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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

CAYLA J. et al.,

Plaintiffs,

v.

STATE OF CALIFORNIA et al.,

Defendants.

Reservation No. 284458662516

Case No. RG20084386

DEFENDANTS' REPLY TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION

Date: August 4, 2023
Time: 10:00 a.m.
Dept: 23
Judge: The Honorable Brad Seligman

Trial Date: September 5, 2023
Action Filed: November 30, 2020

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Defendants file this Reply to Plaintiffs' Opposition to Defendants' Motion for Summary Judgment or, in the Alternative, Summary Adjudication.

INTRODUCTION

Apparently recognizing that their disparate-impact, race and wealth-based claims under *Collins* must fail, plaintiffs dedicate the vast majority of their opposition brief to attempting to substantiate their *Butt*-style "educational equality" claim. (See *Collins v. Thurmond* (2019) 41 Cal.App.5th 879; *Butt v. State of Calif*. (1992) 4 Cal.4th 668.) But defendants are similarly entitled to judgment on that claim because plaintiffs have failed to satisfy their evidentiary burden of establishing (1) the "prevailing statewide standard" for education at any point in time relevant to this action; and (2) that the plaintiff group received an education "substantially below" that standard. (*Butt*, 4 Cal.4th at pp. 686-87.)

Plaintiffs spend the first two-plus pages of their brief discussing the importance of the fundamental right to education—interspersed with flagrant misrepresentations of defendants' argument and quotes falsely attributed to defendants' brief.[1] (Opp'n, pp. 19-21.) But plaintiffs' focus on the principles informing California's recognition of the state constitutional right to education is irrelevant to *this* case based on the factual record before the Court on this motion: plaintiffs have wholly failed to (1) adequately support their arguments with the actual law that interprets the scope of that right, and defines the minimum showing required to establish liability for its violation; and (2) present evidence creating a factual dispute for trial under the applicable law.

Because plaintiffs bring claims for denial of "basic educational equality" under the *Butt* case (third cause of action), and for disparate-impact discrimination under the *Collins* case (first and second causes of action), it is the *Butt* and *Collins* standards that control analysis of those

[1] For example, contrary to plaintiffs' blatantly untrue assertions, defendants never stated, that "the fundamental right to an education 'is no more sacred than any of the other fundamental rights.'" Nor did defendants argue that a claim of infringement of the fundamental right to an education under *Butt* is legally indistinguishable from an equal protection claim based on a suspect classification. (Opp'n, pp. 19-20 (ii)-(iii).) Defendants' brief makes clear that its argument is that, in this case, based on how plaintiffs have styled their claims, plaintiffs' *Butt*-style "educational equality" claim is premised on the same facts as its disparate-impact, race and wealth-based discrimination claim.

claims. And application of those standards to plaintiffs' claims here mandates this Court's conclusion that those claims must fail, and that judgment must be awarded to defendants. (See Mot. for Summ. J., Args. II and III.)

ARGUMENT

Plaintiffs have failed by their opposition to create a material factual dispute for trial or to otherwise show that summary judgment should not be awarded for defendants.

I. DEFENDANTS ARE ENTITLED TO JUDGMENT ON PLAINTIFFS' THIRD CAUSE OF ACTION FOR VIOLATION OF "EDUCATIONAL EQUALITY" BECAUSE PLAINTIFFS HAVE FAILED TO SHOW THAT THEY WERE SUBJECTED TO AN EDUCATION SUBSTANTIALLY BELOW THE PREVAILING STATEWIDE STANDARD

Plaintiffs have failed to satisfy their evidentiary burden in support of their educational equality claim under *Butt* of demonstrating that the plaintiff group was denied an education basically equivalent to the substantial majority of students in the State because of the State's COVID-mitigation policies.

A. Plaintiffs Must Establish Their Claim with Evidence of the Standard for Education Being Provided Statewide.

As an initial matter, to the extent plaintiffs may be purporting to suggest on page 19 of their brief that plaintiffs can prevail on their *Butt*-style educational-equality claim by limiting their evidence to data from one or two school districts,[2] this is flatly incorrect (and improperly conflates the *Butt* "educational equality" analysis with the very distinct *Collins* disparate-impact race and wealth-based analysis). (Opp'n, p. 19; Mot. for Summ. J., Arg. III, p. 27.)

