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

12 MAE M., through her guardian ad litem
13 Anthony M., SUSAN C., through her guardian
14 ad litem Sabrina C., GWEN S., through their
15 guardian ad litem Ramona S., CARSON L.,
16 through his guardian ad litem Nancy L.,
17 DAVID P., through his guardian ad litem
18 RACHEL P., VIOLET B., through her
19 guardian ad litem INEZ B., STELLA B.,
20 through her guardian ad litem INEZ B.,
21 TEMECULA VALLEY EDUCATORS
22 ASSOCIATION, AMY EYTCHISON,
23 KATRINA MILES, JENNIFER SCHARF,
24 and DAWN SIBBY,

Plaintiffs,

v.

21 JOSEPH KOMROSKY, JENNIFER
22 WIERSMA, DANNY GONZALEZ,
23 ALLISON BARCLAY, and STEVEN
24 SCHWARTZ, in their official capacities as
25 members of TEMECULA VALLEY
26 UNIFIED SCHOOL DISTRICT BOARD
27 OF TRUSTEES, TEMECULA VALLEY
28 UNIFIED SCHOOL DISTRICT, and DOES
1 – 20,

Defendants.

Case No.: CVSW2306224

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Judge: Honorable Irma Poole Asberry

Dept.: 5

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1 **I. INTRODUCTION**

2 Since taking office, Defendant Board members have transformed the Temecula Valley
3 Unified School District (“TVUSD”) into a dangerous and damaging environment for students and
4 teachers alike. Students of color and LGBTQ students are the hardest hit, forced to defend
5 themselves against Board members’ relentless assaults on their access to curriculum mandated by
6 State law (and preparatory for admission to California’s institutions of higher education); the
7 experiences and histories of their families and communities; and their own dignity and privacy.

8 In service of their ideological viewpoints, Defendant Board members have stripped
9 Temecula students of their right to an education, a right that California courts have long deemed
10 fundamental.¹ Defendant Board members have:

- 11 (i) Enacted Resolution No. 2022-23/21 (the “Resolution” or “Resolution 21”) barring
12 the teaching of more than a dozen concepts the Board views as constituting “Critical
13 Race Theory” or “similar frameworks.”² The Resolution’s vague and viewpoint dis-
14 criminatory provisions were authored by a Paso Robles lawyer who has dismissed
15 systemic racism as a “myth” that is “peddle[d]” by “[r]ace hustler[s],”³ and who traf-
16 fics in offensive anti-Black stereotypes, for example, attributing “arrests of blacks”
not to “racial prejudice” but to “socio-economic and cultural causes, such as the
gangster sub-culture, poverty, poor education, growing up in homes without a father,
etc.”;⁴

17 ¹ *Butt v. State of California*, 4 Cal. 4th 668, 683 (1992) (“[E]ducation is a fundamental interest under the
18 California equal protection guaranties and . . . the unique importance of public education in
19 California’s constitutional scheme requires careful scrutiny of state interference with basic
20 educational rights.”); *Serrano v. Priest*, 5 Cal. 3d 584, 597, 608–09 (1971) (Education’s “distinctive and
priceless function . . . in our society warrants, indeed compels,” its treatment as a “fundamental
interest” and the application of strict scrutiny.).

21 ² Declaration of Mark Rosenbaum [hereinafter Rosenbaum Decl.], Exhibit (“Ex.”) A (TVUSD,
22 Resol. No. 2022-23/21, Resolution of the Board of Trustees of TVUSD Prohibiting the Teaching of
Critical Race Theory (2022)).

23 ³ Rosenbaum Decl., Ex. G (Christopher Arend, *The myth of ‘systemic racism’*, CAL COAST NEWS (Sept.
24 2, 2020), <https://calcoastnews.com/2020/09/the-myth-of-systemic-racism/> [<https://perma.cc/3BA5-PRY2>]).

25 ⁴ Rosenbaum Decl., Ex. G. These stereotypes ignore the well-documented effects of racial profiling
26 and over-policing on arrest rates in communities of color. *See, e.g.*, Magnus Lofstrom et al., *Racial*
27 *Disparities in Law Enforcement Stops*, PUB. POL’Y INST. CAL. (2021), [https://www.ppic.org/](https://www.ppic.org/publication/racial-disparities-in-law-enforcement-stops/)
28 [publication/racial-disparities-in-law-enforcement-stops/](https://www.ppic.org/publication/racial-disparities-in-law-enforcement-stops/) (finding that Black Californians were more
than twice as likely than white Californians to be subjected to law enforcement searches, despite the

- 1 (ii) Spent thousands of dollars in public monies to hire that lawyer to “train[]” TVUSD
2 staff on the Resolution,⁵ during which he used the phrase “play stupid games, win
3 stupid prizes” to assert that Black victims of police violence are to blame for their
4 own killings and injuries;⁶
- 5 (iii) Censored topics of instruction expressly called for by State curriculum standards and
6 chilled teachers from introducing their students to concepts such as race and sys-
7 temic racism;⁷ sex and sex discrimination; diversity, equity, and inclusion; and im-
8 plicit bias;
- 9 (iv) Delayed the adoption of State-approved social studies curriculum due to its inclusion
10 of information about the LGBTQ rights movement, against the express recommen-
11 dations of District leaders, including the then-Director of Curriculum and Instruc-
12 tion and a committee of 47 Temecula educators;⁸
- 13 (v) Called for the removal from school libraries of books that express ideas with which
14 Defendant Board members disagree, including *The Bluest Eye* by Toni Morrison and
15 *The Kite Runner* by Khaled Hosseini;⁹ and
- 16 (vi) Enacted Policy 5020.01,¹⁰ which forces Temecula educators to “out” students who

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fact that searches of Black Californians were far less likely to yield any illegal contraband or other
incriminating evidence).

⁵ Declaration of Amy Eytchison [hereinafter Eytchison Decl.] ¶ 9.

⁶ *Id.*

⁷ Systemic racism is racism “embedded in laws, policies[,] and institutions that uphold and reproduce
racial inequalities.” NAACP Legal Defense Fund, *Critical Race Theory: Frequently Asked Questions*
(2023), <https://www.naacpldf.org/critical-race-theory-faq/>.

⁸ Rosenbaum Decl., Ex. V (TVUSD, *April 11, 2023 - 6:00 PM - Open Session - TVUSD Governing
Board Meeting* at 2:48:49, YouTube (Apr. 11, 2023), https://youtu.be/AsN_hpJFLNI?t=10129)
(noting removal of agenda item).

⁹ Rosenbaum Decl., Ex. W (TVUSD, *July 18, 2023, 6:00 PM – Open Session – TVUSD Governing Board
Meeting* at 3:16:08, YouTube (July 18, 2023), https://youtu.be/NN-Z_IcswqM?t=17296).

¹⁰ Rosenbaum Decl., Ex. B (TVUSD, *Policy 5020.01: ^Parental Notification*, [https://
simbli.eboardsolutions.com/Meetings/Attachment.aspx?S=36030186&AID=581093&MID=
22134](https://simbli.eboardsolutions.com/Meetings/Attachment.aspx?S=36030186&AID=581093&MID=22134)). The Policy mandates disclosure whenever educators or staff learn that a student is
“[r]equesting to be identified or treated” as a gender that differs from “the student’s biological sex”
or the “gender listed on the student’s birth certificate or any other official records,” when a student
requests to go by a different name or pronouns, or when they seek to access “sex-segregated” school
programs and facilities in accordance with their gender identity. It further requires TVUSD
employees to document forced disclosures in students’ official records.

1 identify as transgender or gender nonconforming to their parents or guardians, re-
2 gardless of their consent and without consideration of whether students have a safe
and supportive home environment.

3 Plaintiffs therefore seek to enjoin the Board’s continued implementation of (i) Resolution
4 21, including its delay and censorship of civil rights curricular materials, and (ii) the forced disclosure
5 provisions of Policy 5020.01.¹¹

6 The harms resulting from Defendant Board members’ actions are immediate, ongoing,
7 and—absent injunctive relief—irreparable. As just one example, every year for the past six years, all
8 of Temecula Middle School’s sixth grade teachers taught their classes Mildred D. Taylor’s *Roll of*
9 *Thunder, Hear My Cry*. But since the enactment of Resolution 21, Ms. Katrina Miles—a plaintiff in
10 this case and the school’s sole Black educator—has been the only teacher to keep the book in her
11 curriculum.¹² Across the District, teachers are avoiding discussions of racial and other forms of
12 inequality for fear of violating the ban, making it impossible to teach subjects like American history
13 and government with even a semblance of accuracy. Denied access to concepts being learned by
14 their peers elsewhere in the State, Temecula students are at a marked disadvantage as they prepare
15 for college, careers, and participation in a diverse democracy. And under Policy 5020.01, students
16 must choose between being their true selves at school and risking the mental and physical harms
17 that accompany forced disclosure. Recognizing the severity of these harms, twelve of the nation’s

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20 ¹¹ Plaintiffs seek to enjoin:

- 21 ○ Subdivisions (1)(a) and (b) in full;
- 22 ○ Subdivision (1)(c), insofar as it applies to transgender or gender diverse students’ requests to
change their name, pronouns, sex, or gender on unofficial records; and
- 23 ○ Subdivision (5), insofar as it applies to transgender or gender diverse students (i) requesting
24 to be treated as a gender other than the student’s biological sex or gender listed on the stu-
25 dent’s birth certificate or any other official records or (ii) accessing sex-segregated school
26 programs or activities that do not align with a student’s biological sex or gender listed on the
student’s birth certificate or other official records.

27 This brief refers to the foregoing provisions as “Policy 5020.01” or “the Policy.”

28 ¹² Declaration of Katrina Miles [hereinafter Miles Decl.] ¶¶ 3, 6.

1 foremost experts in the fields of education and health have submitted declarations in support of
2 Plaintiffs’ request for preliminary relief.¹³

3 In the words of Plaintiffs’ expert Dr. Henry Louis Gates, Jr., Defendant Board members are
4 “deliberately deploy[ing] the apparatus of the state in service of their ideology, limiting what teachers
5 may teach; what students may read; and what textbooks, library books, and coursework may be
6 offered.”¹⁴ The California Constitution does not countenance Defendant Board members’
7 censorship or their discrimination. Resolution 21 and Policy 5020.01 must be enjoined.

8 II. STATEMENT OF FACTS

9 A. Defendant Board Members’ Censorship and Discrimination

10 On December 13, 2022, Defendant Board members Joseph Komrosky, Jennifer Wiersma,
11 and Danny Gonzalez enacted Resolution 21, which prohibits the teaching of a sweeping and ill-
12 defined range of content referred to as “Critical Race Theory or other similar frameworks.” As the
13 first major action by the Board’s newly elected majority, the Resolution followed an openly
14 ideological campaign, led by the Inland Empire Family PAC (“IEF PAC”),¹⁵ to flip school boards
15 across Southwest Riverside County. While candidates, Defendant Board members expressly
16 denounced racial equity and LGBTQ rights.¹⁶ And once in office, they rushed to enact Resolution
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20 ¹³ These experts are, in alphabetical order, Dr. Prudence Carter (Brown), Dr. Thomas Dee
21 (Stanford), Dr. Henry Louis Gates, Jr. (Harvard), Dr. Jeremy Goldbach (Washington University in
22 St. Louis), Dr. Tyrone Howard (UCLA), Dr. Mary Helen Immordino-Yang (University of Southern
23 California), Dr. Uma Jayakumar (UC Riverside), Dr. Sabra Katz-Wise (Harvard), Dr. Rita Kohli (UC
Riverside), Dr. Marcos Pizarro (San Jose State), Dr. Sari Reisner (Harvard), and Dr. John Rogers
(UCLA).

24 ¹⁴ Declaration of Dr. Henry Louis Gates, Jr. [hereinafter Gates Decl.] ¶ 11.

25 ¹⁵ Rosenbaum Decl., Ex. R (Inland Empire Fam. PAC, *Home*, <https://iefamilypac.org/> [<https://perma.cc/34ET-7L9Q>]).

26 ¹⁶ Rosenbaum Decl., Ex. Z (Our Watch, *ie Family PAC Draft – Meet school board candidates of Meniffee,*
27 *Temecula, Murrieta, and Lake Elsinore*, YouTube (Mar. 2, 2022), <https://www.youtube.com/watch?v=7wEBdcbRUng>).
28

1 21, violating their own bylaws and ignoring vehement community opposition—glaring evidence of
2 discriminatory animus.¹⁷

3 Resolution 21 has cast a pall over Temecula’s classrooms. Lacking clear guidance and facing
4 severe, even career-ending penalties,¹⁸ teachers are being forced to “broadly self-censor,”¹⁹ excluding
5 from their classrooms any terms, concepts, and materials that could be construed as violating
6 Resolution 21. School leaders and the Temecula Valley Educators Association (“TVEA”), a plaintiff
7 in this case, are being peppered with questions about what teachers can and cannot teach, but they
8 themselves have no way of interpreting the Resolution’s far-reaching and largely undefined
9 restrictions. Forbidden from fully discussing racial oppression, Temecula’s educators have no way to
10 accurately and supportively guide their students in difficult but necessary discussions of topics
11 including slavery, segregation, colonialism, and immigration. And teachers at every level are
12 witnessing the erosion of trust among their students, who rightfully question whether their
13 instructors are answering their questions fully and honestly.

14 Under Resolution 21, it is “impossible for TVEA educators to meet their professional
15 obligations to their students *and* teach the concepts mandated by both State and District policy.”²⁰
16 As detailed *infra* pages 17–19 and 24–29, Resolution 21 directly conflicts with the State Board of
17 Education’s History-Social Science Content Standards (“HSS Standards”)²¹ and History-Social

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19 _____
20 ¹⁷ *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266–68 (1977).

