ADVOCATES FOR FAITH & FREEDOM
Robert H. Tyler (SBN 179572)
btyler@faith-freedom.com
Mariah R. Gondeiro (SBN 323683)
mgondeiro@faith-freedom.com
25026 Las Brisas Road
Murrieta, California 92562
Telephone: (951) 304-7583

Attorneys for **Defendants**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

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

Plaintiff(s)

v.

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

Defendant(s)

Case No.: CVSW2306224

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Date: January 24, 2024
Time: 8:30 a.m.
Dept.: 5
Judge: Honorable Irma Poole Asberry

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In 2022, three new board members were elected to represent Temecula Valley Unified School District, including Defendants Jennifer Weirsma, Danny Gonzales, and Joseph Komrosky. (First Amended Complaint ["FAC"] ¶¶ 15-16, on file.) These newly elected board members immediately adopted Resolution No. 2022/23/21 ("Resolution"), which banned certain discriminatory doctrines under Critical Race Theory ("CRT"). (*Id.*, ¶¶ 15-17; Ex. 1.) They later adopted Board Policy 5020.01 ("Policy 5020.01"), requiring the district to notify parents of important information regarding their children, including any changes to their pronouns or gender identity. (*Id.*, ¶ 25; Ex. 2.) These board members' beliefs regarding CRT and parental rights were known by the public before they were elected. (*Id.*, ¶¶ 15-17.) Indeed, they garnered a majority of votes because the voters agreed with their stance on these issues. (*Id*.)

The board members acted within the authority given to them by law. Local school boards have broad discretion in the management of school affairs, including controlling their school's curriculum. (*Board of Education v. Pico* (1982) 457 U.S. 853, 864 ["Pico"].) Instead of focusing their efforts on voting the board members out of office, Plaintiffs brought this lawsuit and threw the kitchen sink at Defendants[1], hoping one of their claims would stick. They fling baseless accusations against Defendants, claiming they discriminated against them because of their race and/or sexual orientation and gender identity. They ask this Court to find discrimination simply because they disagree with the Board's policies. That is a dangerous precedent. It would essentially allow any student, parent, or teacher to file a lawsuit against their school simply because they disagree with

[1] Defendants include Joseph Komrosky, Jennifer Wiersma, Danny Gonzales, Allison Barclay, Steven Schwartz, in their official capacity as members of Temecula Valley Unified School District Board of Trustees, and Temecula Valley Unified School District, (collectively, "Board" or "TVUSD").

the school's curriculum or fear that they may be discriminated against because of propaganda perpetuated in the media.

Plaintiffs now ask this Court to preliminary enjoin the Resolution and Policy 5020.01. (Plaintiffs' Mot. for Preliminary Injunction ["Mot."], on file.) Their motion focuses on Counts I, II, III, and VIII. This Court should deny Plaintiffs' motion for the following reasons.

First, Plaintiffs have not demonstrated a likelihood of success on the merits. As to Count I, the Teacher Plaintiffs cannot demonstrate the Resolution is unconstitutionally vague. The Resolution is not vague because it lists five specific elements of CRT and eight specific doctrines of CRT that are prohibited. As to Counts II, III, and VIII, Plaintiffs will not succeed on the merits because there is no evidence that Defendants acted with animus or a discriminatory purpose. In fact, the Resolution was passed to protect diversity and to uplift and unite students. (FAC, Ex. 1.) The Board adopted Policy 5020.1 because they support the fundamental rights of parents, including the right to be informed and involved in their child's well-being and education. (*Id.*, Ex. 2.) It is not discriminatory to seek to involve parents in important decisions regarding their child's gender identity.

Second, the remaining factors weigh in Defendants' favor. Plaintiffs cannot demonstrate harm, let alone irreparable harm, because Defendants did not violate any constitutional provision. Indeed, it is axiomatic that "[a]ny time a [government] is enjoined by a court from effectuating statutes enacted by the people, it suffers a form of irreparable injury." *Maryland v. King*, 133 S. Ct. 1, 3 (2012) (Robert, C.J., in chambers).