The reason such a limited evidentiary showing would be legally insufficient is two-fold: (1) unlike in *Butt*, plaintiffs here challenge facially neutral state policies (school closures and distance learning) with statewide application, as opposed to an allegedly facially discriminatory

[2] As further discussed in section II.A., despite plaintiffs' incorrect argument that they are permitted to limit their evidentiary burden to a single district, plaintiffs have failed to meet even that standard. This is because plaintiffs have failed to present *any* admissible data or other evidence establishing the actual standard of educational content or services provided in any district at any relevant point in time. (See Pls' Further Disputed "Fact" No. 196 [relying on statutory requirements and State distance-learning guidance rather than evidence of the education actually being provided].)

policy of a single school district; and (2) the *Butt* case holds that even such a facial-discrimination claim of the type at issue in that case (but not at issue here) must still be evaluated by reference to the education being "provided elsewhere throughout the State," or, the "prevailing statewide standards," which are tied to the education *actually* provided, i.e., evidence of the services generally received statewide. (*Butt*, *supra*, 4 Cal.4th at pp. 685, 687.) This requirement further makes logical sense because the proper assessment of an educational-disparity claim that rests on an alleged infringement of the fundamental right to education under the state constitution—as opposed to alleged discrimination on the basis of a protected characteristic—inherently depends on a showing of the education actually being provided to the majority of students across the State.

Furthermore, to overcome summary judgment on their *Butt*-style "educational equality" claim, it is not enough for plaintiffs to argue "the importance" of a public education—which, of course, the State-educational defendants do not dispute. It is also not enough for plaintiffs to improperly purport to shift the burden to defendants to establish the relevant prevailing statewide standards (see Opp'n, e.g., at p. 25 ["Indeed, nowhere in its brief does the State proffer its own version of the educational conditions prevailing in the State during this period"]; Code Civ. Proc., § 437c, subd. (o)(2) [a plaintiff's burden on summary judgment "to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto"]). Finally, plaintiffs also cannot prevail on this claim by purporting to "define" the "prevailing statewide standard" as whatever, in plaintiffs' view, would allegedly "be sufficient," since that is not the legal definition of "prevailing statewide standard." (See Mot. for Summ. J., Arg. II(A)(2), citing *Butt*, *supra*, 4 Cal.4th at pp. 686-87, and *Collins*, *supra*, 41 Cal.App.5th at p. 898, and fn. 8.) Instead, to create a factual dispute on their "educational equality" claims, plaintiffs must produce admissible and competent evidence that establishes both the prevailing statewide standard for the actual provision of education, and that the State's COVID-mitigation policies caused the plaintiff group's education to fall substantially below that standard. Plaintiffs have failed to make such a showing.

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Plaintiffs' additional arguments that the State's mitigation response was insufficient under various objective standards—whether Education Code requirements, regulation, plaintiffs' personal opinions, or aspirational goals and principles enunciated in case law—similarly fail to establish that the State violated the state constitution's equal protection mandate.

For a claim alleging violation of educational equal protection under *Butt* to prevail—even when based on the alleged infringement of the fundamental right to education, as opposed to discrimination against a protected class—a plaintiff must still show that their right to education has been significantly infringed *as compared to* the vast majority of students across the State. (*Butt*, *supra*, 4 Cal.4th at 685-686.) In other words, "[t]he essence of an equal protection challenge is a *comparison between similarly situated groups*"—not whether legal mandates or aspirational standards or principles, in a vacuum, are being satisfied. (*People v. Edwards* (2019) 34 Cal.App.5th 183, 199, emphasis added; see also, e.g., *Vergara v. State of Calif*. (2016) 246 Cal.App.4th 619, 644 ["As its name suggests, equal protection of the laws assures that people who are 'similarly situated for purposes of [a] law' are generally treated similarly by the law."].) It is thus that, in the *Butt* case, which held that the plaintiffs' fundamental right to "basic educational equality" was violated by their school district's significant truncation of the school term as compared to all other districts in the State, the California Supreme Court rejected the State's argument that no violation had occurred simply because the school district did not violate the "free schools clause" guarantee of a six-month school term. The Court explained that "whatever the requirements of the free school guaranty, the equal protection clause precludes the State from maintaining its common school system in a manner that denies the students of one district an education basically equivalent to that provided elsewhere throughout the State." (*Butt*, *supra*, 4 Cal.4th at p. 685.)

