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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

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

Plaintiffs,

v.

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

Defendants.

Case No. CVS2306224
Honorable Irma Poole Asberry

PLAINTIFFS' OPPOSITION TO DEFENDANTS' DEMURRER

Date: January 24, 2024
Time: 8:30 a.m.
Location: Department 5
Riverside Superior Court
4050 Main Street
Riverside, CA 92501

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1 **INTRODUCTION**

2 This case challenges Defendant Board members’ imposition of their racially discriminatory
3 and anti-LGBTQ ideologies on Temecula public school students and teachers. Plaintiffs—students,
4 parents, teachers, and the Temecula Valley Educators Association—seek to block two policies:
5 Resolution 21, an unconstitutionally vague curriculum ban that censors a sweeping and ill-defined
6 range of concepts related to race and sex discrimination, and Policy 5020.01, which forces Temecula
7 educators to out transgender and gender diverse students to their parents without their consent and
8 regardless of the harms resulting from disclosure. As alleged in the Complaint, these deeply partisan
9 policies infringe on Temecula students’ rights to receive information and to be free from
10 discrimination on the basis of race, sex, and gender, which are guaranteed by the California
11 Constitution. Resolution 21 further subjects Temecula educators to discipline and loss of
12 employment for failing to guess correctly which concepts could be construed as falling within its
13 indefinite prohibitions. As the Attorney General recognized in his supporting brief, the Resolution
14 “broadly bar[s] the teaching of many chapters of U.S. history (and current events) in which the
15 Nation sought to overcome racial or gender inequality,” in violation of California law. Br. of Amicus
16 Curiae the Att’y Gen. at 16. And it has channeled thousands of public dollars to a consultant who
17 openly traffics in anti-Black rhetoric and stereotypes.

18 Defendants claim that as elected local officials, they may enact policies that actuate their
19 racial and anti-LGBTQ animus, even where those policies deprive students and teachers of their
20 constitutional rights. They argue also that this Court must accept their stated justifications for their
21 actions, even where the policies are discriminatory on their face and the proffered justifications are
22 clearly pretextual. That is not the law.

23 California provides robust protections against public officials’ ideological attempts to censor
24 information, curtail students’ right to education (which California courts have long deemed
25 fundamental), and inflict harm on groups they disfavor. The allegations in Plaintiffs’ complaint are
26 more than sufficient to invoke those protections.

27 **LEGAL STANDARD**

28 A demurrer should not be sustained if the complaint states a cause of action under any

1 possible legal theory. *Aubry v. Tri-City Hosp. Dist.*, 2 Cal. 4th 962, 967 (1992). A court treats a
2 demurrer as admitting all material facts “properly pleaded or implied.” *Schifando v. City of Los Angeles*,
3 31 Cal. 4th 1074, 1081 (2003). Plaintiffs’ allegations “must be liberally construed,” Cal. Code Civ.
4 Proc. (“CCP”) § 452, and factual and evidentiary disputes cannot be resolved by demurrer, *see, e.g.*,
5 *Chapman v. Skype Inc.*, 220 Cal. App. 4th 217, 226–28 (2013).

6 ARGUMENT

7 I. Plaintiffs State a Violation of Students’ Right to Receive Information (Count 8 Two)

9 The Free Speech Clause of the California Constitution, which is “more protective,
10 definitive[,] and inclusive of rights” than its federal counterpart, protects students’ right to receive
11 information. *Lopez v. Tulare Joint Union High Sch. Dist.*, 34 Cal. App. 4th 1302, 1327 (1995) (referring
12 to Cal. Const. art. I, § 2(a)); *McCarthy v. Fletcher*, 207 Cal. App. 3d 130, 144, 146 (1989) (quoting *Bd. of*
13 *Educ. v. Pico*, 457 U.S. 853, 864, 867–68 (1982)). To survive a free speech challenge, a school board
14 must show that its curricular decision was “reasonably related to legitimate educational concerns.”
15 *McCarthy*, 207 Cal. App. 3d at 146. There is no legitimate educational purpose for the removal of
16 classroom materials due to “disagree[ment] with . . . [their] religious or philosophical ideas.” *Id.* at
17 144 (citing *Pico*, 457 U.S. at 870).

18 Even elected officials “[do] not have the power to advance or inhibit a particular religious
19 orthodoxy as a ‘community value[.]’ no matter how prevalent.” *Id.* at 144. Nor will the mere
20 articulation of “some educational reason” place a school board’s action beyond the reach of the
21 courts. *Id.* at 147. Indeed, to prevent school boards from “camouflag[ing]” impermissible
22 discrimination, courts look beyond a policy’s text to Defendants’ “true motives,” asking whether the
23 proffered educational purpose is merely a pretext to exclude “religious or philosophical ideas” that
24 Defendants disfavor. *Id.* at 144, 47.

