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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

MAE M. ET AL.,

Plaintiffs,

v.

JOSEPH KOMROSKY ET AL.,

Defendants.

Case No. CVSW2306224

**[PROPOSED] BRIEF OF AMICUS
CURIAE THE ATTORNEY GENERAL
EX REL. THE STATE OF CALIFORNIA
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

Date: January 24, 2024
Time: 8:30 a.m.
Dept: 05
Judge: Hon. Irma P. Asberry
Trial Date: TBD
Action Filed: August 2, 2023

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INTRODUCTION

The Attorney General, as the chief constitutional officer charged with enforcing the laws of the State of California, respectfully submits this brief as amicus curiae on behalf of the State in support of Plaintiffs’ motion for a preliminary injunction. Plaintiffs seek to enjoin two enactments of the Temecula Valley Unified School District (TVUSD) Board of Trustees: the forced disclosure provisions of Board Policy 5020.01 (Declaration of Jonathan Benner (Benner Decl.), Ex. A), and Resolution No. 2022-23/21 (Benner Decl., Ex. B), including the Board’s restriction of curricular materials. Both enactments interfere with the State’s compelling interest in fostering safe, supportive, and inclusive schools for children of all gender, ethnic, racial, and other backgrounds. Policy 5020.01’s forced disclosure provisions violate transgender and gender nonconforming students’ right to equal protection and nondiscrimination and invade their right to privacy, thereby causing and threatening to cause physical, emotional, psychological, and academic harm. Resolution 21—by censoring curricula to remove diverse perspectives, roles, and contributions—infringes upon “students’ right to receive information and ideas through classroom teaching and reading” (*McCarthy v. Fletcher* (1989) 207 Cal.App.3d 130, 144) and violates the inclusive curricular requirements of the Education Code. In the interests of upholding California’s Constitution and statutes, and preventing irreparable harm to public school students, the State offers this brief to assist the Court’s consideration of the important issues here.

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ARGUMENT

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I. POLICY 5020.01 VIOLATES STUDENTS’ RIGHTS TO EQUAL PROTECTION AND PRIVACY UNDER CALIFORNIA LAW

Education is a fundamental right under California’s equal protection clause. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 608-609, 616-617; Cal. Const., art. I, § 7.) By singling out transgender and gender nonconforming¹ students, Policy 5020.01’s forced disclosure provisions violate these students’ state constitutional right to equal protection and statutory protections from discrimination. The Policy also infringes upon students’ state constitutional right to privacy,

28

¹ As used herein, the term “gender nonconforming” includes students whose gender identities are not solely male or female (gender non-binary); these students may use “they/them” pronouns.

1 depriving them of their fundamental ability to express who they are. And because it represents a
2 discriminatory attack on already marginalized children—denying or limiting their equal access to
3 education, and causing psychological, emotional, and other harm—the Policy serves no valid
4 interest. Indeed, in a suit brought by the State, the San Bernardino Superior Court has twice found
5 that Chino Valley Unified School District’s (CVUSD) identical Board Policy 5020.1 is facially
6 discriminatory in violation of California’s equal protection clause, and accordingly granted a
7 temporary restraining order and preliminary injunction against its forced disclosure provisions.²

8 **A. Policy 5020.01 Violates California’s Equal Protection Clause**

9 **1. The Policy expressly discriminates based on gender identity,**
10 **requiring strict scrutiny review**

11 Policy 5020.01’s text expressly discriminates against transgender and gender
12 nonconforming students, treating them differently than their cisgender peers based on gender
13 identity. Such adverse treatment is subject to strict scrutiny, for two independent reasons.

14 First, *gender identity* is an aspect of *sex* and *gender* (see Civ. Code, § 51, subd. (e)(5); Gov.
15 Code, § 12926, subd. (r)(2); Ed. Code, § 210.7 [all defining “[s]ex” to include a person’s “gender
16 identity and gender expression”]), protected characteristics subject to strict scrutiny in California
17 (see *Catholic Charities of Sacramento, Inc. v. Sup. Ct.* (2004) 32 Cal.4th 527, 564). The U.S.
18 Supreme Court has similarly held that “it is impossible to discriminate against a person for
19 being . . . transgender without discriminating against that individual based on sex.” (*Bostock v.*
20 *Clayton Cty.* (2020) 140 S.Ct. 1731, 1741.)

21 Second, discrimination against transgender and gender nonconforming individuals is
22 subject to strict scrutiny because—based on the history of arbitrary and adverse treatment they
23 have endured—they are a protected class, just as the California Supreme Court held with respect
24 to lesbian, gay, and bisexual individuals. (*In re Marriage Cases* (2008) 43 Cal.4th 757, 843-844;
25 see also, e.g., *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.* (7th Cir. 2017) 858 F.3d
26

27 ² CVUSD’s Policy 5020.1, excerpts from the preliminary injunction hearing, and the preliminary
28 injunction minute order are attached to the Declaration of Jonathan Benner as Exhibits C, D, and E,
respectively.