In other words, a failure to satisfy objective standards—whether they be established under the state constitution, statute, regulation, or policy—does not, in and of itself, give rise to an equal-protection, educational-disparity claim. (*Butt*, *supra*, 4 Cal.4th at pp. 686-87.) Rather, it is the disparate treatment of similarly situated groups (in the *Butt* case, all school children attending the Richmond Unified School District compared to all other students statewide) that does. (*Id.*)

B. The "Prevailing Statewide Standard" Cannot Be Established by Statutory or Regulatory Requirements.

Despite plaintiffs' heavy reliance on the *Butt* case in support of their "educational equality" claim by their opposition, it is evident that plaintiffs' actual theory of constitutional liability is premised on the notion that the State is required to provide all students with an education of a particular quality. This is because plaintiffs argue that the "prevailing statewide standard" is allegedly established by Education Code requirements, state and local regulations, and/or State COVID guidance. (See Opp'n, pp. 12-15; Pls' Further Disputed "Fact" No. 196.) As already noted in the moving papers, however, such an argument is foreclosed under California law.

Plaintiffs' argument that the prevailing statewide standard for education is "set" by regulatory and statutory requirements, and/or by the State's COVID guidance, has already been squarely considered and rejected by the California Court of Appeal. (See Pls' Further Disputed "Fact" No. 196.) In *Campaign for Quality Education v. State of California* (2016) 246 Cal.App.4th 896, 908 (CQE), while reiterating that "the fundamental right to a public school education is firmly rooted in California law," the Court of Appeal clarified that the state constitution does not guarantee a "right" to "a quality education." (*Id*. at pp. 907-909; see also *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1213 [an allegation that "seeks to raise issues of the quality of education," and "the academic results produced," falls "within the rule that courts will not entertain claims of 'educational malfeasance'"].)

Moreover, the *Butt* case—which established the concept of the "prevailing statewide standard"—rejected the notion that a statutory requirement that districts remain in session for at least 175 days in order to receive funding established a prevailing statewide standard for the minimum amount of days districts are in session. (*Butt*, *supra*, 4 Cal.4th at pp. 685-687 & fn. 14.) Instead, the Court determined the prevailing statewide standard of a school term of at least 175 days was based on local-district certifications submitted to the Superintendent of Public Instruction that indicated that "virtually every established school district in California operated for at least 175 days" during the relevant school year. (*Id*., at fn. 14.) Thus, it is clear that the prevailing statewide standard must be determined based on evidence of the education that

students are *actually receiving statewide*, and not on state or other requirements for what districts were expected to provide during the relevant time period. (*Id.* at pp. 686-687 & fn 14.)

For this reason, the "evidence" that plaintiffs cite and rely on for their claimed "further disputed material fact" No. 196, which purports to establish "the prevailing statewide standard" from March 2020 to November 2020, fails, as a matter of law, to do any such thing. (Pls' Further Disputed "Fact" No. 196.) Rather, that alleged "fact" relies entirely on Senate Bill 98 (the now-defunct distance-learning authorization), various provisions of the Education Code, and witness testimony that when a student lacked connectivity during distance learning, they were unable to attend school.[3] Accordingly, this alleged "evidence" fails to create a material factual dispute for trial.

Despite the absence of a state-constitutional right to a particular quality of education, defendants nevertheless agree with the appellate court in *CQE*, and with plaintiffs here, that "an education of 'some quality' accords with good public policy." (*CQE*, *supra*, 246 Cal.App.4th at p. 907.) It is for this reason, as previously noted, that it is a significant priority of the Governor, the Legislature and the State-educational defendants to work to mitigate inequities among California's public-school students, as reflected in the myriad actions they have taken, and continue to take, to support students, and especially economically disadvantaged, low performing, and other targeted high-needs student groups. (UMF 14-31.)

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[3] Of course, losing access to education for a brief period impacts a student; but the quoted testimony does not support the "fact" for which it has been cited, which purports to establish the education being provided to the vast majority of students statewide. Moreover, the California Supreme Court has made clear that the *Butt* standard requires a showing of "extreme and unprecedented" deprivations by a local district, not isolated and anecdotal breakdowns in implementation of educational practice, to demonstrate the denial of educational equal protection. (*Butt*, 4 Cal.4th at p. 687.)

