

Court of Appeal No.

G064332

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION THREE**

MAE M., THROUGH HER GUARDIAN AD LITEM ANTHONY M., et al.

Appellants-Plaintiffs

vs.

JOSEPH KOMROSKY, et al.

Respondents-Defendants

RESPONDENTS' BRIEF

Appeal from Superior Court of Riverside

Case No. CVSW2306224

The Honorable Eric Keen

Department 6

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CERTIFICATE OF INTERESTED ENTITIES OR PARTIES

Pursuant to California Rules of Court, Rule 8.208, Respondents hereby submit the following certificate of interested entities or persons:

I, Julianne Fleischer, know of no other entity or person that has a financial or other interest in the outcome of the proceeding that I reasonably believe the Justices should consider in determining whether to disqualify themselves under California Rules of Court, Rule 8.208.

DATED: August 29, 2024

Respectfully Submitted,

/s/ Julianne E. Fleischer

Julianne E. Fleischer

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I. INTRODUCTION

The lower court correctly denied Appellants¹ request for a preliminary injunction as to both Resolution No. 2022-23/21 [“Resolution”] and Board Policy 5020.1 [“the Policy”]. (6 Clerk’s Transcript (“CT”) 1669-77 [“Opinion”].)

Recognizing that “racism has no place in American society and especially not in the Temecula Valley Unified School District,” the Temecula Valley Unified School District Board of Trustees [“Board”], pursuant to its authority, adopted the Resolution which provides that Critical Race Theory [CRT] as defined therein is “a divisive ideology.” (1 CT 75-76.) The Resolution prohibits the teaching of “specific elements of Critical Race Theory” and certain “doctrines derived from Critical Race Theory.” (1 CT 75-78.) The Resolution does not categorically ban instruction on CRT as it permits social science courses to “include instruction about Critical Race Theory, provided that such instruction plays only a subordinate role in the overall course and provided further that such instruction focuses on the flaws in Critical Race Theory.” (1 CT 77.)

In an effort to “foster trust between the District and parent(s)/guardian(s) of its students” and “assist such students in maximizing their potential,” the Board adopted the Policy. (1 CT 80.) The Policy requires school personnel to notify parents of essential

¹ Appellants include the Temecula Valley Educators Association and individual Temecula Valley Unified School District teachers, students, and parents [collectively, “Appellants”].

information regarding their children, including when their child is “[r]equesting to be identified or treated, as a gender (as defined in Education Code section 210.7) other than the student’s biological sex or gender listed on the student’s birth certificate or any other official records.” (1 CT 80-83.)

Local school boards have broad discretion in the management of school affairs, including formulating educational policy. (*Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico* (1982) 457 U.S. 853, 864 [“Pico”].) Appellants seek to circumvent this discretion by lodging unjustified accusations against Respondents Temecula Valley Unified School District [“TVUSD” or “District”] and its school board members [collectively, “the Board”].² (Opening Brief (“Op. Br.”), pp. 20-41.) The lower court correctly held that Appellants are not likely to succeed on the merits of their claims and that the balance of harms weighs in favor of Respondents. (Opinion, 6 CT 1676-77.) The Court should affirm the lower court’s holding for the following reasons.

First, Appellants should not succeed on the merits of their vagueness claim because the Resolution clearly delineates the proscribed conduct. Perfect clarity has never been required of a statute.

² Respondents include Joseph Komrosky, Jennifer Wiersma, Danny Gonzales, Allison Barclay, Steven Schwarts, in their official capacity as members of Temecula Valley Unified School District Board of Trustees, and Temecula Valley Unified School District [collectively, “Respondents”]. Joseph Komrosky and Danny Gonzales are no longer members of the Board and no replacements have been made as of this date.

(*United States v. Williams* (2008) 553 U.S. 285, 304.) Nevertheless, the Resolution gives clear notice to teachers by defining the 13 proscribed racially prejudiced concepts that are excluded from the curriculum. The Resolution, in doing so, prohibits arbitrary enforcement.

Second, Appellants should not succeed on the merits of their free speech claim because the Board, in an effort to eliminate racist ideologies that elevate one race over the other, acted within its broad discretion when it adopted the Resolution. (*Pico, supra*, 457 U.S. at 863 [“The Court has long recognized that local school boards have broad discretion in the management of school affairs.”].)

Third, Appellants should not succeed on the merits of their education claim because neither state nor federal law requires school districts to include Critical Race Theory as part of their curricula. The Board has broad discretion when creating the parameters of its curricula.

Fourth, Appellants should not succeed on the merits of their equal protection claim because the Policy applies to all students, does not discriminate on the basis of sex or gender, and serves to protect the wellbeing of children while also upholding parents’ fundamental right to direct the care and upbringing of their children, including the right to be informed of and involved in all aspects of their child’s education.

Finally, Appellants cannot demonstrate actionable harm, let alone irreparable harm, because Respondents did not violate any constitutional provision. Indeed, it is axiomatic that “[a]ny time a

[government] is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” (*Maryland v. King* (2012) 133 S. Ct. 1, 3 [Robert, C.J., in chambers] [“King”].)

II. STATEMENT OF THE CASE

A. Factual Background

1. The Resolution

On December 13, 2022, the Board, consistent with its authority, enacted the Resolution. (1 CT 75-78.) Appellants primarily challenge the Resolution because it prohibits the teaching of specific elements and doctrines of CRT. (1 CT 9, 11-12, 42, 75-78.) The Board prohibited these CRT elements and doctrines from being taught because CRT “violates the fundamental principle of equal protection under the law....” and the CRT elements and doctrines are not otherwise required to be taught in school (1 CT 76.)

The Board found that the theory conflicted with its educational values, explaining that CRT “is a divisive ideology that assigns moral fault to individuals solely on the basis of an individual’s race and, therefore, is itself a racist ideology.” (*Id.* at p. 76.) The District “desires to uplift and unite students” and “values all students, respects diversity, celebrates the contributions of all, and encourages culturally relevant and inclusive teaching practices. The [Board] further believes that the diversity that exists among the District’s community of students, staff,

parents, guardians, and community members is an asset to be honored and valued....” (*Id.* at p. 75.) As such, “racism has no place in American society and especially in the Temecula Valley Unified School District.” (*Id.*)

The Resolution states that TVUSD will not use CRT or “other similar frameworks” as a “source to guide how topics related to race will be taught.” (*Id.* at p. 76.) The Resolution explains what “other similar frameworks” encompass by providing a list of specific elements and doctrines derived from CRT along with an explanation for each doctrine. (*Id.*) Specifically, the Resolution states that the following elements of CRT cannot be taught:

- (1) Racism is racial prejudice plus power, a concept that is often used to argue that (i) only individuals classified as “white” people can be racist because only “white” people control society and (ii) individuals in ethnic minorities cannot be racist because they do not control society.
- (2) Racism is ordinary, the usual way society does business.
- (3) “Interest convergence” or “material determinism”, according to which the incentive to move away from racist policies depends primarily on the self-interest of the oppressor class, i.e. “whites”.
- (4) “Differential racialization”, according to which the “dominant society racializes different minority groups at different times, in response to different needs such as the labor market” []
- (5) The “voice-of-color” thesis, according to which merely “minority status ... brings with it a presumed competence to speak about race and racism,” a concept often used to

discredit opposing arguments on the basis of the opposing person's race.

(1 CT 76-77.) The Resolution also instructs school personnel to not teach the following:

- (1) An individual, by virtue of his or her race or sex, is inherently racist and/or sexist, whether consciously or unconsciously.
- (2) Individuals are either a member of the oppressor class or the oppressed class because of race or sex.
- (3) An individual is inherently morally or otherwise superior to another individual because of race or sex.
- (4) An individual should be discriminated against or receive adverse treatment due to the individual's race or sex, or an individual should receive favorable treatment due to the individual's race or sex.
- (5) An individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past or present by other members of the same race or sex.
- (6) An individual should feel discomfort, guilt, anguish or any other form of psychological distress on account of his or her race or sex.
- (7) Meritocracy or traits such as, but not limited to, a hard work ethic or the scientific method are racist or sexist or were created by members of a particular race to oppress members of another race.
- (8) The advent of slavery in the territory that is now the United States constituted the true founding of the United States, or the preservation of slavery was a material motive for independence from England.

(1 CT 77.) The Resolution further states that social science courses can include instruction on CRT, "provided that such instruction plays only

a subordinate role in the overall course and provided that such instruction focuses on the flaws in Critical Race Theory.” (*Id.*)

2. The Policy

The Board adopted the Policy on August 22, 2023, because it “strives to foster trust between the District and parent(s)/guardian(s) of its students.” (*Id.* at 80.) TVUSD supports “the fundamental rights of parent(s)/guardian(s) to direct the care and upbringing of their children, including the right to be informed of and involved in all aspects of their child’s education to promote the best outcomes.” (*Id.*)

Similar to existing state law that requires, at a minimum, parents be notified when a minor seeks to change their official name or sex on a birth certificate³, the Policy requires that parents or guardians be

³ “All applications for change of names shall be made to the superior court of the county where the person whose name is proposed to be changed resides . . . by petition signed by the person or, *if the person is under 18 years of age, by one of the person’s parents, by any guardian of the person, or as specified in subdivision (e)*, or, if both parents are deceased and there is no guardian of the person, then by some near relative or friend of the person, or (B) as provided in Section 7638 of the Family Code.” (Cal. Civ. Proc. Code, § 1276 [emphasis added].)