1 1034, 1051 [“There is no denying that transgender individuals face discrimination, harassment,
2 and violence because of their gender identity”].)

3 **2. Policy 5020.01 cannot survive strict scrutiny**

4 Policy 5020.01 fails strict scrutiny because TVUSD cannot meet its “burden of establishing
5 not only that it has a *compelling* interest which justifies the law but that the distinctions drawn by
6 the law are *necessary* to further its purpose” (*In re Marriage Cases, supra*, 43 Cal.4th at p. 832
7 [cleaned up]), and are “narrowly tailored” to do so (*Connerly v. St. Personnel Bd.* (2001) 92
8 Cal.App.4th 16, 36, 44; see also *Rotary Club of Duarte v. Bd. of Dirs.* (1986) 178 Cal.App.3d
9 1035, 1067 [sex discrimination constitutes “great and irreparable” injury, warranting injunctive
10 relief], *affd. sub nom. Board of Dirs. of Rotary Int’l v. Rotary Club of Duarte* (1987) 481 U.S.
11 537; *Hillman v. Britton* (1980) 111 Cal.App.3d 810, 826 [“repress[ion]” of “constitutional
12 rights” creates “irreparable harm” necessitating preliminary injunction]; *Baird v. Bonta* (9th Cir.
13 2023) 81 F.4th 1036, 1040, 1042 [constitutional violation constitutes irreparable injury].).

14 The District lacks a compelling interest because the explicit text of Policy 5020.01 targets
15 only the conduct of transgender and gender nonconforming students. For example, it expressly
16 conditions forced disclosure on a student’s request to use a name or pronoun, or access programs
17 or facilities, “that do not align with the student’s biological sex or gender.” (Ex. A at p. 1.)
18 Policy 5020.01 thus singles out transgender and gender nonconforming students for forced
19 disclosure, and not their cisgender peers. The Policy’s text also reveals its invidious nature,
20 stating that being transgender is a “mental health” issue to justify forced disclosure. (*Ibid.*) This
21 shows the Board’s reliance on an “outdated social stereotype[.]”—viz., that transgender identity is
22 a mental illness—“result[ing] in invidious laws or practices.” (See *Sail’er Inn, Inc. v. Kirby*
23 (1971) 5 Cal.3d 1, 18; see also, e.g., *Williams v. Kincaid* (4th Cir. 2022) 45 F.4th 759, 767
24 [transgender identity on its own does not support a diagnosis of gender dysphoria or any other
25 mental illness under the DSM-5]; *Grimm v. Gloucester Cty. Sch. Bd.* (4th Cir. 2020) 972 F.3d
26 586, 594 [transgender identity is “not a psychiatric condition,” and the American Psychiatric
27
28

1 Association and World Health Organization do not classify transgender identity as a mental
2 illness].³) This is precisely what strict scrutiny is designed to identify and prohibit.

3 As recently held by the San Bernardino Superior Court in a case brought by the State
4 against CVUSD’s identical forced disclosure policy, this facial discrimination is sufficient reason
5 to find a likelihood of success on the merits and justifies a preliminary injunction. (Ex. D at
6 p. 32.) “Discrimination is built into the operative language of the policy,” the court explained at
7 the preliminary injunction hearing, “since a child’s requests or actions are treated differently
8 based upon their gender incongruity, meaning sex is a determining factor. That’s a suspect
9 classification that does require strict scrutiny.” (*Id.* at p. 27; see also Ex. E.) Even if CVUSD had
10 a compelling interest, the court held, its policy could not survive strict scrutiny, because “less
11 restrictive” and “[g]ender-neutral alternatives are available and were available”—which CVUSD
12 failed to even consider. (Ex. D at p. 31.) Indeed, the court found the policy sufficiently
13 discriminatory on its face that it was not necessary to rely on CVUSD Board members’
14 statements of animus. (See *id.* at p. 39.)