II. DEFENDANTS ARE ALSO ENTITLED TO JUDGMENT ON PLAINTIFFS' FIRST AND SECOND CAUSES OF ACTION FOR DISPARATE-IMPACT DISCRIMINATION BECAUSE PLAINTIFFS HAVE FAILED TO SHOW THAT THE STATE FAILED TO TAKE ACTION TO REMEDIATE PANDEMIC IMPACTS ON STUDENTS

Defendants are entitled to judgment on plaintiffs' race and wealth-based disparate-impact claims because plaintiffs have failed to show not only that the State's policies caused the plaintiff group's education to fall substantially below the prevailing statewide standard, but also that the State took "no action" to remediate Covid-related impacts on students.

A. Defendants Need Not Show that Their Extensive Actions to Mitigate the Impacts of the Pandemic on Students Were Universally Successful.

Plaintiffs argue that defendants must prove that their remedial actions were universally successful in every respect in order for those actions to pass constitutional muster. (Opp'n, pp. 18, 28.) This is incorrect and ignores what California courts have said in the cases on which plaintiffs rely.

Plaintiffs' "Factual Background" heading that "Defendants Have Not Remedied the Harms Caused by the Pandemic" perfectly encapsulates plaintiffs' unsupported attempt to hold the State to the impossible standard of actually remedying all harms arising from the COVID pandemic. However, neither *Collins* nor *Butt* actually imposes any such requirement on the State and, indeed, the cases expressly recognize that the State cannot "remedy all ills." (Opp'n, p. 18; *Butt*, *supra*, 4 Cal.4th at p. 686; *Collins*, *supra*, 41 Cal.App.5th at pp. 896-97.) Plaintiffs nevertheless go so far here as to seek to hold the State constitutionally liable for such alleged failings as providing students with Chromebooks that "only have a five-year life span and cannot handle specialized software," and bandwidth overload when "several individuals" are simultaneously using the internet in a private household. (Pls' Further Disputed "Fact" No. 199.)

As previously explained, under *Collins*, to fulfill its constitutional duty to intervene against a substantial disparate impact, the State must show that it took some "action to correct that policy when its impacts are identified." (*Collins*, *supra*, 41 Cal.App.5th at p. 897.) "Action to correct" is decidedly different from the "remedy all ills" standard that plaintiffs seek to impose on defendants here, despite the Supreme Court's admonition in *Butt* that "principles of equal

protection have never required the State to remedy all ills or eliminate all variances in service." (*Butt*, *supra*, 4 Cal.4th at p. 686.)

Furthermore, to hold the State to a "remedy all ills" standard would deter the very remedial action the State should be encouraged to take as a matter of public policy. This is because a requirement of perfect success—or, as plaintiffs would have it, elimination of all harms and disparities resulting from the pandemic (and, by extension if their theory is credited, every aspect of the operation of the K-12 public-education system)—is, as the *Butt* Court correctly recognized, "an entirely unworkable standard requiring impossible measurements and comparisons." (*Butt*, 4 Cal.4th at p. 686.) Especially in a case like this, when the State was faced with an urgent imperative to take swift action to protect life during the rapid spread of an unknown and deadly virus, state government should be incentivized to craft policy efficiently and creatively to best serve and balance public-health and other important state priorities, without the risk of subsequently incurring liability for less-than-perfect success in all areas.

Although plaintiffs attempt to dismiss the State's extensive mitigation efforts as, in their opinion, "plainly insufficient," whether or not that conclusory characterization could be considered true with respect to any particular policy or action is legally irrelevant. (Opp'n, p. 18; *Collins*, *supra*, 41 Cal.App.5th at p. 897.) There can be no dispute—and plaintiffs understandably do not dispute—that the State in this case mounted a forceful, multi-pronged effort to remediate the impact of the pandemic on all students, an effort which continues to this day. (See Opp'n, p. 18; UMF 14-31; see Ex. 82-84 to Supplemental Request for Judicial Notice.)

B. Any Arguable Factual Dispute Regarding the Impact of the State's Pandemic-Mitigation Policies on the Plaintiff Group is Legally Immaterial in Light of Plaintiffs' Other Fundamental Failures of Proof.

