No. G064332

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION THREE

MAE M. ET AL.,
Plaintiffs-Appellants,
v.
STEVEN SCHWARTZ ET AL.,
Defendants-Respondents.

Riverside County Superior Court, Case No. CVSW2306224
The Honorable Eric Keen (Dept. 6)

BRIEF OF AMICUS CURIAE THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA IN SUPPORT OF PLAINTIFFS-APPELLANTS

ROB BONTA
Attorney General of California
MICHAEL L. NEWMAN
Senior Assistant Attorney General
LAURA L. FAER (SBN 233846)
JAMES F. ZAHRADKA II (SBN 196822)
Supervising Deputy Attorneys General

JONATHAN BENNER (SBN 318956)
ALEXANDER SIMPSON (SBN 235533)
*EDWARD NUGENT (SBN 330479)
Deputy Attorneys General
State Bar No. 330479
455 Golden Gate Avenue,
Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 229-0113
Fax: (510) 622-2270
E-mail: Edward.Nugent@doj.ca.gov
**Counsel of Record*

ATTORNEYS FOR AMICUS CURIAE THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

TABLE OF AUTHORITIES
(continued)

Page

INTRODUCTION

This case concerns two policies enacted by the Temecula Valley Unified School District ("TVUSD" or the "District"). The first, Board Policy 5020.01, subdivisions 1(a)-(c) (the "Forced Disclosure Policy" or the "Policy"), requires school staff to "out" transgender and gender nonconforming students to their parents and guardians, even if such disclosure would put the student at risk of harm. For example, if a student assigned a male sex at birth asks a teacher to refer to them with a female name or pronouns in class, the Policy requires school staff, including teachers, to notify the student's parents—even if they believe that doing so will subject the student to physical, emotional, or psychological harm. The second enactment at issue, Resolution No. 2022-23/21 (the "Curriculum Resolution" or the "Resolution"), purports to ban the teaching of Critical Race Theory ("CRT") and defines that term in so sweeping a manner as to restrict instruction on a broad swath of American history and current events. The Forced Disclosure Policy and the Curriculum Resolution violate critical protections accorded to students under the California Constitution. The superior court erred as a matter of law in denying preliminary injunctive relief.

The Forced Disclosure Policy facially discriminates on the bases of gender, gender identity, and gender expression, thereby triggering strict scrutiny under the State's equal protection clause—a demanding standard that TVUSD cannot satisfy. The Policy does not serve any legitimate compelling interests—Board members' statements of animus confirm that the Policy was

intended to discriminate, and the District failed to provide the required strong basis in evidence for any of its purported purposes or to consider the many gender-neutral alternatives available to serve those purposes before passing the Policy. Further, the Policy is not narrowly tailored to serve any claimed interest in student well-being because it provides no exception to protect students who express a reasonable fear that disclosure will harm them and who do not consent to the notification.[1]

Moreover, the Policy runs counter to the District's duty to protect students from harm by third parties. (See *Cleveland v. Taft Union High Sch. Dist.* (2022) 76 Cal.App.5th 776, 799 [school district owes duty of care to students vis-à-vis third parties]; *In re Marilyn H.* (1993) 5 Cal.4th 295, 307 ["[T]he welfare of a child is a compelling state interest that a state has not only a right, but a duty, to protect"]; cf. *Brennon B. v. Super. Ct.* (2022) 13 Cal.5th 662, 681 [school districts "are the State's agents"].) That risk of harm is hardly speculative here: 10 percent of transgender individuals have suffered physical violence at the hands of an

[1] Earlier this year, the State passed a new statute—Assembly Bill No. 1955—confirming that state law already forbids school districts from enacting forced disclosure policies like the one at issue here. When that statute takes effect on January 1, 2025, it will provide a separate, sufficient basis for this Court to declare that the Policy is unlawful and void. Further, the California Department of Education ("CDE") recently determined that TVUSD's Forced Disclosure Policy facially violates the non-discrimination provisions of section 220 of the Education Code, documenting yet another basis on which the Policy is unlawful. A copy of CDE's decision is attached to the Declaration of Jonathan Benner as Exhibit A.

immediate family member for being transgender, and 15 percent have been kicked out of their home or have run away because of their transgender identity.

The Curriculum Resolution is also unlawful and should have been preliminarily enjoined. While the California Constitution affords school districts latitude to formulate appropriate curricular standards, it also guarantees students' basic right to receive information and ideas. School districts violate that right when they deny students exposure to ideas or aspects of history for no legitimate pedagogical reason. As relevant here, the Curriculum Resolution's overbroad definition of "Critical Race Theory" results in a sweeping prohibition on teaching myriad ideas, perspectives, and historical developments—from the Freedmen's Bureau during Reconstruction to present disparities in police violence—that are foundational to giving students an accurate understanding of American history and current events. The Court should reverse the superior court's refusal to preliminarily enjoin the Curriculum Resolution.

ARGUMENT

In reviewing a trial court's decision to deny a preliminary injunction, appellate courts assess the plaintiffs' likelihood of success on the merits, as well as the balance of harms to plaintiffs, defendants, and the public. (See, e.g., *Vo v. City of Garden Grove* (2004) 115 Cal.App.4th 425, 433-435.) Where, as here, a superior court misconstrues the relevant legal principles in evaluating the plaintiffs' likelihood of success, the standard of review on appeal "is not abuse of discretion but whether the

superior court correctly interpreted and applied the law, which [is] review[ed] de novo." (*Strategix, Ltd. v. Infocrossing W., Inc.* (2006) 142 Cal.App.4th 1068, 1072, internal quotation marks and original alterations omitted.)[2] Consistent with that de novo standard, the Court should reverse with instructions for the superior court to enter a preliminary injunction against the Forced Disclosure Policy and Curriculum Resolution.[3]

I. THE FORCED DISCLOSURE POLICY VIOLATES CALIFORNIA'S EQUAL PROTECTION CLAUSE

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.) And under the California Constitution, education is a fundamental right to which transgender and gender nonconforming students are equally entitled. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 608-609, 616-618; Cal. Const., art. 1, § 7.)

Yet the Forced Disclosure Policy expressly discriminates against transgender and gender nonconforming students, treating them differently than their cisgender peers solely because they identify as a sex or gender different from their sex

---

[2] See also, e.g., *People ex rel. Dept. of Alcoholic Beverage Control v. Miller Brewing Co.* (2002) 104 Cal.App.4th 1189, 1194; *Water Replenishment Dist. of S. California v. City of Cerritos* (2013) 220 Cal.App.4th 1450, 1462; cf. *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1061 ("A decision that rests on an error of law constitutes an abuse of discretion").

[3] The Attorney General focuses this amicus brief on the merits, but agrees with the appellants that the balance of harms also justifies injunctive relief. (See, e.g., Appellants' Opening Br., pp. 15-17, 39-41.)

or gender identified at birth. The Policy requires school staff to notify parents, without exception, when a student requests "to be identified or treated as a gender . . . other than the student's biological sex or gender," which includes requests to use a name or pronouns (or use a bathroom or participate in school programs or activities) that "do not align with" the sex or gender "listed on the student's birth certificate." (1 CT 240.) That classification based on gender, gender identity, and gender expression triggers—and fails to satisfy—strict scrutiny under the equal protection clause of the California Constitution.