15 While the facially discriminatory text of Policy 5020.01 is sufficient reason to issue a
16 preliminary injunction (see *Arp v. Workers’ Comp. Appeals Bd.* (1977) 19 Cal.3d 395, 407),
17 members of the TVUSD Board who voted for the Policy have also made invidious statements
18 evincing their intent to discriminate against the District’s transgender and gender nonconforming
19 students. For example, during the meeting at which Policy 5020.01 was passed, the Board
20 President, who voted for the Policy, invoked harmful stereotypes of diverse gender identities,
21 pathologizing transgender people as lifelong “medical patient[s]” who will become sterile due to
22 “all the drugs and surgeries” and “will struggle to find a mate,” and categorizing transgender
23 identity as a “lifestyle or behavior” of which he disapproved.⁴ During interviews prior to passage,
24 the Board President similarly described transgender identity and acceptance as “horrible” and

25 _____
26 ³ See also Castro-Peraza et al., *Gender Identity: The Human Right of Depathologization* (Mar. 2019) 16
27 Internat. J. of Environmental Research & Pub. Health 978 (“Defining gender diversity as an illness or
28 otherwise abnormal is unfounded, discriminatory, and without demonstrable clinical utility”).

⁴ TVUSD, *AUG 22 2023 Governing Board Meeting*, YouTube (Aug. 25, 2023) (hereafter Aug. 22
TVUSD Board Meeting), at 6:22:59, 6:25:43 <<https://tinyurl.com/4jj98m7w>> (as of Dec. 11, 2023).

1 “evil.”⁵ Hostility towards, or outdated stereotypes about, those who do not conform to gender
2 norms are not legitimate—much less compelling—governmental interests for policymaking.
3 (*Sail’er Inn, Inc. v. Kirby, supra*, 5 Cal.3d at p. 22; see also *Lyle v. Warner Bros. Television*
4 *Prods.* (2006) 38 Cal.4th 264, 280-281 [“hostile, sexist statements”—including “derogatory
5 comments”—are “relevant to show discrimination on the basis of sex”]; *Grimm v. Gloucester*
6 *Cty. Sch. Bd., supra*, 972 F.3d at p. 615 [transgender restroom policy failed intermediate scrutiny
7 in part due to “vitriolic” remarks, which revealed “misconception and prejudice”].)

8 Nor is Policy 5020.01 narrowly tailored to any non-discriminatory interest it might purport
9 to advance. For instance, even if TVUSD claimed Policy 5020.01 was intended to help students
10 navigate their gender identity by ensuring parental support, it lacks “the most exact connection”
11 to fit that purpose. (See *Connerly v. St. Personnel Bd., supra*, 92 Cal.App.4th at p. 37.)

12 *First*, Policy 5020.01 lacks an exception for—or even consideration of—children who may
13 face emotional, physical, or psychological abuse at home as a result of their gender identity being
14 revealed to their parents against their express request,⁶ and the “welfare of a child is a compelling
15 state interest that a state has not only a right, but a duty, to protect.” (*In re Marilyn H.* (1993) 5
16 Cal.4th 295, 307; see also *Cleveland v. Taft Union High Sch. Dist.* (2022) 76 Cal.App.5th 776,
17 799 [school district has a duty to protect students from harm by third parties].)

18 *Second*, any purported narrow tailoring is further contradicted by the identified harms
19 Policy 5020.01 has inflicted and continues to inflict upon TVUSD students.⁷ And studies bear out
20 students’ experiences: one in ten transgender individuals have experienced violence at the hands
21 of an immediate family member on account of being transgender; 15 percent ran away or were

22 ⁵ Our Watch, *ie Family PAC Draft—Meet School Board Candidates of Menifee, Temecula, Murrieta,*
23 *and Lake Elsinore*, YouTube (Mar. 2, 2022), at 0:42:34 <<https://tinyurl.com/2wbb456y>> (as of Dec. 11,
24 2023); Our Watch, *Dr. Joseph Komrosky // TVUSD School Board Candidate // School Board Series*,
25 YouTube (Sept. 13, 2022), at 5:47 <<https://tinyurl.com/mr2dryx9>> (as of Dec. 11, 2023); see also Jen
Wiersma (@jen4tvusd), Instagram (Oct. 29, 2022) <<https://tinyurl.com/3tcc8fmy>> (as of Dec. 11, 2023)
(Board member who voted for Policy 5020.01 stating that “children should never be exposed to . . . gender
ideology and preferences”).

26 ⁶ The mandated reporter provisions cited in section 6 of the Policy do not forbid disclosure, even when
27 there is a reasonable risk of parental abuse. Thus, the Policy requires disclosure, even when school staff
know that disclosure could result in emotional, physical, or psychological harm.

28 ⁷ See, e.g., Aug. 22 TVUSD Board Meeting, *supra*, at 1:16:50, 4:59:12, 5:11:18, 5:22:39, and 5:56:32
(statements of TVUSD students, parents, and teacher explaining threats of forced disclosure).