25 Plaintiffs state a claim that Resolution 21 violates students’ right to receive information. As
26 alleged in the Complaint, the Resolution’s facial viewpoint discrimination—which forces educators
27 to “focus[] on the flaws” of prohibited concepts, if they discuss them at all—has no legitimate
28 pedagogical purpose. FAC ¶¶ 108–09. Plaintiffs allege that Defendants’ purported aim of reducing
racism “serves as a mask” for their true purpose: imposing their ideological viewpoints on

1 Temecula’s public school students. *González v. Douglas*, 269 F. Supp. 3d 948, 972 (D. Ariz. 2017);
2 FAC ¶¶ 11, 15–16, 139. Plaintiffs detail how Defendants passed the Resolution without considering
3 its harms to students, in contravention of the Board’s own policies, and over widespread protests
4 among Temecula educators, students, and community members. *Id.* ¶¶ 17–19, 132–37. The
5 Complaint describes how, far from advancing a legitimate pedagogical purpose, Resolution 21
6 renders it all but impossible for Temecula teachers to provide instruction consistent with State
7 academic standards. *Id.* ¶¶ 111–18.

8 Defendants rely on *Seyfried v. Walton*, a 1981 case from the Third Circuit, to claim that
9 Plaintiffs have no right to receive instruction about any particular topic.¹ Dem. at 6 (citing *Seyfried v.*
10 *Walton*, 668 F.2d 214, 216 (3d Cir. 1981)). That is not the standard. Rather, the key inquiry is
11 whether Defendants’ curricular decisions are “reasonably related to legitimate educational concerns.”
12 *McCarthy*, 207 Cal. App. 3d at 146. Plaintiffs allege that they are not. *See supra*. To the extent
13 Defendants argue that the Board’s proffered justification is actually a legitimate educational concern
14 and not pretextual,² Dem. at 6, that is a factual dispute inappropriate for resolution on demurrer.

15 II. Plaintiffs State a Claim that Resolution 21 is Void for Vagueness (Count One)

16 A law is unconstitutionally vague where it either (1) fails to give “a person of ordinary
17 intelligence . . . a reasonable opportunity to know what is prohibited” (notice prong) or (2) “creat[es]
18 a danger of arbitrary and discriminatory” enforcement (enforcement prong). *Snatchko v. Westfield*
19 *LLC*, 187 Cal. App. 4th 469, 495 (2010). Each prong is an independent ground for vagueness; a
20 policy fails where either is met. *Id.* Restrictions on speech are held to a higher standard of clarity
21 because the freedom of speech “need[s] breathing space to survive.” *Keyishian v. Bd. of Regents*, 385

22 ¹ In addition to being nonbinding, *Seyfried* predates *Pico*, which underscores that school districts may
23 not act merely to “prescribe what shall be orthodox in politics, nationalism, religion, or other
24 matters of opinion.” 457 U.S. at 872 (quoting *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642
(1943)).

25 ² Even if Resolution 21 were reasonably related to a legitimate educational concern—which it is
26 not—Plaintiffs state a claim that it is overbroad because a substantial number of its applications are
27 unconstitutional. *United States v. Stevens*, 559 U.S. 460, 473 (2010). Specifically, Plaintiffs allege that
28 Resolution 21 obstructs the teaching of topics mandated by state standards, stymies culturally
responsive instruction, and suppresses productive classroom discussions. FAC ¶¶ 58, 65, 77–78, 85,
89, 93, 98–99, 111–18. Defendants do not deny that Plaintiffs have stated a claim for overbreadth.
See Dem. at 6–8.

1 U.S. 589, 604 (1967). In particular, curricular restrictions may be vague when they conflict with state
2 standards. *Local 8027 v. Edelblut*, 651 F. Supp. 3d 444, 446–47, 462 (D.N.H. 2023).

3 Although Plaintiffs’ vagueness claim survives so long as their allegations meet either prong,
4 here, the Resolution violates—and Plaintiffs therefore plead—both. First, Plaintiffs allege that
5 Resolution 21 fails to provide Plaintiff teachers with fair notice of what it prohibits. Plaintiffs assert
6 that the Resolution nowhere defines the “other similar frameworks” it bans or clarifies whether such
7 frameworks include culturally responsive instruction, a widely accepted pedagogical approach
8 mandated under California standards. FAC ¶¶ 12–14, 111–13. They offer myriad specific examples
9 of concepts for which Resolution 21’s expansive prohibitions run headlong into State-mandated
10 curriculum. FAC ¶¶ 45, 50–53, 111–18 (questioning whether the Resolution permits State-mandated
11 instruction on compromises made during the Founding, like the three-fifths clause; struggles for
12 wage equality; Martin Luther King’s *Letter from the Birmingham Jail*; and other topics). Beyond the
13 conclusory assertion that “it is clear” what “other similar frameworks” are banned, Dem. at 5,
14 Defendants cannot answer whether Plaintiffs’ enumerated topics violate the Resolution, much less
15 articulate a systematic way to interpret its sweeping prohibitions.