A. The Policy discriminates based on gender, gender identity, and gender expression, requiring strict scrutiny review

1. Classifications based on gender identity and gender expression are subject to strict scrutiny

The Policy's text explicitly discriminates against transgender and gender nonconforming students, treating them differently than their cisgender peers based on gender identity.[4] Such adverse treatment is subject to strict scrutiny for two independent reasons.

First, *gender identity* is an aspect of *sex* and *gender* (see Civ. Code, § 51, subd. (e)(5); Gov. Code, § 12926, subd. (r)(2); Ed. Code, § 210.7 [all defining sex to include a person's "gender identity and gender expression"]), which are protected characteristics subject to strict scrutiny under California law (see *Catholic Charities of*

[4] This brief uses the term "gender nonconforming" to refer to students whose gender identities are not solely male or female (i.e., gender non-binary).

Sacramento, Inc. v. Super. Ct. (2004) 32 Cal.4th 527, 564; *Taking Offense v. California* (2021) 66 Cal.App.5th 696, 722-723, 726 (*Taking Offense*), review granted on other grounds Nov. 10, 2021, S270535 [treating discrimination based on transgender status as a form of sex-based discrimination and applying strict scrutiny]).[5] Neither the superior court nor TVUSD has provided any reason for the Court to depart from *Taking Offense*.[6]

---

[5] "Unlike decisions applying the federal equal protection clause, California cases continue to review, under strict scrutiny rather than intermediate scrutiny, those statutes that impose differential treatment on the basis of sex or gender." (*In re Marriage Cases* (2008) 43 Cal.4th 757, 843.)

[6] Discrimination against transgender individuals also triggers heightened scrutiny under federal equal protection doctrine. (See, e.g., *Hecox v. Little* (9th Cir. 2024) 104 F.4th 1061, 1079-1080 ["discrimination on the basis of transgender status is a form of sex-based discrimination"]; *Grimm v. Gloucester County Sch. Bd.* (4th Cir. 2020) 972 F.3d 586, 607-608 [applying heightened scrutiny to transgender student's equal protection claim]; cf. *Bostock v. Clayton County* (2020) 590 U.S. 644, 660 [concluding, in Title VII case, that "it is impossible to discriminate against a person for being . . . transgender without discriminating against that individual based on sex"].) Even if federal law did not require heightened scrutiny, California's equal protection clause does, and operates independently of its federal counterpart. (See *Taking Offense*, *supra*, 66 Cal.App.5th at pp. 722-726 [explaining that "[t]he state constitutional guarantee [of equal protection] is independent of the federal guarantee," and applying strict scrutiny under California Constitution to classification based on transgender identity]; *Molar v. Gates* (1979) 98 Cal.App.3d 1, 12 ["[E]qual protection provisions of the California Constitution are 'possessed of an independent validity' from the Fourteenth Amendment so that a decision based upon a determination that the equal protection guaranteed by the state Constitution has been violated will stand on the state ground alone"].)

Second, discrimination against transgender and gender nonconforming individuals is subject to strict scrutiny because—based on the history of arbitrary and adverse treatment they have endured—they are a protected class, just as the California Supreme Court held with respect to lesbian, gay, and bisexual individuals. (*In re Marriage Cases*, *supra*, 43 Cal.4th at pp. 843-844.) Indeed, transgender individuals are precisely the type of "discrete and insular minorit[y]" who experience "prejudice . . . which tends seriously to curtail the operation of [ordinary] political processes" and which "call[s] for a . . . more searching judicial inquiry." (*United States v. Carolene Products Co.* (1938) 304 U.S. 144, 153, fn. 4; cf. *City of Cleburne v. Cleburne Living Ctr.* (1985) 473 U.S. 432, 440-441.) "[T]ransgender individuals historically have been subjected to discrimination on the basis of their gender identity," including through "high rates of violence"; "discrimination in education, . . . housing, and healthcare access"; "high rates of employment discrimination, economic instability, and homelessness"; and "frequent[] . . . harassment" and "physical assault." (*Grimm v. Gloucester County Sch. Bd.*, *supra*, 972 F.3d at pp. 611-612 [internal quotation marks omitted], cert. den. (2021) 141 S.Ct. 2878 [No. 20-1163]; accord *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.* (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"].)

2. The Policy singles out and discriminates against transgender and gender nonconforming students

As a matter of plain text and unambiguous legislative purpose, the Policy discriminates based on transgender and gender nonconforming status.

To start, the Policy is facially discriminatory. As the San Bernardino Superior Court recently ruled when permanently enjoining the Chino Valley Unified School District's ("CVUSD") materially indistinguishable forced disclosure policy, discrimination based on gender identity "is built into the operative language of the Policy." (Benner Decl., Ex. B at p. 12; see also *ibid.* [applying strict scrutiny to discrimination based on gender identity].) The Policy requires notification to parents when a student requests to use a name or pronouns, or to access programs, bathrooms, or facilities, *if and only if* such requests "do not align with the student's biological sex or gender."[7] (1 CT 240.) By definition, transgender and gender nonconforming students are the *only* students who will request to use names or pronouns (or to access programs, bathrooms, or facilities) that do not align with their sex or gender assigned at birth. (See *Hecox v. Little*, *supra*, 104 F.4th at pp. 1068-1069 ["A 'transgender' individual's gender identity does not correspond to their sex assigned at birth,

[7] Moreover, to know whether notification is required, one must know the student's gender or sex. As the U.S. Supreme Court has explained, discrimination based on transgender identity necessarily entails treating individuals "differently because of their sex." (*Bostock v. Clayton County*, *supra*, 590 U.S. at p. 661.)

while a 'cisgender' individual's gender identity corresponds with the sex assigned to them at birth"].) Thus, by its express terms, the Policy classifies students on the basis of gender identity and gender expression—rendering the Policy presumptively invalid and requiring strict scrutiny review. (See, e.g., *Connerly v. St. Personnel Bd.* (2001) 92 Cal.App.4th 16, 44.)

The superior court nonetheless refused to apply strict scrutiny. That erroneous decision was based on a since-rejected articulation of state equal protection doctrine and a misunderstanding of the Policy. As to the mechanics of equal protection doctrine, the court reasoned that the Policy does not discriminate between "similarly situated" groups because, in the court's view, "children requesting to be socially transitioned are not similarly situated to children not requesting to be socially transitioned." (6 CT 1695, quoting amicus brief submitted by CVUSD.) But after the superior court's ruling, the California Supreme Court revised state equal protection doctrine to eliminate the threshold question of whether two groups are "similarly situated." (*People v. Hardin* (2024) 15 Cal.5th 834, 850.) Instead, "[t]he only pertinent inquiry is whether the challenged difference in treatment is justified under the applicable standard of review."[8] (*Id.* at pp. 850-851.) Here, as explained above, that standard is strict scrutiny.