21 ¹⁸ Rosenbaum Decl., Ex. LL (TVUSD, *Resolution No. 2022-23/20* (“Resolution 20”), <https://simbli.eboardsolutions.com/Meetings/Attachment.aspx?S=36030186&AID=396053&MID=16350>).
22 Resolution 20 references regulations “which impose sanctions on any . . . employee who engages in
23 racist conduct.” Read in tandem with Resolution 21, which was passed concurrently and which
24 characterizes “Critical Race Theory” as “a racist ideology” (and, by extension, the teaching of
“Critical Race Theory or other similar frameworks” as “racist conduct”), Resolution 20 delineates the
sanctions applicable to teachers who violate Resolution 21.

25 ¹⁹ Declaration of Dawn Sibby [hereinafter Sibby Decl.] ¶ 7.

26 ²⁰ Declaration of Edgar Diaz [hereinafter Diaz Decl.] ¶ 5 (emphasis added).

27 ²¹ Rosenbaum Decl., Ex. H (Cal. Dep’t Educ., *California History-Social Science Content Standards* (1998),
28 <https://www.cde.ca.gov/be/st/ss/documents/histsocscistnd.pdf>).

1 Science Framework (“HSS Framework”).²² It is also irreconcilable with California’s Teaching
2 Performance Expectations, which require teachers to establish and maintain “inclusive learning
3 environments” that “reflect diversity and multiple perspectives[] and are culturally responsive.”²³
4 Rather than show “students how cultural perspectives inform and influence understandings of
5 history,”²⁴ Resolution 21 “mandates the teaching of a single, dominant cultural perspective on
6 historical events, rejecting the realities lived by people of Color.”²⁵

7 But Resolution 21—pernicious as it is—is not the Board’s only censorship. Defendant
8 Board members delayed adoption of a State-approved curriculum that included information about
9 the LGBTQ rights movement, and they are even now forbidding fourth-grade teachers from
10 discussing Harvey Milk, one of the first openly gay elected officials in this nation’s history. And
11 Defendant Board members have each spoken in favor of removing books from Temecula libraries
12 that contain ideas with which they disagree.

13 Defendant Board members’ desire to silence and harm the groups they disfavor is also
14 apparent in Policy 5020.01, which discriminates against transgender and gender nonconforming
15 students on its face, in intent, and in effect. (Policy 5020.01 is identical to Chino Valley Unified’s
16 coercive outing policy, which the San Bernardino Superior Court enjoined as facially
17 discriminatory.²⁶) As described *infra* pages 37–40, statements made by Defendant Board members
18 and their supporters, as well as Defendant Board members’ refusal to make an exception for
19 students whom disclosure would likely endanger, plainly evince the animus underlying Policy
20 5020.01’s enactment.

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23 ²² Rosenbaum Decl., Ex. I (Cal. Dep’t Educ., *California History-Social Science Framework* [hereinafter
24 HSS Framework] (2016), <https://www.cde.ca.gov/ci/hs/cf/hssframework.asp>).

25 ²³ Declaration of Drs. Rita Kohli and Marcos Pizarro [hereinafter Kohli & Pizarro Decl.] ¶¶ 15–23.

26 ²⁴ *Id.* ¶ 19.

27 ²⁵ *Id.* ¶ 20.

28 ²⁶ *People v. Chino Valley Unified Sch. Dist.*, No. CIV SB 2317301 (Cal. Super. Ct. San Bernardino Cnty.,
Sept. 6, 2023) (portal minute order).

1 **B. The Resolution and Policy’s Harms to Students**

2 Resolution 21 and Policy 5020.01 each deprive Temecula students of the education to which
3 they are entitled. Educational, neuroscientific, and sociological research confirms that *all* students
4 benefit from a culturally responsive education, which affirms their backgrounds and identities in the
5 classroom and enables them to “engage across differences of opinion” and “reflect on complex
6 topics from more than one angle.”²⁷ Far from protecting white students, “being shielded from the
7 reality of our country’s racial history” keeps students from developing the racial literacy skills needed
8 to succeed in this country’s diverse workforce.²⁸ By preventing students from grappling with new
9 ideas in a supportive educational environment, Resolution 21 “endangers [their] emotional, social,
10 and academic” growth “at a critical moment in their neurological development.”²⁹ And it restricts
11 their learning based entirely on Defendant Board members’ ideological preferences, denying them an
12 education on par with their peers in other districts and diminishing their college and career
13 readiness.

14 Resolution 21 and Policy 5020.01 also expose students of color and LGBTQ students to
15 toxic, identity-based stress.³⁰ As Dr. Henry Louis Gates, Jr. explains, through Resolution 21, “the
16 Board condemns the lived realities of students of color as a controversial ideology,”³¹ effectively
17 prohibiting students from discussing their “direct experience[s]” of systemic racism.³² Similarly,
18 Policy 5020.01 “institutionalize[s] norms that perpetuate and even encourage violence against
19

20 ²⁷ Gates Decl. ¶ 16; *See also* Kohli & Pizarro Decl. ¶¶ 24–29; Declaration of Dr. Tyrone Howard
21 [hereinafter Howard Decl.] at ¶¶ 8–20; Declaration of Dr. Thomas Dee [hereinafter Dee Decl.] at
22 ¶¶ 8–16; Declaration of Dr. Uma Jayakumar [hereinafter Jayakumar Decl.] ¶¶ 7–13; Declaration of
23 Dr. Mary Helen Immordino-Yang [hereinafter Immordino-Yang Decl.] ¶¶ 8–18; Declaration of Dr.
Prudence Carter [hereinafter Carter Decl.] ¶¶ 10–17.

24 ²⁸ Jayakumar Decl. ¶ 13.

25 ²⁹ Immordino-Yang Decl. ¶ 8.

26 ³⁰ Immordino-Yang Decl. ¶¶ 14–18

27 ³¹ Gates Decl. ¶ 15.

28 ³² Declaration of Susan C. [hereinafter Susan C. Decl.] ¶ 3.

1 LGBTQ+ youth,”³³ even as they face an unprecedented rise in bullying and an “environment of
2 hate.”³⁴ Such “identity-based stress . . . adversely impacts” not only students’ education (limiting the
3 mental resources they have available for schoolwork), but also “their emotional and physical health”
4 and even “their brain development.”³⁵

5 III. LEGAL STANDARD

6 Courts have broad powers to grant preliminary injunctive relief to preserve the status quo
7 until an action is resolved on the merits. *Robbins v. Super. Ct.*, 38 Cal. 3d 199, 205 (1985). An
8 injunction is therefore warranted when Defendants’ acts “would produce . . . great or irreparable
9 injury,” or when Defendants are undertaking or threatening an “act in violation of the rights of
10 another party . . . tending to render the judgment ineffectual.” *See* Cal. Code Civ. Proc. § 526(2)–(3).

11 On a motion for preliminary injunction, the Court must weigh (1) the likelihood that the
12 moving party will prevail on the merits and (2) the relative interim harm to the parties from issuance
13 or non-issuance of the injunction. *Butt v. State of California*, 4 Cal. 4th 668, 677–78 (1992). “The trial
14 court’s determination must be guided by a ‘mix’ of the potential-merit and interim-harm factors; the
15 greater the plaintiff’s showing on one, the less must be shown on the other to support an injunction.”
16 *Id.* at 678. The second factor—the balancing of harms—requires the Court to consider “the
17 inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the
18 status quo.” *Abrams v. St. John’s Hosp. & Health Ctr.*, 25 Cal. App. 4th 628, 636 (1994). Plaintiffs facing
19 a threatened infringement of their rights need not wait until they have suffered actual harm before
20 seeking injunctive relief. *Maria P. v. Riles*, 43 Cal. 3d 1281, 1292 (1987); *accord City of Torrance v.*
21 *Transitional Living Ctrs. for Los Angeles, Inc.*, 30 Cal. 3d 516, 526 (1982) (injunction is available where the
22 injury sought to be avoided is “actual or threatened”).

23 As set forth below, Plaintiffs will prevail on the merits and the balance of harms weighs
24 overwhelmingly in their favor. Resolution 21 violates the California Constitution because it imposes

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26 ³³ Declaration of Dr. Jeremy Goldbach [hereinafter Goldbach Decl.] ¶ 11.

27 ³⁴ Eytchison Decl. ¶ 27.

28 ³⁵ Immordino-Yang Decl. ¶ 15.

1 viewpoint discrimination and lacks a legitimate educational purpose; it is overbroad and void for
2 vagueness; and it denies Temecula students an education equivalent to that of their peers statewide.
3 Policy 5020.01 violates the California Constitution because it expressly discriminates against students
4 on the basis of a protected characteristic. These infringements of Plaintiffs’ constitutional rights, “for
5 even minimal periods of time, unquestionably constitute[] irreparable injury.” *Ketchens v. Reiner*, 194
6 Cal. App. 3d 470, 480 (1987) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

7 **IV. PLAINTIFFS WILL PREVAIL ON THE MERITS**

8 **A. Resolution 21 and the Board’s removal of content from Temecula’s social** 9 **studies curriculum lack any legitimate educational purpose and thus violate** 10 **Plaintiffs’ right to receive information and ideas.**

11 The free speech clause of the California Constitution protects students’ right to receive
12 information and ideas, and schools must make curriculum decisions in accord with these
13 “transcendent” imperatives. *McCarthy v. Fletcher*, 207 Cal. App. 3d 130, 139, 144 (1989) (quoting *Bd. of*
14 *Educ. v. Pico*, 457 U.S. 853, 864, 867–68 (1982)); *Pico*, 457 U.S. at 867 (right to receive information and
15 ideas is “an inherent corollary of the rights of free speech and press” under U.S. Constitution).³⁶ The
16 California Constitution thus requires a school board’s removal of reading materials or topics from the
17 curriculum to be “reasonably related to legitimate educational concerns.” *McCarthy*, 207 Cal. App. 3d
18 at 146. Notwithstanding school boards’ authority in the management of school affairs, curriculum
19 restrictions “cannot be motivated by an intent to ‘prescribe what shall be orthodox in politics,
20 nationalism, religion, or other matters of opinion.’” *Id.* (quoting *Bd. of Educ. v. Barnette*, 319 U.S. 624,
21 642 (1943)).

22 A school board acts without a legitimate educational purpose when it removes classroom
23 materials due to “disagree[ment] with . . . [their] religious or philosophical ideas.” *McCarthy*, 207 Cal.
24 App. 3d at 141, 144 (citing *Pico*, 457 U.S. at 870 (1982)) (reversing summary judgment in favor of

25 ³⁶ The California Constitution’s free speech provision “is at least as broad as and in some ways is
26 broader than the comparable provision of the federal Constitution’s First Amendment.” *Beeman v.*
27 *Anthem Prescription Mgmt., LLC*, 58 Cal. 4th 329, 341 (2013) (cleaned up). Thus, while “federal
28 decisions interpreting the First Amendment are not controlling” in applying the State Constitution,
“[o]ur case law interpreting California’s free speech clause has given respectful consideration to First
Amendment case law for its persuasive value[.]” *Id.*

1 school district that removed books from curriculum because district concluded they were “anti-
2 government, anti-God, anti-religion and anti-personal dignity”). Indeed, an intent to advance a
3 political or religious ideology is a “patently illegitimate educational purpose.” *Id.* at 142, 147
4 (curriculum changes that discriminate based on viewpoint are unconstitutional). And suppressing
5 viewpoints out of fear of disharmony is *not* a legitimate educational concern. *See Smith v. Novato Unified*
6 *Sch. Dist.*, 150 Cal. App. 4th 1439, 1465 (2007) (action by school, after publication of student’s
7 controversial opinion column on immigration, to prohibit future columns on the subject due to “fear
8 of disruption and discontent” was unconstitutional). As set forth below, Resolution 21 is not
9 supported by any legitimate pedagogical purpose.

10 **i. Resolution 21 was driven by partisan ideology and lacks a legitimate**
11 **educational purpose.**

12 Overwhelming evidence establishes that Resolution 21 does not serve a legitimate educational
13 purpose and was instead motivated by Defendant Board members’ political disagreement with
14 concepts they claim are derived from—or “similar” to—critical race theory. The Resolution is
15 partisan on its face; it was enacted without the Board’s making any findings of fact establishing that it
16 would benefit students; and it harms students in intent and effect by denying them the right to
17 receive information about their histories, cultures, and identities. Further, the Resolution was adopted
18 in violation of the Board’s own policymaking procedures, and it was preceded by open expressions of
19 racial and anti-LGBTQ hostility by Defendant Board members and their advisor.

20 In determining whether curriculum censorship is reasonably related to legitimate educational
21 concerns, courts must examine the censors’ intent. *McCarthy*, 207 Cal. App. 3d at 140. A court need
22 not accept a school board’s stated rationale for censoring curriculum if the evidence shows that its
23 true purpose was constitutionally impermissible. “A plaintiff may establish a First Amendment
24 violation by proving that the reasons offered by the [board], though pedagogically legitimate on their
25 face, in fact serve to mask other illicit motivations.” *González v. Douglas*, 269 F. Supp. 3d 948, 972 (D.
26 Ariz. 2017) (state statute targeting ethnic studies course in Tucson schools, with purported goal of
27 preventing racism, was motivated by racial animus toward Mexican-Americans and was
28

1 unconstitutional); *see McCarthy*, 207 Cal. App. 3d at 147 (legitimate educational purpose standard does
2 not mean that, “regardless of the religious, political or philosophical reasons why a school board may
3 exclude a book from a curriculum, the board’s exercise of discretion will be upheld so long as the
4 board expresses *some* educational reason for excluding the book,” because that “would permit school
5 officials to camouflage . . . ‘viewpoint discrimination’” (emphasis added)).

