parties' joint initial trial conference statement.

[5] On February 16, 2024, the Court held a hearing regarding objections to the language of the preliminary injunction order: though the Court ordered two line-edits, the Court observed that these changes were "splitting hairs." Those revisions do not affect the analysis here.

III. THE DISTRICT AMENDS ITS FORCED DISCLOSURE POLICY THROUGH THE ENACTMENT OF BOARD POLICY AND ADMINISTRATIVE REGULATION 5010

On March 7, 2024, the District voted 4-1 to replace Policy 5020.1 with Board Policy 5010 ("BP 5010") and Administrative Regulation 5010 ("AR 5010"), making several changes to its parental notification policy in response to this Court's preliminary injunction order. (Nugent Decl., Exs. 8, 18-19.) Despite the adoption of its new BP and AR 5010, the District maintains its belief that Policy 5020.1 is "common sense" and "constitutional." (Nugent Decl., Ex. 29.) In a public statement issued the day after the District enacted BP and AR 5010, the District's counsel described BP and AR 5010 as the District's "updated policy," and defended its prior Policy 5020.1 as "common sense and constitutional, particularly in light of the recent ruling in the Temecula Valley Unified School District case." (*Ibid*.)[6] Additionally, in a March 21 Board meeting, the District's Board members continued to defend the District's Policy 5020.1. The President declared her goal of "mak[ing] sure [the District] doesn't turn into any other district out here in California . . . [where] people are sexualizing kids" and referred to Policy 5020.1 as one of several policies that the Board "majority" pursued, and that she stood by "all those things proudly." (Nugent Decl., Ex. 19 at pp. 8:12-16, 10:2-20.) Another Board Member, echoing the anti-trans statements he made before voting for Policy 5020.1, praised the Board President for stopping "this kind of stuff" that is "destroying the lives of our children . . . sterilizing them mentally so they don't have kids in the future." (Nugent Decl., Ex. 19 at pp. 4:24-5:5; see also *id*., Ex. 7 at pp. 181:5-7, 183:5-8 [July 20 statement where same Board member objected to "transgenderism" because "a lot of them are not going to be having children because it's one way to reduce the population"].)

ARGUMENT

A plaintiff may move for judgment on the pleadings if "the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts

[6] The Temecula Valley case refers to *Mae M. v. Komrosky*, No. CVSW2306224 (Riverside County Super. Ct.), which concerns a lawsuit challenging both curriculum bans and the forced disclosure policy adopted by the Temecula Valley Unified School District. The court in that case denied a request for preliminary injunction, and that denial has been appealed. (See *Mae M. v. Komrosky*, No. E083409 (Cal.App.4th).)

sufficient to constitute a defense to the complaint" (Civ. Code Proc., § 438, subd. (c)(1)(A))—i.e., if the incontrovertible allegations "raise[] an issue that can be resolved as a matter of law." (*Alameda County Waste Mgmt. Auth. v. Waste Connections, US, Inc.* (2021) 67 Cal.App.5th 1162, 1174, citation omitted.) Such a motion will be granted unless "the defendant's pleadings raise a material issue or set up affirmative matter constituting a defense." (*Engine Manufacturers Assn. v. State Air Res. Bd.* (2014) 231 Cal.App.4th 1022, 1034.) However, conclusory allegations in the answer, "proffered in the form of terse legal conclusions . . . . are not well pled." (*FPI Dev., Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384.) A court also considers "facts of which it may or must take judicial notice" and "may disregard conflicting factual allegations" in the complaint or answer. (*Alameda County Waste Mgmt. Auth*., at p. 1174, citation omitted; see *Pang v. Beverly Hospital, Inc.* (2000) 79 Cal.App.4th 986, 989-990.)

Judgment on the pleadings is proper in this case, as reflected in this Court's preliminary injunction ruling. The pleadings indisputably establish that Policy 5020.1 "on [its] face, discriminate[s] on the basis of sex," requiring "strict scrutiny." (Nugent Decl., Ex. 27 at p. 5.) And judicially noticeable facts—the transcript of the District's July 20 Board meeting where it enacted Policy 5020.1—show that the District cannot "meet its burdens under strict scrutiny" and that its facially discriminatory policy therefore violates the state constitution's equal protection clause. (*Id.* at p. 6.)[7]

Nor can the District claim that this case is moot due to its enactment of BP and AR 5010. The voluntary rescission of a challenged policy does not moot a case when a party can voluntarily reenact the challenged policy at any time; when final relief is still needed to cure the stigmatic harms inflicted by the enactment of a facially discriminatory policy; or when a case addresses a matter of public interest likely to recur.

