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Attorneys for Proposed Amici Curiae

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

MAE M., et al.,

Plaintiffs,

vs.

JOSEPH KOMROSKY, et al.,

Defendants.

Case No. CVSW2306224

EX PARTE APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF

Accompanying Documents: [[PROPOSED] BRIEF OFAMICI CURIAE IN OPPOSITION TO DEFENDANTS' MOTION TO STRIKE UNDER CCP § 425.16; DECLARATION OF JONATHAN MARKOVITZ; [PROPOSED] ORDER

Hearing Date: January 19, 2024
Time: 8:30 a.m.
Department: 5
Judge: Honorable Irma Poole Asberry

Action Filed: August 2, 2023
Trial Date: TBD

APPLICATION TO FILE AMICI CURIAE BRIEF

Proposed amici curiae American Civil Liberties Union of Southern California and First Amendment Coalition (collectively "Amici") will and hereby do apply to and move this Court, pursuant to the California Rules of Court and the Court's inherent authority, for leave to file the attached Brief of Amici Curiae in Opposition to Defendants' Motion to Strike Under Code of Civil Procedure (Code Civ. Proc.) § 425.16, to be heard on January 19, 2024 at 8:30 a.m. in Department 5 of this Court. *See Overstock.com, Inc. v. Goldman Sachs Grp., Inc.*, 231 Cal. App. 4th 471, 489 (2014) ("superior courts retain broad discretion over the conduct of pending litigation and have the authority to determine the manner and extent of ... entities' participation as amici curiae that would be of most assistance to the court") (citations and internal quotation marks omitted); *cf*. Cal. R. Ct. 8.200(c), 8.520(f) (rules governing amicus curiae briefs in the Court of Appeal and Supreme Court, respectively). The Motion to Strike is scheduled to be heard on January 24, 2024.

INTERESTS OF AMICI

The **American Civil Liberties Union of Southern California** ("ACLU SoCal") is a nonprofit, nonpartisan civil liberties organization with more than 100,000 members. Founded by Upton Sinclair in 1923 after he was arrested for reading the Bill of Rights at a rally in support of striking workers, ACLU SoCal has regularly appeared as a party or amicus, or represented parties, to advance the free speech rights of Californians in cases in state and federal courts in California, including in cases involving anti-SLAPP motions. *See, e.g., Hassell v. Bird*, 5 Cal.5th 522 (2018); *The Garment Workers Ctr. v. Superior Ct.*, 117 Cal.App.4th 1156 (2004); *Varian Med. Sys., Inc. v. Delfino*, 35 Cal.4th 180 (2005); *Equilon Enterprises v. Consumer Cause, Inc.*, 29 Cal.4th 53 (2002). ACLU SoCal previously secured leave to file another amicus brief in this matter, in support of Plaintiffs' Motion for a Preliminary Injunction.

The **First Amendment Coalition** ("FAC") is a nonprofit organization based in San Rafael, California and dedicated to defending freedom of speech, freedom of the press, and the people's right to know. Founded in 1988, FAC has often appeared as a party, amicus, or counsel in various cases including anti-SLAPP matters. *See, e.g., Golden Gate Land Holdings LLC v. Direct Action*

Everywhere, 81 Cal.App.5th 82 (2022). FAC previously joined an amicus brief led by Penguin Random House in support of Plaintiff's Motion for Preliminary Injunction.

The accompanying amici curiae brief by ACLU SoCal and FAC argues that Defendants' motion to strike under Code Civ. Proc.§ 425 seriously misconstrues the nature of California's "anti-SLAPP" statute and relevant case law and that the acceptance of Defendants' position would cast a devastating chill on myriad forms of public interest litigation. Amici believe this Court would benefit from additional briefing on these issues. Accordingly, amici request that this Court accept and file the attached amici curiae brief.