Accordingly, this Court should deny Plaintiffs' motion for preliminary injunction.

II. STATEMENT OF FACTS

On December 13, 2022, the Board enacted the Resolution. (FAC, Ex. 1.) Plaintiffs primarily challenge the Resolution because it prohibits the teaching of CRT. (*Id.*, ¶¶ 2, 11-12, 108-09; Ex. 1.) California does not require that CRT be taught in public schools. (*Id.*, Ex. 1, p. 2.) The Board prohibited CRT because it "is a divisive ideology that assigns moral fault to individuals solely on the basis of an individual's race" and "violates the fundamental principle of equal protection under the law…." (*Id.*)

The Board "values all students, respects diversity, celebrates the contributions of all, and encourages culturally relevant and inclusive teaching practices. The [Board] further believes that the diversity that exists among the District's community of students, staff, parents, guardians, and community members is an asset to be honored and valued…." (*Id.*)

The Resolution states that TVUSD will not use CRT or "other similar frameworks" as a source to guide how topics related to race will be taught. (*Id.*) The Resolution explains what "other similar frameworks" encompass by prohibiting a list of specific doctrines derived from CRT. (*Id.*, p. 3.) The Resolution further states that "social science courses can include instruction on CRT, "provided that such instruction plays only a subordinate role in the overall course and provided that such instruction focuses on the flaws in [CRT]." (*Id.*)

On August 22, 2023, TVUSD enacted Policy 5020.01, otherwise known as the parental notification policy. (*Id.*, ¶ 3, Ex. 2.) The Board adopted Policy 5020.01 because it "strives to foster trust between the District and parent(s)/guardian(s) of its students." (*Id.*, p. 1.) TVUSD supports "the fundamental rights of parent(s)/guardian(s) to direct the care and upbringing of their children, including the right to be informed of and involved in all aspects of their child's education to promote the best outcomes." (*Id.*)

The policy requires district staff to notify parents(s)/guardian(s) anytime a student requests to be identified or treated differently than the gender listed on the student's birth certificate or official records. (*Id.*) "This includes any request by the student to use a name that differs from their legal name…or to use pronouns that do not align with the student's biological sex or gender listed on the student's birth certificate or other official records." (*Id.*) The policy also requires the principal/designee or staff to notify parent(s)/guardian(s) if a student "has experienced any significant physical injury while on school property or participating in a school sponsored activity." (*Id.*, p. 2.)

III. LEGAL STANDARD

A party seeking injunctive relief has the burden "to show all elements necessary to support issuance of a preliminary injunction." (*O'Connell v. Sup. Ct.* (2006) 141 Cal.App.4th 1452, 1481.) A superior court must evaluate "two interrelated factors when deciding whether or not to issue a

preliminary injunction. The first is the likelihood that the plaintiff will prevail on the merits at trial." (*Vo v. City of Garden Grove* (2004) 115 Cal.App.4th 425,433 [quoting *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1109].) "The second is the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm the defendant is likely to suffer if the preliminary injunction were issued." (*Ibid.*) Courts must also consider the public interest. Where "the plaintiff seeks to enjoin public officers and agencies in the performance of their duties, the public interest *must* be considered." (*O'Connell v. Sup. Ct., supra*, 141 Cal.App.4th at p. 1471 [citations omitted].)

IV. ARGUMENT SECTION

A. Plaintiffs Do Not Have Standing

As a threshold matter, Plaintiffs do not have standing to pursue Counts I, II, III, and VIII. To confer standing in California courts, a plaintiff must suffer an injury – i.e., an "'invasion of [his or her] legally protected interests'" and whether it is "'sufficient to afford them an interest in pursuing their action vigorously.'" (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 175.) The latter consideration is met where the injury is """(a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical."""" (*Associated Builders and Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 362 ["Associated Builders"]; *City of Palm Springs v. Luna Crest* (2016) 245 Cal.App.4th 879, 883.)