[7] As argued in the People's temporary restraining order and preliminary injunction filings, strict scrutiny analysis applies for the People's Education Code section 220 and Government Code section 11135 claims as well. (See, e.g., Pl.'s Mem. in Supp. of Temporary Restraining Order at pp. 20-22; Pl.'s Reply in Supp. of Prelim. Inj. at pp. 4-5.) For the same reasons this Court should grant judgment on the pleadings as to the People's equal protection claim, this Court should grant judgment as to the People's statutory claims.

To the extent the Court finds it necessary to rely upon additional factual material to issue final judgment against Policy 5020.1's forced disclosure provisions, this motion calls for summary adjudication in the alternative and states where evidence would require summary adjudication. (See Code Civ. Proc., § 437c, subd. (f); Cal. Rules of Court, rule 3.1350, subd. (b).)

I. BOARD POLICY 5020.1 IS SUBJECT TO STRICT SCRUTINY

A. Board Policy 5020.1 Facially Discriminates Based on Sex and Gender Identity

Transgender and gender nonconforming individuals, like all individuals, have equal value and inherent dignity, deserving equal protection under the law. (See Cal. Const., art. I, § 7.) Yet, Policy 5020.1 explicitly discriminates against transgender and gender nonconforming students, treating them differently than their cisgender peers solely due to gender identity. Students have a fundamental right to education in California, under the equal protection clause (*Serrano v. Priest* (1971) 5 Cal.3d 584, 608-609, 616-617), but such discrimination denies and deprives these students of equal access to education.

Any governmental policy that facially subjects transgender or gender nonconforming individuals to disfavorable treatment constitutes discrimination based on sex, and is invalid under the state constitution's equal protection clause unless it survives strict scrutiny.[8] (See *Sail'er Inn, Inc. v. Kirby* (1971) 5 Cal.3d 1, 17; *Woods v. Horton* (2008) 167 Cal.App.4th 658, 674; see also *Taking Offense v. State* (2021) 66 Cal.App.5th 696, 725-726, review granted on other grounds Nov. 10, 2021, S270535 [treating discriminatory classifications based on gender identity as discrimination based on gender]; Civ. Code, § 51, subd. (e)(5) [defining "[s]ex" to include a person's "gender identity and gender expression"]; Gov. Code, § 12926, subd. (r)(2) [same]; Ed. Code, § 210.7 [same].) "[I]t is impossible to discriminate against a person for being . . .

[8] In *People v. Hardin* (2024) 15 Cal.5th 834, 850, the California Supreme Court held that, under equal protection analysis, "courts no longer need to ask at the threshold whether the two groups are similarly situated for purposes of the law in question" when "plaintiffs challenge laws drawing distinctions between identifiable groups or classes of persons." Of course, transgender and gender nonconforming students are similarly situated to their cisgender peers because they simply seek to learn at school as whom they are. (See *Woods v. Horton* (2008) 167 Cal.App.4th 658, 671; see also *Kadel v. N.C. State Health Plan for Teachers & State Emps.* (4th Cir. 2021) 12 F.4th 422, 427 ["We have previously noted what should by now be uncontroversial: 'Just like being cisgender, being transgender is natural and is not a choice,'" [citation].)

transgender without discriminating against that individual based on sex." (*Bostock v. Clayton County, Georgia* (2020) 140 S.Ct. 1731, 1741 [Title VII case].) Subdivisions 1.(a) and 1.(b) of Policy 5020.1 expressly condition forced disclosure on a student's request to use a name or pronouns, or access programs or facilities, "that do not align with the student's biological sex or gender." (Nugent Decl., Ex. 1, § 1, subds. (a)-(b).) As this Court has already held, "[d]iscrimination based on gender classifications is built into the operative language of the Policy," requiring strict scrutiny (Nugent Decl., Ex. 27 at p. 5; see also *Platkin v. Middletown Twp. Bd. of Ed.* (N.J.Super.Ct. Aug. 18, 2023) No. MON-C-80-23).[9]