6 Although the Resolution’s preamble claims that its purpose is to prevent “racism” in the
7 District and to “uplift and unite” students by restricting discussion of “divisive” ideas,³⁷ there is *no*
8 evidence that racially discriminatory ideas are being taught in Temecula classrooms. Rather, there is
9 ample evidence that the Resolution’s stated goal of preventing racism is just a fig leaf for Defendant
10 Board members’ “illicit motivations,” namely their desire to suppress ideas they find politically
11 objectionable. *González*, 269 F. Supp. 3d at 972. The Board’s action lacks a legitimate pedagogical
12 purpose for the following reasons:

13 **1. The Resolution is not based on any findings of fact.**

14 Defendant Board members conducted no studies and made no findings of fact before
15 enacting Resolution 21. Thus, there was no evidence that Temecula students were being harmed by
16 classroom instruction on subjects related to critical race theory or race or sex discrimination. Nor did
17 the Board cite any research in support of its decision. Indeed, as Dr. Tyrone Howard, the President
18 of the American Educational Research Association, attested, he is “not aware of *any* research
19 supporting the pedagogical value of curricular restrictions like Resolution 21.”³⁸ Moreover, the Board
20 violated its own bylaws governing the adoption of curricular changes when it rushed to enact
21 Resolution 21 at its new members’ very first meeting, in wholesale disregard of required fact-finding
22 procedures. *Infra* pages 19–22. The total absence of such fact-finding belies Defendant Board

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24 ³⁷ Uplifting and uniting students is not a legitimate educational justification for censorship. Historically
25 significant events and social issues often are not “uplift[ing]” subjects, nor is it assured that learning
26 about them will “unite students.” *See Smith*, 150 Cal. App. 4th at 1465 (“Any word spoken, in class, in
27 the lunchroom, or on the campus, that deviates from the views of another person may start an
28 argument or cause a disturbance. But our Constitution says we must take this risk[.]”) (quoting
Tinker v. Des Moines Sch. Dist., 393 U.S. 503, 508 (1969)).

³⁸ Howard Decl. ¶ 8 (emphasis added).

1 members' claim that the Resolution was intended to protect students from "racism" and
2 demonstrates that they acted out of political, not educational, motivations. *Cf. González*, 269 F. Supp.
3 3d at 974 ("no legitimate pedagogical objective" motivated enactment of statute with stated goal of
4 reducing racism in schools, where statute targeted Mexican American Studies program and
5 defendants' investigations of program were "one-sided," "outcome-driven," and "yielded little
6 evidence"). The presence of an illicit purpose is even stronger here than in *González*, because the
7 Board conducted no investigation whatsoever.

8 The Resolution's failure to cite *any* data demonstrating an educational purpose is no surprise
9 given that many of its provisions are drawn directly from former President Trump's Executive Order
10 No. 13950, which was entirely unrelated to K–12 education.³⁹ That order prohibited the armed
11 services, federal agencies, federal contractors, and federal grant recipients from promoting a list of so-
12 called "divisive" and "anti-American" concepts. *Santa Cruz Lesbian & Gay Cmty. Ctr.*, 508 F. Supp. 3d
13 521, 528 (N.D. Cal. 2020). The concepts listed in Order No. 13950 are nearly identical to concepts (a)
14 through (g) in Resolution 21. *Id.* at 529 (quoting Executive Order No. 13950, 85 FR 60683, 60685).
15 Yet the Executive Order was not aimed at K–12 schools, and its statement of purpose makes no
16 reference to education. *See* 85 FR 60683, 60685.

17 In sum, the Board adopted a broad ban censoring K–12 curriculum in violation of its own
18 policies for curriculum changes, based in part on a presidential order unrelated to education, and
19 without any factual findings on whether the Resolution would benefit (or harm) students. This
20 establishes a lack of legitimate educational purpose. *McCarthy*, 207 Cal. App. 3d at 146.

21 **2. The text of the Resolution reveals its purpose was to censor in-**
22 **struction in accordance with Defendant Board members' politi-**
23 **cal views.**

24 _____
25 ³⁹ *See* Rosenbaum Decl., Ex. S (Exec. Order No. 13950, 85 Fed. Reg. 60,683 (2020)). Executive Order
26 No. 13950 was enjoined in part by a federal court in *Santa Cruz Lesbian & Gay Cmty. Ctr. v. Trump*, 508
27 F. Supp. 3d 521 (N.D. Cal. 2020), and was later repealed. In 2021, the Paso Robles Joint Unified
28 School District ("PRJUSD") adopted a curriculum ban, authored by Christopher Arend, a TVUSD
consultant who was then the PRJUSD Board president, containing large portions of text from
Executive Order 13950. Resolution 21 is virtually identical to the Paso Robles resolution.

1 Resolution 21’s intent to suppress viewpoints with which Defendant Board members disagree
2 is apparent on its face. *See Parr v. Mun. Ct.*, 3 Cal. 3d 861, 865, 867 (1971) (discriminatory intent
3 behind unconstitutional ordinance was “indelibly expressed” in accompanying legislative declaration,
4 which articulated purpose of discouraging “hippies” from gathering in public areas; “[w]e need not
5 look beyond the adopted language of this ordinance to discover its hostile *raison d’etre*.”).

6 The Preamble of Resolution 21 proclaims its illicit purpose by declaring that critical race
7 theory is a false and “racist ideology” that “is rejected” by the Board because, in some members’
8 subjective opinion: (1) it is “based on false assumptions about . . . America and its population”; (2) it
9 is founded on an “artificial distortion of the traditional definition of ‘racism’” that is “fatally flawed”;
10 (3) it is “divisive” and “assigns moral fault to individuals solely on the basis of an individual’s race
11 and, therefore, is itself . . . racist”; (4) it “assigns generational guilt and racial guilt for conduct and
12 policies that are long in the past”; (5) it “violates the fundamental principle of equal protection under
13 the law”; and (6) it “views social problems primarily as racial problems and, thus, detracts from
14 analysis of underlying socio-economic causes[.]”⁴⁰

15 Thus, the Resolution facially and openly announces the Board’s political and ideological
16 opposition to certain viewpoints about race, racism, sex, and sex discrimination, then prohibits
17 teaching about those viewpoints—with the sole exception of instruction that aligns with Defendant
18 Board members’ own ideology, *i.e.*, that “focuses on the flaws in Critical Race Theory.” This is a
19 “patently illegitimate educational purpose” for censoring curriculum. *McCarthy*, 207 Cal. App. 3d at
20 141–42, 144 (evidence suggested school board lacked legitimate educational basis to remove books
21 from curriculum, where district official described them as “‘anti-government, anti-God, anti-religion
22 and anti-personal dignity’”); *see Pico*, 457 U.S. at 857 (board’s removal of books from library on

24 ⁴⁰ These provisions are taken verbatim from the PRJUSD curriculum ban which, as noted *supra*, was
25 authored by Board consultant Christopher Arend. *Compare* PRJUSD Resol. 21-27, Resolution of the
26 Paso Robles Joint Unified School District prohibiting the teaching of Critical Race Theory (2021), *with*
27 Resolution 21. Arend has publicly expressed his view that systemic racism does not create barriers for
28 people of color, which he instead attributes to stereotypical “socio-economic causes” such as not
working hard in school, joining criminal gangs, and taking illegal drugs. Rosenbaum Decl., Ex. G.
Resolution 21 suppresses discussion of opposing viewpoints.

1 ground they were “anti-American, anti-Christian, anti-Semitic, and just plain filthy” appeared to be
2 based on board’s disagreement with constitutionally protected ideas). Defendant Board members’
3 suppression of opposing viewpoints violates the California Constitution’s free speech clause.
4 *McCarthy*, 207 Cal. App. 3d at 146.

5 **3. The Resolution harms students, particularly students of color**
6 **and LGBTQ students.**

7 Defendant Board members’ partisan censorship is causing irreparable harm to Student
8 Plaintiffs by chilling instruction on subjects including race and sex discrimination, which are highly
9 relevant to students’ lives and identities. *See, e.g., Arce v. Douglas*, 793 F.3d 968, 986 (9th Cir. 2015)
10 (finding that ethnic studies courses including instruction on discrimination “may offer great value to
11 students,” as they “benefit from a greater understanding of their history”).

12 Students benefit when they learn about their diverse histories, cultures, and experiences.⁴¹ For
13 students of color and LGBTQ students, learning about “the rich histories and contributions of,”⁴² as
14 well as the discriminatory barriers faced by, their communities fosters student engagement and

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16 ⁴¹ *See, e.g.,* Rosenbaum Decl., Ex. I at 510–11 (“To ensure that all students thrive in history–social
17 science classrooms, teachers should . . . learn about their students’ lives and make connections
18 between students’ experiences, backgrounds, and interests and the content learning in school.”);
19 Rosenbaum Decl., Ex. J at 918 (Cal. Dep’t Educ., English Language Arts/English Language
20 Development Framework (2014), <https://www.cde.ca.gov/ci/rl/cf/documents/elaldfwchapter9.pdf>) (same); Rosenbaum Decl., Ex. K at 94 (Cal. Dep’t Educ., California Arts
21 Education Framework (2020), <https://www.cde.ca.gov/ci/cr/cf/documents/caartsedfw.pdf>) (“The
22 development of knowledge and skills in the arts must be connected with students’ cultural
23 identities.”); Rosenbaum Decl., Ex. L at 673 (Cal. Dep’t Educ., Mathematics Framework (2013),
24 <https://www.cde.ca.gov/ci/ma/cf/documents/mathfwuniversalaccess.pdf>) (educators are to provide
25 “culturally and linguistically relevant instruction); Rosenbaum Decl., Ex. M at 565 (Cal. Dep’t Educ.,
26 Health Education Framework (2019), <https://www.cde.ca.gov/ci/he/cf/documents/healthframework2019.pdf>) (educators are to “deliberately include culturally relevant topics and
27 texts”); Rosenbaum Decl., Ex. N at 1404 (Cal. Dep’t Educ., 2016 Science Framework (2016),
28 <https://www.cde.ca.gov/ci/sc/cf/documents/scifwchapter10.pdf>) (educators are to “[r]ecognize
and leverage [students’] cultural and experiential backgrounds”); Rosenbaum Decl., Ex. O at 646 (Cal.
Dep’t Educ., World Language Framework (2020), <https://www.cde.ca.gov/ci/fl/cf/documents/wlframework.pdf>) (educators are to “use the strategies and learning approaches of their students’
cultural traditions to scaffold and facilitate learning”).

⁴² Kohli & Pizarro Decl. ¶ 22.

1 educational attainment.⁴³ Given the persistence of racial discrimination within educational
2 institutions, educators must “affirmatively mitigate the effects of structural racism” to ensure that
3 students of color receive an education “equivalent to that of their white peers.”⁴⁴ State guidelines
4 accordingly provide that examination of historical “racism, discrimination, and oppression” and of
5 “the systems that continue to perpetuate inequality” is important to help students “think critically
6 about the world around them,” “construct counter-narratives[,] and develop a more complex
7 understanding of the human experience.”⁴⁵ These standards are consistent with research
8 demonstrating that exposure to complex issues like race and inequality in a supportive educational
9 environment enables students to develop in a psychologically healthy way⁴⁶ and gain the “cross-
10 cultural competencies”⁴⁷ and “cultural flexibility needed to . . . be an engaged member of our
11 multiracial democracy.”⁴⁸ The State also recommends that, for the safety and well-being of LGBTQ
12 students, schools should make available “age-appropriate literature that reflects the diversity of
13 humankind and thoughtfully deals with the complexities and dynamics of intolerance and
14 discrimination.”⁴⁹ Resolution 21 deprives Student Plaintiffs of these benefits by “replacing the
15 research-backed expertise of educational experts with certain Board members’ ideological positions
16 and opinions.”⁵⁰

17 As noted *supra*, in response to the Resolution, all but one of the sixth grade classes at
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19 ⁴³ Howard Decl. ¶¶ 13–20 (discussing need for educators to connect course academic content to
20 students’ experiences and backgrounds through culturally responsive pedagogy); Dee Decl. ¶¶ 9–12
(noting that culturally responsive pedagogy, like Ethnic Studies courses, have large positive effects on
21 student outcomes, including increasing graduation and college enrollment rates).

22 ⁴⁴ Howard Decl. ¶ 15.

23 ⁴⁵ Rosenbaum Decl., Ex. I (HSS Framework) at 310–11 (identifying required topics in ethnic studies
24 courses, which all California high schools must offer beginning in 2025).

25 ⁴⁶ Immordino-Yang Decl. ¶¶ 8–13.

26 ⁴⁷ Jayakumar Decl. ¶ 13.

27 ⁴⁸ Carter Decl. ¶ 12. *See also* Jayakumar Decl. ¶ 13.

28 ⁴⁹ Rosenbaum Decl., Ex. I (HSS Framework) at 532.

⁵⁰ Kohli & Pizarro Decl. ¶ 23.

1 Temecula Middle School have dropped from the curriculum the novel *Roll of Thunder, Hear My Cry*, an
2 award-winning book about a Black family’s struggle against racism in 1930s Mississippi.⁵¹ Student
3 Plaintiffs have heard teachers discussing their fear of teaching subjects involving race or sex
4 discrimination, and classroom discussion of race, gender, and sexual orientation has dwindled.⁵²
5 Teachers are self-censoring to avoid using the word “white” when discussing subjects like Jim Crow
6 segregation and European imperialism, and restricting their answers when students ask about anti-
7 Black violence.⁵³ They are avoiding full discussion of subjects such as the origins of inequities in the
8 American legal system that affect low-income people, people with disabilities, and people of color.⁵⁴
9 Plaintiffs in the 12th grade who wanted to study subjects such as the Black Arts Movement and the
10 “long and rich history of Black resistance to slavery,” or to take an A.P. African American Studies
11 course in which they could learn about civil rights leaders such as Fannie Lou Hamer and Ella Baker,
12 will not have the opportunity to do so in their final year in TVUSD.⁵⁵

13 The chilling effects of Resolution 21 have been exacerbated by the Board’s subsequent
14 actions. Defendant Komrosky has used his platform as Board president to encourage parents to
15 investigate and seek removal of 16 books from District libraries.⁵⁶ In October, Defendant Wiersma
16 made an unannounced visit to Temecula Middle School during which she requested that librarians
17 take down a Banned Books Week display. The librarians acceded to the request and removed the
18 books from display, including *Bridge to Terabithia* by Katherine Paterson and *The Giver* by Lois Lowry,
19 winners of the Newbery Medal, and *Harry Potter* by J.K. Rowling and *The Hunger Games* by Suzanne
20 Collins, which have been recognized by *The New York Times*, *Publishers Weekly*, and the American

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22 ⁵¹ Miles Decl. ¶ 6; Declaration of Inez B. ¶¶ 5–6.