16 Plaintiffs state a vagueness claim on the independent ground that Resolution 21 authorizes
17 arbitrary and discriminatory enforcement. Laws that rely on “murky” distinctions often “pose[] a
18 danger of arbitrary and discriminatory application.” See *Santa Cruz Lesbian & Gay Cmty. Ctr. v. Trump*,
19 508 F. Supp. 3d 521, 544 (2020) (citing *Hunt v. City of Los Angeles*, 638 F.3d 703, 712 (9th Cir. 2011)).
20 And restrictions that carry severe consequences or fail to incorporate a scienter requirement are
21 subject to heightened scrutiny. *Local 8027*, 651 F. Supp. 3d at 459–60 (citing *Vill. of Hoffman Ests. v.*
22 *Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 498 (1982)). Plaintiffs allege that the Resolution provides no
23 standards to guide its enforcement, leaving teachers “to guess at which topics they can teach and
24 which questions they can answer.” FAC ¶¶ 12, 156. Plaintiffs further allege that the Resolution
25 imposes severe, even career-ending penalties on teachers who run afoul of its prohibitions, even
26 unknowingly. FAC ¶ 13.

1 **III. Plaintiffs State a Violation of Students’ Fundamental Right to Education**
2 **(Count Three)**

3 Education is a fundamental right in California. *Serrano v. Priest*, 5 Cal. 3d 584, 608–09 (1971).
4 Its impingement is subject to strict scrutiny “irrespective of motive or intent.” *Vergara v. State of*
5 *California*, 246 Cal. App. 4th 619, 648 n.13 (2016). When a school board denies students an education
6 “basically equivalent to that provided elsewhere” in the State—*i.e.*, when the “actual quality of the
7 district’s program, viewed as a whole, falls fundamentally below prevailing statewide standards”—it
8 infringes students’ fundamental right to education. *Butt v. State of California*, 4 Cal. 4th 668, 685–88
9 (1992).

10 Plaintiffs allege that “[b]y restricting the teaching and learning of content and disciplinary
11 skills mandated under California’s academic standards, the Board has denied, and continues to deny,
12 Temecula students ‘an education basically equivalent’ to what students elsewhere in the State are
13 receiving.” FAC ¶ 165. Specifically, they assert that Resolution 21’s vague and sweeping prohibitions
14 are preventing Temecula educators from introducing, discussing, and answering student questions
15 about concepts set out in California’s academic standards. FAC ¶¶ 13, 28, 38, 50–53, 107, 114, 117.

16 Defendants’ objection to Plaintiffs’ definition of the disfavored class is misplaced. *See* Dem.
17 at 8–9. Contrary to Defendants’ misapprehension, strict scrutiny applies both when “the disfavored
18 class is suspect *or* [when] the disparate treatment has a real and appreciable impact on a fundamental
19 right or interest.” *Butt*, 4 Cal. 4th at 685–86 (emphasis in original); *see also id.* at 679–80 (rejecting
20 State’s contentions that educational inequality in the absence of suspect classifications should be
21 evaluated under rational basis review); *Shaw v. Los Angeles Unified Sch. Dist.*, 95 Cal. App. 5th 740,
22 766–67 (2023) (finding, on appeal from demurrer, that plaintiffs challenging Los Angeles Unified
23 School District’s distance learning policies successfully alleged interdistrict discrimination). Here as
24 in *Butt*, Plaintiffs allege that Defendants’ District-wide policies have a “real and appreciable” impact
25 on Temecula students’ right to basic educational equality, leaving them with an education that “falls
26 fundamentally below prevailing statewide standards.” *Butt*, 4 Cal. 4th at 686–87.

1 **IV. Plaintiffs State a Claim of Intentional Discrimination on the Basis of Race,**
2 **Sexual Orientation, Gender Identity, and Sex (Counts Four and Five)**

3 To state a claim for intentional discrimination, Plaintiffs need only allege that discriminatory
4 purpose was a “motivating factor” behind the challenged action. *Vill. of Arlington Heights v. Metro.*
5 *Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977).³ To ascertain discriminatory purpose, courts analyze
6 several factors, including (1) evidence of disparate impact, (2) the decision’s historical background,
7 (3) the sequence of events leading up to the decision, (4) the decision-maker’s departures from
8 normal procedures or substantive conclusions, and (5) the decision’s legislative or administrative
9 history. *Id.* at 266–68. California constitutional law goes beyond federal law, applying strict scrutiny
10 to distinctions based on gender in addition to race. *See Connerly v. State Pers. Bd.*, 92 Cal. App. 4th 16,
11 31–32 (2001).