While subdivision 1.(c) of Policy 5020.1 is purportedly gender-neutral, it was likewise enacted with the same discriminatory purpose as Policy 5020.1's facially discriminatory subdivisions in 1.(a) and 1.(b). "[W]hen the main purpose of a statute is defeated by the unconstitutionality of part of the act, the whole act is invalid." (*Barlow v. Davis* (1999) 72 Cal.App.4th 1258, 1266.) Though Policy 5020.1 categorizes other notification provisions—e.g., relating to bullying—within separately numbered headings, subdivision 1.(c) is uniquely grouped with Policy 5020.1's facially discriminatory provisions, rather standing on its own like the other notification provisions. (Nugent Decl., Ex. 1.) Indeed, for purposes of summary adjudication, the District's Board President later acknowledged that the provision was specifically intended to force disclosures about transgender identity. (Nugent Decl., Ex. 32; Separate Statement of Facts ("SSOF") No. 30.) In a September 2, 2023 email, a Trustee from another school district quoted the California School Board Association's webpage about "[p]arental and student rights in relation to transgender and gender nonconforming students" and identified "official or unofficial" records change notifications as a "workaround" to laws that might limit such forced disclosures. (Nugent Decl., Ex. 32; SSOF No. 30.) The CVUSD Board President responded, "I love your

[9] As the People argued in its motion for a temporary restraining order, such discrimination against transgender and gender nonconforming people is also independently subject to strict scrutiny because—based on the historical, adverse, and arbitrary treatment they have endured—transgender and gender nonconforming people are a protected class, just as the California Supreme Court held with respect to lesbian, gay, and bisexual people. (*In re Marriage Cases* (2008) 43 Cal.4th 757, 843-844; see *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Ed.* (7th Cir. 2017) 858 F.3d 1034, 1051 ["There is no denying that transgender individuals face discrimination, harassment, and violence because of their gender identity"]; *Grimm v. Gloucester County Sch. Bd.* (4th Cir. 2020) 972 F.3d 586, 611-612 [same].)

work around idea." (Nugent Decl., Ex. 32; SSOF No. 30.) Thus, subdivision 1.(c) advances the same discriminatory ends as subdivisions 1.(a) and 1.(b).

B. Subdivision 1.(c) of Policy 5020.1 Also Violates the Autonomy and Privacy Rights of Students 18 Years Old or Older

Additionally, as this Court previously held, an injunction should issue against subdivision 1.(c) as it applies to students 18 years old or older to protect their fundamental privacy and autonomy rights, including their protected right to decide when and to whom to disclose their gender identities. (See Nugent Decl., Ex. 27 at p. 7; Cal. Const., art. I, § 1; *Hill v. Nat. Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 25, 30; *Pettus v. Cole* (1996) 49 Cal.App.4th 402, 444-445; *Powell v. Schriver* (2d Cir. 1999) 175 F.3d 107, 111-112.)[10] And, as a matter of law, the sweeping, forced disclosures required by subdivision 1.(c)—without limitation "to a specific setting or limited context"—violates these students' reasonable expectations of privacy, producing a serious invasion of their rights. (See *Am. Acad. of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 338.)[11] This invasion of "interests fundamental to personal autonomy" requires the same analysis as strict scrutiny. (See *Mathews v. Becerra* (2019) 8 Cal.5th 756, 769.)

II. BOARD POLICY 5020.1 FAILS STRICT SCRUTINY AS A MATTER OF LAW

When a school district uses a suspect classification in a policy, "the burden of justification is both demanding and entirely upon" them. (*Connerly v. State Pers. Bd.* (2001) 92 Cal.App.4th 16, 36, 43 (*Connerly*).) "Because suspect classifications are pernicious and are so rarely relevant to a legitimate governmental purpose," they are subject to strict scrutiny and "may be upheld only if they are shown to be necessary for furtherance of a compelling state interest and they address that interest through the least restrictive means available." (*Id.* at p. 33 [citations omitted]; see *People v. Son* (2020) 49 Cal.App.5th 565, 590.) Under the pleadings and undisputed facts subject to judicial notice, the District cannot meet its burdens under strict scrutiny.

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[10] The People maintain and preserve their argument that this autonomy privacy right forbids the same sweeping forced disclosure for minor students as well. (See *Am. Acad. of Pediatrics v. Lungren* (1997) 16 Cal 4th 307, 335-339; *Poway Unified Sch. Dist. v. Super. Ct. (Copley Press)* (1998) 62 Cal.App.4th 1496, 1505.)

[11] Indeed, the District has represented that "[i]t is already CVUSD's policy to only notify parents if a student is under the age of 18." (Nugent Decl., Ex. 31; see *id.*, Ex. 9.)

A. The District Fails to Establish Any Compelling Interest to Justify Its Discriminatory Policy 5020.1

To begin, the District cannot demonstrate that its discriminatory Policy furthers a compelling interest. "[S]pecificity and precision are demanded" when articulating a compelling interest, and the "mere recitation of a benign or legitimate purpose is entitled to little or no weight." (*Connerly*, *supra*, 92 Cal.App.4th at p. 36.) A defendant must have some "strong basis in evidence" to establish its compelling interest "*before*" enacting the suspect classification. (*Id.* at p. 38.)