“If the person whose gender is to be changed is under 18 years of age, *the petition shall be signed either (A) by at least one of the minor’s parents, any guardian of the minor, or a person specified in subdivision (c); or (B) if both parents are deceased and there is no guardian of the minor, by either a near relative or friend of the minor.* The affidavit pursuant to subdivision (a) may be signed by the minor. (Cal. Health & Safety Code, § 103430(b)(1) [emphasis added].)

notified within three days from the date any District employee, administrator, or certificated staff, becomes aware that a student is:

(a) Requesting to be identified or treated, as a gender (as defined in Education Code Section 210.7) 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.

(1 CT 80-81.) The Policy, among other parental notification requirements, also requires that school personnel notify a student's parents when "the student has experienced any significant physical injury while on school property or participating in a school sponsored activity," when school personnel "suspects or has knowledge of a student's suicidal intentions," and when "any incident or complaint of a verbal or physical altercation involving their child, including bullying by or against their child." (*Id.* at pp. 81-82.)

Student Appellants sue under Article I, Section 2(a) of the California Constitution for infringement of the right to receive information (Count II), under Article I, Section 7 and Article IV, Section 16(a) of the California Constitution for infringement of the fundamental right to education (Count III) and intentional discrimination on the basis of race (Count IV), and under California Government Code section 11135 for discrimination on the basis of protected characteristics (Count VI). (*Id.* at pp. 65-69.) Appellant Gwen S. is an LGBTQ student and sues under Article I, Section 7 and Article IV, Section 16(a) for intentional discrimination on the basis of sexual orientation, gender identity, and sex regarding the Resolution (Count V) and Policy 5020.1 (Count VIII), and under Article 1, Section 1 regarding the right to privacy (Count IX). (*Id.* at pp. 67-68, 70-71.)

Appellants Temecula Valley Education Association (“TVEA”), Amy Eytchison, Katrina Miles, Jennifer Scharf, and Dawn Sibby [collectively, “Teacher Appellants”] also bring Counts I through III and Count VI. (*Id.* at pp. 64-66, 68-69.) They also sue for a violation of California Code of Civil Procedure Section 526(a) (Count VII), a violation of Article I, Section 7 of the California Constitution regarding Policy 5020.1 (Count VIII), and a violation of Article I, Section 1 regarding the right to privacy (Count IX). (*Id.* at pp. 69-71.) Appellant Katrina Miles is a minority teacher and sues under Article I, Section 7 and Article IV, Section 16(a) for intentional discrimination on the basis of race (Count IV), and California Government Code section 11135 for

discrimination on the basis of protected characteristics (Count VI). (*Id.* at pp. 66-69.) Appellants Rachel P. and Inez B. (collectively, “Parent Appellants”) are parents of David P. and Violet B, respectively, and also bring Counts II, III, VI, and VII. (1 CT 65-67, 69-70.) Appellant Inez B. also brings Count IV. (*Id.* at pp. 66-67.)

Appellant TVEA is an affiliate of the California Teachers Association and consists of teachers in the District, and other employees.

(1 CT 19-20.) TVEA brings Counts IV and V. (*Id.* at pp. 30-31.) TVEA’s members include individual teacher Appellants Amy Eytchison, Katrina Miles, Jennifer Scharf, and Dawn Sibby. (*Id.* at p. 22.)

B. Relevant Procedural Background

On November 29, 2024, Appellants filed a Motion for Preliminary Injunction in the Superior Court of the State of California for the County of Riverside based only on Count I (void-for-vagueness/Cal. Const., art. I § 7(a)), Count II (infringement of right to receive information/ Cal. Const., art. I § 2(a)), Count III (infringement of right to education/ Cal. Const., art. I § 7/ Cal. Const., art. IV § 16(a)), and Count VIII (equal protection/gender discrimination/ Cal. Const., art. I § 7). (1 CT 165-218.) On February 23, 2024, the lower court denied Appellants’ Motion for Preliminary Injunction. (Opinion, 6 CT 1669-77.)

As to Count I, the lower court found that “Plaintiffs have failed to present sufficient evidence showing probability of prevailing on Count I under the void for vagueness doctrine.” *Id.* at p. 1671.)

As to Count II, the court found that “[i]t has not been shown to the Court’s satisfaction how the prohibition of instruction on 13 precepts found within a Theory, *while still allowing instruction on the Theory itself*, would infringe on the rights of students to receive information.” (*Id.* at p. 1673 [emphasis added].)

As to Count III, the lower court found the following:

[T]hat the showing by the Plaintiffs that actual quality of the district’s program, viewed as a whole, has fallen fundamentally below prevailing statewide standards is insufficient. Additionally, evidence that students have been harmed by the Resolution or are receiving disparate treatment by the terms of the Resolution is insufficient to demonstrate likelihood of success on the merits. Further this Court finds that the Plaintiffs’ claims of harm are conclusory and unfounded.

(*Id.* at p. 1674.)

As to Count VIII, the lower court found that “the Policy applies equally to cisgender and transgender/gender nonconforming students” and that the District’s “purpose in involving parents in the decision-making process and restoring trust is furthered by mandatory parental notification when a student makes any of the request in section 1(a)-(c) of the Policy.” (*Id.* at p. 1676.)

On February 29, 2024, Appellants filed a notice of appeal. (*Id.* at pp. 1716-24.)

III. STANDARD OF REVIEW

The standard of review for a denial of a preliminary injunction is primarily evaluated under the “abuse of discretion” standard. (*Am. Indian Model Sch. v. Oakland Unified Sch. Dist.* (2014) 227 Cal. App. 4th 258, 274.) This means that appellate courts generally defer to the lower court’s decision unless the lower court has clearly exceeded the bounds of reason. (*Tulare Lake Canal Co. v. Stratford Pub. Util. Dist.* (2023) 92 Cal. App. 5th 380, 402 [“Tulare Lake”].) While the factual findings of the lower court are typically upheld if they are supported by substantial evidence, legal questions related to the injunction are reviewed *de novo*. (*People ex rel. Feuer v. FXS Mgmt., Inc.* (2016) 2 Cal. App. 5th 1154, 1159.) This includes situations where the likelihood of the moving party prevailing on the merits can be determined as a matter of law (*American Indian Model Sch., supra*, 227 Cal. App. 4th at p. 274.) While questions of law are reviewed independently, the lower court’s discretionary decisions, such as weighing the interrelated factors (likelihood of success on the merits and the balance of harms), are typically given deference unless there is an abuse of discretion. (*Tulare Lake, supra*, 92 Cal. App. 5th at pp. 402-03.)

IV. ARGUMENT

A. This Court Should Affirm The Lower Court’s Decision Because The Resolution Is Not Unconstitutionally Vague

Appellants contend that the lower court applied an incorrect legal standard in assessing whether the Resolution is unconstitutionally

vague. (Op. Br., p. 20.) However, Appellants apply the same standard and do not propose an alternative standard for consideration on appeal. Their dissatisfaction with the lower court’s decision does not warrant overturning it. While Appellants note that statutes affecting speech require more precise language (Op. Br., pp. 20-21), they cite to the same legal test used by the lower court in addressing vagueness challenges and they do not identify any actual shortcomings of the Resolution. (*Compare* Op. Br., p. 20, *with* Opinion, 6 CT 1670 [citing the same two element test].)

A statute is presumed to be constitutional unless its unconstitutionality is clearly, positively, and unmistakably demonstrated. (*Nisei Farmers League v. Lab. & Workforce Dev. Agency* (2019) 30 Cal. App. 5th 997, 1012; *see also Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal. 3d 582, 604-05 [recognizing that legislative enactments, including local policies, are presumed valid unless proven otherwise].) The void-for-vagueness doctrine prevents the government “from enforcing a provision that ‘forbids or requires the doing of an act in terms so vague’ that people of ‘common intelligence must necessarily guess at its meaning and differ as to its application.’” (*People v. Hall* (2017) 2 Cal. 5th 494, 500 [quoting *Connally v. Gen. Const. Co.* (1926) 269 U.S. 385, 391].) If there is any statutory ambiguity, such ambiguity is “determined by reference to the language itself, the specific context in which that

language is used, and the broader context of the statute as a whole.” (*Robinson v. Shell Oil Co.* (1997) 519 U.S. 337, 341.)

“A law is unconstitutionally vague if it fails to meet two basic requirements: (1) The regulations must be sufficiently definite to provide fair notice of the conduct proscribed; and (2) the regulations must provide sufficiently definite standards of application to prevent arbitrary and discriminatory enforcement.” (*Snatchko v. Westfield LLC* (2010) 187 Cal. App. 4th 469, 495.) While regulations touching on principles of speech necessitate greater specificity (*Hynes v. Mayor & Council of Borough of Oradell* (1976) 425 U.S. 610, 620), “perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity.” (*Raef v. App. Div. of Superior Ct.* (2015) 240 Cal. App. 4th 1112, 1138 [quoting *Williams, supra*, 553 U.S. at 304]; *see also Grayned v. City of Rockford* (1972) 408 U.S. 104, 110 [“Condemned to the use of words, we can never expect mathematical certainty in our language.”]; *Arce v. Douglas* (9th Cir. 2015) 793 F.3d 968, 988 [“Due process does not require impossible standards of clarity.”].) Appellants propose an impossible standard of clarity without acknowledging the specificity delineated in the Resolution. (1 CT 76-77.)

Appellants’ vagueness argument is premised on the incorrect belief that “perfect clarity and precise guidance” are required for the Resolution to be constitutionally valid. (*Raef, supra*, 240 Cal. App. 4th

at p. 1138.) This level of precision is not necessary, even for regulations that touch on speech.