---

[8] Even before *Hardin*, the superior court's rationale was flawed under California equal protection law. (See 6 CT 1694-1695.) Any purported concerns about transgender students' mental health, as compared to their cisgender peers, are

(continued…)

The superior court also reasoned that the Policy "applies equally to all students"—both transgender and cisgender students—because schools must notify parents when any student requests to use a name or pronouns different than those assigned at birth. (6 CT 1695.) But that reasoning overlooks two obvious realities: First, notification under the Policy is triggered only when a student requests to use a name or pronouns (or to access programs, bathrooms, or facilities) that "do not align" with the student's sex or gender assigned at birth. (1 CT 240.) And second, transgender and gender nonconforming students are the only students with reason to ask to use such names or pronouns (or to access such programs, bathrooms, or facilities). There is simply no reason to expect that a cisgender student would "[r]equest[] to be identified or treated as a gender . . . other than the student's biological sex or gender" (see *ibid.*), because a cisgender individual's gender identity, *by definition*, corresponds to their

---

insufficient to provide a compelling interest justifying a discriminatory classification. (See *Woods v. Horton* (2008) 167 Cal.App.4th 658, 675 ["The greater need for services by female victims of domestic violence does not provide a compelling state interest in a gender classification"].) This is especially so when acts of discrimination like the Policy contribute to those disparities in the first place by marginalizing, demeaning, and isolating transgender and gender nonconforming students. (Cf. *J.E.B. v. Alabama ex rel. T.B.* (1994) 511 U.S. 127, 138 ["We shall not accept as a defense to gender-based peremptory challenges 'the very stereotype the law condemns'"].) By contrast, when transgender youth are protected from discrimination, their mental health outcomes mirror those of their cisgender peers. (See, e.g., Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities* (2016) 137 Pediatrics e20153223.)

"biological sex." To suggest otherwise is much like saying that a classification based on wearing a yarmulke does not classify based on Jewish identity. (See *Bray v. Alexandria Women's Health Clinic* (1993) 506 U.S. 263, 270 [noting that targeting "activities . . . engaged in exclusively or predominantly by a particular class of people" demonstrates "an intent to disfavor that class"].)

Courts have also repeatedly rejected the false equivalence that the superior court drew (6 CT 1695) and that the District advances (Resp'ts' Br., pp. 50-52). Even if the Policy did not single out transgender students for discriminatory treatment—which it does—the mere use of a suspect classification is enough to require strict scrutiny. (See, e.g., *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 681 [a "law classifying individuals by race and then imposing [a] burden . . . on the basis of the classification," such as a ban on interracial marriage, "is subject to strict scrutiny even if persons of all races bear the burden"]; *Powers v. Ohio* (1991) 499 U.S. 400, 410 ["It is axiomatic that racial classifications do not become legitimate on the assumption that all persons suffer them in equal degree"].)

Moreover, even if the Policy somehow did not constitute a facial classification based on gender, gender identity, and gender expression, strict scrutiny would still be warranted because the purpose of the Policy is to discriminate against transgender students. (See, e.g., *Sanchez v. City of Modesto*, *supra*, 145 Cal.App.4th at p. 687 [facially neutral laws, when adopted for discriminatory purpose, are subject to strict scrutiny]; *Grimm v.*

Gloucester County Sch. Bd., *supra*, 972 F.3d at p. 615 [transgender restroom policy triggered heightened scrutiny in part due to "vitriolic" remarks, which revealed "misconception and prejudice"].)

Here, two of the three members of the TVUSD Board who voted for the Policy made clear their intent to discriminate against transgender and gender nonconforming students in statements made before the Policy's passage. For example, during the meeting at which the Board passed the Policy, the then-Board President,[9] who voted for the Policy, invoked harmful stereotypes of diverse gender identities, pathologizing transgender people as lifelong "medical patient[s]" who will become "sterile" due to "all the drugs and surgeries" and "will struggle to find a mate," and categorizing transgender identity as a "lifestyle or behavior" of which he disapproved.[10] During interviews prior to passage, the then-Board President similarly described transgender identity and acceptance thereof as "horrible" and "evil,"[11] while another

---

[9] Former Board President Joseph Komrosky was recalled by the voters on June 4, 2024. (See Riverside County Registrar of Voters, Final Official Election Results, Temecula Valley Unified School District, TA 4, Special Recall Election <https://tinyurl.com/4supnpdb> [as of Oct. 1, 2024].)

[10] TVUSD, *AUG 22 2023 Governing Board Meeting*, YouTube (Aug. 25, 2023), at 6:22:59, 6:25:43 <https://tinyurl.com/4jj98m7w> (as of Oct. 1, 2024).

[11] Our Watch, *ie Family PAC Draft—Meet School Board Candidates of Menifee, Temecula, Murrieta, and Lake Elsinore*, YouTube (Mar. 2, 2022), at 0:42:34 <https://tinyurl.com/2wbb456y> (as of Oct. 1, 2024); Our Watch, (continued…)

Board member who voted for the Policy stated in an Instagram video that "children should never be exposed to . . . gender ideology and preferences."[12] In denying a preliminary injunction, the superior court improperly disregarded these statements reflecting invidious discriminatory intent. (See 6 CT 1694-1696; cf. *Lyle v. Warner Bros. Television Prods.* (2006) 38 Cal.4th 264, 280-281 ["hostile, sexist statements," including "derogatory comments," are "relevant to show discrimination on the basis of sex"].)

B. The Policy cannot survive strict scrutiny

The Policy fails strict scrutiny because TVUSD cannot meet its "burden of establishing not only that it has a *compelling* interest which justifies the law but that the distinctions drawn by the law are *necessary* to further its purpose" (*In re Marriage Cases*, *supra*, 43 Cal.4th at p. 832 [cleaned up]), and are "narrowly tailored" to do so (*Connerly v. St. Personnel Bd.*, *supra*, 92 Cal.App.4th at pp. 36, 44).

TVUSD's stated interest in enacting the Policy does not qualify as a compelling interest. The Policy justifies forced disclosure by claiming that being transgender is a "mental health" issue. (1 CT 240.) That suggestion is unfounded; being transgender is not a mental illness. (*Grimm v. Gloucester County Sch. Bd.*, *supra*, 972 F.3d at p. 594 [transgender identity is "not a

---

Dr. Joseph Komrosky // TVUSD School Board Candidate // School Board Series, YouTube (Sept. 13, 2022), at 5:47 <https://tinyurl.com/mr2dryx9> (as of Oct. 1, 2024).

[12] Jen Wiersma (@jen4tvusd), Instagram (Oct. 29, 2022) <https://tinyurl.com/3tcc8fmy> (as of Oct. 1, 2024).

psychiatric condition," and the American Psychiatric Association and World Health Organization do not classify transgender identity as a mental illness]; *Williams v. Kincaid* (4th Cir. 2022) 45 F.4th 759, 767-768 [transgender identity on its own does not support a diagnosis of gender dysphoria or any other mental illness under the DSM-5].) Reliance on such an "outdated social stereotype[]" does not provide a compelling governmental interest. (See *Sail'er Inn, Inc. v. Kirby* (1971) 5 Cal.3d 1, 18; cf. *SmithKline Beecham Corp. v. Abbott Laboratories* (9th Cir. 2014) 740 F.3d 471, 484-485 [noting that historical discrimination against "gay and lesbian individuals" included, as recently as 1990, inadmissibility under immigration laws as individuals "afflicted with psychopathic personality"].)[13] And purported concerns that transgender students may have statistically more mental health needs than their cisgender peers do not constitute a compelling interest to justify a discriminatory classification. (See *Woods v. Horton*, *supra*, 167 Cal.App.4th at p. 675 ["The greater need for services by female victims of domestic violence does not provide a compelling state interest in a gender classification"]; see also *ante*, p. 18, fn. 8.)