Dated: January 18, 2024 By: /s/ Jonathan Markovitz
JONATHAN MARKOVITZ
Attorney for *Amicus Curiae*
ACLU FOUNDATION OF SOUTHERN CALIFORNIA

/s/ David Loy
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EXHIBIT A

ACLU FOUNDATION OF SOUTHERN CALIFORNIA
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INTRODUCTION

California's anti-SLAPP statute can be a valuable tool for protecting the constitutional rights of freedom of speech and petition for the redress of grievances, as the legislature intended when enacting Code Civ. Proc. § 425.16. When used appropriately, Section 425.16 makes it possible to avoid protracted litigation over meritless claims filed solely to silence protected speech. As the legislature has also recognized, however, it is important to guard against "abuse of Section 425.16" lest the anti-SLAPP law become an instrument to chill the very rights it was designed to protect. Code Civ. Proc.§ 425.17(a). Defendants' "Motion to Strike under Section 425.16" represents precisely the type of abuse of the anti-SLAPP statute that the Legislature contemplated when it passed Section 425.17.

While Defendants currently seek to strike only one particular lawsuit, acceptance of their position would have far-ranging consequences for many types of public interest litigation. Foundational anti-discrimination case law instructs that one of the most powerful and convincing ways for plaintiffs challenging discriminatory policies is to cite records of statements by members of legislative bodies that show improper motivations. If plaintiffs were routinely subjected to anti-SLAPP motions and forced to make a prima facie showing of merit at the pleading stage solely because they relied on comments in a legislative history as evidence of discrimination, it would become far more difficult to challenge a variety of forms of intentional discrimination. The anti-SLAPP statute was not intended to create this type of burden on the right to petition the courts.

Nor was the anti-SLAPP statute intended to make it more difficult for plaintiffs to challenge unconstitutional or otherwise unlawful policies merely because the policy has some relationship to speech or expressive conduct. The anti-SLAPP statute may provide protection against suing a legislative body for its *own* speech. But Defendants here are asking the Court to raise the bar for any challenge to a legislative body's attempt to regulate *anyone*'s speech. Landmark First Amendment and Liberty of Speech Clause cases challenging statutes or regulations that prohibited petitioning in privately owned shopping centers, or that authorized the removal of books from school libraries, or that required school authorization for the distribution of alternative or

underground student newspapers might have had very different outcomes, or might never had been brought, if the plaintiffs were required to meet a heightened burden at the pleading stage and faced the prospect of having to pay Defendants' attorneys' fees if the anti-SLAPP motion were successful, even though they had no opportunity to conduct discovery, and the suit was not frivolous. *Compare* Cal. Code Civ. Proc. § 1021.5 (forbidding "public entities" from being awarded attorneys' fees even if they are a prevailing party), *with* Cal. Code Civ. Proc. § 425.16 (providing for attorneys fees for any defendant who prevails on an anti-SLAPP motion except for claims brought under small number of statutory provisions). Similar cases might not be brought in the future were Defendants' position to carry the day. That outcome would be directly contrary to the express legislative goals of Sections 425.16 and 425.17.

Finally, Defendants' motion to strike should be understood as a frivolous abuse of the anti-SLAPP statute because it completely fails to account for the fact that this lawsuit was brought in the public interest and is therefore categorically exempt from an anti-SLAPP motion under the public interest carveout of Section 425.17. Plaintiffs, who seek only a type of relief that will benefit the public as a whole, have brought suit to enforce a series of crucially important constitutional and statutory rights that were not likely to be defended by any government entity. It is precisely the sort of action Section 425.17 was designed to protect.

ARGUMENT

I. A Case Does Not "Arise From" An Act in Furtherance of Free Speech Merely Because It Relies on Comments by Members of a Legislative Body.

Defendants' claim that this action "arises from" the free speech activity of Temecula Valley Unified School District ("TVUSD") Board members' speech because it relies on the "legislative history and related comments by Board members" is directly refuted by controlling anti-SLAPP precedent, including cases Defendants rely on. Defendants' Memorandum in Support of Motion to Dismiss Under Code Civ. Proc. § 425.16 ("Motion") at 7:5-10.