Teacher Plaintiffs do not assert enough facts to confer standing as to Count I. They claim the local teachers' union is having to field questions from teachers and administrators regarding what they can and cannot teach. (Mot. at pp. 30-31.) However, the allegations in the FAC belie any claims of vagueness. For instance, Plaintiff Miles claims the Board's actions have already impacted the information available to her students, suggesting she is aware of what she can and cannot teach. (FAC, ¶ 43.) Plaintiff Sibby claims she is unable to discuss many topics in World History. (*Id.*, ¶¶ 50-51.) Thus, Teacher Plaintiffs have not identified concrete harm.

Counts II, III, and VIII suffer the same fate. Plaintiffs claim they have suffered an injury because the Resolution and Policy 5020.01 have caused some students to experience fear of violence or harm. (Mot. at pp. 40-41.) These assertions are woefully inadequate to confer standing. Indeed,

if this Court were to hold these allegations were adequate, it would allow essentially any student to bring a lawsuit simply because they disagree with their teacher or fear some hypothetical harm. "[H]ypothetical" harm is not the standard. (*Associated Builders, supra*, 21 Cal.4th at p. 362.) Plaintiffs do not have standing to bring Counts II, III, or VIII.

B. Plaintiffs Have Not Demonstrated A Likelihood Of Prevailing On The Merits

1. **Plaintiffs will not prevail on Count I because the Resolution is not vague**

The void-for-vagueness doctrine prevents the government "from enforcing a provision that 'forbids or requires the doing of an act in terms so vague' that people of 'common intelligence must necessarily guess at its meaning and differ as to its application.'" (*People v. Hall* (2017) 2 Cal.5th 494, 500 [quoting *Connally v. General Construction Co.* (1926) 269 U.S. 385, 391].) "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." (*Robinson v. Shell Oil Co.* (1997) 519 U.S. 337, 341; *see also Boys Markets, Inc. v. Retail Clerks Union, Loc. 770* (1970) 398 U.S. 235, 250 ["Statutory interpretation requires more than concentration upon isolated words"].)

Plaintiffs erroneously claim the Resolution is vague because it does not explain what other "similar frameworks" include. (Mot. at pp. 31-32.) The Resolution clearly identifies what is prohibited by listing five specific elements of CRT and eight specific doctrines of CRT. (FAC, Ex. 1, pp. 2-3.) Teacher Plaintiffs omit these facts in their motion and fail to explain how any of the challenged elements or doctrines are ambiguous.

Plaintiffs also argue that "the Resolution does not specify whether a teacher could be found in violation of its ban on teaching that '[a]n individual should feel discomfort, guilt, anguish or any other form of psychological distress on account of his or her race or sex' merely for introducing the concept of race- or sex-based advantage or saying something that arguably implies that a person may feel discomfort or guilt due to their race or sex." (Mot. at p. 31 [internal citation omitted].) In doing so, they rely on a distinguishable case, *Local 8027 v. Edelblut* (D.N.H. 2023) 651 F.Supp.3d 444 ["Edelblut"]. There, the court held that the challenged amendments were vague because they could "be violated by conduct that merely implies the truthfulness of a banned concept." (*Id.* at p.

461.) "[T]his statutory construction leaves open countless applications where a teacher does not directly assert a banned concept but, in the view of an enforcer, implies it correctness." (*Id.*)

The Plaintiffs' reliance on *Santa Cruz Lesbian & Gay Cmty. Ctr.* (N.D. Cal. 2020) 508 F.Supp.3d 521 ["Santa Cruz"] is similarly misplaced. (Mot. at p. 32.) There, the Northern District of California found that Sections 4 and 5 of President Trump's Executive Order were unconstitutionally vague because they restricted trainings that taught or *implied* an individual, by virtue of his race, sex, and/or national origin, is racist, sexist, etc., and the "line between teaching or implying (prohibited) and informing (not prohibited) 'is so murky, enforcement of the ordinance poses a danger of arbitrary and discriminatory application.'" (*Santa Cruz, supra,* 508 F.Supp.3d at p. 544 [citing *Hunt v. City of Los Angeles* (9th Cir. 2011) 638 F.3d 703, 712].)