In erroneously applying rational basis review, the superior court credited the Policy's ostensible purposes to foster trust between TVUSD and parents and to involve parents in decision-

[13] See also Castro-Peraza et al., *Gender Identity: The Human Right of Depathologization* (Mar. 2019) 16 Internat. J. of Envtl. Res. & Pub. Health 978 ("Defining gender diversity as an illness or otherwise abnormal is unfounded, discriminatory, and without demonstrable clinical utility").

making. (6 CT 1696; see also 1 CT 240.) However, the District's "mere recitation of a benign or legitimate purpose is entitled to little or no weight." (*Woods v. Horton*, *supra*, 167 Cal.App.4th at p. 674 [citing *Connerly v. St. Personnel Bd.*, *supra*, 92 Cal.App.4th at p. 36].) Any such purpose must be supported by a strong basis in evidence, and TVUSD provided no evidence in support, let along the strong basis required to meet strict scrutiny. (See *Connerly*, at p. 38 [stated purpose must be supported by "strong basis in evidence"].) Further, given the discriminatory statements made by Board members who voted for the Policy, which the superior court improperly disregarded (*ante*, pp. 20-22), there is eminent reason to believe that TVUSD's "alleged objective" was not its "'actual purpose' for the discriminatory classification"—yet another failure for the Policy under strict scrutiny. (See *Connerly*, at p. 38.)

Even assuming that TVUSD had met its burden to demonstrate a compelling interest—which it did not—the Policy also fails because it is neither necessary nor narrowly tailored to advance the District's purported interests. Use of a suspect classification requires "a prior determination of necessity, supported by convincing evidence," and a close connection between the asserted purpose and the terms of the enactment. (*Connerly v. St. Personnel Bd.*, *supra*, 92 Cal.App.4th at pp. 36-37.) The availability of neutral, nondiscriminatory alternatives, "or the failure of the legislative body to consider such alternatives," is "fatal to the classification." (*Id.* at p. 37.) The Policy cannot meet these requirements for two principal reasons.

First, TVUSD did not make any "prior determination of necessity, supported by convincing evidence." (*Connerly v. St. Personnel Bd.*, *supra*, 92 Cal.App.4th at pp. 36-37.) Prior to passage, TVUSD provided no evidence that the Policy—which provides no exception for students facing physical, psychological, or emotional harm at home as a result of a mandatory disclosure—is necessary to support students' "mental health" or to "prevent or reduce potential instances of self-harm." (See 1 CT 240.)

In fact, the evidence is clear that the Policy creates a serious risk of harm to students: One in ten transgender individuals have experienced violence at the hands of an immediate family member on account of their transgender identity; 15 percent have run away from home or have been kicked out of their home for being transgender.[14] And while fewer than 40 percent of LGBTQ youth describe their home as supportive of their identity, "coming out" to parents who are adverse or hostile to a youth's gender identity or expression has been shown to increase the risks of major depressive symptoms, suicide, homelessness, and drug use.[15] The threat of forced disclosure under the Policy also creates pressure for transgender and gender nonconforming

---

[14] James et al., *Report of the 2015 U.S. Transgender Survey*, Nat. Ctr. for Transgender Equality (Dec. 2016) p. 65.

[15] The Trevor Project, *2022 Nat. Survey on LGBTQ Youth Mental Health* (2022) p. 20; Ryan et al., *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults* (Jan. 2009) 123 Pediatrics 346.

students to hide their gender identity at school—with predictable, severe consequences for their psychological health.[16]

TVUSD ignored testimony from District students, parents, and educators who informed the Board immediately prior to passage that the Policy, if enacted, would cause transgender students to experience these harms. For example, one transgender individual (and former TVUSD student) recounted the experiences of friends who were "kicked out of their houses" or "beaten, abused, [and] manipulated with electroshock therapy by their family" after being outed without consent to unsupportive family. (3 CT 629.) A non-binary TVUSD student explained that they had been on "the brink of suicide" after their "transphobic father . . . forced [them] to come out." (3 CT 633.) Further statements—also in the record before the superior court—echo this evidence that forced disclosure harms the interests of students, parents, and schools.[17]

---

[16] See, e.g., Pachankis et al., *Sexual Orientation Concealment and Mental Health: A Conceptual and Meta-Analytic Review* (Oct. 2020) 146 Psychological Bull. 831 (finding statistically significant correlation between sexual orientation concealment and mental health issues such as "depression, anxiety, distress, [and] problematic eating," especially among young people).

[17] See, e.g., 3 CT 638 (divorced mother opposed to Policy explaining her son's fear of "com[ing] out to his father . . . who openly posts anti-gay, anti-trans rhetoric on his social media" and "who harasses trans kids online for fun"); 3 CT 712 (parent of LGBTQ child opposing Policy because "[n]ot every home is safe" and "[n]ot every parent is safe"); see also 3 CT 730 (declaration explaining that "not all parents are supportive"; that transgender

(continued…)

Recent evidence further bears out the risks of harm caused by the Policy and similar enactments. At the August 27, 2024 Board meeting, a witness informed the Board that in the year since the Policy has been in effect, a thousand TVUSD students have called a statewide hotline for LGBTQ youth, averaging 88 students per month—more than three times as many calls, on average, compared to LGBTQ youth in communities without a forced disclosure policy. Two-thirds of the TVUSD students calling the hotline expressed fear of being outed under the Policy.[18] And, more generally, researchers have found strong and statistically significant evidence of a "causal relationship" between laws "restrict[ing] the rights of transgender and non-binary people" and increases in suicide attempts by transgender and non-binary individuals; for example, two years after the enactment of an "anti-transgender law," transgender and gender non-binary youth aged 13-17 were 72 percent more likely to have attempted suicide in the past year.[19]

TVUSD students "rightly fear abuse, violence, or even being kicked out of their home if they are forcibly outed"; and that a "trans TVUSD student . . . [had already been] kicked out of his home by unsupportive parents after his parents found a name change in his school records").

[18] TVUSD, *AUG-27-2024 6:00 PM ◊ Regular Meeting ◊ Open Session ◊ TVUSD Governing Board*, YouTube (Aug. 27, 2024), at 53:38 <https://tinyurl.com/2rj92m3r> (as of Oct. 1, 2024).

[19] Lee et al., *State-Level Anti-Transgender Laws Increase Past-Year Suicide Attempts Among Transgender and Non-Binary Young People in the USA* (Sept. 26, 2024), Nature Human Behavior <https://tinyurl.com/4hm7ytan> (as of Oct. 1, 2024).

Rather than promoting positive parental involvement in students' education and mental health, the Policy instead causes students to further hide who they are—and severely threatens their mental health—thereby denying students the care and support they need, including the support that could give students tools to enable them to have conversations about their gender identity with family. A Policy that is so broad as to place students at risk and require school staff to disclose, even when it will result in harm, is not necessary or narrowly tailored to improving student well-being or mental health. It does exactly the opposite of that stated purpose.

Second, gender-neutral and less restrictive alternatives are available but were not considered, which is "fatal" to the Policy. (*Connerly v. St. Personnel Bd.*, *supra*, 92 Cal.App.4th at p. 37 [use of suspect classification is invalid when neutral alternatives are available or the governmental entity failed to consider such alternatives].) Perhaps most obviously, the Policy is not narrowly tailored because it lacks any exception for students who may face physical, psychological, or emotional harm at home as a result of the forced disclosure of their gender identity to their parents. (See, e.g., *Cleveland v. Taft Union High Sch. Dist.*, *supra*, 76 Cal.App.5th at p. 799 [school district owes duty of care to protect students from harm at the hands of third parties]; *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"].)