Here, the District's express justifications for adopting Policy 5020.1—made immediately before the District enacted it on July 20, 2023—demonstrate that Policy 5020.1 advances an invidious purpose, not a compelling one. (See Nugent Decl., Ex. 7 at pp. 183:6-8, 185:25-186:10, 198:4-7.) Three of the four Board members who voted to enact the Policy stated their intent to discriminate against transgender and gender nonconforming students in the District. (See *ante*, at pp. 11-12.) Their goal was to "put a stop to" transgender identities, which they viewed as a "mental illness"; to be "non-affirming" so that transgender or gender nonconforming children could "get better." (*Ibid*.) Such hostility to transgender individuals lies at the heart of this Policy. (Cf. *Grimm v. Gloucester County Sch. Bd.* (4th Cir. 2020) 972 F.3d 586, 615 [discriminatory transgender restroom policy failed intermediate scrutiny because it was "adopted in the context of two heated Board meetings filled with vitriolic, off-the-cuff comments," revealing "misconception and prejudice"]; *Lyle v. Warner Bros. Television Prods*. (2006) 38 Cal.4th 264, 280-281 ["hostile, sexist statements"—including "derogatory comments"—"relevant to show discrimination on the basis of sex"]; *Lynn v. Regents of Univ. of Cal.* (9th Cir. 1981) 656 F.2d 1337, 1343, fn. 5 [decisions motivated by discriminatory attitudes relating to sex are probative of discrimination].)

Moreover, the explicit text of the Policy itself reveals an invidious intent. Policy 5020.1 states that being transgender is a "mental health" issue that requires parental intervention "at the earliest possible time" because it could give rise to "instances of self-harm." (Nugent Decl., Ex. 1, at p. 1.) The Policy thus relies on "outdated social stereotypes," which has "result[ed] in invidious

laws or practices"— precisely what strict scrutiny is designed to identify and counteract. (*Sail'er Inn, Inc. v. Kirby*, *supra*, 5 Cal.3d at p. 18; cf. *SmithKline Beecham Corp. v. Abbott Laboratories* (9th Cir. 2014) 740 F.3d 471, 484-485 ["[G]ays and lesbians were [once] . . . made inadmissible under . . . immigration laws . . . [as] individuals 'afflicted with psychopathic personality'"].) The invidious aims animating Policy 5020.1 are not legitimate or compelling governmental interests.

Additionally, the District failed to cite any evidence prior to enactment—let alone a "strong basis in evidence"—to establish a compelling and non-discriminatory basis for Policy 5020.1's forced outing provisions. (See generally Nugent Decl., Ex. 7 [transcript of July 20, 2023 Board meeting]; see *Connerly*, *supra*, 92 Cal.App.4th at pp. 36, 38 ["statistical analysis" is "valuable evidence"]; *Assoc. Gen. Contractors of Am., San Diego Chapter, Inc. v. Cal. Dept. of Transp*. (9th Cir. 2013) 713 F.3d 1187, 1196 [same].) And as this Court already determined, any purported concerns that transgender students may have more mental health concerns as opposed to others is insufficient to provide a compelling interest justifying a discriminatory classification (Nugent Decl., Ex. 27 at p. 6; see *Woods v. Horton* (2008) 167 Cal.App.4th 658, 676 ["The greater need for services by female victims of domestic violence does not provide a compelling state interest in a gender classification"]), particularly when discriminatory actions like Policy 5020.1 create those disparities in the first place by marginalizing, demeaning, and isolating such students (see *ante* at pp. 9-11). Because the pleadings and judicially noticeable record show that the District cannot prove a compelling interest in its discriminatory policy, judgment on the pleadings is proper.

B. The District Fails to Show That Policy 5020.1's Forced Disclosure Provisions Are Narrowly Tailored to Advance Any Non-Discriminatory Interests

Further, the District cannot show that Policy 5020.1 is narrowly tailored to any non-discriminatory interest it purports to advance. To satisfy narrow tailoring, "[o]nly the most exact connection between justification and classification will suffice." (*Connerly*, *supra*, 92 Cal.App.4th at p. 37.) Such a classification must be "necessary"—not merely "convenient," "reasonable," or "efficient"—and the availability of gender neutral alternatives that do not rely on the suspect classification, or the failure to consider such alternatives, "will be fatal." (*Ibid*.)