12 First, Plaintiffs plead that the Board is inflicting disparate injuries on students and teachers
13 of color, female students and teachers, and LGBTQ students and teachers by censoring curricular
14 material that reflects their identities, experiences, and histories (and thereby mitigates identity-based
15 harassment, discrimination, and stress). FAC ¶¶ 22, 30, 35, 36, 41–43, 47, 58, 66, 77, 78, 84–86, 91,
16 93–95, 98–100, 122–25. Plaintiffs further plead that the Resolution’s vague and overbroad
17 prohibitions suppress classroom discussions on topics including systemic racism and discrimination,
18 which disproportionately harms students who belong to protected classes. *Id.* ¶¶ 58, 77–78, 84–85,
19 89, 93, 99. Plaintiffs allege that the Resolution has foreseeably fostered a climate of hostility against
20 students of color and LGBTQ students, *id.* ¶¶ 61–63, 70, 73–76, 94, and exposed teachers of color
21 and LGBTQ teachers to the stress of confronting racism and anti-LGBTQ animus in the school
22 environment, *id.* ¶¶ 75, 126–28.

23 Second, Plaintiffs allege that the Resolution follows a history of educational segregation in
24 Temecula and the Inland Empire. *Id.* ¶ 129.

25 Third, Plaintiffs allege that the Resolution is the culmination of a months-long concerted
26 campaign to impose Defendants’ racially discriminatory and anti-LGBTQ views on Temecula
27 schools. *Id.* ¶¶ 15–17. Plaintiffs trace the Resolution’s prohibitions to former President Trump’s

28

³ California “relies on principles elucidated under the Fourteenth Amendment when considering its
own Constitution’s equal protection rights.” *Collins v. Thurmond*, 41 Cal. App. 5th 879, 892–93 (2019).

1 Executive Order 13950, which banned so-called “divisive concepts,” and similar ideological speech
2 restrictions. *Id.* ¶ 131.

3 Fourth, Plaintiffs allege that Resolution 21’s passage was the product of a series of
4 procedural and substantive irregularities. Plaintiffs plead that in enacting Resolution 21, Defendants
5 violated their own bylaws by failing to invite or review input from District administrators, teachers,
6 or staff; consult legal counsel; consider the Resolution’s impact on student outcomes; or hold two
7 readings before calling a vote. *Id.* ¶¶ 132–37.

8 Finally, Plaintiffs allege that the Resolution’s legislative history is shot through with
9 Defendants’ and their supporters’ expressions of racial and anti-LGBTQ animus. Plaintiffs plead
10 that Defendants repeatedly invoked racial stereotypes and anti-LGBTQ rhetoric during their
11 campaigns. *Id.* ¶¶ 15–17, 139. Once elected, Defendants paid thousands of public dollars to a
12 consultant who attributes racial disparities in the criminal justice system to “the gangster sub-culture,
13 poverty, poor education, growing up in homes without a father, etc.” *Id.* ¶¶ 20–21, 139. And
14 Defendants have repeatedly disparaged the LGBTQ community, censoring instruction based on
15 noxious stereotypes. *Id.* ¶¶ 120, 139.⁴

16 **V. Plaintiffs State a Violation of California Government Code Section 11135**
17 **(Count Six)**

18 Plaintiffs allege that both Resolution 21 and Policy 5020.01 violate Government Code
19 section 11135, which prohibits discrimination “on the basis of sex, race, color, religion, ancestry,
20 national origin, ethnic group identification, . . . or sexual orientation” in “any program or activity”
21 that is funded by or receives financial assistance from the State. Plaintiffs plead that the provision of
22 education in the District is a program that receives financial assistance from the State. FAC ¶ 177.
23 Plaintiffs sufficiently allege intentional discrimination and disparate impact discrimination with
24 respect to both policies,⁵ and further allege that Policy 5020.01 is discriminatory on its face. *Supra*

25 ⁴ These glaring indications of intentional discrimination belie Defendants’ assertion that Plaintiffs’
26 equal protection claim is no more than a “policy disagreement,” Dem. at 10. Whether Resolution 21
27 contravenes this State’s protections against discrimination is a question of law, not policy.

28 ⁵ Defendants’ claim that, notwithstanding Plaintiffs’ sufficiently alleging disparate impact, “TVUSD
can justify the adoption and implementation of the Resolution,” Dem. at 14, is a merits argument
inappropriate on demurrer.

1 § IV; *infra* §§ VII, IX.

2 Contrary to Defendants’ assertion, *see* Dem. at 12–13, the Fifth District’s decision in *Collins v.*
3 *Thurmond* does not extend to claims like Plaintiffs’ here, which challenge discrimination by local-level
4 defendants. The *Collins* court expressly limited its analysis to plaintiffs’ section 11135 claim against
5 State-level defendants (the California Department of Education and Superintendent of Public
6 Instruction), deliberately excluding local-level defendants. *See* 41 Cal. App. 5th at 902–05. *Collins*
7 does not govern.