TVUSD argues on appeal that parents must be notified of "critical health and safety information." (Resp'ts' Br., p. 61.) But as the San Bernardino Superior Court observed when enjoining CVUSD's identical forced disclosure policy, the District could have "adopt[ed] a policy that more directly focuses on the existing problems," such as bullying, mental health, or psychological distress, "instead of focusing on the protected group." (Benner Decl., Ex. B at p. 15.) 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, school districts, including TVUSD itself, have adopted policies and regulations that enable schools to partner and communicate with parents without putting students at risk. Such policies have included resources, support, and counseling to help students initiate conversations about their gender identity with their families in the time and manner of the family's choosing; prioritizing a student's consent and best interest before disclosure; and providing for disclosure when there is strong evidence of the need to protect a student's physical health or mental well-being.[20] All such policies better support families and promote positive parental involvement without placing students

[20] See, e.g., TVUSD Administrative Regulation 5145.3 <https://tinyurl.com/76zhruzk> (as of Oct. 1, 2024); see also former CVUSD Administrative Regulation 5145.3 (Benner Decl., Ex. C at p. 212).

at risk. Because alternative, non-discriminatory policies exist that would address the District's purported interests in supporting mental health and involving parents in schools, the Policy fails strict scrutiny as a matter of law. (See *Connerly v. St. Personnel Bd.*, *supra*, 92 Cal.App.4th at p. 37.)

Because the Policy is facially discriminatory and is not necessary or narrowly tailored to support a compelling interest, TVUSD cannot satisfy strict scrutiny. Not only are plaintiffs likely to succeed on the merits of their challenge to the Policy, but such a constitutional violation inflicts irreparable harm that must be remedied by injunctive relief. (*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, 1040-1041.)

C. Because the Policy fails strict scrutiny, the District's arguments about parental rights are irrelevant

TVUSD argues that this Court should ignore the inherently discriminatory nature of the Policy because of purported parental rights, which it claims to locate both in substantive due process doctrine and the Education Code. (Resp'ts' Br., pp. 59-61.) These arguments are both irrelevant and wrong, and the Court should disregard the District's red herring.

First, irrespective of the scope and nature of these asserted parental rights, the Policy fails strict scrutiny. When defending its discriminatory Policy, TVUSD's assertion of a countervailing

right is relevant only if it can establish—and it cannot—that the Policy is necessary and narrowly tailored to achieve a compelling interest. "The strict scrutiny standard of review applies regardless of whether a law is claimed to be benign or remedial." (*Connerly v. St. Personnel Bd.*, *supra*, 92 Cal.App.4th at p. 35; see also *Richmond v. J.A. Croson Co.* (1989) 488 U.S. 469, 493 ["Absent searching judicial inquiry into the justification . . . there is simply no way of determining what classifications are 'benign' or 'remedial' and what classifications are in fact motivated by illegitimate notions"].) Courts require a law to satisfy strict scrutiny, for example, even when the challenged law could claim federal equal protection rights as its purpose, such as when the challenged law seeks to remedy discrimination. (See, e.g., *Connerly*, at p. 35.) Thus, no matter the source or scope of the asserted parental rights, the Policy is facially discriminatory, and was also passed with obvious discriminatory intent. (*Ante*, pp. 17-22.)

Second, TVUSD's reference to *Mirabelli v. Olson* (S.D. Cal. 2023) 691 F.Supp.3d 1197, is irrelevant because that case involved a different policy not at issue here. As the District admits, the policy challenged and enjoined in *Mirabelli* "*prohibited* school personnel from disclosing to a student's parents that the student . . . wanted to be addressed by a new name or pronouns." (Resp'ts' Br., pp. 59-60.) But that policy is not TVUSD's policy, and this case is not a vehicle for TVUSD to assert claims about *other* policies—and certainly not by way of violating students' fundamental right to be free from

discrimination. (Cf., e.g., *King v. South Jersey Nat. Bank* (1974) 66 N.J. 161, 175 ["State action is not invoked; it is restrained. So, as shield rather than sword, does the [Fourteenth] Amendment secure to the people due process and equal protection of the laws"]; *Railway Mail Assn. v. Corsi* (1945) 326 U.S. 88, 98 (conc. opn. of Frankfurter, J.) ["To use the Fourteenth Amendment as a sword against [a law prohibiting discrimination] would stultify that Amendment"]; *Hughes v. Super. Ct.* (1948) 32 Cal.2d 850, 854-855 [compelling discrimination is "an unlawful objective"].)

Third, to the extent that TVUSD argues that the Policy supports parental due process rights (see Resp'ts' Br., pp. 59-60), TVUSD is wrong. There is no substantive due process right to compel schools to adopt a policy that requires school staff to discriminate against transgender and gender nonconforming students or place them in harm's way. Rather, the U.S. Supreme Court has repeatedly made clear that parental due process rights have "limited scope" in the educational context. (*Norwood v. Harrison* (1973) 413 U.S. 455, 461; *Runyon v. McCrary* (1976) 427 U.S. 160, 177.) In *Runyon*, the Court rejected the claim that parental rights permitted schools to discriminate against students based on race, stating that parental rights to direct the upbringing of their children—in the school context—are limited to the facts of *Pierce v. Society of Sisters* (1925) 268 U.S. 510 (right to send child to private school) and *Meyer v. Nebraska* (1923) 262 U.S. 390 (right to provide instruction in languages other than English at private school). (*Runyon*, at p. 177.)

Accordingly, federal courts of appeal have unanimously held that parents do not have "a constitutional right to direct . . . school administration," let alone to compel school staff to report that students are members of a protected class. (*Parents for Privacy v. Barr* (9th Cir. 2020) 949 F.3d 1210, 1231 [rejecting argument that "the Supreme Court has extended parental rights into the classroom"]; *Fields v. Palmdale Sch. Dist.* (9th Cir. 2005) 427 F.3d 1197, 1204-1206 [recognizing "the constitutionality of a wide variety of state actions that intrude upon the liberty interest of parents in controlling the upbringing and education of their children," and reaffirming that parents do not have "a right to compel public schools to follow their own idiosyncratic views"]; *Parker v. Hurley* (1st Cir. 2008) 514 F.3d 87, 102 [collecting cases for this "well recognized" principle].) In this respect, the Policy is no different than hypothetical policies forcing schools to notify parents before letting a student use an empty classroom to pray, or before allowing a student to attend prom with a student of a different race or the same sex. (Cf. generally *Perez v. Sharp* (1948) 32 Cal.2d 711.) Thus, courts have rejected claims like the District's parental rights arguments, which raise serious constitutional problems. (*Parents for Privacy*, at pp. 1217-1218.)

Moreover, the U.S. Supreme Court consistently holds that States may limit parental authority where, as here, "parental decisions will jeopardize the health or safety of the child." (*Wisconsin v. Yoder* (1972) 406 U.S. 205, 233-234; see also *Prince v. Massachusetts*, *supra*, 321 U.S. at pp. 166-167; accord *In re Marilyn H.*, *supra*, 5 Cal.4th at p. 307 ["[T]he welfare of a child is

a compelling state interest that a state has not only a right, but a duty, to protect"]; *Cleveland v. Taft Union High Sch. Dist.*, *supra*, 76 Cal.App.5th at p. 799 [school district owes duty of care to protect students from harm at the hands of third parties].)