Defendants' position is foreclosed by a recent decision, *Mary's Kitchen v. City of Orange*, 96 Cal.App.5th 1009 (2023), in which the Court of Appeal held that the anti-SLAPP statute did not apply to a Brown Act claim that a city council had improperly terminated a license during closed session without noting that matter on the agenda. The cause of action arose from the city council's

unprotected conduct of making a collective decision to take "a governing action," not any speech protected by the anti-SLAPP statute. *Id.* at 1017. As the court explained, "we interpret the complaint as arising from unprotected action—the unanimous confirmation [of termination of the license]—and the fact that the agenda had not given proper notice of that action." *Id.* Therefore, the complaint was not based on any protected speech involved in "the conversation the city council had with the city attorney" in closed session, although statements made in that conversation might be evidence relevant to the Brown Act claim. *Id.* Therefore, the mere evidentiary use of board members' statements to prove a claim does not mean the claim arises from protected speech under anti-SLAPP statute. *Cf. Wisconsin v. Mitchell*, 508 U.S. 476, 489 (1993) ("The First Amendment … does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent."). Thus, this case does not arise from protected speech merely because Plaintiffs rely on board members' comments as evidence of improper motivations. *See, e.g., Mary's Kitchen*, 96 Cal.App.4th at 1017.

In *San Ramon Valley Fire Protection District v. Contra Costa County Employees' Retirement Association*, the Court of Appeal expressly declined to decide "whether an action against individual lawmakers, challenging their vote cast in the exercise of individual legislative prerogative, would properly be held to arise from conduct in the furtherance of the exercise of speech rights, protected by section 425.16." 125 Cal. App. 4th 343, 356 (2004). But the Court took great pains to point out that the only way the anti-SLAPP statute might apply to litigation involving a legislator's vote is if the legislator was sued individually and "the asserted basis for their liability was premised on their *vote*" itself. *Id*. at 356 (internal quotation marks and citation omitted); *see also Schwarzburd v. Kensington Police Prot. & Cmty. Servs. Dist. Bd.*, 225 Cal.App.4th 1345, 1355 (2014) (holding that the anti-SLAPP statute was "triggered" by claims against individual council members where the "gravamen" of the claims was that the defendants had voted in a manner that violated the legislative body's policies). The mere fact that Plaintiffs might have cited legislators' public statements or votes in their Complaint or that such statements or votes might be relevant evidence does not mean that the lawsuit "arises from" protected activity.

Indeed, *San Ramon Valley's* opening lines emphatically reject Defendants' position: "This case

requires us to decide whether litigation seeking judicial review of an action or decision by a public entity is subject to a special motion to strike under the anti-SLAPP statute, Code Civ. Proc. § 425.16, merely because the challenged action or decision was taken by vote after discussion at a public meeting. Our answer is no." *Id*. at 346. Defendants therefore have no basis for their assertion that this "lawsuit arises from the Board members' exercises of free speech" merely because it "relies on the comments and votes of the individual board members who voted in support" of the challenged policies, particularly because Plaintiffs are not suing individual board members for their votes. Motion at 7:5-6, 6:17-19.

The California Supreme Court has approvingly referenced *San Ramon Valley* as an example of the ways that "[m]any Courts of Appeal … are attuned to and have taken care to respect the distinction between activities that form the basis for a claim and those that merely lead to the liability-creating activity or provide evidentiary support for the claim." *Park v. Bd. of Trustees of California State Univ.*, 2 Cal.5th 1057, 1064 (2017). *Park* also recognized the consequences of failing to respect this distinction, noting that

> to read the 'arising from' requirement differently, as applying to speech leading to an action or evidencing an illicit motive, would, for a range of publicly beneficial claims, have significant impacts the Legislature likely never intended. Government decisions are frequently arrived at after discussion and a vote at a public meeting. Failing to distinguish between the challenged decisions and the speech that leads to them or thereafter expresses them would chill the resort to legitimate judicial oversight over potential abuses of legislative and administrative power.