8 **VI. Plaintiffs State a Taxpayer Claim (Count Seven)**

9 Plaintiffs state a taxpayer claim under section 526a of the California Code of Civil Procedure
10 where they allege “specific facts and reasons for a belief that some illegal expenditure or injury to the
11 public fisc is occurring or will occur.” *Cnty. of Santa Clara v. Superior Ct.*, 171 Cal. App. 4th 119, 130
12 (2009) (quoting *Waste Mgmt. of Alameda Cnty., Inc. v. Cnty. of Alameda*, 79 Cal. App. 4th 1223, 1240
13 (2000)). Here, Plaintiffs challenge the “actual . . . expenditure of public funds” to implement
14 identified unlawful “policies and practices.” *Id.* Plaintiffs plead that Defendants illegally expended
15 public monies to implement an identified policy, Resolution 21, which Plaintiffs allege violates
16 Article I, sections 2(a) and 7, and Article IV, section 16(a) of the California Constitution, as well as
17 Government Code section 11135. FAC ¶¶ 151–83. Plaintiffs challenge specific expenditures by
18 Defendants to implement the Resolution, including the payment of \$15,000 in public monies to
19 retain Christopher Arend as a consultant and the hiring of a partisan panel of ostensible “experts”
20 on “CRT.” *Id.* ¶¶ 20–21.

21 Defendants argue that Plaintiffs’ taxpayer claim should be dismissed because, in their view,
22 the Resolution “is compliant with state law.” Dem. at 17. That is plainly a merits argument
23 inappropriate for adjudication at the pleading stage. Nor is it within the Board’s discretion to enact
24 measures “motivated by an intent to ‘prescribe what shall be orthodox in politics, nationalism,
25 religion, or other matters of opinion[.]’” *McCarthy*, 207 Cal. App. 3d at 146; *id.* at 140 (“[S]chool
26 boards are precluded from imposing a ‘pall of orthodoxy on classroom instruction which implicates
27 the state in the propagation of a particular religious or ideological viewpoint.’” (quoting *Pratt v. Indep.*

1 *Sch. Dist.*, 670 F.2d 771, 776 (8th Cir. 1982)) (cleaned up).

2 **VII. Plaintiffs State a Violation of California Constitution Article I, Section 7**
3 **(Count Eight)**

4 Plaintiffs properly allege that Policy 5020.01 facially discriminates against a protected class of
5 transgender and gender diverse students. In California, discrimination based on gender, including
6 gender identity, is suspect and subject to strict scrutiny. *Catholic Charities of Sacramento, Inc. v. Super.*
7 *Ct.*, 32 Cal. 4th 527, 564 (2004); *Taking Offense v. State*, 66 Cal. App. 5th 696, 725–26 (2021). Policies
8 that discriminate against protected classes are invalid unless the government “establish[es] not only
9 that it has a *compelling* interest which justifies the law but that the distinctions drawn by the law are
10 *necessary* to further its purpose.” *In re Marriage Cases*, 43 Cal. 4th 757, 832 (2008) (cleaned up).

11 Plaintiffs allege that the Policy “discriminates against transgender and gender
12 nonconforming students on its face” by “singl[ing] out transgender and gender nonconforming
13 students for adverse treatment.”⁶ FAC ¶¶ 140–41. They explain that the Policy requires mandatory
14 written disclosure “whenever a student requests to go by a different name or pronouns or accesses
15 ‘sex segregated’ school programs and facilities, such as bathrooms, in accordance with their gender
16 identity.” *Id.* ¶ 141 (quoting Policy 5020.01). Plaintiffs also allege that the Policy mandates
17 documentation of the forced disclosure in students’ official records. *Id.*

18 Even if Plaintiffs’ allegations of facial discrimination were insufficient—which they are
19 not—Plaintiffs have further alleged Defendants’ clear intent to discriminate against a protected class.
20 FAC ¶¶ 142–49. For example, during public comment on Policy 5020.01, its supporters disparaged
21 transgender and gender diverse individuals as having a “mental medical disorder” and being the
22 product of a “destructive agenda.” *Id.* ¶ 142. Defendants echoed these derogatory viewpoints. *Id.*
23 ¶ 143. Plaintiffs allege that, faced with numerous warnings from concerned students, parents, and
24 educators that forced disclosure would jeopardize the lives of transgender and gender
25 nonconforming students, Defendants pushed through the Policy. *Id.* ¶¶ 145, 147. Finally, Plaintiffs
26 assert that the Policy is inflicting predictable harms on LGBTQ students, who are experiencing

27 ⁶ Defendants’ assertion that the Policy “applies equally to all students who wish to transition from
28 their gender listed from their birth certificate” erroneously assumes that such students are not
members of a protected class. They are. *Taking Offense*, 66 Cal. App. 5th at 725–26.

1 increased fear and anxiety, suppressing their identities, and experiencing escalated harassment. *Id.* ¶¶
2 82, 149.

3 **VIII. Plaintiffs State a Violation of California Constitution Article I, Section 1**
4 **(Count Nine)**

5 The California Constitution protects two classes of privacy interests: autonomy privacy and
6 informational privacy. *Sheehan v. S.F. 49ers, Ltd.*, 45 Cal. 4th 992, 999 (2009). These interests can be
7 interrelated: “[D]isclosure of information. . . may have an impact on personal decisions and
8 relationships between individuals and government.” *Hill v. Nat’l Collegiate Athletic Assn.*, 7 Cal. 4th 1,
9 30 (1994) (internal citation omitted). To state a claim for invasion of either autonomy or
10 informational privacy in violation of the California Constitution, a plaintiff must allege “(1) a legally
11 protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3)
12 conduct by defendant constituting a serious invasion of privacy.” *Mathews v. Becerra*, 8 Cal. 5th 756,
13 769 (2019) (quoting *Hill*, 7 Cal. 4th at 39–40). Plaintiffs successfully state violations of both
14 autonomy and informational privacy.