Policy 5020.1's forced disclosure provisions fail narrow tailoring, for two reasons. First, the forced disclosure provisions lack any exception for students who may face emotional, physical or psychological abuse at home as a result of the forced disclosure of a student's gender identity to parents. (See *ante* at pp. 9-11.) The forced disclosure provisions thereby harm, rather than advance, the interests of students, parents, and schools. (See *In re Marilyn H.* (1993) 5 Cal.4th 295, 307 [the "welfare of a child is a compelling state interest that a state has not only a right, but a duty, to protect"]; *Prince v. Massachusetts* (1944) 321 U.S. 158, 165 ["It is the interest of youth itself, and of the whole community, that children be . . . safeguarded from abuses"].)

Second, the pleadings and undisputed facts subject to judicial notice show that the District did not consider *any* alternatives to its facially discriminatory Policy, let alone gender-neutral ones, and there are other gender-neutral and more narrowly tailored options to accomplish the District's purported goals. (See generally Nugent Decl., Ex. 7 [transcript of July 20, 2023 Board meeting].) This failure to consider alternatives is "fatal" for the District's Policy. (*Connerly*, *supra*, 92 Cal.App.4th at p. 37.) For example, the District could have adopted gender neutral policies directly tailored to any problems related to bullying, mental health, and psychological distress, instead of singling out a protected group. These kinds of neutral alternatives are analogous to the less restrictive, gender-neutral funding alternatives recognized in *Woods v. Horton*, *supra*, 167 Cal.App.4th at pp. 674-676, which the Court of Appeal found sufficient to establish that a discriminatory policy failed strict scrutiny.

Indeed, the District failed to address why alternatives, like its prior policy for the past six years, proved insufficient to enable schools to partner with parents to ensure the wellbeing of students. Without Policy 5020.1, schools would remain free—as they had under the previous administrative regulation—to disclose a student's gender identity to their parents with the student's consent. (Nugent Decl., Ex. 5.) Without Policy 5020.1, schools could still disclose a student's gender identity to their parents, even without the student's consent, if there was a compelling need to protect the student's physical or mental well-being. (*Ibid*.) Without Policy 5020.1, students and parents could still initiate conversations about their gender identity with each other; school personnel could still encourage such conversations; and CVUSD could still create

counseling and support programs advising students on how to have such conversations with their parents. (See *ibid*.) And without Policy 5020.1, all these goals could be achieved without threatening students with forced disclosure and its discriminatory harms.

Because the pleadings and facts subject to judicial notice show that the District cannot demonstrate that facially discriminatory Policy 5020.1 is "the least restrictive means" to advance non-discriminatory interests (*Connerly*, *supra*, 92 Cal.App.4th at p. 33), the District cannot satisfy strict scrutiny. Thus, Policy 5020.1 violates the rights of equal protection, as well as privacy, insofar as it applies to students 18 years old or older. Such a constitutional violation inflicts irreparable harm that must be remedied through final injunctive and declaratory relief. (See Civ. Code, § 3422; *Rotary Club of Duarte v. Bd. of Dirs.* (1986) 178 Cal.App.3d 1035, 1067 ["The injury caused and perpetuated by . . . sex discrimination is both 'great and irreparable,'" meriting "injunctive relief"], aff'd sub nom. *Bd. of Dirs. of Rotary Int. v. Rotary Club of Duarte* (1987) 481 U.S. 537; *Baird v. Bonta* (9th Cir. 2023) 81 F.4th 1036, 1041.)

III. THIS COURT SHOULD ISSUE FINAL INJUNCTIVE AND DECLARATORY RELIEF

While the District may claim mootness because the District rescinded Policy 5020.1, this case continues to present a live, justiciable controversy because the District remains free to engage in unlawful conduct upon the end of this litigation, and final injunctive and declaratory relief is still needed to cure the stigmatic harms inflicted by the enactment of the facially discriminatory Policy. And, even if the Court were to consider the case moot, this case falls within the exception to mootness in matters of significant public interest that are likely to recur.

A. This Case Is Not Moot Because a Justiciable Controversy Remains

Courts decide "justiciable issues" if they present an "actual controversy." (*Davis v. Fresno Unified Sch. Dist.* (2020) 57 Cal.App.5th 911, 926 [citations omitted].) A once-justiciable controversy may become moot "when 'the question addressed was at one time a live issue in the case,' but has been deprived of life 'because of events occurring after the judicial process was initiated.'" (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1574 [citations omitted].) However, the "enactment of subsequent legislation does not automatically render a matter moot." (*Shaw v. L.A. Unified Sch. Dist*. (2023) 95 Cal.App.5th 740,

773.) Rather, the "pivotal question in determining if a case is moot is . . . whether the court can grant the plaintiff any effectual relief." (*Parkford Owners for a Better Cmty. v. County of Placer* (2020) 54 Cal.App.5th 714, 722.)