23 ⁵² Declaration of Carson L. [hereinafter Carson L. Decl.] ¶¶ 5–6; Declaration of Gwen S. [hereinafter
24 Gwen S. Decl.] ¶ 10.

25 ⁵³ Miles Decl. at ¶¶ 6, 9–10; Sibby Decl. ¶ 8.

26 ⁵⁴ Declaration of Jennifer Scharf [hereinafter Scharf Decl.] ¶ 7.

27 ⁵⁵ Declaration of Mae M. [hereinafter Mae M. Decl.] ¶ 7; Susan C. Decl. ¶ 5.

28 ⁵⁶ These books include *The Kite Runner* by Khaled Hosseini, *The Bluest Eye* by Toni Morrison, and
Looking for Alaska by John Green. Rosenbaum Decl., Ex. W.

1 Library Association.⁵⁷ In Temecula classrooms, teachers have stopped teaching or providing support
2 and contextual information to students as they read important texts, including the Pulitzer Prize-
3 winning novel *Beloved* by Nobel laureate Toni Morrison,⁵⁸ and *Just Mercy* by Bryan Stevenson, which
4 was honored by the American Library Association and the NAACP.⁵⁹

5 While felt most acutely by students of color and LGBTQ students, the Resolution’s harms
6 extend to students of all identities. Educational research demonstrates that “[a]ll students benefit
7 from building racial literacy, *i.e.*, the capacity to identify and challenge both interpersonal and
8 structural racism.”⁶⁰ Students will require such “cross-cultural competencies” to “collaborate
9 effectively with colleagues” in a “diverse workforce.”⁶¹ Schools are sites where students can develop
10 such skills in a supportive environment. For example, based on her 26 years of experience, Plaintiff
11 Amy Eytchison, a fourth grade teacher at Temecula Elementary, explains that when learning about
12 subjects such as slavery, segregation, and anti-immigrant legislation, her “students overwhelmingly
13 feel empathy, as opposed to guilt. [They] typically feel sad for the people who have suffered injustice
14 . . . [and] express motivation to be part of the change that will help redress the wrongs of the past and
15 usher in more justice in the future.”⁶² But students in Temecula are now obstructed from developing
16 such “cross-racial understanding.”⁶³ These demonstrated harms underscore the Resolution’s lack of a
17 valid educational purpose.

18 **4. The Resolution chills instruction required by State law.**

19 Schools throughout California must follow curriculum standards and guidelines developed by
20 the State. Resolution 21 conflicts with those State standards as well as provisions of the Education
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22 ⁵⁷ Miles Decl. ¶ 7.

23 ⁵⁸ Carson L. Decl. ¶ 5.

24 ⁵⁹ Scharf Decl. ¶ 7.

25 ⁶⁰ Jayakumar Decl. ¶ 13.

26 ⁶¹ *Id.*

27 ⁶² Eytchison Decl. ¶ 18.

28 ⁶³ Jayakumar Decl. ¶ 4.

1 Code. Indeed, the Resolution penalizes teachers whose instruction furthers what the State has
2 determined are not just legitimate, but imperative pedagogical objectives.

3 For example, Education Code § 51220 provides that all middle and high school social science
4 curricula “*shall* provide a foundation for understanding . . . human rights issues, with particular
5 attention to the study of the inhumanity of genocide, slavery, and the Holocaust, and contemporary
6 issues.” Cal. Educ. Code § 51220(b)(1) (emphasis added). However, any teacher leading a discussion
7 about slavery or Jim Crow—or the continuing impacts thereof on Black communities—risks
8 discipline if a student perceives a message that “[a]n individual should feel discomfort, guilt, anguish
9 or any other form of psychological distress on account of his or her race” or that “racism is ordinary,
10 the way society does business.”⁶⁴ The Resolution is also “directly at odds” with several of the State’s
11 Teaching Performance Expectations, which teachers must master before receiving a preliminary
12 teaching credential.⁶⁵

13 Moreover, Resolution 21 directly conflicts with the California Department of Education’s
14 HSS Standards (1998) and HSS Framework (2016), curricular standards that reflect the overwhelming
15 consensus of California educators and the public around the academic foundation necessary for civic
16 and economic participation. For example, under Resolution 21, teachers cannot instruct students on
17 police violence being a “catalyst” for the Civil Rights Movement or lead meaningful discussions
18 about whether that movement “succeed[ed]”⁶⁶—both of which would foster timely discussion of
19 present-day police killings of Black people—without facing possible discipline for teaching students
20 that “[r]acism is ordinary, the usual way society does business.”⁶⁷ Similarly, lessons on “the new wave
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23 ⁶⁴ Rosenbaum Decl., Ex. A. Similarly, discussion of other contemporary issues such as affirmative
24 action or immigration policy is highly likely to intersect with topics such as unconscious bias, white
privilege, and systemic racism, which would trespass on Resolution 21.

25 ⁶⁵ Kohli & Pizarro Decl. ¶¶ 15–23.

26 ⁶⁶ These topics are both expressly recommended by the HSS Framework. Rosenbaum Decl., Ex. I at
27 418, 422.

28 ⁶⁷ Rosenbaum Decl., Ex. A.

1 of nativism” in the U.S. in response to the Industrial Revolution,⁶⁸ on the Chinese Exclusion Act of
2 1882 and the Immigration Act of 1917,⁶⁹ or on Propositions 63 and 187 in California,⁷⁰ may subject a
3 teacher to discipline for instructing that the “dominant society racializes different minority groups at
4 different times, in response to different needs such as the labor market.”⁷¹ And if teachers discuss
5 consequential Supreme Court cases such as *Plessey v. Ferguson*, *Regents of the University of California v.*
6 *Bakke*, or *United States v. Virginia*,⁷² they risk being disciplined for teaching that “[i]ndividuals are
7 either a member of the oppressor class or the oppressed class because of race or sex.”⁷³

8 Further, the teaching of *any* subject involving race or sex discrimination could violate
9 Resolution 21 if a student believes it communicates that white, male, or heterosexual students
10 “should feel discomfort, guilt, anguish or any other form of psychological distress on account of . . .
11 race or sex.”⁷⁴ Temecula schoolteachers have been set up to fail by a Board that is forcing them to
12 choose whether to comply with State curricular mandates and guidelines or the Board’s curriculum
13 ban.⁷⁵ For this additional reason, the Resolution lacks a legitimate pedagogical purpose.

14 **5. The highly irregular procedures leading to the Resolution’s**
15 **adoption evidence Defendant Board members’ “illicit motiva-**
16 **tions.”**

17 The newly elected Board members rammed through Resolution 21 at their very first meeting,

18 ⁶⁸ Rosenbaum Decl., Ex. H at 39.

19 ⁶⁹ Rosenbaum Decl., Ex. I at 276.

20 ⁷⁰ Rosenbaum Decl., Ex. I at 91. Proposition 63, passed in 1986, made English the official State
21 language. Proposition 187, passed in 1994 but struck down in large part by federal courts as
22 unconstitutional, denied non-emergency health care, public education, and other services to
undocumented immigrants.

23 ⁷¹ Rosenbaum Decl., Ex. A.

24 ⁷² Rosenbaum Decl., Ex. H at 56.

25 ⁷³ Rosenbaum Decl., Ex. A.

26 ⁷⁴ *Id.*

27 ⁷⁵ Resolution 21 includes a disclaimer that “[n]othing in this resolution shall require any staff member
28 to violate local, state, or federal law.” But as the foregoing examples demonstrate, many concepts
included in the HSS Standards and HSS Framework are fundamentally in conflict with Resolution 21.

1 in violation of the Board’s bylaws and over vociferous community opposition. The Board’s failure to
2 adhere to normal policymaking procedures is highly suggestive that the Resolution lacked a legitimate
3 pedagogical purpose. *See Pico*, 457 U.S. at 874, 875 (school board’s failure to “employ[] established,
4 regular, and facially unbiased procedures” to remove books from libraries suggested decision was not
5 motivated by “constitutionally valid concerns”).

6 In *Pico*, a plurality of the Supreme Court reversed a grant of summary judgment to the
7 defendant school board, which was sued after pulling books from school libraries. *Id.* at 875. The
8 board claimed the books were “anti-American, anti-Christian, anti-Semitic, and just plain filthy.” *Id.* at
9 857. The procedural irregularities behind the board’s decision led the Supreme Court to conclude that
10 it may have been motivated by “disagreement with [the books’] constitutionally protected ideas.” *Id.*
11 at 875. Those irregularities included (i) ignoring an already-existing policy for evaluating whether
12 books were appropriate for the library; (ii) “ignor[ing] ‘the advice of literary experts,’ the views of
13 ‘librarians and teachers within the . . . School system,’ . . . and the guidance of publications that rate
14 books for junior and senior high school students”;⁷⁶ and (iii) rejecting the advice of a special
15 committee that recommended keeping several books. *Id.*

16 Here, the new Board members rushed headlong to enact the Resolution in violation of the
17 Board’s own procedures governing the development and adoption of new policies. Pursuant to Bylaw
18 9310, after “identify[ing] the need for a new policy,” the Board must “fully inform” itself about the
19 particular issue.⁷⁷ This often includes collecting “fiscal data, staff[,] and public input” and reviewing
20 related TVUSD and California School Boards Association (“CSBA”) policies; holding “discussions
21

22 ⁷⁶ For example, Kirkus, the leading reviewer of young readers’ literature, rates *Harry Potter* as
23 appropriate for students age 10–14, *The Hunger Games* for students 11 and up, and *The Giver* for
24 students age 12–16. Kirkus Reviews, *Harry Potter and the Sorcerer’s Stone*, (May 19, 2010), [https://](https://www.kirkusreviews.com/book-reviews/jk-rowling/harry-potter-and-the-sorcerers-stone/)
25 [www.kirkusreviews.com/book-reviews/](https://www.kirkusreviews.com/book-reviews/suzanne-collins/the-hunger-games/)
26 [suzanne-collins/the-hunger-games/](https://www.kirkusreviews.com/book-reviews/lois-lowry/the-giver); Kirkus Reviews, *The Giver* (May 19, 2010), [https://](https://www.kirkusreviews.com/book-reviews/lois-lowry/the-giver)
www.kirkusreviews.com/book-reviews/lois-lowry/the-giver.

27 ⁷⁷ Rosenbaum Decl., Ex. C (TVUSD, *Bylaw 9310: Board Policies*, [https://simbli.eboardsolutions.com/](https://simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030186&revid=FjHHRvl59vykJIo68vdeWg==&ptid=amIgTZiB9plushNjl6WXhfiOQ==&secid=qo79RxbUbdO3GjATNVIJ7Q==&PG=6&IRP=0&isPndg=false)
28 [Policy/ViewPolicy.aspx?S=36030186&revid=FjHHRvl59vykJIo68vdeWg==&ptid=amIgTZiB9plushNjl6WXhfiOQ==&secid=qo79RxbUbdO3GjATNVIJ7Q==&PG=6&IRP=0&isPndg=false](https://simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030186&revid=FjHHRvl59vykJIo68vdeWg==&ptid=amIgTZiB9plushNjl6WXhfiOQ==&secid=qo79RxbUbdO3GjATNVIJ7Q==&PG=6&IRP=0&isPndg=false)).

1 during a public Board meeting” about staff recommendations, community expectations, and the
2 policy’s expected impact “on student learning and well-being, equity, governance, and the district’s
3 fiscal resources and operational efficiency”; and requesting that legal counsel review the draft policy.⁷⁸

4 After the Board undertakes this process, the Superintendent or her designee (not the Board)
5 must “develop and present a draft policy for a first reading at a public Board meeting.”⁷⁹ At its second
6 reading, the Board may take action on the proposed policy.”⁸⁰

7 There is no indication that prior to enacting the Resolution, the Board assessed fiscal data,
8 invited or reviewed input from District staff, or examined TVUSD or CSBA policies. Nor is there
9 any indication that the Board consulted the District’s legal counsel before drafting the Resolution.
10 Nor did the Board discuss in a public meeting the Resolution’s impact on student outcomes, course
11 offerings including A.P. classes, or the District’s ability to operate effectively. In another deviation
12 from procedure, members of the Board, not the Superintendent, authored the Resolution, and the
13 Board did not hold a first reading to solicit public input before a second reading and vote. The
14 Board’s manner of adopting Resolution 21 was therefore “highly irregular and ad hoc—the antithesis
15 of those procedures that might tend to allay suspicions regarding [their] motivations.” *Pico*, 457 U.S.
16 at 875; *see also Arlington Heights*, 492 U.S. at 267 (“evidence that improper purposes are playing a role”
17 may include “[d]epartures from the normal procedural sequence” and “[s]ubstantive departures
18 . . . , particularly if the factors usually considered important by the decisionmaker strongly favor a
19 decision contrary to the one reached”).