15 Autonomy privacy protects individuals’ abilities to “mak[e] intimate personal decisions or
16 [conduct] personal activities without observation, intrusion, or interference.” *Sheehan*, 45 Cal. 4th at
17 999. Here, Plaintiffs have pled (1) a legally protected, autonomy-based privacy interest in their
18 gender identity,⁷ FAC ¶ 150; *see, e.g., Pettus v. Cole*, 49 Cal. App. 4th 402, 444–45 (1996) (describing
19 “sexual orientation and conduct” as constitutionally protected privacy interest); (2) a reasonable
20 expectation of privacy in the circumstances, *id.* at 458–59; *see also Hill*, 7 Cal. 4th at 25 (“The claim is
21 not so much one of total secrecy as it is of the right to *define* one’s circle of intimacy.”); *Am. Acad. of*
22 *Pediatrics v. Lungren*, 16 Cal. 4th 307, 336–37 (1997) (“Children are not simply chattels belonging to
23 the parent, but have fundamental interests of their own that may diverge from the interests of the
24 parent.”) (citing *In re Jasmon O.*, 8 Cal. 4th 398, 419 (1994)); and (3) a serious invasion of privacy by
25 Defendants’ enactment and implementation of Policy 5020.01, FAC ¶ 141, which requires disclosure

26 ⁷ *Wyatt v. Fletcher*, 718 F.3d 496, 499 (5th Cir. 2013), cited by Defendants at page 18, does not govern
27 the scope of the California Constitution’s right to privacy, which is guaranteed to children and adults
28 alike. *Poway Unified Sch. Dist. v. Superior Ct.*, 62 Cal. App. 4th 1496, 1505 (1998) (“Minors, as well as
adults, possess a constitutional right of privacy under the California Constitution.”).

1 of students' gender identity regardless of their consent, *id.* ¶ 25; denies students the ability to disclose
2 their gender identity on their own, *id.* ¶ 74; and forces students to “suppress[] their gender identities
3 to avoid being outed,” *id.* ¶ 149.

4 Plaintiffs have also sufficiently stated a violation of informational privacy. Contrary to
5 Defendants' assertion, *see* Dem. at 18, information about a student's gender identity does not need to
6 be “wholly private” for the student to retain an “interest in limiting disclosure or dissemination of
7 [that] information.” *C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005) (finding that student
8 retained “a legally protected privacy interest in information about her sexual orientation” despite
9 being “openly gay at school”) (citing *U.S. Dep't of Just. v. Reps. Comm. For Freedom of Press*, 489 U.S.
10 749, 770 (1989)). Here too, Plaintiffs have sufficiently pled (1) a legally protected, informational-
11 based privacy interest in their gender identity, FAC ¶ 150; *see Leibert v. Transworld Systems, Inc.*, 32 Cal.
12 App. 4th 1693, 1701 (“[T]he details of one's personal life, including sexuality . . . fall within a
13 protected zone of privacy.”) (internal marks omitted); (2) a reasonable expectation of privacy in the
14 circumstances, FAC ¶¶ 71–74, 144–47, 149–50; *see C.N.*, 410 F. Supp. 2d at 903 (student who is
15 openly gay at school still alleged “reasonable expectation of privacy” protecting against school's
16 disclosure of her sexual orientation to her mother); and (3) a serious invasion of privacy by
17 Defendants' enactment and implementation of Policy 5020.01, as discussed *infra* §§ X.B., D.; *see*
18 *C.N.*, 410 F. Supp. 2d at 903 (student alleged “serious invasion of her privacy interest” where school
19 principal “disclosed [student's] sexual orientation to her mother”).

20 Defendants' primary rejoinder—that school officials have a “duty to communicate with
21 parents” about students, Dem. at 18—has no bearing on whether Plaintiffs have adequately pled
22 their autonomy or informational privacy claims. Whether such an interest exists, is advanced by the
23 Policy, and sufficiently justifies the Policy's invasions of Plaintiffs' autonomy and informational
24 privacy are questions inappropriate for adjudication at the demurrer stage, which tests only the
25 sufficiency of Plaintiffs' pleadings. *See, e.g., Mathews*, 8 Cal. 5th at 783 (whether statute fulfills its
26 intended purpose of preventing child abuse could not be resolved at demurrer stage).