Id. at 1067. In fact, virtually *every* legislative action requires some form of discussion or communication followed by a majority vote of the legislative body for a measure to be approved, so allowing the anti-SLAPP statute to be triggered simply because members of a legislative body discussed the challenged policy, or later voted on and approved the measure, would raise the bar for challenging just about anything any legislative body does.

Park was particularly concerned with the impact on anti-discrimination litigation if the "arising from" requirement of Section 425.16 could apply to speech that merely preceded a legislative enactment or that demonstrated improper motivations. *Id*. at 1061. The plaintiff in *Park* was an assistant professor who filed a national origin discrimination suit under the California Fair Employment and Housing Act after being denied tenure. *Id*. The University filed an anti-SLAPP

motion, arguing that the professor's suit arose in part from "communications that led up to and followed" the tenure decision. *Id*. The decision noted that if the "arising from" requirement could be satisfied by "speech leading to an action or evidencing an illicit motive"

> [a]ny employer that initiates an investigation of an employee, whether for lawful or unlawful motives, would be at liberty to claim that its conduct was protected and thereby shift the burden of proof to the employee who, without the benefit of discovery and with the threat of attorney fees looming, would be obligated to demonstrate the likelihood of prevailing on the merits. Conflating, in the anti-SLAPP analysis, discriminatory decisions and speech involved in reaching those decisions or evidencing discriminatory animus could render the anti-SLAPP statute fatal for most harassment, discrimination and retaliation actions against public employers.

Id. at 1067 (citations and internal quotation marks omitted).

Indeed, were the Court to accept the position that the anti-SLAPP statute could be triggered by mere reliance on legislators' comments as evidence of improper motive, the result would undermine foundational anti-discrimination case law that makes clear that comments from members of a legislative body or from other decisionmakers can be important evidence of intentional discrimination. *See, e.g., Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 (1977) ("The legislative or administrative history may be highly relevant [in determining whether a legislative enactment was motivated by a discriminatory purpose], especially where there are contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports."); *DeJung v. Superior Ct.*, 169 Cal.App.4th 533, 550 (2008) ("[c]omments demonstrating discriminatory animus may be found to be direct evidence" of discriminatory intent in employment discrimination cases). The legislature surely never intended to make it more difficult for plaintiffs to rely on precisely the types of evidence courts have long instructed them to rely on when challenging discriminatory policies and decisions.

Defendants' claim that "[t]he votes and comments of the individual board members … are … entitled to anti-SLAPP protection" and that "[a]nything the Board members said or wrote when considering" the challenged policies is, therefore, essentially identical to the arguments rejected by the Court of Appeal and the Supreme Court in *Mary's Kitchen*, *San Ramon Valley* and *Park*, and should be rejected here too. Motion at 6:1-3, 13-16.

II. Defendants' Policies do not "Arise From" Protected Activity Merely Because They

May Have Some Relationship to Speech.

Defendants' argument that any public entity's "speech-related enactment" is protected by the anti-SLAPP statute lacks support in the statute or case law, and, if accepted, would make it far more difficult to challenge any legislative action that violates the First Amendment or the Liberty of Speech Clause of the California Constitution. Motion at 5:17-27. Defendants' reliance on *San Ramon Valley* is misplaced. *Id*. In that case, the Court of Appeal considered the possibility that the anti-SLAPP statute might be triggered by lawsuits that challenge a legislative body's "own exercise of free speech," as when a governing Board of a county employees' retirement association took action "to authorize participation in a campaign to amend state pension laws, or to become actively involved in a voter initiative seeking such changes." 125 Cal.App.4th at 357. But the case never suggested that the statute could come into play whenever a governing board passed a measure that regulated the speech of *other* entities or individuals. Indeed, "[n]othing in the language of section 425.16 or the case law construing it authorizes an anti-SLAPP motion simply because a claim would have an adverse effect on protected activity. … In the anti-SLAPP context, the critical consideration is whether the cause of action is based on the defendant's protected free speech or petitioning activity." *Hastings Coll. Conservation Comm. v. Faigman*, 92 Cal.App.5th 323, 334 (2023), review denied (Sept. 20, 2023). Thus, while it may be an "open question whether a challenge based on a speech-related enactment … may give rise to an anti-SLAPP motion" in some circumstances, *id*. at 458, it is clear that an anti-SLAPP motion is not automatically appropriate in any circumstance where a legislative measure has some relationship to speech. The anti-SLAPP statute is not triggered unless the defendant's free speech is *itself* the basis for the alleged liability.