As the lower court noted, “Plaintiffs raise a facial challenge to the Resolution . . . [they] do not attempt to establish that the Resolution applied unconstitutionally to a particular person, the type of challenge made in an as-applied case.” (Opinion, 6 CT 1670.) Indeed, “[a] facial challenge to the constitutional validity of a statute or ordinance considers only the text of the measure itself, not its application to the particular circumstances of an individual.” (Opinion, 6 CT 1670 [citing *Tobe v. City of Santa Ana* (1995) 9 Cal. 4th 1069, 1084].) A plaintiff seeking to void a statute as a whole for facial unconstitutionality cannot prevail “by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the statute. . . . Rather, [the plaintiff] must demonstrate that the act’s provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions.” (*Vergara v. State of California* (2016) 246 Cal. App. 4th 619, 643; see also *AIDS Healthcare Found. v. Bonta* (2024) 101 Cal. App. 5th 73, 81 [“[I]t is not enough to show that the statute ‘might operate unconstitutionally under some conceivable set of circumstances.’”] [citing *United States v. Salerno* (1987) 481 U.S. 739, 745].)

The Resolution is sufficiently clear and specific as to what is proscribed. (*Forsyth Cnty., Ga. v. Nationalist Movement* (1992) 505 U.S. 123, 131 [“In evaluating [a party’s] facial challenge, we must

consider the [government’s] authoritative constructions of the ordinance, including its own implementation and interpretation of it.”.) Here, Appellants do not attempt to establish that the Resolution applied unconstitutionally to a particular person. Instead, as the lower court recognized, Appellants “seek to enjoin [Respondents] from ‘adopting, implementing, enforcing or otherwise giving effect’ to the Resolution, i.e., from applying the Resolution to any person in any circumstance.” (Opinion, 6 CT 1670.) Appellants fail to demonstrate how the Resolution is unconstitutionally vague on its face.

1. The Resolution is sufficiently definite to provide fair notice of the conduct proscribed

The lower court correctly held that the Resolution precisely outlines which expressive activities are prohibited in a manner that gives teachers notice of what teaching is proscribed. (Opinion, 6 CT 1670-71 [“[T]he resolution is sufficiently definite to provide notice of the conduct proscribed and standards of application in that the Resolution specifically delineates what ‘cannot be taught.’”].) As the lower court noted, the Resolution lays forth five elements and eight doctrines which specifically may not be taught. (Opinion, 6 CT 1670-71.) Each of these thirteen guiding principles are further defined as laid forth below.

Contrary to Appellants’ claims, the Resolution clearly delineates what school personnel are prohibited from teaching regarding Critical Race Theory. (1 CT 76-77.) Appellants complicate the interpretation of

the Resolution, creating unnecessary confusion about its scope. To support their vagueness claim, Appellants piecemeal the Resolution, take phrases like “similar frameworks” out of context, and ignore the specificity of the Resolution. (Op. Br., p. 21.) Specifically, Appellants contend that the Resolution is “anything but specific” and “prohibits teaching ‘Critical Race Theory or other similar frameworks’ without bothering to (i) identify those frameworks or (ii) to explain what makes a framework ‘similar’ to critical race theory [.]” (Op. Br., p. 21.) Notably, Appellants brush over the five “specific elements of Critical Race Theory [that] cannot be taught” and the eight “doctrines derived from Critical Race Theory [that] cannot be taught.” (1 CT 76-77.) Instead, they focus on a single phrase—“similar frameworks”—in the Resolution to argue that the entire Resolution is vague, and thus, unconstitutional. (Op. Br., pp. 21-22.) As the lower court noted, the Resolution clearly defines what constitutes those “similar frameworks,” rendering any claims of vagueness unfounded. (Opinion, 6 CT 1671; 1 CT 76-77.)

Specifically, the Resolution instructs school personnel to not teach the following:

- (6) Racism is racial prejudice plus power, a concept that is often used to argue that (i) only individuals classified as “white” people can be racist because only “white” people control society and (ii) individuals in ethnic minorities cannot be racist because they do not control society.
- (7) Racism is ordinary, the usual way society does business.

- (8) “Interest convergence” or “material determinism”, according to which the incentive to move away from racist policies depends primarily on the self-interest of the oppressor class, i.e. “whites.”
- (9) “Differential racialization”, according to which the “dominant society racializes different minority groups at different times, in response to different needs such as the labor market” []
- (10) The “voice-of-color” thesis, according to which merely “minority status ... brings with it a presumed competence to speak about race and racism”², a concept often used to discredit opposing arguments on the basis of the opposing person's race.

(1 CT 76-77.) The Resolution also instructs school personnel to not teach the following:

- (9) An individual, by virtue of his or her race or sex, is inherently racist and/or sexist, whether consciously or unconsciously.
- (10) Individuals are either a member of the oppressor class or the oppressed class because of race or sex.
- (11) An individual is inherently morally or otherwise superior to another individual because of race or sex.
- (12) An individual should be discriminated against or receive adverse treatment due to the individual's race or sex, or an individual should receive favorable treatment due to the individual's race or sex.
- (13) An individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past or present by other members of the same race or sex.
- (14) An individual should feel discomfort, guilt, anguish or any other form of psychological distress on account of his or her race or sex.

- (15) Meritocracy or traits such as, but not limited to, a hard work ethic or the scientific method are racist or sexist or were created by members of a particular race to oppress members of another race.
- (16) The advent of slavery in the territory that is now the United States constituted the true founding of the United States, or the preservation of slavery was a material motive for independence from England.

(1 CT 77.) Appellants fail to articulate how any of the elements or doctrines listed in the Resolution are ambiguous. Appellants urge this Court to focus solely on a single phrase of the Resolution, ignoring the substantive content and context of the entire Resolution. (Op. Br., pp. 21-22.) Indeed, any regulation could be deemed “vague” if its words or phrase are construed independently and out of context of the entire regulation. This approach is not only misguided but also undermines proper statutory interpretation. (*Boys Markets, Inc. v. Retail Clerks Union, Loc. 770* (1970) 398 U.S. 235, 250 [“Statutory interpretation requires more than concentration upon isolated words.”].)

Appellants must demonstrate that the Resolution’s prohibitions, such as its prohibition against teaching an “individual is inherently or morally or otherwise superior to another individual because of race or sex” does not give a teacher notice of what may not be taught. Because Appellants fail to demonstrate how a teacher could not reasonably understand what is being proscribed, they have failed to meet their burden.

Appellants assert “teachers can only guess at whether asking students to read Dr. Martin Luther King, Jr.’s *Letter from a Birmingham*

Jail” would result in penalties. (Op. Br., p. 21 n.11.) Specifically, Appellants argue the ban on teaching students that an individual “bears responsibility for actions committed in the past or present by other members of the same race” may reasonably prohibit such teaching. Appellants do not provide any reasoning describing how this CRT doctrine would prohibit such reading. It is nonsensical to suggest that assigning *Letter from a Birmingham Jail* would be prohibited under the Resolution. It is a patently unreasonable reading of the Resolution.

The Resolution does not ban teachers from teaching about Jim Crow, segregation, or otherwise teaching students about civil rights history. Appellants conflate the teaching of doctrines with the teaching of facts to sow confusion. The Resolution by its plain language only prevents teachers from attempting to inculcate racist ideologies. Nothing in the language prohibits teaching that *Dr. King believed* white moderates were failing to support the civil rights movement and have discussion on the topic. Rather, the Resolution would simply prohibit the teacher from telling a white student they are morally guilty for any of the past atrocities committed by a student’s ancestors or ancestors of the same race.

Even if this Court were to isolate the phrase “similar frameworks” from the overall context of the Resolution and rule that the Resolution is vague as to the phrase “similar frameworks,” the Court need not find that the entire Resolution is vague and, therefore, unconstitutional. The Court can sever “similar frameworks” without

eliminating the entire Resolution. (*See Barr v. Am. Ass'n of Pol. Consultants* (2020) 591 U.S. 610, 625 [calling it the “normal rule” for courts to “limit the solution to the problem, severing any problematic portions [of a statute] while leaving the remainder intact”].) A court must construe a regulation in a way to preserve its constitutionality if reasonably possible. (*Franklin v. Leland Stanford Junior Univ.* (1985) 172 Cal. App. 3d 322, 348). A court may enjoin only portions of a regulation it finds vague, leaving intact those that do reach constitutional muster. (*See Black Emergency Response Team v. Drummond* (W.D. Okla., June 14, 2024, No. CIV-21-1022-G) 2024 WL 3015359, at *12 [enjoining the provisions of the statute it deemed unconstitutionally vague and denying plaintiffs’ request for a preliminary injunction against the remaining provisions that were found to be constitutionally valid].)

Appellants do not and cannot raise any vagueness challenges to the other remaining provisions of the Resolution, as the Resolution clearly delineates what is proscribed and gives school personnel proper notice of what is prohibited. (1 CT 76-77.)

2. The Resolution provides sufficiently definite standards of application to prevent arbitrary and discriminatory enforcement

The lower court correctly observed that “the resolution is sufficiently definite to provide notice of the conduct proscribed and the standards of application in that the Resolution specifically delineates

what ‘cannot be taught.’” (Opinion, 6 CT 1671.) The lower court went on to note, “[A] person of ordinary intelligence would have a reasonable opportunity to know what is prohibited as what is prohibited is set out specifically in the Resolution.” (*Id.*) The Resolution is sufficiently clear that those enforcing it will not be able to apply it in an arbitrary and discriminatory way. If a regulation is vague, it improperly delegates policy matters to lower officials on a subjective basis with the “attendant dangers of arbitrary and discriminatory application.” (*Grayned, supra*, 408 U.S. at 109.)