1 **IX. Plaintiffs State a Violation of Education Code Sections 200 et seq. (Count**
2 **Ten)**

3 Plaintiffs state a violation of Education Code §§ 200 et seq. by alleging (1) severe, pervasive,
4 and offensive harassment that deprives transgender and gender diverse students of the right of equal
5 access to educational benefits and opportunities; (2) that Defendants had actual knowledge of that
6 harassment; and (3) that Defendants acted with deliberate indifference in the face of such
7 knowledge. *See Videckis v. Pepperdine Univ.*, 100 F. Supp. 3d 927, 935 (C.D. Cal. 2015). Even a “single
8 incident of harassing conduct” can constitute severe and pervasive harassment. *Ortiz v. Dameron*
9 *Hosp. Ass’n*, 37 Cal. App. 5th 568, 582 (2019) (claim brought under California Fair Employment and
10 Housing Act) (internal citation omitted).

11 Plaintiffs plead that the Board’s express targeting of LGBTQ students through Policy
12 5020.01 has exacerbated the harassment and bullying these students undergo at school, causing them
13 to experience heightened stress, anxiety, and fear and depriving them of equal access to educational
14 opportunities. FAC ¶ 149. Students are missing class and hiding their gender identities to avoid
15 being outed by their school staff. FAC ¶¶ 74, 149. As a result of robust public opposition,
16 Defendants were well-aware of the harms Policy 5020.01 would inflict, yet they pushed it through
17 anyway. FAC ¶¶ 144–47.

18 **X. The Court Has Jurisdiction over Plaintiffs’ Claims**

19 “California courts are not bound by the ‘case or controversy’ requirement of article III of the
20 United States Constitution, but instead are guided by ‘prudential’ considerations.” *Bilafer v. Bilafer*,
21 161 Cal. App. 4th 363, 370 (2008) (quoting *Matrixx Initiatives, Inc. v. Doe*, 138 Cal. App. 4th 872, 877–
22 78 (2006)). Plaintiffs must generally have a “concrete and actual” interest in the litigation’s outcome.
23 *Iglesia Evangelica Latina, Inc. v. S. Pac. Latin Am. Dist. of the Assemblies of God*, 173 Cal. App. 4th 420,
24 445 (2009). The California Court of Appeal, like the U.S. Supreme Court, “relaxe[s] the general rule
25 of standing . . . in the free speech context.” *Prigmore v. City of Redding*, 211 Cal. App. 4th 1322, 1349
26 (2012).

1 **A. Student and Parent Plaintiffs Adequately Allege Concrete and Actual Injuries**
2 **from Defendants’ Violation of the Free Speech Clause and Article I, Section**
3 **7(b)**

4 Plaintiffs allege concrete injuries as a result of the Resolution. In particular, Student Plaintiffs
5 allege concrete educational harms, including teachers skirting classroom discussions on topics like
6 racial and gender discrimination, FAC ¶¶ 58, 77, 84, and excluding canonical books like *Roll of*
7 *Thunder, Hear My Cry*, out of fear of disciplinary action, *id.* ¶ 98. Both Student and Parent Plaintiffs
8 plead that they have been forced to dedicate enormous amounts of time and energy to dealing with
9 the negative impacts of the Resolution, *id.* ¶¶ 59–60, 69, 75, 79–82, 87, 90, 96, 100, 128, and face
10 harassment and retaliation from the Resolution’s supporters as a result, *id.* ¶¶ 61–63, 67–70, 76, 80,
11 128.

12 **B. Plaintiffs Adequately Allege Concrete and Actual Injuries from Defendants’**
13 **Discrimination on the Basis of Race, Sexual Orientation, Gender Identity,**
14 **and Sex**

15 Plaintiffs Mae M., Susan C., Gwen S., Carson L., Violet B., Stella B., Inez B., Teacher
16 Plaintiffs, and the Temecula Valley Educators Association (“TVEA”) also allege concrete injuries as
17 a result of Defendants’ discrimination. Student Plaintiffs are deprived of the educational benefits of
18 learning about their and others’ diverse histories, cultures, and experiences. *Id.* ¶¶ 58, 66, 84–85, 93,
19 98–99. Both Student and Parent Plaintiffs plead heightened racial hostility as a result of Defendants’
20 discriminatory statements and conduct. *Id.* ¶¶ 61–63, 69–70, 94. Plaintiff Katrina Miles, the sole
21 Black educator at Temecula Middle School, is experiencing the psychological, emotional, and
22 physical toll of Defendants’ racial discrimination. *Id.* ¶¶ 41–43, 126. Plaintiff Gwen S. pleads that the
23 Board’s excision of LGBTQ-related curricular content is harming LGBTQ students, who no longer
24 see themselves represented in instructional materials, and exacerbating anti-LGBTQ hostility,
25 harassment, and bullying in the District. *Id.* ¶¶ 22, 73.

26 Plaintiff TVEA alleges that Defendants’ discriminatory practices have forced its members to
27 change their lesson plans, censor course materials that address racial and other forms of inequality,
28 and restrict their classroom instruction and discussions, including answers to student questions. FAC
29 ¶ 28. Policy 5020.01 has further jeopardized TVEA members’ ability to build trusting relationships
30 with—and therefore teach and support—LGBTQ students. *Id.* ¶ 31.