The District's decision to rescind Policy 5020.1 does not moot this case because "'[t]he voluntary discontinuance of alleged illegal practices does not remove the pending charges of illegality from the sphere of judicial power or relieve the court of the duty of determining the validity of such charges where by the mere volition of a party the challenged practices may be resumed.'" (*Robinson v. U-Haul Co. of California* (2016) 4 Cal.App.5th 304, 315-316 (*Robinson*), citation omitted; see *In re J.G.* (2008) 159 Cal.App.4th 1056, 1063].) In *Marin County Board of Realtors, Inc. v. Palsson* (1976) 16 Cal.3d 920, 929, for instance, the California Supreme Court held that "the question of the validity of the board's 'primarily engaged' rule" was "still justiciable, despite the board's deletion of the bylaw," because "there is no assurance that the board will not reenact it in the future."[12] Thus, the Court held, the "board should be enjoined from enforcing or promulgating any bylaw or other rule" with the deleted rule's provisions. (*Id.* at p. 940.) So too here, since nothing prevents the District from re-enacting the provisions at the earliest opportunity following the end of this litigation. Indeed, for purposes of summary adjudication, the District's counsel has suggested that a return to the prior facially discriminatory Policy is possible, representing that "none of us" can predict what the District or future District Boards will do following the end of this litigation. (Nugent Decl., ¶ 37; SSOF No. 47.)

Courts have awarded final injunctive relief when a defendant's decision to rescind a challenged policy comes only, as here, after the defendant has been brought to court on a motion for preliminary injunction. In *Robinson*, the Court of Appeal addressed a case where a

[12] Some California Court of Appeal cases have incorrectly suggested that a case is presumptively moot following voluntary cessation of the unlawful conduct. (See, e.g., *RGC Gaslamp, LLC v. Ehmcke Sheet Metal Co., Inc.* (2020) 56 Cal.App.5th 413, 434; *Ctr. for Loc. Gov't Accountability v. City of San Diego* (2016) 247 Cal.App.4th 1146, 1157.) These decisions conflict with—and fail to address—the California Supreme Court's ruling in *Palsson*, which instead follows the "well settled" federal approach by presuming courts' ongoing duty to adjudicate a case, with the defendant's heavy burden to guarantee that the offending conduct will not reoccur. (See *Palsson*, *supra*, 16 Cal.3d at p. 929; see also *W. Virginia v. Env't Prot. Agency* (2022) 597 U.S. 697, 719 [defendant has "heavy" burden to prove a case moot by voluntary cessation].) To the extent these Court of Appeal decisions present an inconsistent rule, this Court is bound to follow the California Supreme Court's approach in *Palsson*. (See *Consol. Fire Prot. Dist. of L.A. County v. Howard Jarvis Taxpayers' Assn.* (1998) 63 Cal.App.4th 211, 220.)

defendant's "change in policy came only after it lost its motion for a preliminary injunction" and "when threatened with an injunction." (*Robinson*, *supra*, 4 Cal.App.5th at p. 316.) The Court found this to reflect defendant's "*resistance* to amending its policies, and its *persistence* in pursuing" the challenged conduct, such that final injunctive relief was appropriate to "eliminate[] a practice that is now shrouded in uncertainty and plagued by a troubling past." (*Id.* at pp. 316-317; see also *Phipps v. Saddleback Valley Unified Sch. Dist.* (1988) 204 Cal.App.3d 1110, 1118-1119 [affirming permanent injunction because voluntary cessation was not in "good faith," as it occurred only after a preliminary injunction].) Here, too, the District resisted repeated calls to abide by antidiscrimination protections and persisted in adopting its facially discriminatory Policy 5020.1, even after requests not to do so from the Attorney General, State Superintendent, and students, teachers, and parents. (See *ante* at pp. 9-11.)

Indeed, the District's conduct signals a reasonable expectation that it could re-adopt the discriminatory policy absent a final ruling by this Court. When enacting Policy 5020.1, the District expressly stated its animus toward transgender students when disregarding the urgings of those who informed the District that the unlawful Policy would harm students. (See *ante* at pp. 9-12.) Even after its rescission of Policy 5020.1, the District continued to reiterate its belief in the necessity of Policy 5020.1 and to echo its prior statements of animus and prejudice. (See *ante* at p. 13; *Ctr. for Loc. Gov't Accountability v. City of San Diego* (2016) 247 Cal.App.4th 1146, 1157 [because the "City . . . has not conceded its former practice . . . violated the Brown Act . . . the Center may be able to at least plead a viable claim for declaratory relief"].) The day after the District rescinded Policy 5020.1, the District's counsel issued a press release stating that they "believe that both versions of Chino Valley's parental notification policy are common sense and constitutional." (Nugent Decl., Ex. 29; see also *id.* ¶ 37 [District counsel representing to DOJ counsel their position that Policy 5020.1 "was never unlawful"]; *Ctr. for Loc. Gov't Accountability*, at p. 1157.) And, in its March 21, 2024 public Board meeting, the District's Board President continued to stand "proudly" by the District's challenged policies, including Policy 5020.1. (See *ante* at p. 13; see also *ibid.* [Board Member echoing his anti-trans statements on July

20, lauding Board President for opposing things that are "sterilizing [students] mentally so they don't have kids in the future"].)