1 kicked out of their home because they were transgender; fewer than 40 percent of LGBTQ+ youth
2 identified their home as supportive of their identity; and “coming out” to adverse parents has been
3 shown to increase the risks of major depressive symptoms, suicide, homelessness, and drug use.⁸

4 *Third*, the forced disclosure policy fails to accomplish even its stated goal of promoting
5 parental involvement; rather than fostering students’ openness about their gender identity,
6 Policy 5020.01 forces students to hide their gender identity at school for fear of forced disclosure
7 and its consequences, which can have serious psychological health effects.⁹ And as discussed
8 below, gender-neutral and less restrictive alternatives are available but were not considered,
9 which is “fatal” to the Policy. (*Connerly v. St. Personnel Bd.*, *supra*, 92 Cal.App.4th at p. 37.)

10 **B. Policy 5020.01 Violates Statutory Prohibitions on Discrimination**

11 Just as Policy 5020.01 violates equal protection under the California Constitution, it also
12 violates California antidiscrimination statutes. Section 220 of the Education Code prohibits
13 “discrimination on the basis of . . . gender, gender identity, [or] gender expression” in any
14 educational program that receives state financial assistance. (See also Gov. Code, § 11135,
15 subs. (a) & (c) [prohibiting recipients of state financial assistance from discriminating based on,
16 inter alia, sex, gender identity, or gender expression].) The Policy violates these express statutory
17 protections by facially discriminating against transgender and gender nonconforming students on
18 the basis of their gender identity and expression (see, e.g., *Koire v. Metro Car Wash* (1985) 40
19 Cal.3d 24, 39 [“express language of [antidiscrimination statute] provides a clear and objective
20 standard . . . to determine legality”]), and it cannot withstand strict scrutiny (*ante*, at pp. 9-12.)

21 **C. Policy 5020.01 Violates the California Constitutional Right to Privacy**

22 The constitutional right to privacy under article I, section 1 protects “autonomy,”¹⁰ which
23 includes “making intimate personal decisions or conducting personal activities without

24 ⁸ James et al., *Report of the 2015 U.S. Transgender Survey*, Nat. Ctr. for Transgender Equality (Dec.
25 2016) p. 65; The Trevor Project, *2022 Nat. Survey of LGBTQ on Youth Mental Health* (2022) p. 20; Ryan
26 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.

27 ⁹ Pachankis et al., *Sexual Orientation Concealment and Mental Health: A Conceptual and Meta-
Analytic Review* (Oct. 2020) 146 *Psychological Bull.* 831.

28 ¹⁰ Policy 5020.01 also implicates students’ rights to informational privacy, since “disclosure of
information . . . may have an impact on personal decisions and relationships” affecting a person’s core
autonomy. (*Hill v. Nat. Coll. Athletic Assn.* (1994) 7 Cal.4th 1, 30.) This is just such a case.

1 observation, intrusion or interference.” (*Sheehan v. S.F. 49ers, Ltd.* (2009) 45 Cal.4th 992, 999.)
2 A privacy violation consists of “(1) a legally protected privacy interest; (2) a reasonable
3 expectation of privacy in the circumstances; and (3) conduct by the defendant constituting a
4 serious invasion of privacy.” (*Mathews v. Becerra* (2019) 8 Cal.5th 756, 769.) In cases involving
5 “an obvious invasion of an interest fundamental to personal autonomy,” a defendant must show
6 that the infringement is necessary to serve a “compelling interest.” (*Ibid*; *Am. Acad. of Pediatrics*
7 *v. Lungren* (1997) 16 Cal.4th 307, 329, 340). A plaintiff may then rebut such an assertion by
8 showing the existence of feasible, effective, and less invasive alternatives. (*Mathews*, at p. 769.)

9 **1. Minors have a legally protected interest and reasonable expectation**
10 **of privacy in their gender identity, a core aspect of their autonomy**

11 A student’s gender identity is a legally protected autonomy interest. “[M]inors, as well as
12 adults, possess a constitutional right of privacy under the California Constitution.” (*Poway*
13 *Unified Sch. Dist. v. Sup. Ct.* (1998) 62 Cal.App.4th 1496, 1505.) And courts have repeatedly
14 affirmed that an individual has a constitutionally protected privacy interest in their sexual
15 orientation or gender identity. (See, e.g., *Pettus v. Cole* (1996) 49 Cal.App.4th 402, 444-445
16 [describing “sexual orientation and conduct” as legally protected privacy interest].)

17 The Policy invades a core aspect of students’ privacy and autonomy: their ability to express
18 their identity. While parents may generally “act on behalf of their child to protect their child’s
19 rights and interests,” the California Supreme Court has held that “[c]hildren . . . have fundamental
20 interests of their own that may diverge from the interests of the parent.” (*Am. Acad. of Pediatrics*
21 *v. Lungren, supra*, 16 Cal.4th at pp. 336-337.) As with the right to obtain an abortion without
22 parental consent, a student’s gender identity is “central” to their “values” and “life.” (*Id.* at p. 337;
23 see also *Mathews v. Becerra, supra*, 8 Cal.5th at p. 774 [citing *Lungren*, at pp. 326, 338-339].)