To conclude otherwise would create daunting obstacles for First Amendment and Liberty of Speech Clause litigation because those cases often involve challenges to legislative efforts to regulate speech. For example, in *Robins v. Pruneyard Shopping Ctr.*, 23 Cal.3d 899 (1979), *aff'd*, 447 U.S. 74, 100 S. Ct. 2035 (1980), the California Supreme Court held that the free speech and petition provisions of Cal. Const., art. I, §§ 2 and 3, protect speech and petitioning at even privately

owned shopping centers. The Court had occasion to consider this issue because high school students brought suit after security guards told them they were violating a San José shopping center's regulations prohibiting public expressive activity by attempting to gather signatures on a petition expressing opposition to a United Nations resolution against Zionism. These students were not required to prove they were likely to prevail at the onset of the case. Had they been forced to do so without discovery, there is no telling whether they would have brought the suit or ultimately prevailed, and one of the most important cases establishing that the California Constitution's Liberty of Speech Clause might actually provide "greater protection than the First Amendment" might never have been decided on the merits. *Id*. at 910. Moreover, if the student plaintiffs had faced the threat of paying the shopping center's attorneys fees, the likelihood of their bringing the case would have been even lower. *See, e.g., Park*, 2 Cal.5th at 1067 (noting the potential chilling effect of "attorneys fees looming" created by the anti-SLAPP statute's fee shifting provision).

The fee shifting and heightened pleading standards of an anti-SLAPP framework might also have proven daunting for Susannah Bright, the 10th grade student who filed a suit seeking injunctive and declarative relief to prevent the enforcement of school regulations that required school approval for distribution of alternative or underground student newspapers in *Bright v. Los Angeles Unified Sch. Dist.*, 18 Cal.3d 450, 453, (1976). The challenged regulations were clearly "speech-related," and, by bringing the case, Ms. Bright helped to secure "the right of California public school students to speak and write freely." *Id*. at 452. Were a plaintiff to bring a similar case now, and were Defendants' reading of Section 425.16 to prevail, she would be subject to an anti-SLAPP motion and the accompanying threat of having to pay the school district's attorneys' fees. Surely, the Legislature never intended this result.

Perhaps even more relevant here, in *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, high school and junior high school students secured a decision vindicating their First Amendment right to receive information and prohibiting a school district from removing books from school libraries "simply because they dislike the ideas contained in those books and seek by their removal to prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." 457 U.S. 853, 854 (1982) (citations and quotation marks omitted). This was a

case quite similar to the one Defendants seek to strike here. There, as here, a school board made a "speech-related" decision about what kinds of information should be provided to students. In *Pico*, however, the plaintiffs were not subject to the heightened pleading standards of an anti-SLAPP statute and were able to develop a substantial enough record via discovery to convince the Supreme Court that there was a genuine issue of material fact as to whether the defendants had exercised their discretion over library curation in an unconstitutional manner. *Id*. at 872-73. It is unlikely that plaintiffs could have made such a showing at the outset of the case. Had they been required to, the Supreme Court may never have had the opportunity to weigh in on the crucial First Amendment issues raised in the case.

Pico, *Bright*, and *Pruneyard* are just three of hundreds, if not thousands, of cases that involved challenges to "speech-related measures" and that played crucial roles in the development of First Amendment and Liberty of Speech Clause doctrine leading to a modern and vibrant speech-protective jurisprudence that is truly protective of core constitutional values and principles. The anti-SLAPP statute was never intended to stifle this type of Liberty of Speech Clause case or First Amendment case brought in California courts, yet that is precisely what would occur should Defendants' position hold sway.