Moreover, the District has, on multiple occasions, sought to circumvent this Court's preliminary injunctions, underscoring the need for a permanent injunction to guarantee that students are protected. Despite this Court issuing a temporary restraining order against Policy 5020.1 on September 6, 2023 (Nugent Decl., Ex. 24), the next day, the District placed an Administrative Regulation 5020.1 ("AR 5020.1")—which expressly restated the enjoined provisions of BP 5020.1—on its board meeting agenda to implement the enjoined Policy (Nugent Decl., Ex. 13). Though the temporary restraining order remained in place, just two weeks later, the District again placed AR 5020.1 on its board meeting agenda to implement Policy 5020.1. (*Id*., Ex. 15.)[13] The District's conduct establishes a reasonable expectation that the District would re-enact the discriminatory policy, requiring final injunctive and declaratory relief to prevent any further attempts to discriminate against students in the District. (See *In re Austin J.* (2020) 47 Cal.App.5th 870, 881, fn. 5.)

Final injunctive and declaratory relief is also needed to provide permanent, effective relief against the stigmatic harms communicated and inflicted by the District's enactment of its facially discriminatory Policy 5020.1—harms amplified by the District's express and public statements of animus made moments before enacting Policy 5020.1. (See *ante* at pp. 11-12.) Courts widely recognize the "invidious effect[s]" communicated by facially discriminatory policies like Policy 5020.1 that "separat[e] individuals solely because" of their identities, a harm made "greater when it has the sanction of the law." (*Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal.4th 537, 546, citation omitted.) The passage of such policies "generates a feeling of inferiority" in the students targeted (*Brown v. Bd. of Ed.* (1954) 347 U.S. 483, 494), calling for court rulings that respond with a "message . . . even stronger" by striking down such policies "whenever it is within the capacity of conscientious courts" to do so (*Hi-Voltage Wire Works, Inc. v. City of San Jose*,

[13] The District removed AR 5020.1 from its September 7 Board meeting agenda only after the People issued the District a cease-and-desist letter that same day. (Nugent Decl., Exs. 13-14, 20-21; SSOF Nos. 37-38.) On September 21, the District again removed AR 5020.1 from its agenda only after the People re-sent the District the September 7 cease-and-desist letter. (Nugent Decl., Exs. 15-16, 20, 22; SSOF Nos. 39-41.)

supra, at pp. 546, 548, citation omitted). Because the enactment of facially discriminatory provisions in Policy 5020.1 sends a stigmatic message about the students it singles out for adverse treatment (see *ante* at pp. 9-11), striking down such policies through final judgment provides both "practical impact" and "effective relief" by declaring such policies and their stigmatic messages as violations of equal protection and antidiscrimination law. (See *Shaw v. L.A. Unified Sch. Dist.*, *supra*, 95 Cal.App.5th at pp. 768-769, 772 [injunctive relief proper against expired statute to remedy harm caused].)

B. Even if Moot, This Case Falls Under an Exception to Mootness Because It Presents an Issue of Broad Public Interest Likely to Recur

Even if the Court were to consider this case moot, the Court should nonetheless issue final injunctive and declaratory relief because "the case presents an issue of broad public interest that is likely to recur": the rights of transgender students to be free from discriminatory treatment. (*In re D.P.* (2023) 14 Cal.5th 266, 282 [citations omitted]; *Robinson*, *supra*, 4 Cal.App.5th at p. 320 [applying public interest exception to mootness and determining that "an injunction was warranted"].) "This exception [to mootness] has been invoked in many instances in order to decide a case of continuing public interest." (*Bullis Charter Sch. v. Los Altos Sch. Dist.* (2011) 200 Cal.App.4th 296, 307; see, e.g., *Johnson v. Hamilton* (1975) 15 Cal.3d 461, 465 [courts "frequently" apply mootness exceptions]; *Cal. Correctional Peace Officers Assn. v. State of California* (2000) 82 Cal.App.4th 294, 303-304 [same].)[14]