20 The Board also violated its written policies regarding curricular changes. TVUSD Board
21 Policy 6141 and its regulations set out the process for revising District curriculum, which requires the
22 Board to ground its decision-making in the professional judgments of District teachers and
23
24

25 _____
26 ⁷⁸ Rosenbaum Decl., Ex. C.

27 ⁷⁹ *Id.*

28 ⁸⁰ *Id.*

1 administrators.⁸¹ Moreover, Board policy mandates that curriculum align with “the [D]istrict’s vision
2 and goals for student learning,”⁸² which include increasing the percentage of students meeting State
3 performance standards,⁸³ as well as with “Board policies, academic content standards, state
4 curriculum frameworks, state and district assessments, graduation requirements, school and district
5 improvement plans, and” related legal requirements.⁸⁴ The Board’s failure to consider *any* of these
6 factors raises a strong inference that Resolution 21 was improperly motivated by certain members’
7 disagreement with constitutionally protected ideas. *See Pico*, 457 U.S. at 875.

8 In addition, the remarks of Defendants Wiersma and Gonzalez manifest hostility to the
9 concept of racial equity or outright racial animus. *González*, 269 F. Supp. 3d at 965, 973 (state law
10 targeting Mexican American Studies program was motivated by racial animus and lacked legitimate
11 pedagogical purpose, where legislator made racist comments about Mexican-Americans on blog).

12 During a school board campaign event, Gonzalez told the audience:

13 [F]ifteen days after the death of George Floyd they sign a resolution in Temecula
14 Valley reaffirming their commitment to promote equity, right? . . . And we know that
15 equity is this fluffy word that they use. . . . And it essentially means that we’re going to
16 . . . disseminate [critical race theory] through every part of this education system.⁸⁵

17 Wiersma further stated in a campaign interview that “every skin color has . . . been a slave”
18 and that students of color would only be “held back” if they “have a chip on their shoulder”:

19 [W]hat’s so interesting to me is that every skin color has both been a slave and owned
20 a slave. And so when you look at that, and where we are in the world today, trafficking,

21 ⁸¹ Rosenbaum Decl., Ex. D (TVUSD, *Policy 6141: Curriculum Development And Evaluation*, [https://
22 simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030186&revid=
23 gzplustvVLghI3WefrcJKZCA==&PG=6&st=academic%20content%20standards&mt=Exact](https://simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030186&revid=gzplustvVLghI3WefrcJKZCA==&PG=6&st=academic%20content%20standards&mt=Exact)).

24 ⁸² Rosenbaum Decl., Ex. D.

25 ⁸³ Rosenbaum Decl., Ex. E. (TVUSD, *Policy 0200: Goals For the School District*, [https://
26 simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030186&revid=
27 YviGHmz263hSEtMMsx0lew==&PG=6&st=aligned&mt=Exact](https://simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030186&revid=YviGHmz263hSEtMMsx0lew==&PG=6&st=aligned&mt=Exact)).

28 ⁸⁴ Rosenbaum Decl., Ex. D.

⁸⁵ Rosenbaum Decl., Ex. MM (Our Watch, *ie Family PAC Draft – Meet school board candidates of Menifée, Temecula, Murrieta, and Lake Elsinore*, YouTube (Mar. 2, 2022), [https://www.youtube.com/watch?v=
7wEBdcbRUng](https://www.youtube.com/watch?v=7wEBdcbRUng)).

1 slavery still exists. . . . They're going to be held back only if we get mixed up in these
2 conversations where kids walk away feeling like they're bitter and have a chip on their
3 shoulder.⁸⁶

4 Perhaps the most telling indicators of the Board's views on racial equity are the statements of
5 a consultant it hired to teach District staff about Resolution 21. As described *supra*, Christopher
6 Arend is a former member of the Paso Robles Joint Unified School District board of trustees, and he
7 authored that district's Resolution 21-27, large portions of which were copied verbatim in Resolution
8 21. Arend also authored a 2020 essay titled *The myth of "systemic racism"*,⁸⁷ in which he stated:

9 Racism under the traditional definition ceased to exist in the American legal and socio-
10 economic system when prejudiced conduct was outlawed. . . . [A] new definition [of
11 racism] has been developed and nurtured in American academia for the last 50 years
12 as a tool to address the fact of continuing socio-economic differences between
13 "whites" and "blacks" or "people of color", especially because the consequence of the
14 individualist approach under the traditional definition of racism is that individuals have
15 been primarily responsible for their own successes and failures after race-based
16 discrimination was effective [sic] eliminated.

17 Referencing offensive racial stereotypes, Arend wrote:

18 Racial discrimination in the traditional sense is rare and immediately sanctioned in both
19 American culture as well as law. The way to alleviate socio-economic differences
20 between ethnic groups is . . . a long-term process in which individuals earn their way
21 up the socio-economic ladder with hard work and by making good decisions (deciding
22 to work hard in school, not joining criminal gangs, not taking illegal drugs, etc.).

23 In Arend's view, disproportionate police violence against Black people does not reflect systemic
24 racism, because "white supremacists . . . are especially rare in our law enforcement agencies. In the
25 rare instance when a law enforcement officer is found to be racist, that officer is normally disciplined
26 and removed from the force."⁸⁸ Arend expressed these views during his "training" for Temecula
27 educators, blaming Black victims of police violence for their killings and injuries.⁸⁹

28 _____
⁸⁶ Rosenbaum Decl., Ex. X. (Our Watch, *Jen Wiersma // TVUSD School Board Candidate // School Board Series*, at 12:11, YouTube (Sept. 20, 2022), <https://www.youtube.com/watch?v=AkewhkedCZM&t=12m10s>).

⁸⁷ Rosenbaum Decl., Ex. G.

⁸⁸ *Id.*

⁸⁹ Eytchison Decl. ¶ 9.

1 These comments by Gonzalez, Wiersma, and Arend strongly suggest that racial animus
2 “infected” the Board’s decision to adopt and enforce Resolution 21. *González*, 269 F. Supp. 3d at 965.
3 In sum, the Resolution’s lack of factual support; its partisan criticisms of critical race theory, systemic
4 racism, and similar concepts, which evidence a purpose to discriminate based on viewpoint; its
5 demonstrated harmful effects on students and its conflict with State curriculum standards; as well as
6 the procedural abnormalities and Defendant Board members’ comments manifesting racial animus,
7 conclusively demonstrate that Resolution 21 lacks a legitimate pedagogical purpose.

8 **ii. The Board’s censorship of information about the LGBTQ rights move-**
9 **ment imposes Board members’ ideological beliefs on students and**
10 **lacks a legitimate pedagogical purpose.**

11 The Board’s plan to censor instruction on the LGBTQ rights movement likewise lacks a
12 legitimate educational purpose and violates the free speech clause of the California Constitution.
13 Specifically, Defendant Board members have voted to shelve Lesson 12 of the State-approved
14 fourth-grade *Social Studies Alive* curriculum until they can identify “substituted age-appropriate
15 curriculum” which “exclude[s] sexualized topics of instruction.”⁹⁰ The supposed “sexualized”
16 material in Lesson 12 is a brief supplemental discussion of the LGBTQ rights movement that does
17 not in any way reference sexual activity. Defendant Board members’ spurious concern about
18 nonexistent “sexualized topics” is a pretext for advancing their anti-LGBTQ ideology and an
19 unconstitutional attempt to impose their religious beliefs on Temecula students.

20 “There is and can be no doubt that the First Amendment does *not* permit the State to require
21 that teaching and learning must be tailored to the principles or prohibitions of any religious sect or
22 dogma.” *See Epperson v. Ark.*, 393 U.S. 97, 106 (1968) (emphasis added) (statute banning the teaching
23 of evolution in public schools violated First Amendment’s establishment clause). Moreover, an intent

24
25 ⁹⁰ Rosenbaum Decl., Ex. Y (TVUSD, JUL-21-2023 7:30 PM ◇ *Special Meeting* ◇ *TVUSD Governing*
26 *Board* at 2:58:56, YouTube (July 21, 2023), <https://youtu.be/yqY34hx2B3k?t=10736>); Rosenbaum
27 Decl., Ex. OO (TVUSD, *Special Board Meeting of the Board of Trustees of the Temecula Valley Unified School*
28 *District* | 07/21/2023 - 07:30 PM, [https://simbli.eboardsolutions.com/SB_Meetings/](https://simbli.eboardsolutions.com/SB_Meetings/ViewMeeting.aspx?S=36030186&MID=23246&T=1)
[ViewMeeting.aspx?S=36030186&MID=23246&T=1](https://simbli.eboardsolutions.com/SB_Meetings/ViewMeeting.aspx?S=36030186&MID=23246&T=1)).

1 to advance a religious ideology is a “patently illegitimate educational purpose.” *McCarthy*, 207 Cal.
2 App. 3d at 142.

3 Lesson 12 of *Social Studies Alive* describes California’s contributions to American culture,
4 including in entertainment, the arts, architecture and literature, and public education. It contains no
5 sexualized content. There is a two-page supplemental section on “Civil Rights in California,” which
6 includes a discussion of court cases on marriage equality:

7 Court decisions have also impacted civil rights in other ways. For many years, it was
8 illegal for gay couples to marry in the state of California. In 2008, voters in California
9 decided to limit marriage to be between a man and a woman. Many gay couples were
10 unable to marry. A group of people decided to take their case to court. They argued
11 that not allowing gay people to marry was a violation of their civil rights. California
12 courts agreed. This case, *Hollingsworth v. Perry*, legalized marriage equality in the state of
13 California.

14 While marriage was legal for everyone in California and some other states, it was not
15 for everyone in the United States. Two years after *Hollingsworth v. Perry*, the Supreme
16 Court heard a case called *Obergefell v. Hodges*. The court decided that it was a violation
17 of civil rights to only give some people in the country the right to marry. Now,
18 everyone in the United States can marry.⁹¹

19 The end of the supplement discusses LGBTQ rights groups:

20 Some groups organize to help people fight for their rights. Some of these groups need
21 to fight for a long time. An example of these groups would be gay rights groups.

22 In the 1950s, gay men and women did not have many people to speak for them. Some
23 of the nation’s first gay rights organizations were formed in California such as the
24 Daughters of Bilitis, the first lesbian civil rights organization in the United States,
25 which was founded in 1955 in San Francisco by two lesbians, Del Martin and Phyllis
26 Lyon. Until the 1970s, many gay people were barred from working in some places.
27 Gay rights groups successfully defeated a ballot initiative that would have banned gay
28 men and women from being schoolteachers. Organizations formed to speak for them.
Over time, groups like the Gay Liberation Front and the Human Rights Campaign
fought for the civil rights of gay people. Groups like these were able to organize
protests and hire lawyers to help gay people get their civil rights.⁹²

29 ⁹¹ Eytchison Decl., Ex. B.

30 ⁹² *Id.*

1 In addition, among the nearly 300 biographies included in supplementary materials is a
2 biography of San Francisco Supervisor Harvey Milk, California’s first openly gay elected official and a
3 leader in the LGBTQ rights movement. *See* Eytchison Decl., Ex. C

4 There is no reference to sexual activity in these materials. Instead, Defendant Board members
5 are using the stated goal of removing “sexualized topics of instruction” as a front for their
6 discriminatory purpose: erasure from Temecula’s curriculum of any references to gay, lesbian,
7 bisexual, or transgender persons. Whether the new Board members approve of marriage equality or
8 not, landmark civil rights decisions such as *Hollingsworth v. Perry* and *Obergefell v. Hodges* are consequen-
9 tial historical events. Removing history from history books based on hostility toward LGBTQ people
10 violates students’ right to receive information under the Constitution. *See Pico*, 457 U.S. at 870–71
11 (“[I]f an all-white school board, motivated by racial animus, decided to remove all books . . .
12 advocating racial equality and integration,” then “few would doubt that the order violated the
13 constitutional rights of the students denied access to those books.”).

14 Defendant Board members’ animus toward LGBTQ people is well established. At the
15 beginning of the 2022 campaign season, at an “endorsement draft” held by the Inland Empire Family
16 PAC, Defendants Komrosky, Wiersma, and Gonzalez were interviewed by the PAC’s founder,
17 evangelical pastor Tim Thompson.⁹³ Onstage with Thompson, who condemned public schools as
18 “Satan’s playground,” Komrosky said:

19 When teachers at Temecula can tell the kids, “if you’re a boy and you feel like dressing
20 like a girl, if you’re a girl and dressing like a boy,” I saw an instance of that with my
21 own eyes, in our community, and I don’t want my son to be affected by it. So it’s
22 affecting our generation, and that’s horrible.

24
25 ⁹³ The PAC’s website endorses Komrosky, Wiersma, and Gonzalez and describes “The Problem In
26 Schools” as “Growing Indoctrination,” “Critical Race Theory,” “Forced LGBTQ+ Acceptance,”
27 “Perverted Sexual Training,” and “Transgenderism Encouraged.” Rosenbaum Decl., Ex. R. The
28 website states that “The Inland Empire Family PAC works to stop the indoctrination of our children
by placing candidates on school boards who will fight for Christian and Conservative values.” *Id.*
(emphasis added).

1 . . . I think that if Christians stood up and showed courage, and asked God to work
2 through them humbly, he will go ahead of you, he will work through you, and the
[incumbent] board of education, they will crumble like the walls of Jericho.⁹⁴

3 This animus continued after the election. At its May 16, 2023 meeting, the Board rejected the
4 *Social Studies Alive* curriculum primarily due to references to the LGBTQ rights movement.⁹⁵ Prior to
5 the vote, Wiersma urged the Board to ignore requirements of the FAIR Act, a State law mandating
6 instruction on contributions of members of the LGBTQ community.⁹⁶

7 I did knock on doors and . . . I did talk to the parents who said, “I’m gonna teach them
8 about those issues. I don’t want my third grader studying an LGBTQ issue. I don’t
9 want them going into gender ideology. I don’t want them looking at it.” . . . So when
we look at the material in the FAIR Act I felt like I was led to believe that we’ve gotta
10 cover that K-5. We do not.⁹⁷

11 Wiersma was subsequently corrected by Nicole Dayus, TVUSD’s then-Director of
12 Curriculum and Instruction and now Assistant Superintendent for Educational Support Services, who
13 stated that legal counsel had advised that individual categories of people could *not* be eliminated from
14 FAIR Act requirements for grades K–5.⁹⁸

15 ⁹⁴ Rosenbaum Decl., Ex. Z.