Fourth, the Education Code simply does not confer the sort of parental rights the District endeavors to invoke—and certainly not at the expense of the express antidiscrimination provisions of sections 200 and 220 therein. TVUSD cites sections 51100 and 51101 to argue that the Policy is consistent with parental rights under the Education Code. (Resp'ts' Br., pp. 60-61.) But not a single "right" or "opportunity" enumerated in section 51101 addresses or requires disclosure of sensitive information about a student's gender identity or expression—especially not on a facially discriminatory basis. (See Ed. Code, § 51101, subds. (a)-(b).) Nor does the Legislature's encouragement of "collaborative efforts" between parents or guardians and schools give license to discriminate based on the protected characteristics of a student's gender identity or expression. (See Ed. Code, § 51100, subd. (d).)

Again, the District's (incorrect) arguments that the Forced Disclosure Policy protects parental rights do not alter the strict scrutiny analysis that applies to the facially discriminatory Policy or the conclusion that the Policy fails strict scrutiny and is therefore unlawful. As explained above (*ante*, pp. 22-30), because the Policy is not necessary or narrowly tailored to serve a compelling interest, it violates students' right to equal protection under the California Constitution and should therefore be enjoined.

II. THE CURRICULUM RESOLUTION VIOLATES ARTICLE I, SECTION 2 OF THE CALIFORNIA CONSTITUTION

The Curriculum Resolution violates students' rights by restricting their access to information in the classroom while lacking a legitimate pedagogical purpose for doing so.

The guarantees of free speech and press under article I, section 2 of the California Constitution encompass "students' right to receive information and ideas through classroom teaching and reading." (*McCarthy v. Fletcher* (1989) 207 Cal.App.3d 130, 144, 146, fn. 3; see also *Smith v. Novato Unified Sch. Dist.* (2007) 150 Cal.App.4th 1439, 1465 [even brief loss of free speech rights constitutes irreparable injury].) In light of this important right, a restriction on what books and instructional materials students receive must be "reasonably related to legitimate educational concerns." (*McCarthy*, at pp. 141, 146 [bare ideological opposition to *One Hundred Years of Solitude* as a classroom or curricular resource was not reasonably related to a legitimate educational concern]; see also *Arce v. Douglas* (9th Cir. 2015) 793 F.3d 968, 983 [restrictions on "a student's access to materials otherwise available may be upheld only where they are reasonably related to legitimate pedagogical concerns"].)

A. The Resolution unlawfully limits students' ability to learn about and discuss a broad range of topics

The Resolution censors accurate, historically significant educational material for no legitimate educational purpose—thereby violating article I, section 2. The Resolution's terms are sweeping and chilling, censoring a broad swath of American history by specifying a number of ideas and topics that "cannot be

taught." (1 CT 236-237.) For example, under prohibition (h), students "cannot be taught" about the connection between slavery and the "founding" or "independence" of the United States, directly restricting information about the country's early history. Prohibition (b) similarly states that students "cannot be taught" that individuals are members of an "oppressor" or "oppressed class because of race or sex," while prohibition (d) prevents schools from discussing the possibility that an individual should "receive favorable treatment due to the individual's race or sex," and prohibition (2) censors the idea that "[r]acism is ordinary, the usual way society does business."

These prohibitions broadly censor the teaching of many chapters of U.S. history (and current events) in which the Nation sought to overcome racial or gender inequality, and would restrict foundational historic texts like the speeches and writings of Martin Luther King Jr., as well as seminal court rulings.

King's Letter from Birmingham Jail, for example, expressly describes the existence of "oppressor" and "oppressed" races in the context of segregation—while the Resolution directly censors the idea that individuals can belong to "the oppressor class or the oppressed class because of race." (Compare King, Letter from Birmingham Jail with 1 CT 237; see *Brown v. Bd. of Ed.* (1954) 347 U.S. 483, 494 ["separating the races is usually interpreted as denoting the inferiority" of one group to the other, creating racial hierarchy].) Students may not receive information about the history of the Fourteenth Amendment, the lives of Black Americans during Reconstruction, or the purpose and work of the

Freedmen's Bureau, because prohibition (d) of the Resolution bars teaching that "an individual should receive favorable treatment due to the individual's race." (See, e.g., *Jones v. Alfred H. Mayer Co.* (1968) 392 U.S. 409, 422-436 [discussing history of Civil Rights Act of 1866].) Nor can students learn about the Jim Crow era—when ordinary people and commonplace discriminatory laws perpetrated racism—because prohibition (2) forbids teaching that "[r]acism is ordinary, the usual way society does business."

Similarly, students cannot meaningfully learn about or discuss our government's treatment of Native Americans, given prohibitions (2) and (b)—which suppress, respectively, the ideas that "[r]acism is ordinary, the usual way society does business," and that individuals may belong to "oppressed" or "oppressor" classes "because of race." But the systematic oppression of Native Americans by white-dominated government agencies is well documented. (See, e.g., *Haaland v. Brackeen* (2023) 599 U.S. 255, 298-299 (conc. opn. of Gorsuch, J.) [describing federal government's "dark[] designs" of "destroying tribal identity and assimilating Indians" into "the dominant race," creating "a now-familiar nightmare for Indian families"]; *Oklahoma v. Castro Huerta* (2022) 597 U.S. 629, 688 (dis. opn. of Gorsuch, J.) [describing state-sanctioned "elaborate schemes" of "legalized robbery" "to deprive Indians of their lands, rents, and mineral rights"].)

So too with the women's suffrage movement and the Nineteenth Amendment, or Supreme Court cases recognizing the

lengthy history of discrimination against women and providing recompense, as prohibitions (b) and (d) encompass sex as well as race: students "cannot be taught" that individuals can belong to an "oppressor" or "oppressed class because of . . . sex," or that an individual should "receive favorable treatment due to the individual's . . . sex." (But see, e.g., *Kahn v. Shevin* (1974) 416 U.S. 351, 353 [recognizing need for efforts to remedy "overt discrimination" against women and "the socialization process of a male-dominated culture"].)

And likewise with recent history and current events: students may be prevented from learning, for example, about efforts to address disproportionate police violence against Black Americans (e.g., *Leaders of a Beautiful Struggle v. Balt. Police Dept.* (4th Cir. 2021) 2 F.4th 330, 347 [Black communities are "over-policed" and suffer "increased exposure to incidents of police violence"]) or ongoing, modern-day segregation in schools (e.g., *People v. Sausalito Marin City Sch. Dist.* (Super. Ct. S.F. City and County, 2019, No. CGC-19-578227) [judgment against school district that "knowingly and intentionally maintained and exacerbated existing racial segregation, and had established an intentionally segregated school" within last decade]), as any meaningful discussion of these topics these would necessarily expose students to the forbidden concepts of "oppressor" and "oppressed" groups, and that remedies for racial discrimination can include "favorable treatment" of impacted individuals and communities based on race.