24 Transgender and gender nonconforming students also have a reasonable expectation of
25 privacy in choosing how and when to disclose their gender identity: choosing to disclose one’s
26 gender identity at school does not negate one’s reasonable expectation of privacy generally. (See
27 *Mathews v. Becerra, supra*, 8 Cal.5th at p. 769 [requiring reasonable expectation of privacy “in
28 the circumstances”].) As the California Supreme Court has explained, “[t]he claim is not so much

1 one of total secrecy as it is of the right to *define* one’s circle of intimacy,” and people may still
2 “fear exposure . . . to those closest to them.” (*Hill v. Nat. Coll. Athletic Assn.*, *supra*, 7 Cal.4th at
3 p. 25; *C.N. v. Wolf* (C.D. Cal. 2005) 410 F.Supp.2d 894, 903 [student had reasonable expectation
4 of privacy in sexual orientation with respect to parents, even if publicly homosexual at school].)

5 **2. Forced disclosure seriously invades students’ privacy and autonomy**

6 The Policy is a serious invasion of privacy. (See *Hill v. Nat. Coll. Athletic Assn.*, *supra*, 7
7 Cal.4th at p. 37.) A student’s gender identity concerns “the most intimate aspects” of “thought
8 and behavior,” such that “[m]andatory reporting of such information is a severe invasion.”
9 (*Mathews v. Becerra*, *supra*, 8 Cal.5th at p. 780.) In a related context, California courts have
10 described revelations of “sexual orientation and conduct” as a serious invasion of privacy that
11 “could prove to be highly embarrassing . . . and/or disruptive” to the victim’s relationships,
12 “caus[ing] great damage to both [the victim’s] self-concept and to [their] image.” (*Pettus v. Cole*
13 (1996) 49 Cal.App.4th 402, 444-445.) Forced disclosure of one’s gender identity is an equally
14 serious privacy violation. (See *ante*, at pp. 11-12 & fn. 8 [studies detailing risks of violence,
15 homelessness, suicide, and other harms associated with forced disclosure of gender identity].)

16 **3. The Policy is not necessary to support a compelling interest**

17 As explained *ante* at section I(A)(2), Policy 5020.01 is rooted in outdated stereotypes and
18 animus, neither of which can be a compelling interest. Further, feasible and effective alternatives
19 that better protect families, parents, and students have been in place without incident in many
20 other school districts for years. School districts, including TVUSD itself,¹¹ have adopted policies
21 and regulations protecting the privacy of transgender and gender nonconforming students (with
22 an exception for cases in which disclosure is necessary to protect a student’s health or safety), and
23 providing resources, support, and counseling for students and families to facilitate conversations.

24 **II. RESOLUTION 21 VIOLATES CALIFORNIA’S CONSTITUTION AND EDUCATION CODE**

25 The State also has a strong interest in challenging Resolution 21, which violates students’
26 rights by censoring school curricula and books to remove references to the diverse perspectives,
27 roles, contributions, and history of members of protected groups, in violation of California law.

28 ¹¹ TVUSD Administrative Regulation 5145.3 <<https://tinyurl.com/76zhruzk>> (as of Dec. 11, 2023).

1 **A. Resolution 21, Including Restriction of Social Studies Curricular Material,**
2 **Violates Article I, Section 2 of the California Constitution**

3 The guarantees of free speech and press under article I, section 2 of the California
4 Constitution encompass “students’ right to receive information and ideas through classroom
5 teaching and reading.” (E.g., *McCarthy v. Fletcher, supra*, 207 Cal.App.3d at pp. 144, 146, fn. 3;
6 see also *Smith v. Novato Unified Sch. Dist.* (2007) 150 Cal.App.4th 1439, 1465 [even brief loss of
7 free speech rights constitutes irreparable injury].) Given this right, a curriculum restriction must
8 be “reasonably related to legitimate educational concerns.” (*McCarthy*, at pp. 141, 146 [bare
9 ideological opposition to *One Hundred Years of Solitude* as a classroom or curricular resource
10 was not reasonably related to a legitimate educational concern]; see also *Arce v. Douglas* (9th Cir.
11 2015) 793 F.3d 968, 983 [restrictions on “a student’s access to materials otherwise available may
12 be upheld only where they are reasonably related to legitimate pedagogical concerns”].) Further, a
13 legitimate educational concern must be the true reason for the removal, “not just a pretextual
14 expression for exclusion because the board disagrees with the religious or philosophical ideas
15 expressed in the books.” (*McCarthy*, at p. 144.)