In considering whether a statute’s alleged vagueness would impermissibly chill First Amendment expression, the context in which the regulation operates must be considered. (*Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.* (1982) 455 U.S. 489, 498). A school district is permitted to regulate a far broader range of speech than can be regulated for the general public. (*Dibona v. Mathews* (1990) 220 Cal. App. 3d 1329, 1344.) School administrators “possess considerable discretion in deciding on the content of school curriculum.” (*Id.*) While teachers do not shed their rights at the schoolhouse gate, “[u]nder the guise of free speech, the First Amendment does not transfer control of a public school’s curriculum from school administrators to individual teachers.” (*Id.* at p. 1341.) Teachers are government employees and are paid, in part, to speak on behalf of the government and convey its intended message. (*Kennedy v. Bremerton Sch. Dist.* (2022) 597 U.S. 507, 527.) The school system does not so much “regulate” a teacher’s

speech as much as it “*hires*” that speech. (*Johnson v. Poway Unified Sch. Dist.* (2011) 658 F.3d 954, 966 [citing *Evans-Marshall v. Bd. of Educ. of Tipp City Exempted Vill. Sch. Dist.* (2012) 624 F.3d 332].)

A rule is impermissibly vague where it “authorizes an impermissible degree of enforcement discretion – and – where it fails to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent arbitrary and discriminatory enforcement.” (*Frese v. Formella* (1st Cir. 2022) 53 F.4th 1, 7.) In *Pryor v. Municipal Court*, the Court held that a ban on “lewd or dissolute” acts was vague, as a defendant would have to “gauge the temper of the community and predict at his peril the moral and sexual attitudes of those who will be called to serve on the jury” in interpreting whether an act would be considered “lewd or dissolute.” ((1979) 25 Cal. 3d 238, 251.) The court further noted that the law was a descendant of vagrancy laws, which had been drafted using vague language to allow police to remove unwanted individuals from public spaces. (*Id.* at p. 249.) Finally, the words “lewd” and “dissolute” do not by themselves “imply a definite and specific referent” but instead “apply broadly to conduct” which the speaker subjectively considers unseemly. (*Id.* at pp. 246–247.) As a further example, the court noted that while some individuals would consider extramarital sex to be lewd, others may distinguish between heterosexual or homosexual acts, and still others would draw their own lines based on their own experiences. (*Id.*) Similarly, police, judges, and juries lacked sufficient standards to

reach decisions, leaving the door open to arbitrary and discriminatory enforcement of the law. (*Id.*)

When there are no standards governing discretion, such as where the prohibited conduct relies on subjective standards, it risks allowing discriminatory enforcement. (*See Palmer v. City of Euclid, Ohio* (1971) 402 U.S. 544, 545–546 [holding statute that prohibited presence in a public way late at night “without any visible or lawful business” unduly vague]); *Papachristou v. City of Jacksonville* (1972) 405 U.S. 156, 164 [holding statute that prohibited “wandering or strolling around from place to place without any lawful purpose or object” unduly vague].)

Here, the Resolution’s standards are defined clearly and do not permit the administration to punish teachers on a subjective basis because the teacher’s lessons are otherwise disagreeable. Appellants have provided no argument that the wording in the Resolution would permit an administrator to punish one educator for teaching a particular topic but not another educator for teaching a similar topic. Rather, Appellants’ arguments appear to be simply that some teachers would like to teach the prohibited material. But that fact is of no legal consequence when considering whether a statute is vague.

In *McCarthy v. Fletcher*, a California appeals court upheld a school board’s decision to restrict student access to a book as well as the school board’s decision to exclude the book from its curriculum. ((1989) 207 Cal. App. 3d 130, 149.) The appellants in *McCarthy* argued that the criteria for evaluating curriculum material was

unconstitutionally vague and overbroad. (*Id.* at p. 148.) However, in upholding the board policy, the court stated, “[A]nalyzing certain aspects of proposed educational materials using criteria which appellants would classify as vague is inherent in the curriculum selection process.” (*Id.*) Recognizing a school board’s “broad discretion in the area of curriculum” and its “role of transmitting community values to their students,” the court rejected *McCarthy* appellants’ vagueness arguments and noted that “due to the formative purpose of secondary school education, school administrators are required to present their students with materials which, in their opinion, will best transmit the basic values of the community.” (*Id.*) As such, “subjective interpretation is necessarily included in curriculum decisions.” (*Id.*) The court concluded that “the inclusion of subjective as well as objective criteria in [the school board policy] does not render it unconstitutionally vague.” (*Id.* at p. 149.)

Likewise, even if the Resolution requires some subjective interpretation (which arguably it does not), such is to be expected in a policy that touches on the “curriculum selection process.” Nevertheless, to the extent that Appellants base their vagueness arguments on a few personal anecdotes from teachers and their questions about the scope of the Resolution, such reliance is both misplaced and misleading. (Op. Br., pp. 22-23.) Because a degree of vagueness is inherent in all written policies, chilling of speech by itself is not sufficient to invalidate a policy. (*California Tchrs. Ass’n v. State Bd. of Educ.* (9th Circ. 2001)

271 F.3d 1141, 1152.) Rather, there must be a showing that a *substantial* amount of *legitimate* speech will be chilled. (*Id.*) The Resolution provides precise definitions to avoid arbitrary enforcement. (1 CT 76-77.) Appellants do not explain how the specific tenets or doctrines identified in the Resolution are ambiguous or how school personnel are unable to determine what is prohibited such that the policy would allow for arbitrary enforcement. Rather, every teacher in the District is well informed that the Resolution bans five specific elements of CRT and eight doctrines of CRT. (*Id.*)

Because Appellants have not demonstrated a likelihood of success on the merits of their vagueness challenge, this Court should affirm the lower court's decision.

B. This Court Should Affirm The Lower Court's Decision Because The Resolution Does Not Infringe On The Constitutional Right To Receive Information And Ideas

A school district is not obligated to promote a doctrine or teaching that it finds to be racially discriminatory just because a teacher, student, or parent thinks it should be taught or because they have a different perspective on the subject matter. Neither students nor teachers have a right to receive or provide instruction on any given subject. (*See Seyfried v. Walton* (3d Cir. 1981) 668 F.2d 214, 216 [“[A] student has no First Amendment right to study a particular aspect or period of history”]; *Dibona, supra*, 220 Cal. App. 3d at p. 1341 [“[T]he First Amendment does not transfer control of a public school's

curriculum from school administrators to individual teachers and students.”].)

Appellants erroneously claim the Resolution violates the Free Speech Clause of the California Constitution because it deprives students of their right to receive information and ideas. (Op. Br., p. 23.) A school board’s decision to restrict classroom materials as part of a curriculum implicates the balance between a student’s First Amendment rights and a state’s authority in education matters. (*Hazelwood Sch. Dist. v. Kuhlmeier* (1988) 484 U.S. 260, 266 [“Kuhlmeier”].) School boards have broad discretion in the management of school affairs. (*Pico, supra*, 457 U.S. at p. 864.) “[L]ocal school boards must be permitted ‘to establish and apply their curriculum in such a way as to transmit community values....’” (*Id.*) The Board’s conduct does not offend the free speech clause so long as it is “reasonably related to legitimate pedagogical concerns.” (*Kuhlmeier, supra*, 484 U.S. at p. 571.)

Appellants claim the Resolution violates California’s Free Speech Clause because the Resolution does not serve a legitimate educational purpose. (Op. Br., p. 27.) Appellants contend that the (1) Board failed to adhere to normal policymaking procedures in passing the Resolution, (2) the Resolution conflicts with State standards, and (3) public comments from District decisionmakers concerning the Resolution suggest that “racial animus ‘infected’ the decision to adopt and enforce the Resolution.” (Op. Br., p. 27.) At this stage of the

proceedings, however, the evidence does not support any of these contentions.

To begin, Appellants' assertion that the Board failed to adhere to normal policymaking procedures (Op. Br., p. 25) is belied by the factual record at this stage of the proceedings. The Board did not take any action that conflicted with their normal course of business. Indeed, the Resolution was approved by a majority on the Board, in compliance with established procedures. (1 CT 1515, ¶ 3.) Appellants complain that the Board did not assess fiscal data or receive input from District staff or examine TVUSD or CSBA policies. (Op. Br., pp. 25-26.) While Appellants do not provide any support for these baseless claims, neither state law nor district policy requires a school board to consult such factors prior to adopting a policy.⁴ (1 CT 244.) Appellants cannot point to any misconduct on the part of the Board in adopting the Resolution when it voted to adopt the Resolution by Board majority.

Next, Appellants' contention that the Resolution conflicts with State standards is contradicted by state law. (Op. Br., pp. 26-27.)

⁴ Appellants emphasize the Board's failure to gather fiscal data, seek staff and public input, hold discussion during a public Board meeting, consider sample policies from the CSBA, and seek legal review of the draft policy. (Op. Br., pp. 25-26.) Yet, District policy makes clear that the Board "may" (not must) consider such factors and may do so "as needed." (1 CT 244.) Whether a Board seeks out this information or not, District policy is clear that "[o]nly policies formally adopted by a majority vote of the Board shall constitute official Board policy." (*Id.*) Consistent with district policy, by majority vote, the Board adopted the Resolution. (*Id.* at p. 11.)