III. Defendants' Motion to Strike is Frivolous Because the Case Was Brought in the Public Interest and is Categorically Exempt from an anti-SLAPP Motion.

The Court should deny Defendants' motion not only because the case does not "arise from" protected activity, but also because it was brought in the public interest. The anti-SLAPP statute does not apply to lawsuits brought in the public interest or on behalf of the general public if:

> (1) The plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member. A claim for attorney's fees, costs, or penalties does not constitute greater or different relief for purposes of this subdivision.
> (2) The action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons.
> (3) Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter.

Cal. Civ. Proc. Code § 425.17.

Because they seek only equitable relief enjoining implementation or enforcement of allegedly

unconstitutional and otherwise unlawful policies, along with legal fees, Plaintiffs meet the first element of the public interest exemption; thus, the Court need only determine the second and third elements. *See Found. for Taxpayer & Consumer Rts. v. Garamendi*, 132 Cal.App.4th 1375, 1380 (2005) (Section 425.17 applied where petitioners sought to enjoin the enforcement of an allegedly "invalid and unconstitutional" law).

ACLU SoCal, together with the ACLU Foundation of Northern California and on behalf of more than 20 organizations serving the LGBTQ+ community and/or advocating for civil rights in California, previously submitted an amicus brief in support of Plaintiffs' motion for a preliminary injunction that illustrates why the portion of this case challenging TVUSD's forced outing policy is important for the school community generally. That brief argues that the forced outing policy not only violates transgender students' constitutional rights but also threatens their mental health and well-being. It explains how the forced outing policy increases the chances that students will be "outed" to family before they are ready, thus exposing them to risk of familial rejection and/or abuse, while also deterring students from the expression of authentic identity at school that research shows is highly beneficial for LGBTQ youth.[1] The declarations Plaintiffs filed in support of their motion for a preliminary injunction from renowned academic experts like Dr. Henry Louis Gates, Jr., detail how the portion of this case challenging TVUSD's "anti-CRT" policy is similarly important for the school community generally. As a whole, this case seeks to affirm the rights of all TVUSD students to be their authentic selves at school without the fear of being outed without their consent, while ensuring that students see themselves reflected in their education and that they can freely discuss issues related to race, gender, and sexual orientation in the classroom—crucially important rights in the public interest. The case therefore meets the second element of Section 425.17's public interest exemption.

The case also meets the third element of the Section 425.17 exemption because it is clear that

[1] Researchers with the Williams Institute at UCLA School of Law have estimated that about 49,000 California adolescents, between the ages of 13 and 17, identify as transgender. Herman et al., *How Many Adults and Youth Identify as Transgender in the United States?*, Williams Institute (June 2022) https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf (as of Jan. 16, 2024).

the rights that this lawsuit seeks to vindicate require private enforcement. In recent years, at least six school districts around the state have enacted forced-outing policies[2] and at least seven districts have enacted policies restricting instruction about race.[3] On information and belief, the state of California has taken only one of these districts -- the Chino Valley Unified School District (CVUSD) in San Bernardino County -- to court, and the preliminary injunction it secured against enforcement of CVUSD's forced outing policy did not bind board members or school officials in any other district. This record makes clear that government entities cannot be counted upon to vindicate the rights that are threatened and impinged upon by Defendants' actions and policies.

Thus, vindication of these civil and constitutional rights requires private enforcement, and the case is exempt from an anti-SLAPP motion under Section 425.17.

CONCLUSION

For the foregoing reasons, the Court should deny Defendants' anti-SLAPP motion.

Dated: January 18, 2024 Respectfully submitted,

ACLU FOUNDATION OF SOUTHERN CALIFORNIA

/s/ Jonathan Markovitz
JONATHAN MARKOVITZ

FIRST AMENDMENT COALITION

/s/David Loy
DAVID LOY

[2] Gomez, *"Kids Are Having to Use Their Deadname": Students Say Gender Policies Make Schools Feel Unsafe*, Los Angeles Times (Sept. 21, 2023) https://www.latimes.com/california/story/2023-09-21/transgender-students-parental-notification-policies-schools-lgbtq-forced-outing (as of Jan. 10, 2024).