This case is distinguishable from *Edelblut* and *Santa Cruz* because the Resolution does not state that a teacher can violate the Resolution by implication. (FAC, Ex. 1.) The Resolution bans five specific elements of CRT and eight doctrines of CRT. (*Id.*, pp. 2-3.) The Resolution prohibits doctrines that teach (not imply) that "[a]n individual, by virtue of his or her race or sex, is inherently racist and/or sexist…." (*Id.*, p. 3.)

Indeed, the Board used precise definitions to avoid vagueness and ambiguity. (Declaration of Joseph Komrosky ISO Opp'n to Preliminary Injunction [Komrosky Decl.], ¶ 6.) Plaintiffs do not explain how the tenets or doctrines are ambiguous or how they are unable to determine what is prohibited. In a District that employs over a thousand educators, the fact that a few people have questions regarding the scope of the Resolution hardly stands for the proposition that the entire Resolution is unconstitutionally vague. (*Id.*, ¶ 2.) Thus, Plaintiffs are unlikely to prevail on the merits of their vagueness claim.

2. **Plaintiffs will not prevail on Count II because the Board did not violate Plaintiffs' right to receive information and ideas**

Plaintiffs erroneously claim the Resolution violates the Free Speech Clause. (Mot. at pp. 9-10.) However, Student Plaintiffs do not have a First Amendment right to receive instruction on any given subject. (*See Seyfried v. Walton* (3d Cir. 1981) 668 F.2d 214, 216.) A school board's decision to restrict classroom materials as part of a curriculum implicates the balance between a student's

First Amendment rights and a state's authority in education matters. (*Hazelwood Sch. Dist. v. Kuhlmeier* (1988) 484 U.S. 260, 266 ["Kuhlmeier"].) School boards have broad discretion in the management of school affairs. (*Board of Education v. Pico* (1982) 457 U.S. 853, 864 ["Pico"].) "[L]ocal school boards must be permitted 'to establish and apply their curriculum in such a way as to transmit community values.…'" (*Id.*) The Board's conduct does not offend the First Amendment so long as it is "reasonably related to legitimate pedagogical concerns." (*Kuhlmeier, supra*, 484 U.S. at p. 571.)

a. The Resolution was not driven by partisan ideology but a desire to protect all students from racism and sexism

Plaintiffs claim the Resolution does not serve a legitimate educational purpose because it was motivated by the Board's "political disagreement with concepts they claim are derived from – or 'similar' to – critical race theory." (Mot. at p. 10.) At this stage, the evidence does not demonstrate the Resolution was driven by partisan or religious ideology.

Courts examine the true motives of the school board members when analyzing free speech challenges. (*McCarthy v. Fletcher* (Ct. App. 1989) 207 Cal.App.3d 130, 147.) Plaintiffs' argument contradicts the explicit purpose of the Resolution. Plaintiffs cannot point to any evidence that suggests the Board members intended to restrict students' access to viewpoints on a discriminatory basis. In fact, the Resolution explicitly states that it "encourages culturally relevant and inclusive teaching practices." (FAC, Ex. 1, p. 1.) It further states that "the diversity that exists among the District's community of students, staff, parents, guardians, and community members is an asset to be honored and valued…." (*Id.*)

Plaintiffs' ask this Court to dismiss the stated purpose of the Resolution because "there is ample evidence that the Resolution's stated goal of preventing racism is just a fig leaf for Defendant Board members 'illicit motivations,' namely their desire to suppress ideas they find politically objectionable." (Mot. at p. 11 [citation omitted].) According to Plaintiffs, this "ample evidence" includes the Board's criticism of CRT and certain doctrines and tenets stated in the Preamble of the Resolution. (*Id.* at p. 13.) The Resolution's criticism of CRT is not tantamount to the Board criticizing specific groups of people, unlike the ordinance in *Parr*, where the ordinance stated that

its purpose was to discourage "hippies" from gathering in public areas. (*Parr v. Mun. Ct.* (1971) 3 Cal.3d 861, 865, 867.)