Courts generally apply this exception to mootness where a case affects a wider group of people beyond the immediate parties. For example, in *Palsson*, the California Supreme Court applied the exception and determined that the case involved matters of public interest because it involved "the appearance of the . . . Attorney General," as well as other entities, "through amicus briefs"; "similar cases are pending in various trial courts"; and the issue before the Court affected

[14] California courts inconsistently describe cases of broad public interest as an exception to mootness or a circumstance where the case is not moot at all. (Compare, e.g., *Newsom v. Super. Ct.* (2021) 63 Cal.App.5th 1099, 1111 [noting court's "discretion to decide a case which, although technically moot, poses an issue of broad public interest that is likely to recur"] with *Lemat Corp. v. Barry* (1969) 275 Cal.App.2d 671, 673, fn. 2 ("the issues here raised are of sufficient public interest and, therefore, not moot"].) Regardless of wording, as stated above, California courts regularly find cases justiciable under this principle and have found injunctive relief appropriate to resolve these cases of broad public interest.

a wider group of people beyond the parties. (See *Marin County Bd. of Realtors, Inc. v. Palsson* (1976) 16 Cal.3d 920, 930, 940 [remanding with instructions to issue an injunction].) Those same elements counsel in favor of this exception to mootness here.

Indeed, courts have repeatedly recognized that cases that concern students' rights, such as this one, qualify as matters of significant public interest that warrant adjudication even when otherwise moot, since they pose "questions of significance to students, parents, school boards, [and] school administrators." (*Steffes v. Cal. Interscholastic Fed'n* (1986) 176 Cal.App.3d 739, 745 [applying mootness exception to determine "rights of a student who seeks participation in interscholastic athletics"]; see also, e.g., *Nathan G. v. Clovis Unified Sch. Dist*. (2014) 224 Cal.App.4th 1393, 1397, fn. 4 [applying mootness exception to student due process challenge to transfer issue]; *John A. v. San Bernardino City Unified Sch. Dist*. (1982) 33 Cal.3d 301, 307 [applying exception to mootness because "[w]hat process is due a student facing expulsion from a public school is a matter of continuing importance"]; *Montalvo v. Madera Unified Sch. Dist. Bd. of Ed.* (1971) 21 Cal.App.3d 323, 329 [same, as to challenge to regulation governing student hair length].) Likewise, this case concerns "significant and important" matters of public interest that broadly affect students, parents, school boards, school administrators, and teachers. (Nugent Decl., Ex. 25, at vol. 1, p. 5:13-17 [Oct. 19 preliminary injunction hearing].) More than just a student's right to participate, for example, in "interscholastic athletics" (*Steffes*, at p. 745), this case concerns a student's fundamental right to education (see *Serrano v. Priest*, *supra*, 5 Cal.3d at pp. 608-609, 616-617) and to participate in all aspects of school that they choose to, simply as whom they are, free from discrimination based on their sex or gender identity (see *Kidd v. State* (1998) 62 Cal.App.4th 386, 399 [sex discrimination raises "an issue of the highest public interest"]).

Additionally, the issues in this case are likely to recur, as identical or similar forced outing policies targeting transgender students have been adopted in several districts in different counties throughout the State. (Nugent Decl., Exs. 10-11.) Courts have recognized the value of finding a mootness exception in such circumstances. In *County of Madera v. Gendron* (1963) 59 Cal.2d 798, 804, for instance, the California Supreme Court held that a legal challenge was not moot

where "other counties" had "similar statutory disabilities." Similarly, the Court of Appeal in *In re Lee* held the case not moot because the "procedure of jailing these applicants may be duplicated in other counties," meaning "[t]he case poses an issue of broad public interest which is likely to recur." (*In re Lee* (1978) 78 Cal.App.3d 753, 756.)[15] Because this case also involves policies and issues of significant and continuing concern to school districts, parents, teachers, and students in other counties, final relief is necessary to provide clarity on this issue of broad and significant public interest.

CONCLUSION

For these reasons, the Court should grant the People's motion for judgment on the pleadings—or, in the alternative, for summary adjudication—and provide declaratory and injunctive relief.

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[15] Some California courts have used the language of "evad[ing] review," which resembles the "capable of repetition, yet evading review" exception to mootness applied under federal law. (Compare *In re Schuster* (2019) 42 Cal.App.5th 943, 952 with *Wallingford v. Bonta* (9th Cir. 2023) 82 F.4th 797, 801.) However, the Court of Appeal has held that a technically moot issue of public importance likely to recur need not also be likely to evade review to be adjudicated. (*In re Schuster*, at p. 952.)