Under the elements of the *Collins* case, defendants are entitled to summary judgment irrespective of any arguable factual dispute concerning the impact of the State's COVID-mitigation policies on particular groups of students.

As set forth in the moving papers, the *Collins* case adapted the principles first enunciated in *Butt* to a claim of educational disparate-impact discrimination based on a protected class. Under *Collins*, plaintiffs are similarly required to show that, "due to" the challenged state policies, they

have been subjected to an education "fundamentally below the standards provided elsewhere throughout the state." (*Collins*, *supra*, 41 Cal.App.5th at pp. 897, 899.) In order to prevail on this claim, however, plaintiffs must additionally show that "no action is taken to correct" the challenged policy "when its impacts are identified." (*Id.* at pp. 896–97.) Accordingly, even if an arguable factual dispute exists concerning the data on the effects of distance learning on various student groups, defendants are still entitled to judgment on this claim because plaintiffs cannot show that the State took "no action" to mitigate the effects of COVID and distance learning on students—a point that plaintiffs effectively concede by limiting their rebuttal to three sentences. (Opp'n, Arg. II.B., p. 28.)

Moreover, plaintiffs have in any event failed to present any evidence establishing "de facto segregation" of the plaintiff group within their school districts on the basis of their race or income status. *Collins* holds that intra-district discrimination can form the basis for an educational disparate impact claim in the limited and extreme situation where the impacts of the challenged policy amount to "de facto racial segregation." (*Collins*, *supra*, 41 Cal.App.5th at p. 899.) Thus, in that case—wherein the district's disciplinary policies were alleged to have excluded African-American students from the regular classroom at disproportionately high rates compared to their white peers within the district—the appellate court ruled that such "de facto segregation" presumptively meant that those students were receiving an education that fell substantially below the "prevailing statewide standard" for education in schools that otherwise comply with non-discrimination law. (*Id.*) Yet, the evidence presented by plaintiffs here, to the extent admissible, falls far short of establishing racial or wealth-based "segregation" of students in their districts. (See Pls' Further Disputed "Fact" No. 184, 193, 195-197, 199; UMF 32-40.)

C. Plaintiffs' Criticisms of the State's COVID-Mitigation Program are Misleading, Inaccurate, and Irrelevant to Defendants' Entitlement to Summary Judgment.

Lacking a viable legal argument in support of their disparate-impact claims, plaintiffs are left merely to criticize the State's extraordinary and historic measures to remediate the pandemic-related impacts experienced by California's students as "small" and "ineffectual." (Opp'n, p. 28; see UMF 14-31.) One strand of this criticism arguably warranting a brief response for clarity is

plaintiffs' suggestion that the State's mitigation response was legally deficient because it allegedly lacked "any meaningful accountability mechanism." (Opp'n, p. 28.) *Collins* does not inject any "accountability" requirement into the State's duty to act, and plaintiffs cite to no other authority to support their contention. But plaintiffs' assertions of the absence of any mechanism for ensuring accountability, although legally irrelevant, are nevertheless misleading and inaccurate.

As described in defendants' moving papers, the California Legislature, in 2013, significantly changed how California funds, evaluates, and supports public schools through enactment of the Local Control Funding Formula (LCFF), which addresses 1) school finance; (2) local planning and community engagement; (3) state accountability; and (4) the system for providing state support to LEAs. (See Mot. for Summ. J., pp. 8-9 ["Relevant Statutory Background"]; see also Educ. Code, §§ 2574 et seq., §§ 42238.02 et seq.) With LCFF, the Legislature recalibrated the role of the State in deciding to hold local educational agencies (LEAs) accountable for improving student performance and addressing opportunity and achievement gaps by vesting substantial engagement responsibilities and oversight over schools in the LEAs and county offices of education. (See Educ. Code, §§ 52059.5-52094.) That is, with the LCFF's accountability system, the Legislature recognized LEAs and the county offices of education as the primary units of change and vehicles for ensuring accountability, with assistance and oversight from CDE, and intervention by the Superintendent of Public Instruction as warranted pursuant to statute. (See *id.*)