Relying on Education Code section 51220, Appellants argue that the Resolution conflicts with state standards because curricula “shall provide a foundation for understanding . . . human rights issues, with particular attention to the study of the inhumanity of genocide, slavery, and the Holocaust; and contemporary issues.” (Cal. Educ. Code, § 51220(b)(1); Op. Br., p. 26-27.) However, the Resolution does not—and Appellants do not show—that the Resolution impedes or otherwise conflicts with this statutory provision. The Resolution does not proscribe discussions on any of those listed topics provided in Education Code section 51220(b)(1). To support their argument, Appellants propose that a teacher risks discipline for leading a discussion about slavery or Jim Crow. (Op. Br., p. 27.) Yet, Appellants fail to articulate how a teacher would incur any discipline for leading such a discussion under any provision of the Resolution. This hypothetical presents no evidence that such a discussion would run afoul of the Resolution. The Resolution does not ban discussions on slavery, historical figures (i.e., Jim Crow), or the human rights issues concerning such topics. (1 CT 76-77.) The Resolution, among other specific provisions, prohibits leading a discussion that “[a]n individual, by virtue of his or her race or sex, is inherently racist and/or sexist, whether consciously or unconsciously” or that “[a]n individual is inherently morally or otherwise superior to another individual because of race or sex.” (*Id.* at p. 77.)

Appellants' claim that the Resolution conflicts with state standards is ironic, given that state law explicitly forbids school districts from adopting curricula that promotes racism. (Op. Br., p. 30-31; Cal. Educ. Code, § 51501.) State law mandates that “[n]o textbook, or other instructional materials shall be adopted by the state board or any other governing board for use in the public schools which contains any matter reflecting adversely upon persons because of their *race . . .*” (Cal. Educ. Code, § 51501.) As discussed above, *supra* Section IV.A, the Resolution’s stated purpose is to combat racist ideology: “Critical Race Theory is a divisive ideology that assigns moral fault to individuals solely on the basis of an individual’s race and, therefore, is itself a racist ideology;” “Critical Race Theory assigns generational guilt and racial guilt for conduct and policies that are long in the past;” “Critical Race Theory views social problems primarily as racial problems and, thus, detracts from analysis of underlying socio-economic causes of social problems.” (1 CT 75-76.) Any action or statement beyond criticizing the flaws of Critical Race Theory would amount to endorsing racist ideologies, which directly contradicts state law. The Resolution does not conflict with state standards, but instead works congruently with them.

Finally, the District’s decisionmakers’ public comments do not suggest any “racial animus”, nor do their comments have any bearing on the constitutionality of the Resolution. (Op. Br, p. 26.) Appellants cannot point to any evidence that suggests the Board intended to restrict

students' access to viewpoints on a discriminatory basis. In fact, the Resolution explicitly states that it "encourages culturally relevant and inclusive teaching practices." (1 CT 75.) It further states that "the diversity that exists among the District's community of students, staff, parents, guardians, and community members is an asset to be honored and valued...." (*Id.*) The Resolution also states TVUSD's desire to "engage students of all cultures in age-appropriate critical thinking that helps students navigate the past, present, and future." (*Id.*) In direct contradiction to Appellants' "racial animus" assertions, TVUSD, in the Resolution, condemns racism and expresses its intent to "not tolerate racism or racist conduct." (*Id.*)

Appellants ask this Court to ignore the stated purpose of the Resolution because they claim the evidence demonstrates that the District "acted out of illicit ideological motivations, rather than to further any legitimate pedagogical purpose." (Op. Br., p. 30). The Resolution's criticism of CRT is not tantamount to the Board criticizing specific groups of people. (*Cf. Parr v. Mun. Ct.* (1971) 3 Cal. 3d 861, 865, 867 [holding that the challenged ordinance was discriminatory because the ordinance stated that its purpose was to discourage "hippies" from gathering in public areas]; *González v. Douglas* (D. Ariz. 2017) 269 F. Supp. 3d 948, 965 [holding that there was extensive evidence showing that the enactment and enforcement of a law to eliminate Mexican American Studies was motivated by anti-Mexican American animus, including comments by legislators disparaging

Mexican Americans].) Further, the Board operated in its legislative capacity when adopting the Resolution, thereby making any inquiry into their intent at this stage of the proceedings inappropriate. (*People ex rel. Searce v. Glenn Cnty.* (1893) 100 Cal. 419, 423 [“[T]he motives which induced legislative action are not a subject of judicial inquiry”]; *Hadacheck v. Alexander* (1915) 169 Cal. 616, 617 (“It is . . . the general, if not the universal, rule that the motive of the legislator may not be inquired into.”]; *Soon Hing v. Crowley* (1885) 113 U.S. 703, 710-711 [“The motives of the legislators . . . will always be presumed to be to accomplish that which follows as the natural and reasonable effect of their enactments. Their motives, considered as the moral inducement for their votes, will vary with the different members of the legislative body.”].)

Appellants’ reliance on comments Board members made criticizing CRT is also a slippery slope. (Op. Br., pp. 27-28.) By Appellants’ logic, anyone who criticizes CRT is guilty of racism and sexism. Appellants ask this Court to assume Defendants’ motives in contradiction to Joseph Komrosky’s declaration, where he explains the Board’s intent behind the Resolution was to protect all students from racism and sexism. (6 CT 1515, ¶ 4.) The Board members’ comments were not targeted towards specific groups of students but rather the efficacy of Critical Race Theory. Appellants cannot demonstrate the Resolution disproportionately targets a specific group of students either. The Resolution applies to all students. (*Id.*)

The Board’s conduct does not offend the First Amendment so long as it is “reasonably related to legitimate pedagogical concerns.” (*Kuhlmeier, supra*, 484 U.S. at p. 571.) The “makeup of the curriculum . . . is by definition a legitimate pedagogical concern.” (*Boring v. Buncombe Cnty. Bd. of Educ.* (4th Cir. 1998) 136 F.3d 364, 370.) Legitimate pedagogical concerns are enumerated in Education Code section 233.5, which states the following:

Each teacher shall endeavor to impress upon the minds of the pupils the principles of morality, truth, justice, patriotism, and a true comprehension of the rights, duties, and dignity of American citizenship, ... to teach them to avoid idleness, profanity, and falsehood, and to instruct them in manners and morals and the principles of a free government.

(Cal. Educ. Code, § 233.5(a); *see also McCarthy, supra*, 207 Cal. App. 3d at p. 146.)

Education Code section 60044 also prohibits governing boards from adopting “any instructional materials for use in the schools that, *in its determination*, contain: (a) Any matter reflecting *adversely* upon persons on the basis of race or ethnicity . . .” (Cal. Educ. Code, § 60044(a).) Appellants’ claim that the Resolution—which prohibits elevating one race over another or promoting the idea that one race is inferior to another (1 CT 75-77)—conflicts with state law is disingenuous. (Op. Br., p. 28.) State law forbids curricula that “adversely affect persons based on race or ethnicity” or that is “racist.” (Cal. Educ. Code, § 60044(a); Cal. Educ. Code, § 51501.) There is no

evidence that the District intended to deny Appellants access to ideas with which the Board disagreed. Again, the purpose of the Resolution was to discourage an ideology that sought to disparage particular races—not to withhold or stifle particular ideas and concepts related to race. (1 CT 75-77.)

The Resolution is reasonably related to legitimate pedagogical concerns because it prohibits doctrines that teach that “[a]n individual is inherently morally or otherwise superior to another individual because of race or sex.” (1 CT 77.) The state has a legitimate interest in ensuring that students are not taught that one race is inherently superior to another race. The Board believes a strong education system supports a strong country, and the Resolution, therefore, aims to enhance students’ educational experience. (6 CT 1515-16, ¶ 7.) These goals align with the principles of morality, justice, and patriotism outlined in Education Code section 233.5(a) and the prohibition against adopting “racist” curricula as outline in Education Code sections 60044(a) and 51501. The Resolution also promotes open-mindedness and critical thinking because it allows the instruction of CRT so long as teachers include the flaws in Critical Race Theory. (6 CT 1515-16, ¶¶ 7-8.) These goals improve the pedagogical value of the students’ education because they “impart particular knowledge or skills to student participants....” (*Kuhlmeier, supra*, 484 U.S. at p. 271.)

Appellants should not prevail on the merits of Count II because the Board’s actions were aligned with legitimate pedagogical concerns.

At the very least, Appellants' contentions as to the legitimacy and intent behind the Resolution and the Board's conduct lack credible and sufficient evidence, rendering an injunction inappropriate at this stage.

C. This Court Should Affirm The Lower Court's Decision Because The Resolution Does Not Infringe On The Fundamental Right To Education

Appellants wrongly assert that the Resolution deprives students of their right to education. (Op. Br., 28-32.) As the lower court recognized, Appellants "offer no analysis as to how the Resolution [will cause TVUSD's academic program to fall below prevailing statewide standards] other than repeating vague, unsupported arguments." (Opinion, 6 CT 1673.)

Article IX, Section 1 of the California Constitution recognizes that "[a] general diffusion of knowledge and intelligence [is] ... essential to the preservation of the rights and liberties of the people...." Because of this principle, "California has assumed specific responsibility for a statewide public education system open on equal terms to all." (*Butt v. State of California* (1992) 4 Cal.4th 668, 680.) "A finding of constitutional disparity depends on the individual facts. Unless the actual quality of the district's program, viewed as a whole, falls fundamentally below prevailing statewide standards, no constitutional violation occurs." (*Id.* at pp. 686-87.) "[T]he Constitution does not prohibit all disparities in educational quality or service." (*Id.*) Indeed, the lower court recognized that "[d]espite extensive State

regulation and standardization [], the experience offered by our vast and diverse public-school system undoubtedly differs to a considerable degree among districts, schools, and individual students.” (Opinion, 6 CT 1674.)