TVUSD protests that the Resolution does not forbid teachers from teaching students about civil rights history and does not censor King's Letter from Birmingham Jail: "Nothing in the language prohibits teaching that *Dr. King believed*" his statements in that seminal document of the Civil Rights Movement. (Resp'ts' Br., p. 28.) But this assertion, far from supporting the District's position, in fact illustrates the breadth of the Resolution's censorship—the clear implication is that a teacher *would* violate the Resolution by assigning Letter from Birmingham Jail without also stating the proviso that "*Dr. King believed*" what he wrote therein.[21] And such a proviso, in turn, would imply that basic historical facts that underlie our Nation's civil rights laws—such as the fact that Black people had endured "long years of oppression" (King, Letter from Birmingham Jail)—are merely Dr. King's "belief," a truly pernicious and counter-historical idea. In short, the Resolution broadly and improperly restricts students' ability to learn about and discuss important developments and ideas throughout American history, and indeed generates an affirmative risk of disinformation in the classroom.

[21] Further, even if TVUSD teachers could assign Letter from Birmingham Jail—despite its conflict with prohibition (b) of the Resolution—they would be required to "focus[] on the flaws" of King's ideas. (See 1 CT 237.) This is a paradigm of the "rigid and exclusive indoctrination" forbidden under the California Constitution. (See *McCarthy v. Fletcher*, *supra*, 207 Cal.App.3d at p. 146.)

B. The Resolution is not related to a legitimate pedagogical concern

The Resolution's sweeping curricular restrictions run afoul of article I, section 2 because they were not enacted "for legitimate educational reasons." (See *McCarthy v. Fletcher* (1989) 207 Cal.App.3d at p. 141.) The Resolution seeks to impose "rigid and exclusive indoctrination" (see *id.* at p. 146) and was enacted out of animus against equitable curricula that present diverse and inclusive perspectives (cf. *Arce v. Douglas*, *supra*, 793 F.3d at pp. 983-984, 986 [ethnic studies curriculum can "offer great value to students," and restrictions on students' access to material must reasonably relate to "legitimate pedagogical concerns," such as combating racism]).

The Board's animus and intent to indoctrinate are evident from the statements of Board members who voted in favor of the Resolution, which reveal their ideological opposition to diverse and inclusive perspectives in education. During the meeting at which the Board adopted the Resolution, for example, one Board member who voted for the Resolution downplayed the significance of slavery in U.S. history, asserting that "every skin color has both been a slave and owned a slave," and criticized CRT as "uniquely un-American."[22]

The Board's statements and actions in the course of implementing the Resolution further demonstrate the Board's impermissible intent. (See, e.g., *People v. Preller* (1997) 54

[22] TVUSD, *December 13, 2022 - 6:00 PM - Open Session – TVUSD Governing Board Meeting*, YouTube (Dec. 13, 2022), at 5:33:19 <https://tinyurl.com/bb8jtvm9> (as of Oct. 1, 2024).

Cal.App.4th 93, 98 [collecting cases considering postenactment legislative statements as "evidence of earlier legislative intent"].) Notably, the Board hired a consultant to train TVUSD staff on CRT, including "the specific content of the resolution."[23] The hired consultant has dismissed the persistence of systemic racism after the passage of civil rights legislation in the 1960s as a "myth,"[24] and has espoused invidious stereotypes about Black Americans, attributing the disproportionate arrest rate of Black Americans to "the gangster sub-culture, poverty, poor education, growing up in homes without a father, etc."[25] (All of these statements were publicly available prior to the Board's decision

---

[23] TVUSD, *Regular Meeting of the Board of Trustees of the Temecula Valley Unified School District 03/14/2023 - 4:00 PM*, Item O.2, "Consultant Agreement: Arend Law Firm" (Mar. 14, 2023) <https://tinyurl.com/43tnyhb7> (as of Oct. 1, 2024). This consultant also drafted another school district's resolution prohibiting the teaching of CRT, on which the TVUSD Board modeled the Resolution.

[24] Arend, *The Myth of "Systemic Racism"*, Cal Coast News (Sept. 2, 2020) (hereafter "Myth") <https://tinyurl.com/3rum9xzs> (as of Oct. 1, 2024). But enforcing this viewpoint, as the Resolution does, would limit, e.g., discussion of studies like these: Abel & Burger, *Unpacking Name-Based Race Discrimination*, IZA - Inst. of Lab. Econ. (June 2023) (finding systematic discrimination against job applicants with distinctively Black names); Jones & Schmitt, *A College Degree Is No Guarantee*, Ctr. for Econ. and Pol'y Res. (May 2014), p. 1 (finding that unemployment rate for Black college graduates is double that of college graduates in general, and that more than half of Black graduates are employed in jobs that do not require college degree, "reflect[ing] ongoing racial discrimination in the labor market").

[25] "Myth," *supra*.

to hire the consultant.) One then-Board member[26] who voted for the Resolution, after noting his "many conversations" with the hired consultant about CRT, described the consultant as "an expert."[27] TVUSD subsequently hosted a "workshop" on CRT, which was billed as being "led by a diverse panel of experts"; however, all of the panelists, including TVUSD's consultant, were "in disagreement with CRT," and the then-Board President later stated that the workshop's aim was to "raise awareness of the potential harms of CRT and its associated tenets."[28]

During the July 18, 2023 Board meeting, the then-Board President continued down the path of censorship, asserting that "there is an intrinsic moral evil when we allow obscenity, pornography, vulgarity, and erotica in our school district," which "should be dealt with"; he then listed 16 books—including *The*

---

[26] Board member Danny Gonzalez resigned in December 2023. (Seshadri, *Joseph Komrosky's Recall Leaves Temecula Valley Unified's Future Uncertain* (June 20, 2024) EdSource <https://tinyurl.com/2zn2n36k> [as of Oct. 1, 2024].)

[27] TVUSD, *March 14, 2023 - 6:00 PM - Open Session - TVUSD Governing Board Meeting*, YouTube (Mar. 14, 2023), at 2:55:35 <https://tinyurl.com/mu5tj7s2> (as of Oct. 1, 2024).

[28] TVUSD, *Temecula Valley Unified School District Governing Board Hosts Expert Panel Workshop* (Mar. 10, 2023) <https://tinyurl.com/4ummc6pd> (as of Oct. 1, 2024); Nelson, *California School District Hires Anti-Critical Race Theory Consultant*, Fox News (Mar. 20, 2023) <https://tinyurl.com/wuscx3pt> (as of Oct. 1, 2024); TVUSD, *Statement from the TVUSD Board President and Board Clerk in Response to Recent Media Reports on the March 22, 2023, Special Meeting* (Mar. 23, 2023) <https://tinyurl.com/3944zr2a> (as of Oct. 1, 2024).

Bluest Eye by Toni Morrison and *The Kite Runner* by Khaled Hosseini—and demanded to know "the names of who put these books in our libraries," threatening to disclose them "for accountability, transparency to the public."[29] Another then-Board member suggested forming a committee to "flag" or "eliminate" potentially "objectionable" books.[30] And a TVUSD official informed the California Department of Justice that, at the Board's direction, TVUSD had restricted students' access to all of the hundreds of biographies included as supplemental social studies materials, in order to censor a biography of San Francisco Supervisor Harvey Milk, California's first openly gay elected official and an LGBTQ rights leader.[31] The Board restricted this material even though a review by TVUSD educators found no "sexualized" content in any of the restricted biographies,[32] thereby intentionally removing a wide swath of information about historical figures from the curriculum without a legitimate educational reason. (See *McCarthy v. Fletcher*, *supra*, 207 Cal.App.3d at p. 146.)