16 **1. Resolution 21 unlawfully limits students’ ability to learn about and**
17 **discuss a broad range of topics**

18 Resolution 21 directly censors accurate, historically significant educational material for no
19 legitimate educational purpose—in violation of article I, section 2. Resolution 21’s terms are
20 sweeping and chilling, censoring a broad swath of American history and specifying a number of
21 ideas and topics that “cannot be taught.” (Ex. B, pp. 2-3.) For example, under prohibition (h),
22 students “cannot be taught” about the connection between slavery and the “founding” or
23 “independence” of the United States, directly restricting information about the country’s early
24 history. (*Id.* at p. 3.) Similarly, prohibition (b) states that students “cannot be taught” that
25 individuals are members of an “oppressor” or “oppressed class because of race or sex,” while
26 prohibition (d) prevents schools from discussing that an individual should “receive favorable
27 treatment due to the individual’s race or sex,” and prohibition (2) censors the idea that “[r]acism
28 is ordinary, the usual way society does business.”

1 These prohibitions broadly bar the teaching of many chapters of U.S. history (and current
2 events) in which the Nation sought to overcome racial or gender inequality, and would likely
3 restrict foundational historic texts like the speeches and writings of Martin Luther King Jr. (some
4 of which analyze segregation in terms of “oppressor” and “oppressed”), as well as seminal court
5 rulings. (See, e.g., King, Letter from Birmingham Jail (1963) [describing the “oppressor” and
6 “oppressed” races in the context of segregation]; *Brown v. Bd. of Ed.* (1954) 347 U.S. 483, 494
7 [“separating the races is usually interpreted as denoting the inferiority” of one group to the other,
8 creating racial hierarchy].) Similarly, students cannot meaningfully learn about or discuss our
9 government’s treatment of Native Americans, given prohibitions (2) and (b). (See, e.g., *Haaland*
10 *v. Brackeen* (2023) 599 U.S. 255, 298-299 (conc. opn. of Gorsuch, J.) [describing federal
11 government’s “dark[] designs” of “destroying tribal identity and assimilating Indians” into “the
12 dominant race,” creating “a now-familiar nightmare for Indian families”].) Students may not
13 receive information about the history of the Fourteenth Amendment, the lives of Black Americans
14 during Reconstruction, or the purpose and work of the Freedmen’s Bureau, due to prohibition (d).
15 (See, e.g., *Jones v. Alfred H. Mayer Co.* (1968) 392 U.S. 409, 422-436 [discussing history of
16 Civil Rights Act of 1866].) So too with the women’s suffrage movement and the Nineteenth
17 Amendment, or Supreme Court cases recognizing the lengthy history of discrimination against
18 women and providing recompense, as prohibitions (b) and (d) encompass sex as well as race.
19 (See, e.g., *Arp v. Workers’ Comp. Appeals Bd.*, *supra*, 19 Cal.3d at pp. 403-404 [statute “could be
20 upheld on the theory that after centuries of economic discrimination against females, men and
21 women simply are not similarly situated with respect to economic factors”].) And likewise with
22 recent history and current events: students may be prevented from learning, for example, about
23 efforts to address disproportionate police violence against Black Americans (e.g., *Leaders of a*
24 *Beautiful Struggle v. Balt. Police Dept.* (4th Cir. 2021) 2 F.4th 330, 347 [Black communities are
25 “over-policed” and suffer “increased exposure to incidents of police violence”]) or ongoing
26 segregation in schools (e.g., *People v. Sausalito Marin City Sch. Dist.* (Super. Ct. S.F. City and
27 County, 2019, No. CGC-19-578227) [judgment against school district that “knowingly and
28

1 intentionally maintained and exacerbated existing racial segregation, and had established an
2 intentionally segregated school” within last decade]).

3 **2. Resolution 21 is not related to a legitimate pedagogical concern**

4 Such sweeping curricular restrictions run afoul of article I, section 2 because Resolution 21
5 seeks to impose “rigid and exclusive indoctrination” (*McCarthy v. Fletcher, supra*, 207
6 Cal.App.3d at p. 146), and was enacted out of animus against equitable curricula that present
7 diverse and inclusive perspectives, rather than legitimate pedagogical concerns, such as reducing
8 racism in schools. (Cf. *Arce v. Douglas, supra*, 793 F.3d at pp. 983-984, 986 [ethnic studies
9 curriculum can “offer great value to students,” and restrictions on students’ access to material
10 must reasonably relate to “legitimate pedagogical concerns,” such as reducing racism].)