16 ⁹⁵ Rosenbaum Decl., Ex. AA (TVUSD, *May 16 2023, 6:00 PM – Open Session – TVUSD Governing*
17 *Board Meeting* at 2:14:30 [hereinafter *May 16 Board Meeting*], YouTube (May 16, 2023),
18 https://youtu.be/ABcKfZu7_pU?t=8070).

19 ⁹⁶ Rosenbaum Decl., Ex. NN. California Education Code 60040 (amended under the FAIR Act) states
in relevant part:

20 When adopting instructional materials for use in the schools, governing boards shall
21 include only instructional materials that, in their determination, accurately portray the
22 cultural and racial diversity of our society, including: (a) The contributions of people
23 of all genders in all types of roles, including professional, vocational, and executive
24 roles. (b) The role and contributions of Native Americans, African Americans, Latino
25 Americans, Asian Americans, Pacific Islanders, European Americans, LGBTQ+
26 Americans, persons with disabilities, and members of other ethnic, cultural, religious,
and socioeconomic status groups to the total development of California and the
United States. (c) The role and contributions of the entrepreneur and labor in the total
development of California and the United States.

27 ⁹⁷ Rosenbaum Decl., Ex. BB (May 16 Board Meeting at 1:48:00).

28 ⁹⁸ Rosenbaum Decl., Ex. CC (May 16 Board Meeting at 1:50:33).

1 In the same meeting, Defendants Gonzalez and Komrosky objected to inclusion of the
2 biography of Harvey Milk in the supplemental materials—which are optional for classroom use—
3 based on allegations that Milk was a “pedophile.” Gonzalez said: “I find the inclusion of sexually
4 based topics and the glorification of a known pedophile who happened to be an advocate for gay
5 rights to ten year olds morally reprehensible and inappropriate.”⁹⁹ Despite being informed that the
6 District would soon be in violation of State law if it did not have an updated curriculum and
7 textbooks in place, the Board voted to reject the District task force’s recommendation to adopt the
8 *Social Studies Alive* curriculum.¹⁰⁰

9 It was not until July 21, 2023, after Governor Newsom threatened to fine the District for
10 failing to provide updated textbooks under State law, that the Board adopted *Social Studies Alive*.
11 However, Defendant Board members voted to move Lesson 12 to the end of the fourth-grade
12 curriculum until they could recommend substituted material that—impossibly—“meets all state and
13 federal standards, including the FAIR Act” while also being “consistent with this Board’s
14 commitment to exclude sexualized topics of instruction from the elementary school grade levels.”¹⁰¹
15 Again, this is entirely pretextual because *there are no sexualized topics of instruction in the curriculum*
16 *whatsoever*. By targeting Lesson 12, the Board has moved to excise all curricular references to the
17 LGBTQ rights movement, violating the FAIR Act (notwithstanding its professions to the contrary)
18 and disregarding the State’s History-Social Science Framework, which recommends that fourth
19 graders learn about California LGBTQ groups’ fight for the right to teach and to marry, as well as
20 about Harvey Milk’s election as one of the first openly gay public officials in the U.S.¹⁰²

21 School boards may not impose curricular restrictions which implicate the State in the
22 promotion of a “particular religious or ideological viewpoint.” *McCarthy*, 207 Cal. App. 3d at 140

23 _____
24 ⁹⁹ Rosenbaum Decl., Ex. DD (May 16 Board Meeting at 1:34:42).

25 ¹⁰⁰ Rosenbaum Decl., Ex. PP (TVUSD, *Regular Meeting of the Board of Trustees of the Temecula Valley*
26 *Unified School District | 05/16/2023 - 04:00 PM*, https://simbli.eboardsolutions.com/SB_Meetings/ViewMeeting.aspx?S=36030186&MID=19903&T=1).

27 ¹⁰¹ Rosenbaum Decl., Ex. Y.

28 ¹⁰² See Rosenbaum Decl., Ex. I at 90.

1 (citing *Pratt v. Ind. Sch. Dist. No. 831, Forest Lake*, 670 F.2d 771, 776 (8th Cir. 1982)). The Board’s
2 censorship of references to the LGBTQ rights movement lacks a legitimate pedagogical purpose and
3 is improperly motivated by hostility toward LGBTQ persons.

4 **iii. Resolution 21 is unconstitutionally overbroad.**

5 Even if Resolution 21 were motivated by a legitimate educational purpose—and it is not—the
6 Resolution is alarmingly overbroad and censors topics that have no reasonable relationship to its
7 supposed goal of preventing racism.

8 Constitutional guarantees of free speech “forbid the States to punish the use of words or
9 language not within narrowly limited classes of speech. . . . [The] statute must be carefully drawn or
10 be authoritatively construed to punish only unprotected speech and *not be susceptible of application to*
11 *protected expression.*” *Ketchens*, 194 Cal. App. 3d at 475 (quoting *Gooding v. Wilson*, 405 U.S. 518, 521–22
12 (1972)) (emphasis added; cleaned up).¹⁰³ Accordingly, “[a]n ordinance which sweeps within its
13 prohibitions what may not be punished under the First and Fourteenth Amendments is
14 unconstitutionally overbroad.” *Id.* at 476; *see also United States v. Stevens*, 559 U.S. 460, 473 (2010) (“[A]
15 law may be invalidated as overbroad if ‘a substantial number of its applications are unconstitutional,
16 judged in relation to the statute’s plainly legitimate sweep.’” (citation omitted; cleaned up)).

17 Resolution 21 has no legitimate educational purpose, and thus no “plainly legitimate sweep.”
18 But even if the Court were to accept Defendant Board members’ claim that Resolution 21 is intended
19 to protect students from racism, the Resolution nevertheless prohibits a substantial amount of speech
20 with no reasonable relationship to that objective.

21 The banned concepts—*e.g.*, that “[r]acism is racial prejudice plus power”; that “[r]acism is
22 ordinary”; that an individual can be “inherently racist and/or sexist, whether consciously or
23 unconsciously”; that people can “bear[] responsibility for actions committed in the past or present by
24 other members of the same race or sex”—are broad enough to prohibit any mention of systemic

25
26 ¹⁰³ In *Ketchens*, the Court of Appeal found that California Education Code sections making it a
27 misdemeanor to “upbraid[], insult[], or abuse[]” teachers within the hearing of pupils or other staff
28 were unconstitutionally overbroad, because they punished protected speech in addition to
unprotected fighting words. *Id.* at 475–77.

1 racism or sex discrimination, implicit bias, or racial privilege, among other subjects. Yet proscribing
2 *any* instruction on such subjects is not reasonably related to Resolution 21’s stated goal of protecting
3 students from racism. By way of example, in *Letter from Birmingham Jail*, Dr. Martin Luther King, Jr.
4 criticized “white moderate[s]” whose privilege made them indifferent to the Civil Rights Movement:

5 I suppose I should have realized that few members of the oppressor race can
6 understand the deep groans and passionate yearnings of the oppressed race, and still
7 fewer have the vision to see that injustice must be rooted out by strong, persistent and
determined action.

8 King wrote he was “gravely disappointed” with white moderates whose inaction, he felt, was partly to
9 blame for racist violence and discrimination. Thus, teaching *Letter from Birmingham Jail*—a seminal text
10 of the Civil Rights Movement that students must examine pursuant to California content stand-
11 ards¹⁰⁴—would violate the Resolution’s ban on introducing the concept that an individual “bears
12 responsibility for actions committed in the past or present by other members of the same race[.]” The
13 California Constitution does not and cannot condone stifling such instruction. For this reason as
14 well, the Resolution is unconstitutionally overbroad.

15 **iv. Resolution 21 is void for vagueness.**

16 Resolution 21 has created profound uncertainty among Temecula educators. Instructors must
17 guess at what can be taught, with substantial consequences if they guess wrong. Plaintiff Dawn Sibby,
18 a history teacher, is “worr[ie]d that if I use the ‘wrong’ language or if a student misinterprets my
19 words, someone may report me to school officials and subject me to discipline.”¹⁰⁵ She has tried
20 without success to gain clarity on what she can say in the classroom.¹⁰⁶ The local teachers’ union,
21 Plaintiff TVEA, is “having to field countless questions from teachers and administrators regarding
22 what they can and cannot teach, and what questions they can and cannot answer, under the
23

24
25 ¹⁰⁴ Rosenbaum Decl., Ex. H at 52 (11th graders are required to “[e]xamine the roles of civil rights
26 advocates . . . including the significance of Martin Luther King, Jr.’s ‘Letter from Birmingham Jail.’”).

27 ¹⁰⁵ Sibby Decl. ¶ 8.

28 ¹⁰⁶ *Id.* ¶ 7.

1 Resolution.”¹⁰⁷ Since December 2022, “the vast majority of TVEA meetings have dealt with
2 addressing the Resolution, and particularly . . . supporting teachers who fear losing their livelihoods if
3 they are accused of violating it.”¹⁰⁸ TVEA members are having to limit classroom discussions to
4 avoid being reported.

5 “[W]here a vague statute abuts upon sensitive areas of basic First Amendment freedoms, it
6 operates to inhibit the exercise of those freedoms.” *Ketchens*, 194 Cal. App. 3d at 477 (citation
7 omitted; cleaned up). “A law is unconstitutionally vague if it fails to meet two basic requirements:
8 (1) The regulations must be sufficiently definite to provide fair notice of the conduct proscribed; and
9 (2) the regulations must provide sufficiently definite standards of application to prevent arbitrary and
10 discriminatory enforcement.” *Snatchko v. Westfield LLC*, 187 Cal. App. 4th 469, 495 (2010). Resolution
11 21 fails both criteria and is therefore unconstitutionally vague.

12 *First*, Resolution 21 does not provide teachers a reasonable opportunity to know what it
13 prohibits. In addition to banning 13 enumerated concepts, Resolution 21 prohibits teaching “Critical
14 Race Theory or other similar frameworks” without defining critical race theory or identifying the
15 other “similar” frameworks. As described *supra*, even the enumerated concepts are, for the most part,
16 impossibly undefined. Moreover, the Resolution does not specify whether a teacher could be found
17 in violation of its ban on teaching that “[a]n individual should feel discomfort, guilt, anguish or any
18 other form of psychological distress on account of his or her race or sex” merely for introducing the
19 concept of race- or sex-based advantage or saying something that arguably implies that a person may
20 feel discomfort or guilt due to their race or sex. *Local 8027 v. Edelblut*, 651 F. Supp. 3d 444, 446–47,
21 461 (D.N.H. 2023) (holding a similar statute unconstitutionally vague where “a teacher could
22 unknowingly violate [it] by making a statement that does not expressly endorse a banned concept but
23 that could be understood to imply it”).

24 *Second*, Resolution 21 invites arbitrary enforcement because officials have no clear guidelines
25 for determining when it is violated. As noted *supra*, the Resolution does not state whether teachers

26 ¹⁰⁷ Diaz Decl. ¶ 9.

27 ¹⁰⁸ *Id.* ¶ 10.

1 can be disciplined for teaching the banned topics by implication. Indeed, much of Resolution 21 is
2 patterned after former President Trump’s Executive Order 13950, which was preliminarily enjoined
3 as unconstitutionally vague by a federal district court in California in 2020. *Santa Cruz Lesbian & Gay*
4 *Cnty. Ctr.*, 508 F. Supp. 3d at 550. That federal court found the order to be “so vague that it is
5 impossible . . . to determine what conduct is prohibited,” and the line between permissible and
6 prohibited conduct to be “so murky, enforcement of the [order] poses a danger of arbitrary and
7 discriminatory application.” *Id.* at 543–44 (citation omitted; brackets added). The portions of
8 Resolution 21 lifted from Order No. 13950 are similarly void for vagueness.

9 *Third*, the Resolution’s vagueness causes teachers to self-censor on a much wider range of
10 topics than if its prohibitions were clearly defined. This problem is exacerbated by the severe
11 sanctions teachers face for noncompliance. Resolution 21 states that critical race theory and “other
12 similar frameworks” are “racist,” and District policies provide that any employee who engages in
13 racist or discriminatory conduct “shall be subject to disciplinary action, up to and including
14 dismissal.”¹⁰⁹ The amount of speech chilled by Resolution 21 is all the greater due to the grave
15 consequences for violating it. *Local 8027*, 651 F. Supp. 3d at 460 (“The need for clarity is . . .
16 paramount when a statutory provision authorizes severe consequences for a violator.”).¹¹⁰

17 In *Local 8027*, a federal court found a state statute prohibiting public schoolteachers from
18 teaching four “divisive concepts”—including that an individual should receive adverse treatment on
19 the basis of race or sex—to be unconstitutionally vague. *Id.* at 446–47. Resolution 21 chills a much
20 wider swath of speech than that statute, banning instruction on 13 concepts rather than four. It is
21 void for vagueness.

22 **v. Resolution 21 denies Temecula students an education equivalent to**
23 **that provided elsewhere throughout the State.**

24 ¹⁰⁹ Rosenbaum Decl., Ex. F (TVUSD, *Policy 5145.3: Nondiscrimination/Harassment*, <https://simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030186&revid=JlRWwVzFrEvP54pluscMr iTfw=&ptid=amIgtZiB9plushNjl6WXhfiOQ=&secid=9slshUHzTHxaaYMVf6zKpJz3Q=&is Pndg=&PG=6>).