Plaintiffs' reliance on comments Board members made criticizing CRT is also a slippery slope. (Mot. at pp. 20-24.) Plaintiffs claim the Board's opinions on CRT strongly suggest racial animus. (Mot. at pp. 10-13, 23-24.) By Plaintiffs' logic, anyone who criticizes CRT is guilty of racism and sexism. Plaintiffs ask this Court to assume Defendants' motives in contradiction to Joseph Komrosky's declaration, where he explains the Board's intent behind the Resolution was to protect all students from racism and sexism. (Komrosky Decl., ¶ 4.)

Plaintiffs' reliance on *González v. Douglas* (D. Ariz. 2017) 269 F.Supp.3d 948 is also misplaced. (Mot. at pp. 10-12, 23-24.) In *González*, there was extensive evidence showing the enactment and enforcement of a law to eliminate Mexican American Studies was motivated by anti-Mexican American animus, including comments by legislators disparaging Mexican Americans. (*González v. Douglas, supra*, 269 F.Supp.3d at pp. 964-972.) When the program was terminated, "approximately ninety percent of the students enrolled in MAS courses were Latino." (*Id.* at p. 965.) The court also noted that it was unusual for Arizona to address "a perceived problem with one school program on a statewide, rather than a local, basis." (*Id.* at p. 966.)

This case is distinguishable from *González* because the Board members' comments were not targeted towards specific groups of students but rather the efficacy of CRT. Plaintiffs cannot demonstrate the Resolution disproportionately targets a specific group of students either. The Resolution applies to all students. (Komrosky Decl., ¶ 4.)

Plaintiffs also argue that the Board's swift implementation of the Resolution suggests bias. (Mot. at pp. 19-20.) The Resolution was approved by a majority on the Board, in compliance with established procedures. (Komrosky Decl., ¶ 3.) This case is therefore distinguishable from *González* where the challenged law interfered with the role of local school districts. (*González v. Douglas, supra*, 269 F.Supp.3d at p. 966.) Local board members have broad discretion in the management of school affairs, including the direction of the school's curriculum. (*Pico, supra,* 457 U.S. at p. 864.) The Board acted pursuant to the authority bestowed to them by law.

b. The Resolution is reasonably related to legitimate pedagogical concerns

The Board's conduct does not offend the First Amendment so long as it is "reasonably related to legitimate pedagogical concerns." (*Kuhlmeier, supra*, 484 U.S. at p. 571.) The "makeup of the curriculum…is by definition a legitimate pedagogical concern." (*Boring v. Buncombe Cty. Bd. of Educ.* (4th Cir. 1998) 136 F.3d 364, 370.) Legitimate pedagogical concerns are enumerated in Education Code section 44806, which states the following:

> Each teacher shall endeavor to impress upon the minds of the pupils the principles of morality, truth, justice, patriotism, and a true comprehension of the rights, duties, and dignity of American citizenship, ... to teach them to avoid idleness, profanity, and falsehood, and to instruct them in manners and morals and the principles of a free government.

(*McCarthy v. Fletcher, supra,* 207 Cal.App.3d at p. 146.)

The Resolution is reasonably related to legitimate pedagogical concerns because it prohibits doctrines that teach that "[a]n individual is inherently morally or otherwise superior to another individual because of race or sex." (FAC, Ex. 1, p. 3.) The state has a legitimate interest in ensuring that students are not taught that one race is inherently superior to another race. The Board believes a strong education system supports a strong country, and the Resolution, therefore, aims to enhance students' educational experience. (Komrosky Decl., ¶ 7.) These goals align with the principles of morality, justice, and patriotism outlined in Education Code section 44806. The Resolution also promotes open-mindedness and critical thinking because it allows the instruction of CRT so long as teachers include the flaws in CRT. (Komrosky Decl., ¶¶ 7-8.) These goals improve the pedagogical value of the students' education because they "impart particular knowledge or skills to student participants…." (*Kuhlmeier, supra*, 484 U.S. at p. 271.)

It is also disingenuous for the Plaintiffs to claim the Board has removed books. (Mot. at pp. 9-10, 16.) The Board has not banned any books to date but approved a policy allowing the District to remove materials that are vulgar, profane, or unsuitable for educational purposes. (Komrosky Decl., ¶¶ 10-11.) School boards have the power to remove or restrict the use of books and other instructional materials which are "pervasively vulgar," profane, contrary to prevailing moral standards, or unsuitable for educational purposes. (*Pico, supra,* 457 U.S. at pp. 870-871.)