[3] Lambert, "*National wave of anti-CRT measures trickles into California schools*," EdSource (Apr. 20, 2023) https://edsource.org/2023/national-wave-of-anti-crt-measures-trickle-into-california-schools/688862 (as of Jan. 10, 2024).

EXHIBIT B

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Defendants.

Case No. CVSW2306224

DECLARATION OF JONATHAN MARKOVITZ IN SUPPORT OF EX PARTE APPLICATION TO FILE BRIEF OF AMICI CURIAE

Hearing Date: January 19, 2024
Time: 8:30 a.m.
Department:5
Judge: Honorable Irma Poole Asberry

Action Filed: August 2, 2023
Trial Date: TBD

DECLARATION OF JONATHAN MARKOVITZ

I, Jonathan Markovitz, hereby declare:

1. I make this declaration based on my own personal knowledge and if called to testify could and would do so competently as follows:

2. I am a staff attorney at the American Civil Liberties Union Foundation of Southern California ("ACLU").

3. I am counsel for proposed amici curiae American Civil Liberties Union of Southern California and First Amendment Coalition.

4. My clients hereby apply for leave of court to file the attached [Proposed] Brief of Amici Curiae in opposition to Defendants' Motion to Strike under CCP § 425.16

5. My office consulted the California Rules of Court and Rules of Civil Procedure, but there are no specific rules pertaining to the submission of amicus briefs in this Court.

6. However, our office submitted an earlier amicus brief in this case, in support of Plaintiffs' Motion for a Preliminary Injunction. Our office filed an ex parte application to submit that brief, after being instructed to do so by someone at the Civil Clerk's office at the Superior Court of California, County of Riverside. We are therefore filing an ex parte application to submit this brief too.

7. 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 comprise Plaintiffs in this case. Counsel of record for Plaintiffs are Mark Rosenbaum (mrosenbaum@publiccounsel.org), Amanda Mangaser Savage (asavage@publiccounsel.org), Mustafa Ishaq Filat (ifilat@publiccounsel.org), and

Kathryn Eidmann (keidmann@publiccounsel.org) of Public Counsel as well as Scott Humphreys (humphreyss@ballardspahr.com), Elizabeth Schilken (schilkene@ballardspahr.com), and Maxwell S. Mishkin (mishkinm@ballardspahr.com) of Ballard Spahr LLP. Public Counsel's address is 610 South Ardmore Avenue, Los Angeles, CA, 90006, and their phone number is (213) 385-2977. Scott Humphreys and Elizabeth Schilken's address is 2029 Century Park East, Suite 1400, Los Angeles, CA, 90067, and their phone number is (424) 204-4400. Maxwell S. Mishkin's address is 1909 K Street, NW, 12th Floor, Washington, DC 20006, and his phone number is (202) 508-1140.

8. 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, and Temecula Valley Unified School District comprise the named Defendants in the case. Counsel for Defendants is Mariah Gondeiro (mgondeiro@tylerlawllp.com and mgondeiro@faith-freedom.com) and Robert H. Tyler (btyler@faith-freedom.com) of Advocates for Faith & Freedom. Mariah Gondeiro's and Robert H. Tyler's address is 25026 Las Brisas Road, Murrieta, CA 92562, and their phone number is (951) 304-7583.

9. In accordance with California Rules of Court rule 3.1203, on January 17, 2023, at approximately 7:43 AM, I emailed notice to counsel for Plaintiffs and Defendants that I would be filing an ex parte application for leave to file an amici curiae brief on December 18, 2023, and that I intended to appear before this Court on December 19, 2023 at 8:30 AM to argue the application. Counsel for Plaintiffs indicated that they would not oppose proposed amici's application. Counsel for Defendants did not respond.

I declare under penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 18th day of January, 2024, in Los Angeles, California.

Respectfully submitted,

ACLU FOUNDATION OF SOUTHERN CALIFORNIA

/s/ Jonathan Markovitz
JONATHAN MARKOVITZ