11 In addition, Board members who voted in favor of Resolution 21 have made statements
12 revealing their ideological opposition to diverse and inclusive perspectives in education. During
13 the meeting at which the Board adopted Resolution 21, for example, one Board member
14 downplayed the significance of slavery in U.S. history, asserting that “every skin color has both
15 been a slave and owned a slave,” and criticized CRT as “uniquely un-American.”¹² And in the
16 course of implementing Resolution 21, the Board hired a consultant to train TVUSD staff on
17 CRT, including “the specific content of the resolution.”¹³ The hired consultant has dismissed the
18 persistence of systemic racism after the passage of civil rights legislation in the 1960s as a
19 “myth,”¹⁴ and has espoused invidious stereotypes about Black Americans, attributing the

20 ¹² TVUSD, *December 13, 2022 - 6:00 PM - Open Session - TVUSD Governing Board Meeting*,
21 YouTube (Dec. 13, 2022), at 5:33:19 <<https://tinyurl.com/bb8jvm9>> (as of Dec. 11, 2023).

22 ¹³ TVUSD, *Regular Meeting of the Board of Trustees of the Temecula Valley Unified School District*
23 *03/14/2023 - 4:00 PM*, Item O.2, “Consultant Agreement: Arend Law Firm” (Mar. 14, 2023)
24 <<https://tinyurl.com/43tnyhb7>> (as of Dec. 11, 2023). This consultant also drafted another school district’s
25 resolution prohibiting the teaching of CRT, on which the TVUSD Board modeled Resolution 21.
26 (Shuman, *Paso Robles School Board Bans Aspects of Critical Race Theory in Classrooms*, San Luis
27 Obispo Tribune (Aug. 11, 2021) <<https://tinyurl.com/26cjekvn>> [as of Dec. 11, 2023].)

28 ¹⁴ Arend, *The Myth of “Systemic Racism”*, Cal Coast News (Sept. 2, 2020) (hereafter “Myth”)
<<https://tinyurl.com/3rum9xzs>> (as of Dec. 11, 2023). But enforcing this viewpoint, as Resolution 21
does, would limit, e.g., discussion of studies like these: Abel & Burger, *Unpacking Name-Based Race*
Discrimination, IZA - Institute of Labor Economics (June 2023) (finding systematic discrimination against
job applicants with distinctively Black names); Jones & Schmitt, *A College Degree Is No Guarantee*,
Center for Economic and Policy Research (May 2014), p. 1 (unemployment rate for Black college
graduates double rate for college graduates in general, and more than half of Black graduates employed in
jobs that do not require college degree, “reflect[ing] ongoing racial discrimination in the labor market”).

1 disproportionate arrest rate of Black Americans to “the gangster sub-culture, poverty, poor
2 education, growing up in homes without a father, etc.”¹⁵ (Another Board member, after noting his
3 “many conversations” with the hired consultant about CRT, described the consultant as “an
4 expert.”¹⁶) TVUSD hosted a “workshop” on CRT, which was billed as being “led by a diverse
5 panel of experts”; however, all of the panelists, including TVUSD’s consultant, were “in
6 disagreement with CRT,” and the Board President later stated that the workshop’s aim was to
7 “raise awareness of the potential harms of CRT and its associated tenets.”¹⁷

8 During the July 18, 2023 Board meeting, the Board President continued down the path of
9 censorship, asserting that “there is an intrinsic moral evil when we allow obscenity, pornography,
10 vulgarity, and erotica in our school district” which “must be dealt with”; he then listed 16
11 books—including *The Bluest Eye* by Toni Morrison and *The Kite Runner* by Khaled Hosseini—
12 and demanded to know “the names of who put these books in our libraries,” threatening to
13 disclose them “for accountability, transparency to the public.”¹⁸ Another Board member
14 suggested forming a committee to “flag” or “eliminate” potentially “objectionable” books.¹⁹ And
15 a TVUSD official has informed the California Department of Justice that, at the Board’s
16 direction, TVUSD has restricted students’ access to all of the hundreds of biographies included as
17 supplemental social studies materials, in order to censor a biography of San Francisco Supervisor
18 Harvey Milk, California’s first openly gay elected official and an LGBTQ+ rights leader.²⁰ The
19 Board restricted this material even though TVUSD educators have found no “sexualized” content

20 ¹⁵ “Myth,” *supra*.

21 ¹⁶ 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 Dec. 11, 2023).