Appellants swing vague, conclusory accusations against the Resolution, but fail to demonstrate how the Resolution actually deprives students of a right to education or how the Resolution falls below statewide standards. The basis for much of Appellants’ arguments under this claim is that implementation of the Resolution will cause the District’s academic program, as a whole, to fall below prevailing statewide standards. (Op. Br., p. 29). This claim is baseless considering that neither state nor federal law requires districts to include CRT as part of their curricula. Appellants ask this Court to wholly ignore the broad discretion afforded to school boards and hold it to an unworkable standard that is not required by state or federal law. (*See Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley* (1982) 458 U.S. 176, 198 [“[A] requirement that [the State] provide ‘equal’ educational opportunities would thus seem to present an entirely unworkable standard requiring impossible measurements and comparisons”].) Appellants argue that the Resolution conflicts with Education Code section 51220(b)(1) which requires curricula “provide a foundation for understanding . . . human rights issues, with particular attention to the study of the inhumanity of genocide, slavery, and the Holocaust, and contemporary issues.” (Mot.

at p. 18.) Yet, nothing in the Resolution prohibits teachers from teaching on these topics. (6 CT 1516, ¶ 9.) The lower court agreed; “nothing in the Resolution prohibits teachers from teaching on these topics [identified in Education Code section 51220(b)(1)].” (*Id.*)

The Board’s conduct does not contravene state law. (Op. Br., p. 30.) California does not require the teaching of CRT, and the Resolution specifically states that “[n]othing in this resolution shall require any staff member to violate local, state, or federal law....” (1 CT 75.) Appellants do not explain how the Resolution violates state law or causes the District to fall below academic standards.

Here, the Resolution applies to all students equally. (6 CT 1515, ¶ 4.) Appellants do not explain the harm they have suffered either, other than repeating the unsupported conclusion that the Resolution falls below prevailing standards. (Op. Br., pp. 31-32.)

An injunction is not warranted at this stage as there is no overwhelming evidence that any specific group of students has been harmed by the Resolution. Indeed, Joseph Komrosky discusses the benefits of the Resolution in his declaration. (6 CT 1516-17, ¶¶ 7-8, 14.) Appellants’ claims of harm are simply conclusory, speculative, and unfounded.

D. This Court Should Affirm The Lower Court’s Decision Because The Policy⁵ Does Not Discriminate On The Basis Of Sex And Gender

The entirety of Appellants’ equal protection argument is premised on a misleading interpretation of the scope and purpose of the Policy and a misunderstanding of California’s equal protection law. (Op. Br., p. 32.) As the lower court correctly noted, “[T]he Policy is gender neutral and does not expressly single out transgender or gender

⁵ On July 15, 2024, Governor Gavin Newsom approved Assembly Bill No. 1955, which prohibits school personnel from “enacting or enforcing any policy, rule, or administrative regulation that requires an employee or a contractor to disclose any information related to a pupil’s sexual orientation, gender identity, or gender expression to any person without the pupil’s consent unless otherwise required by law.” (Assembly Bill No. 1955, Legislative Counsel’s Digest, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1955.) Respondents maintain that AB 1955 has no bearing on the merits of the claims currently before this Court. Additionally, AB 1955 is currently being challenged before a federal court and does not go into effect until at least January 1, 2025. (*See Chino Valley Unified Sch. Dist., et al v. Newsom, et al* (E.D. Cal. Aug. 8, 2024) No. 2:24-cv-01941-DJC-JDP, <https://libertyjusticecenter.org/wp-content/uploads/Amended-Complaint-AB-1955.pdf>.) Further, a federal court recently blocked a policy that forced teachers to withhold information from parents regarding their child’s intentions to “change” genders and socially “transition” at school. (*Mirabelli v. Olson* (S.D. Cal. 2023) 691 F. Supp. 3d 1197, 1211.) The court held that parents have a fundamental constitutional right to be informed about significant aspects of their child’s well-being and that “[a] parent’s right to make decisions concerning the care, custody, control, and medical care of their children is one of the oldest of the fundamental liberty interests that Americans enjoy.” (*Id.*)

non-conforming students, as it applies to any student’s request to change their school official or unofficial records.” (Opinion, 6 CT 1676.) Appellants’ equal protection claim fails on the merits because the Policy does not create any classifications, and even if it did, the record below is devoid of any evidence of discrimination or disparate treatment. (*See Mass v. Franchise Tax Bd.* (2019) 38 Cal. App. 5th 959, 963 [“[T]he party challenging the constitutionality of the statute bears a heavy burden and cannot prevail simply by suggesting a hypothetical in which the application of the statute would be unconstitutional.”].) Further, even if there is any differential treatment, the Board has a compelling interest in protecting children and promoting the best outcomes for children. The Board has a compelling interest in “prevent[ing] or reduc[ing] potential instances of self-harm” of students, “promot[ing] the best outcomes for pupils’ academic and social-emotional success,” “assist[ing] students in maximizing their potential,” and “support[ing] the fundamental rights of parent(s)/guardian(s) to direct the care and upbringing of their children.” (1 CT 80.).

1. The Policy does not violate California’s Equal Protection Clause because the Policy applies equally to all students

The California Constitution mandates equal protection under the law. (Cal. Const., art. I, § 7(a).)⁶ “Equal protection of the laws assures that people who are ‘similarly situated for purposes of [a] law are generally treated similarly by the law.’” (*Vergara, supra*, 246 Cal. App. 4th at 644.) “[C]lassification does not of itself deprive a group of equal protection. However, the classification must be based upon some difference between the classes which is pertinent to the purpose for which the legislation is designed.” (*Vincent v. State of California* (1971) 22 Cal. App. 3d 566, 572 [internal citations removed].) “Equal protection applies to ensure that persons similarly situated with respect to the legitimate purpose of the law receive like treatment; equal protection does not require identical treatment.” (*People v. Green* (2000) 79 Cal. App. 4th 921, 924.)

California’s Equal Protection Clause requires the government “to treat all persons similarly situated alike or conversely, to avoid all classifications that are ‘arbitrary or irrational’ and those that reflect ‘a bare . . . desire to harm a politically unpopular group.’” (*Taking Offense v. State* (2021) 66 Cal. App. 5th 696, 722.) At its core, equal protection ensures that the government does not treat a group of people unequally

⁶ While there are some differences, “[t]he equal protection analysis under the California Constitution is ‘substantially similar’ to analysis under the federal Equal Protection Clause.” (*See RUI One Corp. v. City of Berkeley* (9th Cir. 2004) 371 F.3d 1137, 1154.)

without some justification. (*People v. Hardin* (2024) 15 Cal. 5th 834, 847.) “A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.” (*Sanchez v City of Modesto* (2006) 145 Cal. App. 4th 660, 678 [quoting *Salerno, supra*, 481 U.S. at 745]; *Associated Home Builders etc., Inc., supra*, 18 Cal. 3d at pp. 604-05 [holding that legislative enactments are presumed valid unless proven otherwise].)

Here, the Policy applies equally to all students. Appellants have not met their burden identifying any explicit classification, let alone disparate treatment of any classification. As the lower court recognized, the Policy is facially neutral and applies equally to all students within the District. (Opinion, 6 CT 1675.) Indeed, the Policy applies the same standard to only one group: students. (*Id.*; 1 CT 80). The Policy requires parental disclosure when *any* student (regardless of gender identity or gender expression) requests to be treated or identified as a different gender or to access sex-segregated facilities and programs. (*Id.*) The Policy is gender neutral and neither singles out transgender students, gender nonconforming students, nor cisgender students.⁷ (*Id.*)

⁷ Appellants use the terms “cisgender,” “transgender,” and “gender nonconforming.” We note that these terms have become more common in modern usage, but do not necessarily have universally accepted definitions. The construct of gender theory has rapidly evolved in recent years making concepts and classifications difficult, if not impossible, to neatly define. Therefore, for purposes of this brief and without necessarily validating these definitions as universal or

Because the policy is facially neutral, Appellants must demonstrate there is a disparate impact upon a protected class and that there was intent to discriminate against that class.

First, Appellants wrongly conclude that the Policy subjects students to disparate treatment based on their “biological sex or gender.” (Op. Br., p. 33.) Their argument, however, is premised on a false representation of the Policy and a false assumption regarding gender theory. For example, Appellants reason that the “Policy mandates parental disclosure when a transgender student takes actions that, if taken by a cisgender student . . . would not trigger disclosure.” (Op. Br., pp. 33-34.) However, this is false. The Policy mandates parental disclosure when *any* student (whether cisgender, transgender,

scientifically adopted, this brief will use the following definitions in an effort to help inform the legal arguments:

“Cisgender”: of, relating to, or being a person whose gender identity corresponds with the sex the person was identified as having at birth. (*Cisgender*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/cisgender>.)

“Transgender”: of, relating to, or being a person whose gender identity differs from the sex the person was identified as having at birth. (*Transgender*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/transgender>.)

“Gender nonconforming”: exhibiting behavioral, cultural, or psychological traits that do not correspond with the traits typically associated with one’s sex: having a gender expression that does not conform to gender norms.