27 ¹¹⁰ The “training” sessions led by Christopher Arend for District staff did nothing to clarify what can
28 and cannot be taught. *See* Eytchison Decl. ¶ 9; Miles Decl. ¶ 5.

1 Resolution 21 has deprived Temecula students of an education that complies with California
2 curriculum standards. *See supra* pages 17–19, 24–29. Students are also being denied the right to learn
3 about subjects such as discrimination that are critical to their educational development. For these
4 reasons, the continued enforcement of Resolution 21 denies Temecula students an education
5 basically on par with that of their peers throughout the State.

6 Public education is a fundamental right in California. *Butt*, 4 Cal. 4th at 686; *Serrano*, 5 Cal. 3d
7 at 589 (“the right to an education in our public schools is a fundamental interest”). Because education
8 is a fundamental right, the equal protection clause of the State Constitution “prohibits maintenance
9 and operation of the common public school system in a way which denies basic educational equality
10 to the students of particular districts.” *Butt*, 4 Cal. 4th at 685; *see id.* at 680–81 (quoting *Jackson v.*
11 *Pasadena City Sch. Dist.*, 59 Cal. 2d 876, 880 (1963)) (“In view of the importance of education to
12 society and to the individual child, the opportunity to receive the schooling furnished by the state
13 must be made available to all on an equal basis.” (cleaned up)). Unequal education “leads to unequal
14 job opportunities, disparate income, and handicapped ability to participate in the social, cultural, and
15 political activity of our society.” *Serrano*, 5 Cal. 3d at 606 (citation omitted).

16 Thus, the California Constitution guarantees students the right to receive an education
17 “basically equivalent to that provided elsewhere throughout the State.” *Butt*, 4 Cal. 4th at 685. A
18 student’s education is not “basically equivalent” when “the actual quality of the [school’s] program,
19 viewed as a whole, falls fundamentally below prevailing statewide standards,” thereby demonstrating
20 “a real and appreciable impact on the affected students’ fundamental California right to basic
21 educational equality.” *Id.* at 686–88. A denial of basic educational equality is subject to strict scrutiny,
22 under which “the state bears the burden of establishing *not only* that it has a *compelling* interest which
23 justifies the law but that the distinctions drawn by the law are *necessary* to further its purpose.”
24 *Serrano*, 5 Cal. 3d at 597 (emphases added; citation omitted).

25 Depriving students of an education aligned with State curriculum standards directly infringes
26 on this fundamental right. *Id.* at 596 (California Constitution requires that statewide “educational
27 system must be uniform in terms of the prescribed course of study and educational progression from
28

1 grade to grade”); *see* Educ. Code § 60119(a)(1)(A) (requiring all public schools to have sufficient
2 textbooks “aligned to the content standards adopted by the state board” and “consistent with the
3 content and cycles of the curriculum framework adopted by the state board”); *Wilson v. State Bd. of*
4 *Educ.*, 75 Cal. App. 4th 1125, 1137–38 (1999) (charter schools did not violate California constitutional
5 requirement of a statewide school system that is “uniform in terms of the prescribed course of
6 study” because “their education programs must be geared to meet the same state standards”); *see also*
7 *Butt*, 4 Cal. 4th at 681 (“Local districts are the State’s agents for local operation of the common
8 school system[.]”).

9 The continued enforcement of Resolution 21 will cause Temecula’s academic program, as a
10 whole, to fall below prevailing statewide standards. There are 939 school districts in the State of
11 California.¹¹¹ As of November 29, 2023, only seven of these districts had adopted curriculum bans
12 targeting Critical Race Theory or other “divisive concepts,” according to the UCLA School of Law’s
13 Critical Race Studies Program.¹¹² In other words, “[i]f Resolution 21 is allowed to stand, access to”
14 instruction on important components of the State’s History-Social Science Standards and Framework
15 “will turn on the fortuity of district assignment.”¹¹³ Resolution 21 has thus already had a “real and
16 appreciable impact” on Temecula students’ fundamental right to basic educational equality. *Butt*, 4
17 Cal. 4th at 686–88. A parent Plaintiff has even considered moving out of Temecula to allow her son
18 to receive an education basically equivalent to that of his peers in other districts.¹¹⁴

19 There is *no* legitimate—much less compelling—interest in an act of censorship that lacks a
20 valid educational purpose, discriminates based on viewpoint, and is unconstitutionally vague and
21 overbroad. *See supra* pages 10–32. Further, even if Resolution 21 did not offend the free speech and
22 due process clauses of the California Constitution—which it does—Defendants’ interests in local

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24 ¹¹¹ Rosenbaum Decl., Ex. P (Cal. Dep’t Educ., *List of School Districts*, <https://www.cde.ca.gov/re/lr/do/schooldistrictlist.asp> (last visited Nov. 11, 2023)).

25 ¹¹² Rosenbaum Decl., Ex. Q (UCLA School of Law, *CRT Forward*, <https://crtforward.law.ucla.edu/map/> [<https://perma.cc/SCZ4-MXL5>] (last visited Nov. 29, 2023)).

26 ¹¹³ Declaration of Dr. John Rogers [hereinafter Rogers Decl.] ¶ 16.

27 ¹¹⁴ Declaration of Rachel P. ¶ 3.
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1 educational autonomy do not “outweigh the rights of . . . students to basic educational equality.”
2 *Butt*, 4 Cal. 4th at 688. Resolution 21 should be enjoined.

3 **B. Policy 5020.01 discriminates against transgender and gender nonconforming**
4 **students.**

5 Policy 5020.01 expressly discriminates against transgender and gender nonconforming students,
6 singling them out for forced disclosure based on discredited social stereotypes in direct
7 contravention of the Board’s own regulations.¹¹⁵ No compelling interest supports the Policy. And
8 even if this Court were to accept the specious justifications proffered by members of the Board—
9 which it should not—the Policy is not narrowly tailored to serve those ends.

10 **i. Policy 5020.01 facially discriminates based on gender identity.**

11 California protects transgender and gender nonconforming individuals from discrimination,
12 invalidating policies that discriminate on the basis of gender identity unless they can withstand strict
13 scrutiny. Cal. Const. Art. 1, § 7. Discrimination based on gender identity or gender expression is a
14 form of sex and gender discrimination. *See* Educ. Code § 210.7 (defining sex to include “gender
15 identity and gender expression”); Gov. Code § 12926 (same). Consistent with federal precedent, the
16 California Court of Appeal treats discrimination based on gender identity as gender discrimination.
17 *Taking Offense v. State of California*, 66 Cal. App. 5th 696, 725–26 (2021), *review on other grounds granted*
18 Nov. 10, 2021, S270535; *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1741 (2020) (deeming it “impossible
19 to discriminate against a person for being . . . transgender without discriminating against that
20 individual based on sex”). Indeed, discrimination against transgender individuals often “punish[es]

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22 ¹¹⁵ Rosenbaum Decl., Ex. SS (TVUSD, *Regulation 5145.3: Nondiscrimination/Harassment*, <https://simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030186&revid=L5AvcAC0TQZislshgslshikUF80w==&ptid=amIgT'ZiB9plushNjl6WXhfiOQ==&secid=9slshUH'zTHxaaYMVf6zKpJz3Q==&PG=6&IRP=0&isPndg=false>). Administrative Regulation 5145.3 provides, in relevant part, that
23 “[t]o ensure that transgender and gender-nonconforming students are afforded the same rights,
24 benefits, and protections provided to all students,” and in recognition of a student’s right to privacy
25 in their transgender or gender-nonconforming identity, “the district will only disclose [a student’s
26 transgender or gender nonconforming identity] to others with the student’s prior consent, except”
27 where required by law or “necessary to preserve the student’s physical or mental well-being.”

1 transgender persons for gender non-conformity, thereby relying on sex stereotypes.” *Grimm v.*
2 *Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 608 (4th Cir. 2020). In California, discrimination based on
3 gender identity or gender expression is subject to strict scrutiny. *See Catholic Charities of Sacramento, Inc.*
4 *v. Sup. Ct.*, 3 Cal. 4th 527, 564 (2004).

5 Discrimination against transgender and gender nonconforming individuals is subject to strict
6 scrutiny for the independent and additional reason that they are a protected class, subject to a long
7 history of adverse treatment. Like lesbian, bisexual, and gay people, transgender individuals were
8 historically subjected to—and continue to face—“invidious and prejudicial treatment” stemming
9 from “outdated social stereotypes.”¹¹⁶ And as with an individual’s lesbian, bisexual, or gay identity,
10 an individual’s gender identity or gender nonconformity “generally bears no relationship to [their]
11 ability to perform or contribute to society.” *Id.*

12 Policy 5020.01 facially discriminates against transgender and gender nonconforming students
13 by requiring District staff to disclose to parents whenever a student requests “to be identified or
14 treated” as a gender that differs from “the student’s biological sex” or the “gender listed on the
15 student’s birth certificate or any other official records.”¹¹⁷ The Policy also mandates disclosure
16 whenever students ask to use a different name or pronouns or to access “sex-segregated” programs
17 or facilities in accordance with their gender identity.¹¹⁸ These express requirements single out
18 transgender and gender nonconforming students for treatment different from that of their peers.

19 **ii. Policy 5020.01 cannot survive strict scrutiny.**

23 ¹¹⁶ *In re Marriage Cases*, 43 Cal. 4th 757, 843 (2008) (citing *Sail’er Inn, Inc. v. Kirby*, 5 Cal. 3d 1, 18 (1971));
24 *see* Declaration of Drs. Sabra Katz-Wise & Sari Reisner [hereinafter Katz-Wise & Reisner Decl.] ¶ 18;
25 Goldbach Decl. at ¶¶ 9–10 (attributing “disparate behavioral health outcomes” to “minority stress,”
26 including “negative of outcomes result[ing] from disclosure to family or peers,” “bullying by students
and teachers,” “violence . . . perpetuated by students, faculty, and staff,” and homelessness).

27 ¹¹⁷ Rosenbaum Decl., Ex. B at 1.

28 ¹¹⁸ *Id.* at 1–2.

1 Policy 5020.01 is invalid unless the District “establish[es] not only that it has a *compelling*
2 interest which justifies the law but that the distinctions drawn by the law are *necessary* to further its
3 purpose.” *In re Marriage Cases*, 43 Cal. 4th at 832 (cleaned up). Defendants can establish neither.

4 **1. Defendants fail to state a compelling purpose.**

5 Rather than demonstrate a compelling purpose, Defendant Board members’ contemporane-
6 ous statements and actions, as well as those of the Policy’s supporters, plainly evince discriminatory
7 intent. During consideration of the Policy, Defendant Komrosky described transgender people as
8 lifelong “medical patient[s]” due to “all the drugs and surgeries.”¹¹⁹ Likewise, the Policy’s supporters
9 disparaged transgender and gender nonconforming individuals as “gender confused,”¹²⁰ suffering
10 from a “mental medical disorder,”¹²¹ and the product of a “destructive agenda.”¹²²

11 Defendant Board members enacted the Policy as part of a wave of anti-LGBTQ measures,
12 including their excision of State-mandated curricular information on the LGBTQ rights movement
13 and invocation of a toxic, unfounded, and decades-old stereotype linking LGBTQ people to
14 pedophilia, described *supra*.¹²³ Shortly after adopting the Policy, Defendant Board members also
15 banned the Pride flag from Temecula classrooms¹²⁴ and rejected a proposed resolution prohibiting
16 discrimination, bullying, and harassment of all students, including LGBTQ youth.¹²⁵ Additionally,
17 Defendant Komrosky openly belittled transgender youth during a podcast appearance in which the

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20 ¹¹⁹ Rosenbaum Decl., Ex. QQ (TVUSD, *AUG 22 2023 Governing Board Meeting* from 6:22:50 to
21 6:23:15, YouTube (Aug. 22, 2023), <https://youtu.be/0eiEUuXtPNc?t=20307>).

22 ¹²⁰ Rosenbaum Decl., Ex. EE (August 22 Board Meeting, at 2:33:43).

23 ¹²¹ Rosenbaum Decl., Ex. FF (August 22 Board Meeting 5:57:43).

24 ¹²² Rosenbaum Decl., Ex. GG (August 22 Board Meeting at 5:04:05).

25 ¹²³ Rosenbaum Decl., Ex. HH (May 16 Board Meeting at 1:53:01).

26 ¹²⁴ Rosenbaum Decl., Ex. U (TVUSD, *Regular Meeting of the Board of Trustees of the Temecula Valley Unified*
27 *School District | 09/12/2023 - 04:00 PM*, https://simbli.eboardsolutions.com/SB_Meetings/ViewMeeting.aspx?S=36030186&MID=22883&Tab=Minutes).

28 ¹²⁵ *Id.*

1 host referred to being transgender as a “disease.”¹²⁶

2 The Board adopted Policy 5020.01 nearly simultaneously with five other California school
3 districts, including Chino Valley, whose identical policy was enjoined on October 19, 2023.¹²⁷ Here
4 too, the Policy’s invidious purpose is clear from the plain text of its purported aims. Namely, Policy
5 5020.01 claims to be intended to “prevent or reduce potential instances of self-harm” and “promote
6 . . . academic and social-emotional success,” but it requires disclosure and documentation regardless
7 of (i) whether a student is actually experiencing mental health issues or (ii) whether a student has a
8 safe and supportive home environment.¹²⁸ Its language invokes the “outdated social stereotype[s]”
9 that being transgender or gender nonconforming is attributable to mental illness¹²⁹ and that gender
10 transition constitutes “self-harm.” *Sail’er Inn*, 5 Cal. 3d at 18. Both the Board’s recent actions and the
11 Policy itself expose its true purpose: “a bare . . . desire to harm a politically unpopular group.”
12 *Romer v. Evans*, 517 U.S. 620, 634 (1996) (citing *Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973)).