---

[29] TVUSD, *July 18, 2023, 6:00 PM - Open Session - TVUSD Governing Board Meeting*, YouTube (July 18, 2023), at 3:15:34 <https://tinyurl.com/4v2shnwv> (as of Oct. 1, 2024).

[30] *Id.* at 3:19:23.

[31] TVUSD, *Special Meeting of the Board of Trustees of the Temecula Valley Unified School District 07/21/2023 - 7:00 PM*, Item G.2, "TCI Elementary Social Science Curriculum" (July 21, 2023) <https://tinyurl.com/5dp985k4> (as of Oct. 1, 2024); Emails from TVUSD Assistant Superintendent to Cal. Dept. of Justice (Nov. 27 & Dec. 7, 2023) (Benner Decl., Exs. D-E).

[32] See, e.g., 3 CT 737, 748.

Given this evidence of the Board's improper purpose in enacting the Resolution, it is clear that the Resolution is unconstitutional under the standard set forth in *McCarthy*. As previously explained (*ante*, pp. 35-39 & fn. 21), the Resolution restricts students' ability "to receive information and ideas through classroom teaching and reading" (see 207 Cal.App.3d at p. 144).[33] And rather than being based on legitimate pedagogical concerns, these restrictions are rooted in the Board's intent to impose "rigid and exclusive indoctrination" (see *id.* at p. 146) and its animus against diverse and inclusive perspectives in curricula. As such, the Resolution should have been preliminarily enjoined for violating article I, section 2 of the California Constitution.

Despite the tremendous censorial sweep of the Resolution, the superior court held that the Resolution does not "infringe on the rights of students to receive information," and despite the

---

[33] While the Resolution does not expressly prohibit teaching a particular topic, assigning a particular reading, or conducting a particular discussion, the proper analysis under article I, section 2 is whether the Resolution restricts access to *any* information (and does so without a legitimate educational purpose). It clearly does; as discussed above (*ante*, pp. 35-39 & fn. 21), teachers cannot assign King's Letter from Birmingham Jail, or Justice Gorsuch's accounts of Native American history, without running afoul of the Resolution. In fact, these broad, poorly defined prohibitions are, in a sense, even more troubling than the type of discrete (albeit also harmful to students) restrictions in *McCarthy*, since a much larger swath of critical material is censored. (Cf. *McCarthy v. Fletcher*, *supra*, 207 Cal.App.3d at pp. 141, 144, fn. 2, 146 [addressing whether two individual novels could be removed from English curriculum and classroom shelves].)

evidence of the Board's improper purpose, the court found "that the Resolution is reasonably related to a legitimate pedagogical concern." (6 CT 1692.) This was legal error, for three reasons.

First, the superior court implausibly concluded that the Resolution "does not appear to . . . seek[] to deny access to information." (6 CT 1692.) But, as discussed above (*ante*, pp. 35-39 & fn. 21), the Resolution broadly limits students' ability to learn about and discuss important topics in American history and current events. The superior court also misstated an express directive of the Resolution: it found that "the Resolution allows CRT to be discussed, but must *include* its flaws," when in fact, the Resolution provides that any instruction on CRT must "*focus[] on* the flaws in Critical Race Theory." (Compare 6 CT 1692 [italics added] with 1 CT 237 [italics added].) By requiring teachers to "focus[] on the flaws in Critical Race Theory," if CRT is to be discussed at all, the Resolution violates students' right to receive information under the California Constitution. (See *McCarthy v. Fletcher*, *supra*, 207 Cal.App.3d at p. 146 [prohibiting "rigid and exclusive indoctrination" in curriculum decisions].)

Second, the superior court uncritically—and erroneously—accepted "that the Resolution is reasonably related to a legitimate pedagogical concern." (6 CT 1692.) In so doing, the superior court failed to scrutinize the Resolution as required by law. Even if the Resolution were reasonably related to a legitimate educational concern—which it is not—that alone would not suffice; article I, section 2 requires a legitimate

educational concern to be the true reason for a curriculum restriction, "not just a pretextual expression for exclusion because the board disagrees with the religious or philosophical ideas expressed." (See *McCarthy v. Fletcher*, *supra*, 207 Cal.App.3d at p. 144.)

As discussed above (*ante*, pp. 40-43), there is ample evidence that the Board enacted the Resolution out of ideological opposition to diverse perspectives in education and a proclivity for censorship, neither of which is a legitimate pedagogical concern. The Resolution's directive to "focus[] on the flaws in Critical Race Theory," which the superior court mischaracterized (see 6 CT 1692), further shows that the Board unlawfully enacted the Resolution out of ideological animus. By ignoring such evidence and failing to examine the true purpose behind the Resolution, the superior court abused its discretion.

Third, the superior court also suggested that section 233.5 of the Education Code supports the Resolution. That is not a remotely accurate understanding of section 233.5, which merely instructs teachers "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." Teaching historic documents like King's Letter from Birmingham Jail, or discussing basic concepts such as the existence of "oppressor" and "oppressed" races under segregation, in no way conflicts with a teacher's responsibility to convey morality, truth, citizenship, dignity, equality, or any other value listed in

section 233.5. To the contrary, few modern texts have been as important to our Nation's history or bending its moral arc towards justice. And students undoubtedly have a right, under article I, section 2, to read and discuss this foundational text, its historical context, and its continued relevance.

In short, the superior court abused its discretion by ignoring the express text of the Resolution, which unlawfully restricts access to historical information and discussion of current events without a legitimate educational purpose; disregarding evidence of the Board's improper purpose in enacting the Resolution; and misapplying section 233.5 of the Education Code.

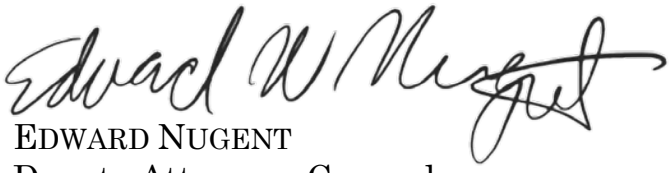
CONCLUSION

For these reasons, the Court should reverse the order denying a preliminary injunction with instructions to enter a preliminary injunction against the Forced Disclosure Policy and Curriculum Resolution.

October 1, 2024

Respectfully submitted,

ROB BONTA
Attorney General of California
MICHAEL L. NEWMAN
Senior Assistant Attorney General
LAURA L. FAER
JAMES F. ZAHRADKA II
Supervising Deputy Attorneys General
JONATHAN BENNER
ALEXANDER SIMPSON

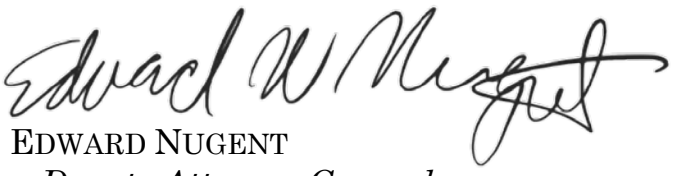


EDWARD NUGENT
Deputy Attorneys General
Attorneys for Amicus Curiae the Attorney General of the State of California

CERTIFICATE OF COMPLIANCE

I certify that the attached Brief of Amicus Curiae the Attorney General of the State of California in Support of Plaintiffs-Appellants uses a 13 point Century Schoolbook font and contains 9,602 words.

ROB BONTA
Attorney General of California



EDWARD NUGENT
Deputy Attorney General
Attorney for Amicus Curiae the Attorney General of the State of California

October 1, 2024