(*Gender nonconforming*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/gender%20nonconforming>.)

or gender nonconforming, etc.) requests to access sex-segregated school programs and activities “that do not align with the student’s . . . gender listed on the birth certificate or other official records” and *any* student (whether cisgender, transgender, or gender nonconforming, etc.) requests to be identified or treated “as a gender . . . other than the student’s . . . gender listed on the student’s birth certificate or any other official records.” (1 CT 80-81.) Appellants presume that *only* a transgender or a gender nonconforming student would make such requests. However, there is no evidence in the record below to suggest that is the case. For instance, under the Policy, a transgender student who chooses to detransition to cisgender would trigger parental notification just as a cisgender student who chooses to explore transitioning would trigger parental notification. (*See* 1 CT 81.) Likewise, parents would need to be notified if a gender nonconforming student decided to transition to be cisgender just the same as a cisgender student that sought to transition to nonconforming. (*See also* 6 CT 1516, ¶ 13 [The Policy applies to all students, “including the students who are not diagnosed as transgender, etc.”].)

Furthermore, Appellants maintain a contradictory assumption regarding gender theory, thereby creating unworkable gender classifications. Appellants conclude that students that desire to transition to an alternate gender are an identifiable class. In no way does the Policy even attempt to make such classifications. Indeed, gender theory argues that it is not always possible to determine one’s gender

identity at any given time. (See “Gender fluidity – What it means and why support matters (Dec. 3, 2020) Harvard Health, <https://www.health.harvard.edu/blog/gender-fluidity-what-it-means-and-why-support-matters-2020120321544> [“While some people develop a gender identity early in childhood, others may identify with one gender at one time and then another gender later on.”].) Students who claim their gender is “fluid” may change their pronouns daily, weekly, or monthly thereby potentially triggering the Policy each time they switch pronouns.

Importantly, the Policy is drafted in such a way to include students who may request to access sex-segregated school programs that do not align with their biological sex or gender listed on their birth certificate or other official records, or request to go by different pronouns, etc. not because they are transgender or gender nonconforming, but because they feel pressured to do so, are in a “questioning stage” regarding their gender identity, are gender fluid, claim to be nonconforming, are simply curious, or simply want to join a sex segregated sports team that does not match the sex listed on their birth certificate or official records. Appellants mistakenly attempt to create paradoxical gender classifications that *are not* present in the Policy. The Policy, on its face, does not target any gender classification.

Next, Appellants do not identify any discriminatory purpose on behalf of the Board. The party challenging the law must show discriminatory intent or purpose. (*Kim v. Workers’ Comp. Appeals Bd.*

(1999) 73 Cal. App. 4th 1357, 1362; *see also City of Banning v Desert Outdoor Advert., Inc.* (1962) 209 Cal. App. 2d 152 [“The burden of proving discrimination is upon the complaining party.”]; *Harman v. City & Cnty. of San Francisco* (2006) 136 Cal. App. 4th 1279, 1289 [“[T]he invidious quality of a law claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose.”].) Discriminatory purpose “implies that the decisionmaker...selected or reaffirmed a particular course of action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group.” (*Pers. Adm’r of Massachusetts v. Feeney* (1979) 442 U.S. 256, 279 [cleaned up].) For cases that are based on “disparate impact,” the law must have been motivated at least in part by a purpose or intent to harm a protected group. (*Kim, supra*, 73 Cal. App. 4th at 1361; *see also Baluyut v. Superior Ct.* (1996) 12 Cal.4th 826, 837.)

To begin, it is disingenuous for Appellants to allege that the parental notification under the Policy is discriminatory when state law requires a *parental signature* for a minor under the age of 18 to officially change their name or gender. (Cal. Civ. Proc. Code, § 1276; Cal. Health & Safety Code, § 103430(b)(1).)

Next, the Board implemented the Policy to “promote the best outcomes for pupils’ academic and social-emotional success” and to “maximize their potential.” (1 CT 80; 1 CT 1516, ¶ 12.) There is no evidence in the record that supports any claim of discriminatory

purpose. Indeed, the Policy specifically states that the intent behind the District's enactment of the Policy is to:

- (1) Provide procedures designed to maintain and, in some cases, restore, trust between school districts and parent(s)/guardian(s) of pupils.
- (2) Bring parent(s)/guardian(s) into the decision-making process for mental health and social-emotional issues of their children at the earliest possible time in order to prevent or reduce potential instances of self-harm.
- (3) Promote communication and positive relationships with parent(s)/guardian(s) of pupils that promote the best outcomes for pupils' academic and social-emotional success.

(1 CT 80.) In order to “reduce potential instances of self-harm” of students and “promote the best outcomes for pupils' academic and social-emotional success” and “maintain and [] restore trust between school districts and parent(s)/guardian(s),” the Board, in its discretion, saw fit to require parental notification when a student is requesting to be treated or identified as a different gender, requesting to use a name that differs from their legal name, is physically injured on school property, is expressing suicidal ideation, and/or is being bullied. (1 CT 80-81.)

Notably, Appellants do not allege any discrimination for the provisions of the Policy that require parental disclosure when a student is being bullied or when a student is suicidal despite the Policy treating bullied students and suicidal students differently than those who have not been bullied or who are not suicidal. (1 CT 81-82.) Appellants fail to articulate how notifying parents when *any* student is requesting to be

treated or identified as a sex or gender other than the sex or gender listed on their birth certificate or any other official records imposes discriminatory classifications. The Policy applies equally to all students. For this reason, Appellants' equal protection claim fails on the merits.

2. The Policy does not violate California's Equal Protection Clause because the Board has a justified interest in protecting children and promoting their best interests

Even if the Court is inclined to hold that the Policy creates some disparate treatment based upon an identifiable classification (it does not), the Policy still does not violate California's Equal Protection Clause because any alleged disparate treatment based upon a classification is "justified by the purposes the law was meant to serve." (*Hardin, supra*, 15 Cal.5th at 850.) While courts may "no longer need to ask at the threshold whether the two groups are similarly situated for purposes of the law in question," courts must still address whether the "challenged difference in treatment is adequately justified under the applicable standard of review." (*Id.*) "The burden is on the party challenging the law to show that it is not." (*Id.* at p. 851.) Appellants have not met this burden.

When the classification is based on a "suspect classification," the challenged law will be upheld if it is necessary to promote a compelling government interest. (*Woods v. Horton* (2008) 167 Cal. App. 4th 658, 674.) It is disingenuous for Appellants to argue that the Board "passed

the Policy as part of a wave of anti-LGBTQ measures” (Op. Br., pp. 36-37) when no provision in the Policy nor the actual implementation of the Policy serves to harm members of the LGBTQ community. In fact, there is no identifiable harm at this stage of the proceedings. That *some* parents protested the enactment of the Policy (Op. Br., p. 37) does not undercut the Board’s stated purpose in implementing the Policy, i.e. protecting children and fostering parent involvement concerning their child’s well-being. (1 CT 80.)

The Board has a compelling interest in protecting and promoting a student’s well-being. Indeed, the Policy’s stated purpose is to “promote the best outcomes” of students. (1 CT 80.) The Board, in implementing the Policy sought to “prevent or reduce potential instances of self-harm” of students, “promote the best outcomes for pupils’ academic and social-emotional success,” “assist [] students in maximizing their potential,” and “support the fundamental rights of parent(s)/guardian(s) to direct the care and upbringing of their children.” (1 CT 80.)

Appellants conclude, without any data or other evidence that the Policy puts students at risk of “emotional, psychological, or physical harm.” (Op. Br., pp. 37-38.) At this stage of the proceedings, however, there is no record evidence to suggest that this Policy places students in harm, and Appellants’ First Amended Complaint is devoid of any facts to support such a contention. (1 CT 70-71.) In fact, to the contrary, studies demonstrate that transgender and nonconforming students raise

mental and social-emotional issues that their cisgender peers do not present.⁸ (See Lowry R, Johns MM, Robin LE. *Violence Victimization, Substance Use Disparities, and Gender-Nonconforming Youth* (2020) *American Journal of Preventive Medicine* [noting higher rates of bullying and substance abuse in non-gender conforming children as well as laying forth numerous other publications which have reached similar conclusions]; Madison Aitken, et al, *Self-Harm and Suicidality in Children Referred for Gender Dysphoria* (2016) 55 *J. Am. Acad. Child. Adolesc. Psychiatry* 6, 513–520 [noting numerous studies have demonstrated that children with different gender identities than the one assigned at birth have higher rates of self-harm and, ultimately, suicide]; see also Gordon AR, et al, *Gender Expression, Violence, And Bullying Victimization: Findings From Probability Samples Of High School Students, 4 U.S. School Districts* (2012) 88 *J. Sch. Health* 4.) In *L.W. by and through Williams v Skrrmmetti*, the Sixth Circuit

⁸ California’s Attorney General Rob Bonta in his Complaint against Chino Valley Unified School District for adopting a similar parental notification policy noticed this apparent distinction when he stated, “more than 40 percent of transgender students reported being bullied because of their gender identity, as opposed to only 7.3 percent of non-transgender students who reported gender-based bullying or bullying on the basis of perceived gender identity.” (*California, ex al v. Chino Valley Unified Sch. Dist.* (Aug. 28, 2023) CIVSB2317301, Complaint, ¶ 29, <https://libertyjusticecenter.org/wp-content/uploads/Complaint-for-Declaratory-and-Injunctive-Relief.pdf>.) The Attorney General further complained that “[e]ighty-six percent of transgender youth reported suicidal thoughts, and 56 percent of transgender youth reported a previous suicide attempt.” (*Id.*)

acknowledged the long history of the rapidly changing standards of care promulgated by the medical community for those suffering from gender dysphoria. ((2023) 83 F.4th 460, 466-468). Further, numerous states and other countries, in an effort to protect children, have curtailed practices that purportedly provide gender affirming care, such as providing puberty blockers to pre-pubescent children and surgeries to conform the child's body with the child's perceived gender.⁹

Preventing parents from receiving information relating to their child's changing identity prevents those parents from learning critical information about increased health risks to their child. In turn, parents are unable to take steps to mitigate such serious harms, such as getting medical care or therapy for their child. Making disclosure of the information contingent on the child's permission is inadequate because it hinges on a subjective perception of how a parent may react or what treatment is best. A school that requires teachers to share a child's grades with the child's parents does not create an automatic harm against the child even if that child's parents may be unhappy with the information. Appellants' argument that abuse may occur with

⁹ See Joshua P. Cohen, *Increasing Number Of European Nations Adopt A More Cautious Approach To Gender-Affirming Care Among Minors* (June 6, 2023) FORBES (noting Norway, Finland, the United Kingdom, and Sweden have now introduced limits on the provision of gender affirming care to minors and twelve states have banned or severely limited such care), Nathalie Lees, *The Evidence To Support Medicalised Gender Transitions In Adolescents Is Worryingly Weak* (Apr. 5, 2023) THE ECONOMIST.

disclosure is purely speculative and would be a basis for prohibiting a school from sharing any facts about a child such as the child's grades, discipline record, or sport's team result. As such, Appellants' claim that the Policy, by requiring parental notification in particular instances, can only do harm is baseless.