1 Finally, Plaintiffs Gwen S. and Teacher Plaintiffs allege that Policy 5020.01’s mandatory
2 disclosure and documentation provisions harm LGBTQ students by denying them the autonomy to
3 decide if, when, and to whom to disclose their gender identity, *id.* ¶¶ 25, 74, 149; causing them to
4 suffer heightened fear, stress, and anxiety, *id.* ¶ 149; and forcing them to suppress their gender
5 identity in order to avoid being forcibly outed and having their forced outing documented in their
6 school records, *id.* ¶¶ 25, 149.

7 **C. Teacher Plaintiffs Adequately Allege a Concrete Interest in Avoiding Arbitrary**
8 **and Discriminatory Enforcement**

9 Teacher Plaintiffs have alleged a concrete interest in avoiding arbitrary and discriminatory
10 enforcement and sanctions. Given the Resolution’s sweeping prohibitions and the drastic
11 consequences for even unknowingly violating them, *supra* § II, Plaintiff teachers’ fears of sanction
12 are far from hypothetical or conjectural. FAC ¶¶ 39, 43, 45, 50–52. Because the Resolution does not
13 specify what “other similar frameworks” it prohibits and provides no standards to guide its
14 enforcement, teachers are left to wonder if they may be subject to discipline merely for engaging in
15 culturally responsive instruction. *Id.* ¶¶ 111–14, 156. Even the Resolution’s enumerated prohibitions
16 remain ambiguous. For example, the Resolution does not distinguish between *teaching* the prohibited
17 concepts, like that individuals are members of an oppressor or oppressed class, and merely
18 acknowledging them. Consequently, Teacher Plaintiffs fear being sanctioned merely for using the
19 “‘wrong’ language” while discussing topics like European imperialism or the Armenian genocide, or
20 for assigning books that deal with racial oppression. *Id.* ¶¶ 45, 50–51.

21 **D. Teacher Plaintiffs Adequately Allege Third Party Standing to Challenge**
22 **Resolution 21 and Policy 5020.01**

23 Litigants have standing to assert the rights of third parties where those rights are (1)
24 “inextricably bound up” with the litigants’ activities and (2) “likely to be diluted or adversely
25 affected” unless asserted by others on the third parties’ behalf. *Lewis v. Superior Ct.*, 3 Cal. 5th 561,
26 570 (2017) (citing *Singleton v. Wulff*, 428 U.S. 106, 114–16 (1976) and *Griswold v. Connecticut*, 381 U.S.
27 479, 481 (1965)).

28 Here, Teacher Plaintiffs’ teaching activities are inextricably linked to their students’ rights.

1 Resolution 21 and Policy 5020.01 impose “legal duties and disabilities” on Teacher Plaintiffs,
2 dictating their pedagogical choices on threat of discipline and drafting them into Defendants’ efforts
3 to report and document students’ gender identities and expression. *See Craig v. Boren*, 429 U.S. 190,
4 196 (1976). Just as physicians had third party standing to protect patients’ privacy rights, *Lewis*, 3 Cal.
5 5th at 570–71, Teacher Plaintiffs have an interest in protecting students’ rights, as maintaining safe,
6 productive learning environments for their students promotes their professional interests. *See also*
7 *Cnty. of Los Angeles*, 65 Cal. App. 5th at 635–36 (county had standing to assert privacy interests of
8 patients whose medical records it possessed). Second, students’ privacy rights will be adversely
9 affected unless asserted by Teacher Plaintiffs. Students seeking to challenge the Policy may need to
10 divulge their gender identity to establish harm or access resources necessary to pursue legal action,
11 risking the very same privacy harms they face from the Policy. Those with the strongest interests in
12 challenging the Policy—transgender and gender nonconforming students who risk abuse,
13 harassment, and other harms if outed—are also the most likely to be deterred by these concerns.

14 **E. Teacher and Parent Plaintiffs Adequately Allege Facts to Establish Taxpayer**
15 **Standing**

16 California courts, unlike their federal counterparts, permit Plaintiffs to maintain an action as
17 taxpayers and as citizens. *See Connerly*, 92 Cal. App. 4th at 29 (upholding a taxpayer’s right, absent
18 personal injury, to bring equal protection challenges to state affirmative action programs); *Serrano v.*
19 *Priest*, 5 Cal. 3d 584, 618 (1971) (holding that parents could challenge violations of their children’s
20 educational rights under taxpayer standing). Here, Teacher and Parent Plaintiffs allege sufficient
21 facts to establish taxpayer standing. FAC ¶¶ 187–88. In particular, Plaintiffs’ claim that Defendants’
22 policies violate the Free Speech Clause is a matter “of intense public concern”—“precisely the type
23 of claim to which citizen and taxpayer standing rules apply.” *Connerly*, 92 Cal. App. 4th at 29.

24 **CONCLUSION**


25 For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants’
26 Demurrer.

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Respectfully submitted,

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