Moreover, contrary to plaintiffs' argument that the State simply disbursed pandemic-related funds without any "meaningful" mechanism for ensuring their appropriate use by school districts (Opp'n, e.g., p. 25), the State has established multiple accountability mechanisms, including, for example: (1) the Learning Continuity and Attendance Plan requirement during the 2020-21 school year, and subsequent evaluation and review as part of the LCAP process during the following school year; (2) required quarterly and annual reporting by LEAs on the use of pandemic funds, and review and monitoring of funds by CDE; and (3) Expanded Learning Opportunity (ELO) Grant-plan reporting requirements, and related quarterly and annual reporting

to CDE and the federal government. (See UMF 14, 23.) And the State's performance-based accountability system, with its escalating steps of assistance and intervention, including as set forth in Education Code sections 52059.5, et seq., remain in place. (See Ex. 82-84 to Supplemental Request for Judicial; *Plenger v. Alza Corp.* (1992) 11 Cal.App.4th 349, 362, fn. 8.)

III. PLAINTIFFS HAVE FAILED TO DEMONSTRATE ANY VIOLATION OF ARTICLE IX'S FREE SCHOOL GUARANTEE

While plaintiffs accuse defendants' reading of the seminal *Hartzell* case of being too "literal," plaintiffs' interpretation of the case is entirely divorced from the free-school guarantee of Article IX or the *Hartzell* case's analysis. (*Hartzell v. Connell* (1984) 35 Cal.3d 899.) Defendants are also entitled to judgment on this claim.

Hartzell does not stand for the proposition, as plaintiffs argue, that the State is required to "eliminate any financial burden" a student may face in accessing an education, especially where that financial burden is not imposed by a school district or the State but is a product of life circumstances. And plaintiffs' suggestion that the State's position—especially given the undisputed evidence of the State's wide-ranging efforts to support students with funding, programs, devices, and connectivity—is that "a public school could limit enrollment to students from families with incomes exceeding $200,000" is, frankly, as offensive as it is baseless. (Opp'n, p. 29.)

Plaintiffs specifically argue that the State "fail[ed] to cover the cost of digital access to the remote classroom," but cite no evidence that their school districts charged them for providing devices and/or hot spots, or informed them they were required to purchase such technology themselves. (*Id.*) In sum, plaintiffs have failed to establish that defendants have in any way conditioned plaintiffs' participation in school, and in all of the essential aspects of the educational experience, on the payment of a fee.

Even if plaintiffs had shown that their districts charged them for devices or hotspots during the pandemic, defendants would still be entitled to judgment on their Article IX claim due to plaintiffs' failure to exhaust required administrative remedies. Contrary to plaintiffs' argument that their Article IX claims need not be exhausted, the Education Code mandates that they must.

(Opp'n, p. 29, fn. 10.) Education Code section 49013 applies to complaints regarding "pupil fees," which section 49010 explicitly defines to mean "a fee, deposit, or other charge" imposed on pupils or their parents "in violation of Section 49011 and *Section 5 of Article IX* of the California Constitution." (Ed. Code § 49010, subd. (b), emphasis added.) Moreover, as a general matter, the exhaustion rule applies to any type of action for judicial relief where an administrative remedy is available. (*City of Grass Valley v. Cohen* (2017) 17 Cal. App. 5th 567, 578, n.5; *Lopez v. Civil Service Comm'n of City and County of San Francisco* (1991) 232 Cal. App. 3d 307, 315 [exhaustion rule "applies generally whenever judicial relief is sought where a remedy is available at the administrative level"].) Thus, the fact that plaintiffs did not style their claim as a violation of sections 49010, et seq., does not exempt the claim from the exhaustion requirement. (See, e.g., *Contractors' State License Bd. v. Sup. Ct*. (2018) 28 Cal. App. 5th 771, 780 (2018) [litigant "may not evade the exhaustion requirement by filing an action for declaratory or injunctive relief"].)

Accordingly, plaintiffs' Article IX claim fails and defendants are entitled to judgment on it.

CONCLUSION

By their opposition, plaintiffs have failed to satisfy their burden of creating a factual dispute for trial on any of their claims, or otherwise demonstrate that summary judgment for defendants would be inappropriate. Alternatively, defendants are entitled to summary adjudication on each of plaintiffs' claims separately.

Dated: July 31, 2023

Respectfully submitted,

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