By requiring parental notification in certain instances, the Board not only furthers their interest in protecting children, but the Board also upholds the fundamental right of a parent to direct the care and upbringing of their child. (*See Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary* (1925) 268 U.S. 510, 535; *see also Prince v. Massachusetts* (1944) 321 U.S. 158, 166 ["It is cardinal with us that the custody, care, and nurture of the child reside first in the parents."]; *Parham v. J. R.* (1979) 442 U.S. 584, 602 ["The law's concept of the family rests on a presumption that parents possess what a child lacks in . . . capacity for judgment More important, . . . it has recognized that natural bonds of affection lead parents to act in the best interests of their children."]; *H.L. v. Matheson* (1981) 450 U.S. 398, 410 [Parental rights "presumptively include[] counseling [their children] on important decisions."]; *Mirabelli, supra*, 691 F.Supp.3d at 1202 ["A parent's right to make decisions concerning the care, custody, control, and medical care of their children is one of the oldest of the fundamental liberty interests that Americans enjoy."].) A federal district court recently enjoined a policy that *prohibited* school personnel from disclosing to a student's parents that the student identified as a new

gender or wanted to be addressed by a new name or pronouns. *Mirabelli, supra*, 691 F.Supp.3d at 1222.) There, the federal court recognized the “trifecta of harm” that results from withholding this sensitive information from parents:

Parental involvement [is] essential to the healthy maturation of schoolchildren. . . . The school’s policy is a trifecta of harm: it harms the child who needs parental guidance and possibly mental health intervention to determine if the incongruence is organic or whether it is the result of bullying, peer pressure, or a fleeting impulse. It harms the parents by depriving them of the long-recognized Fourteenth Amendment right to care, guide, and make health care decisions for their children. And finally, it harms [teachers] who are compelled to violate the parent’s rights by forcing [teachers] to conceal information they feel is critical for the welfare of their students

(Id.)

Additionally, state law encourages parental involvement. California Education Code section 51110(d) notes that “[f]amily and school collaborative efforts are most effective when they involve parents and guardians in a variety of roles” (Cal. Educ. Code, § 51110(d).) Further, “involving parents and guardians of pupils in the education process is fundamental to a healthy system of public education.” (Cal. Educ. Code, § 51100(a).) Education Code section 51101 enumerates a list of “rights of parents and guardians to information” concerning their children, including the right to “have access to the school records of their child,” to “receive information

about any psychological testing the school does involving their child,” and to “question anything in their child’s record that the parent feels is inaccurate or misleading or is an invasion of privacy.” (Cal. Educ. Code, § 51101.)

Appellants would have this court adopt a contrary presumption that all parents would be hostile to their child’s gender exploration and should not be included in a child’s education. It is alarming that Appellants—some parents—fail to address or acknowledge the Policy’s intent to protect children, the fundamental right of parents to guide their children’s care, and the scope of state law that compels parental involvement in their child’s academics. Withholding critical health and safety information concerning a child from parents could directly harm the student and other students, as well as undermine a parent’s fundamental right to direct the care of their children. Respondents have a compelling interest in respecting the constitutional rights of parents and protecting students from harm.

The Policy is also narrowly tailored to satisfy this interest. It is disingenuous for Appellants to allege that “student consent” should be required for parental involvement when the student has already consented to this information being publicly disclosed on school campus. Appellants’ claims that the Policy equates to “nonconsensual disclosure” are likewise disingenuous. (Op. Br., p. 37). Indeed, by the time this Policy is triggered, and parental disclosure is required, the student is requesting to *socially* and *publicly* be identified and treated

as a different gender. If the student is not requesting to be identified or treated as a different gender at school, the Policy would not be enforced (nor would it need to be).

Appellants argue that the Policy is not narrowly tailored because it does not “create an exception for students at risk of emotional, psychological, or physical harm.” (Op. Br., p. 37.) Again, no such data has been presented to support this claim, but nevertheless, Appellants are mistaken. The Policy was narrowly tailored to limited disclosure when necessary. As the Policy states, “inclusion of parent(s)/guardian(s) is appropriate *unless specifically prohibited by law.*” (1 CT 83.) Further, the Policy states, “Nothing in this policy affects the obligations of the District’s employees, administrators, and certificated staff as mandated reporters under Article 2.5 of the Child Abuse and Neglect Reporting Act Sections 11164-11174.3 of the Penal Code, and the District Policies 5141 and 5141.4.” (1 CT 83.)

The Policy serves the District’s compelling interest of protecting children, promoting their best outcomes, and ensuring parents are involved in important decisions regarding their children’s psychological care at school. The Policy is narrowly tailored to exclude parental notification where teachers or school administrators suspect abuse or neglect. For these reasons, Appellants equal protection claim fails on the merits, and an injunction is not warranted.

E. This Court Should Affirm The Lower Court’s Decision Because The Balance Of Harms Weighs In Favor Of Denying A Request For A Preliminary Injunction

In evaluating the balance of harms at the preliminary injunction stage, the inquiry is whether the harm that will befall the moving party if the motion is not granted exceeds any harm to the party to be restrained if the preliminary injunction is imposed. (*California State Univ., Hayward v. Nat'l Collegiate Athletic Assn.* (1975) 47 Cal. App. 3d 533, 544.) The plaintiff must offer evidence of “irreparable injury or interim harm that it will suffer if an injunction is not issued pending an adjudication of the merits.” (*White v. Davis* (2003) 30 Cal.4th 528, 554.) A plaintiff must make a “significant” showing of immediate irreparable injury to enjoin a public agency from performing its duties. (*Tahoe Keys Prop. Owners’ Assn. v. State Water Res. Control Bd.* (1994) 23 Cal. App. 4th 1459, 1471.) Appellants cannot meet that high burden here.

Appellants claim they will suffer irreparable harm because Student Appellants are being deprived of their right to basic educational autonomy and their right to receive information and ideas. (Op. Br., p. 39-40.) Appellants also claim Respondents’ conduct has caused some students to experience fears of abuse and violence. (Op Br, p. 40.) As established above, neither the Resolution nor the Policy violates Appellants’ constitutional rights. In effect, the Resolution and Policy enforce current law in California and further the *status quo*.

Appellants cannot enjoin a statute out of fear alone. When facial challenges are “wide-ranging, conclusory, and unfocused,” a court is permitted to deny a preliminary injunction. (*Harmon v. City of Norman, Oklahoma* (10th Cir. 2020) 981 F.3d 1141, 1150.) “Because facial challenges push the judiciary towards the edge of its traditional purview and expertise, courts must be vigilant in applying a most exacting analysis to such claims.” (*Ward v. Utah* (10th Cir. 2005) 398 F.3d 1239, 1247.)

Moreover, an injunction threatens the public welfare because it deprives children of a public education crafted out of the District’s democratic process and policy judgments. It is axiomatic that “[a]ny time a [government] is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” (*King, supra*, 133 S. Ct. at p. 3.)

Respondents’ decisions fall within the broad discretion granted to local school board members. Thus, an injunction is not warranted here.

V. CONCLUSION

Considering the foregoing, Respondents respectfully request this Court affirm the lower court's denial of Appellants' Motion for Preliminary Injunction.

DATED: August 29, 2024

Respectfully Submitted,

/s/ Julianne E. Fleischer

Julianne E. Fleischer

CERTIFICATE OF COMPLIANCE

I, Julianne E. Fleischer, am counsel in this matter, and I certify that the attached Respondents' Brief has a typeface of 14 points or more and contains 13,642 words, as determined by a computer word count.

DATED: August 29, 2024

/s/ Julianne E. Fleischer

Julianne E. Fleischer

ADVOCATES FOR FAITH & FREEDOM

CERTIFICATE OF SERVICE

I am employed in the county of Riverside, State of California. I am over the age of 18 and not a party to the within action. My business address is 25026 Las Brisas Road, Murrieta, California 92562.

I hereby certify that I electronically filed the foregoing with the California Court of Appeals, Fourth Appellate District, by using the Court's Electronic Filing System operated by TrueFiling on August 29, 2024.

On the date set forth below, I served a true copy of the following document(s) described as **RESPONDENTS' BRIEF** on the interested parties in this action as follows:

- Mark Rosenbaum at mrosenbaum@publiccounsel.org
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(Federal) I declare that I am a member of the Bar of this Court at whose direction the service was made.

DATED: August 29, 2024

/s/ Julianne E. Fleischer
Julianne E. Fleischer

ADVOCATES FOR FAITH & FREEDOM