13 **2. Policy 5020.01 is not narrowly tailored to accomplish any legiti-**
14 **mate purpose.**

15 Even if the Board enacted Policy 5020.01 without the intent to discriminate—which it did
16 not—the Policy would still fail strict scrutiny because it is neither necessary nor narrowly tailored to
17 any legitimate, much less compelling, purpose.

18 *First*, notwithstanding their purported intent to promote students’ “socio-emotional
19 success,” Defendant Board members chose to mandate disclosure regardless of student consent, and
20 refused to create an exception for students at risk of emotional, psychological, or physical harm.
21 Such forced disclosure directly results in bullying, violence, and homelessness.¹³⁰ It is therefore
22 “common practice” to waive parental disclosure of information that has “the potential to cause

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24 ¹²⁶ Point. Blank. Truth., *Episode 2, Parental Rights ft. Dr. K*, at 50:30, 57:48 (Aug. 28, 2023), <https://temeculaparents.podbean.com/e/pbt-episode-2-parental-rights-ft-dr-k/>.

25 ¹²⁷ *Supra* note 26.

26 ¹²⁸ Rosenbaum Decl., Ex. B at 1.

27 ¹²⁹ Katz-Wise & Reisner Decl. ¶ 16–18; Goldbach Decl. ¶ 9.

28 ¹³⁰ Goldbach Decl. ¶ 10.

1 harm.”¹³¹ But when presented with abundant evidence that nonconsensual disclosure exposes
2 transgender and gender nonconforming students to discrimination, harassment, and abuse, the
3 Board made no attempt to ensure that the Policy would protect against these harms, which are
4 occurring even now.¹³² As Rachel Dennis, facilitator of a local LGBTQ safe space, explained,
5 LGBTQ youth in Temecula are facing “enormous hostility and hatred” from both their peers and
6 adults, causing many to “experience daily anxiety and depression and to fear for their and their
7 friends’ safety.”¹³³ Many students have missed school or have been subjected to escalated
8 harassment from their emboldened classmates.¹³⁴ By robbing students of the opportunity to build
9 trusting relationships with teachers, Policy 5020.01 has denied them a critical source of support in a
10 hostile environment and “made an already bad situation dire.”¹³⁵ Dennis reports that some members
11 of the safe space have expressed fears of “abuse, violence, or even being kicked out of their home if
12 they are forcibly outed.”¹³⁶ Their fears are justified: One transgender Temecula student has already
13 been kicked out after his parents discovered his name change in school records.¹³⁷ The prospect of
14 being forcibly outed has driven many students to suppress their identities,¹³⁸ and Dennis has had to
15 direct multiple Temecula students to a mental health crisis hotline since the Board passed the
16 Policy,¹³⁹ an outcome directly at odds with the Board’s professed desire to improve students’ mental
17 health.

18 ¹³¹ Goldbach Decl. ¶ 16.

19 ¹³² As students at the August 22 Board meeting warned, the Policy increases students’ risk of being
20 “beaten, abused, [or] manipulated with electroshock therapy by their family” or “brought to the brink
21 of suicide.” Rosenbaum Decl., Ex. II (August 22 Board Meeting at 4:59:10); Rosenbaum Decl., Ex. JJ
(August 22 Board Meeting at 5:56:09).

22 ¹³³ Declaration of Rachel Dennis [hereinafter Dennis Decl.] ¶ 5–7.

23 ¹³⁴ Gwen S. Decl. ¶¶ 5–6, 13–16; Mae M. Decl. ¶¶ 4–6.

24 ¹³⁵ Dennis Decl. ¶ 10.

25 ¹³⁶ *Id.*

26 ¹³⁷ *Id.*

27 ¹³⁸ *See, e.g.*, Gwen S. Decl. ¶ 6.

28 ¹³⁹ Dennis Decl. ¶ 10.

1 *Second*, Policy 5020.01’s lack of exceptions also undercuts its claimed justification of
2 “foster[ing] trust between” parents and the District.¹⁴⁰ Policy 5020.01 requires the disclosure and
3 permanent documentation of students’ gender identity and expression regardless of whether parents
4 themselves would welcome such steps. Indeed, Defendant Board members enacted Policy 5020.01
5 over the protests of parents who pointed out that such intrusions would endanger students within
6 their own families. For example, a mother of a transgender son warned that the Policy would force
7 District staff to out children to unsupportive parents such as her son’s father, who espouses anti-
8 trans rhetoric and “harasses trans kids online for fun.”¹⁴¹ Another parent underscored: “Not every
9 home is safe. Not every parent is safe.”¹⁴² In light of heightened animus toward the LGBTQ
10 community, many parents may oppose the Policy’s documentation of their children’s gender identity
11 and expression—accessible to teachers, administrators, and other staff—which could subject them
12 to discrimination or harassment at school. But the Policy does not allow parents to opt out of its
13 provisions.

14 **V. PLAINTIFFS’ HARMS OUTWEIGHS ANY HARM TO DEFENDANTS**

15 Absent injunctive relief prohibiting the continued enforcement of Resolution 21, Student and
16 Teacher Plaintiffs will suffer irreparable harm. The Board’s actions are infringing Student and
17 Teacher Plaintiffs’ constitutional rights. Student Plaintiffs are being denied information highly
18 relevant to their cultures and identities, which is integral to their academic success, as well as
19 opportunities to develop the cross-cultural competencies necessary to excel in a diverse workforce.
20 They will not get back the instructional time they have spent under the restrictions of Resolution 21.
21 Education is cumulative: Every successive level of schooling builds on knowledge students are
22 expected to have learned at previous levels, and gaps in learning compound over time. Thus, even a
23 temporary deprivation of standards-compliant instruction denies Temecula’s students the educational

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25 ¹⁴⁰ Rosenbaum Decl., Ex. B at 1.

26 ¹⁴¹ Rosenbaum Decl., Ex. KK (August 22 Board Meeting at 1:16:41).

27 ¹⁴² Rosenbaum Decl., Ex. RR (TVUSD, *AUG 22 2023 Governing Board Meeting* from 5:11:12 to 5:11:38,
28 YouTube (Aug. 22, 2023), <https://youtu.be/0eiEUuXtPNc?t=20307>).

1 foundation necessary for meaningful learning in subsequent grades, in college, and beyond.¹⁴³ It is a
2 powerful indictment of Defendants’ actions that a group of high school students, including Plaintiff
3 Carson L., have had to form their own discussion group to debate significant contemporary issues
4 that the Board has banned from the classroom.¹⁴⁴ Meanwhile, Teacher Plaintiffs—who, facing
5 potential discipline or even dismissal for being found in violation of Resolution 21’s undefined terms,
6 are already self-censoring in their classrooms—are being deprived of their due process rights.

7 Similarly, absent injunctive relief prohibiting enforcement of Policy 5020.01, Plaintiff
8 Gwen S. and other LGBTQ students will suffer irreparable harm in the form of bullying, violence, or
9 homelessness.¹⁴⁵ They will continue to experience fear and anxiety due to the possibility of forced
10 outing, their targeting and harassment by peers and adults, the absence of a supportive educational
11 environment, and the need to hide their gender identities.¹⁴⁶

12 These harms to Plaintiffs outweigh any conceivable harm to Defendants. *See Robbins*, 38 Cal.
13 3d at 205 (“If denial of an injunction would result in great harm to the plaintiff, and the defendants
14 would suffer little harm if it were granted, then it is an abuse of discretion to fail to grant the
15 preliminary injunction.”). It is settled law that public school students’ fundamental right to
16 educational equality outweighs school districts’ interest in local autonomy. *Butt*, 4 Cal. 4th at 688
17 (California Constitution grants “plenary” power over public education to the State). Moreover,
18 parties such as Defendants “suffer[] no grave or irreparable harm by being prohibited from violating
19 the law.” *People v. Uber Techs., Inc.*, 56 Cal. App. 5th 266, 306 (2020).

20 And as set forth below, the interim harm factors, including the inadequacy of other remedies,
21 the degree of irreparable harm, and the necessity of preserving the status quo, all weigh in favor of
22 granting injunctive relief. *Abrams*, 25 Cal. App. 4th at 636.

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25 ¹⁴³ See Immordino-Yang Decl. ¶¶ 8–13.

26 ¹⁴⁴ Carson L. Decl. ¶ 13.

27 ¹⁴⁵ Goldbach Decl. ¶ 10; Katz-Wise & Reisner Decl. ¶¶ 17, 28.

28 ¹⁴⁶ Mae M. Decl. ¶¶ 4–6; Gwen S. ¶¶ 5–6; Mae M. Decl. ¶¶ 6–8.

1 **A. Plaintiffs have no adequate remedy at law.**

2 That a plaintiff has no plain, speedy, and adequate remedy at law is “apparent . . . when timely
3 action is requisite for the protection of constitutional rights[.]” *United Farm Workers Organizing Comm.*
4 *v. Super. Ct.*, 254 Cal. App. 2d 768, 769 (1967) (issuing peremptory writ of prohibition against
5 enforcement of injunction barring union picketers from using mechanical devices to amplify voices);
6 *see* Code Civ. Proc. § 526(a)(3) (preliminary injunction may be granted “[w]hen it appears, during the
7 litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or
8 suffering to be done, some act in violation of the rights of another party to the action respecting the
9 subject of the action, and tending to render the judgment ineffectual”). There is thus no adequate
10 remedy at law for Student Plaintiffs, who—depending on the lifespan of this action—could spend
11 the next year or more under the Board’s censorship and discrimination. The same is true for Teacher
12 Plaintiffs, who face the very real threat of discipline or dismissal, day in and day out, if deemed to
13 have somehow violated the vague and arbitrary mandates of Resolution 21.

14 **B. Plaintiffs will suffer irreparable harm in the absence of an injunction.**

15 While Resolution 21 remains in effect, Student Plaintiffs will continue to be deprived of their
16 right to receive information and ideas, as well as their right to basic educational equality, under the
17 California Constitution. “The loss of First Amendment freedoms, for even minimal periods of time,
18 unquestionably constitutes irreparable injury.” *Ketchens*, 194 Cal. App. 3d at 480 (quoting *Elrod v.*
19 *Burns*, 427 U.S. 347, 373 (1976)). In particular, a “chilling effect” on free speech rights can constitute
20 such an injury. *Mireskandari v. Daily Mail*, No. CV-12-02943 MMM-FFM, 2013 U.S. Dist. LEXIS
21 199145, *9 (C.D. Cal. Jan. 14, 2013).

22 Temecula students are suffering these injuries now. Resolution 21 has curtailed educators’
23 ability “to accurately explore U.S. history with their students” in compliance with State standards,¹⁴⁷
24 and its vague prohibitions are driving teachers to exclude even material that is not banned outright.
25 *See supra* pages 17–19, 24–32. Students of color are being denied a culturally responsive education

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28 ¹⁴⁷ Rogers Decl. ¶ 10.

1 “equivalent to that of their white peers,”¹⁴⁸ and their communities’ erasure from the curriculum sends
2 a clear and devastating message “that the educational environment is not for them.”¹⁴⁹ In the long
3 run, the Resolution will also accelerate teacher burnout, “hinder[ing] schools’ ability to attract and
4 retain highly qualified teachers.”¹⁵⁰ Meanwhile, Teacher Plaintiffs’ due process rights will continue to
5 be infringed as a result of the Resolution’s extremely vague prohibitions.

6 Moreover, so long as Policy 5020.01 stands, transgender and gender nonconforming students
7 will be unconstitutionally discriminated against on the basis of their gender identity. *Taking Offense*, 66
8 Cal. App. at 725–26. The Policy denies this protected class of students the opportunity to choose
9 when and how they disclose their gender identity, as called for by experts.¹⁵¹ It “transform[s] both
10 schools and homes into unsafe environments,” which will “predictably lead to negative mental health
11 outcomes.”¹⁵² Since the Policy’s passage, Temecula students have expressed fears of abuse, violence,
12 and homelessness, with multiple experiencing distress severe enough that the facilitator of a local
13 LGBTQ safe space has had to direct them to a mental health crisis hotline.¹⁵³ Plainly, by
14 “institutionaliz[ing] norms that perpetuate or even encourage violence against LGBTQ+ youth,” the
15 Policy exacerbates the victimization that LGBTQ students already face.¹⁵⁴ These losses constitute
16 irreparable harm mandating the issuance of a preliminary injunction. As the court noted in *Ketchens*,
17 “[t]he question is not a close one” given the ongoing deprivation of constitutional rights. 194 Cal.
18 App. 3d at 480.

22 ¹⁴⁸ Howard Decl. ¶ 15.

23 ¹⁴⁹ Carter Decl. ¶ 13.

24 ¹⁵⁰ Jayakumar Decl. ¶ 10.

25 ¹⁵¹ Katz-Wise & Reisner Decl. ¶ 28, 31–32.

26 ¹⁵² Goldbach Decl. ¶ 18.

27 ¹⁵³ Dennis Decl. ¶ 10.

28 ¹⁵⁴ Goldbach Decl. ¶ 11.

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C. An injunction is necessary to preserve the status quo.

Finally, the purpose of a preliminary injunction “is to preserve the status quo until a final determination following a trial.” *Costa Mesa City Emps. Ass’n. v. City of Costa Mesa*, 209 Cal. App. 4th 298, 305 (2012) (citation omitted). “The status quo has been defined as the last uncontested status which preceded the pending controversy.” *Pub. Emp. Rel. Bd. v. Modesto City Schs. Dist.*, 136 Cal. App. 3d 881, 902 (1982) (citation omitted; cleaned up). Here, injunctive relief is required to prevent significant disruption to TVUSD’s educational program and preserve the rights of Temecula students as they existed prior to the Board’s adoption of Resolution 21 and Policy 5020.01.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs request that this Court grant the preliminary injunction.

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Respectfully submitted,

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