22 ¹⁷ TVUSD, *Temecula Valley Unified School District Governing Board Hosts Expert Panel Workshop*
(Mar. 10, 2023) <<https://tinyurl.com/4ummc6pd>> (as of Dec. 11, 2023); TVUSD, *Statement from the*
23 *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 Dec. 11, 2023); Nelson, *California*
24 *School District Hires Anti-Critical Race Theory Consultant*, Fox News (Mar. 20, 2023)
<<https://tinyurl.com/wuscx3pt>> (as of Dec. 11, 2023).

25 ¹⁸ 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 Dec. 11, 2023).

26 ¹⁹ *Id.* at 3:19:23.

27 ²⁰ 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 Dec. 11, 2023); Emails from TVUSD Assistant Superintendent to
28 Cal. Dept. of Justice (Nov. 27 & Dec. 7, 2023) (Benner Decl., Exs. F-G).

1 in any of the restricted biographies,²¹ thereby intentionally removing a wide swath of information
2 about historical figures from the curriculum without a legitimate educational reason. (See, e.g.,
3 *McCarthy v. Fletcher, supra*, 207 Cal.App.3d at p. 146.) Accordingly, Resolution 21 violates
4 students’ right to receive information in violation of article I, section 2 and should be enjoined.

5 **B. Resolution 21 Violates the California Education Code**

6 Resolution 21 violates the curriculum and antidiscrimination requirements of the Education
7 Code. The FAIR Education Act, as amended by AB 1078, requires curricula to cover “the role
8 and contributions” of men, women, and numerous racial and ethnic groups, inter alia, “to the
9 economic, political, and social development of California and the United States of America, with
10 particular emphasis on . . . contemporary society.” (Ed. Code, § 51204.5.) School boards must
11 only approve instructional materials that “accurately portray” the “role and contributions” of
12 these groups “to the total development of California and the United States.” (Ed. Code, § 60040.)
13 And school boards may not prohibit instructional material on the basis that it “contains inclusive
14 and diverse perspectives” (Ed. Code, § 51501, subd. (b)) or “includes a study of the role and
15 contributions of any individual or group” (Ed. Code, § 243, subd. (a)). Prohibiting instruction on
16 the latter basis also constitutes “discrimination.” (*Id.*, subds. (a)-(b) [citing Ed. Code, § 220].)

17 Because these prohibitions censor curricular materials that accurately portray the historical
18 roles and contributions of diverse groups, and restrict discussion of current events, Resolution 21
19 is especially harmful for students of color. When school curricula do not include content that
20 reflects the history, culture, and experience of all students, research shows that the students who
21 are not represented suffer academically and emotionally.²² Resolution 21 limits the opportunity of
22 students of color to see figures like themselves represented in their curriculum, and in so doing,
23 threatens them with negative educational impacts.

24 ²¹ See, e.g., Pls.’ Mot. for Prelim. Inj., Eytchison Declaration, Ex. C.

25 ²² E.g., Adam, *When Authenticity Goes Missing: How Monocultural Children’s Literature Is Silencing*
26 *the Voices and Contributing to Invisibility of Children from Minority Backgrounds* (2021) (hereafter
27 *Monocultural Children’s Literature*) Educ. Sciences, vol. 11, art. 32 <<https://tinyurl.com/mwb6hyzx>>
28 (importance of children seeing their culture represented in curricula, and absence of diverse perspectives
“contribute[s] to prejudice and discrimination”). While all students benefit from diverse, equitable, and
accurate curricula—which the Resolution impedes—Resolution 21 inflicts a particular educational harm
that specifically results from finding themselves and the history of people of color underrepresented in
their curricula (see *Monocultural Children’s Literature, supra*).

1 Notwithstanding the recital that Resolution 21 shall not “require any staff member to
2 violate local, state, or federal law,” it threatens to diminish or erase the “role and contributions” of
3 people of color, and women, in TVUSD curricula. As explained above in section II(A)(1),
4 Resolution 21 restricts or bars teaching students about significant figures, movements, and events
5 in California and U.S. history, including the civil rights movement, Native American history, and
6 the women’s suffrage movement. By censoring curricula and materials that contain inclusive and
7 diverse perspectives and that portray the role and contributions of women and people of color in
8 the United States and California, Resolution 21 would violate California law by prohibiting “a
9 study of the role and contributions of any individual or group” to our State’s and Nation’s history
10 (Ed. Code, § 243, subd. (a)); violate Education Code section 220’s antidiscrimination provision;
11 and, to the extent it prohibits materials like the “Letter from Birmingham Jail” included in
12 approved instructional materials, violate Education Code section 51501, subdivision (b). The
13 Court should therefore enjoin Resolution 21.

14 CONCLUSION

15 For the reasons above, the Court should grant Plaintiffs’ Motion for Preliminary Injunction
16 against both Policy 5020.01 and Resolution 21 and related curriculum restrictions.

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Respectfully submitted,

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