In sum, Plaintiffs will not prevail on the merits of Count II because Defendants' actions were aligned with legitimate pedagogical concerns. At the very least, there are serious disputes as to the legitimacy and intent behind the Resolution and the Board's conduct, rendering an injunction inappropriate at this stage.

3. **Plaintiffs will not prevail on Count III because the Board did not violate their fundamental right to an education**

Plaintiffs wrongly assert that the Resolution deprives students of their right to education. (Mot. at pp. 32-33.) Article IX, Section 1 of the California Constitution recognizes that "[a] general diffusion of knowledge and intelligence [is] … essential to the preservation of the rights and liberties of the people…." Because of this principle, "California has assumed specific responsibility for a statewide public education system open on equal terms to all." (*Butt v. State of California* (1992) 4 Cal.4th 668, 680.) "A finding of constitutional disparity depends on the individual facts. Unless the actual quality of the district's program, viewed as a whole, falls fundamentally below prevailing statewide standards, no constitutional violation occurs." (*Id.* at pp. 686-87.)

Plaintiffs swing vague, conclusory accusations against the Resolution, but fail to demonstrate how the Resolution actually deprives students of a right to education or how the Resolution falls below statewide standards. For instance, Plaintiffs argue that the "continued enforcement of Resolution 21 will cause Temecula's academic program, as a whole, to fall below prevailing statewide standards." (Mot. at p. 34.) Despite this flawed conclusion, Plaintiffs offer no analysis as to how the Resolution does this other than repeating vague, unsupported arguments. They argue that the Resolution conflicts with Education Code section 51220(b)(1) which requires curricula "provide a foundation for understanding . . . human rights issues, with particular attention to the study of the inhumanity of genocide, slavery, and the Holocaust, and contemporary issues." (Mot. at p. 18.) Yet, nothing in the Resolution prohibits teachers from teaching on these topics. (Komrosky Decl., ¶ 9.)

The Board's conduct does not contravene state law. (Mot. at pp. 33-34.) California does not require the teaching of CRT, and the Resolution specifically states that "[n]othing in this resolution shall require any staff member to violate local, state, or federal law…." (FAC, Ex. 1, p. 1.) Plaintiffs

do not explain how the Resolution violates state law or causes the District to fall below academic standards.

Moreover, to claim an equal protection violation, group members must have some pertinent common characteristic other than the fact that they are allegedly harmed by the challenged act or law. (*Altadena Library Dist. v. Bloodgood* (Cal. Ct. App. 1987) 192 Cal.App.3d 585, 590-91.) For instance, in *Vergara v. State of California* (2016) 246 Cal.App.4th 619, 629, the plaintiffs alleged that a group of students were disadvantaged because they were assigned to grossly ineffective teachers. The court found these facts insufficient because whether students are assigned to grossly ineffective teachers is the result of a random assortment, not a defining characteristic. (*Id.* at p. 648.)

Here, the Resolution applies to all students equally. (Komrosky Decl., ¶ 4.) Plaintiffs mistakenly define the class of students solely by reference to their alleged shared harm. (Mot. at pp. 33-34.) Plaintiffs do not explain the harm they have suffered either, other than repeating the fact that the Resolution falls below prevailing standards. (*Id.*) Plaintiffs' "proposed categories are to lose, too shifting to be useful to courts." (*Corey Airport Servs., Inc. v. Clear Channel Outdoor, Inc.* (11th Cir. 2012) 682 F.3d 1293, 1298.)

Even if Plaintiffs could cite to a defining group, an injunction is still not warranted at this stage. There is no overwhelming evidence that any specific group of students have been harmed by the Resolution. Indeed, Joseph Komrosky discusses the benefits of the Resolution in his declaration. (Komrosky Decl., ¶¶ 7-8, 14.) Plaintiffs' claims of harm are simply conclusory, speculative, and unfounded.

4. **Plaintiffs will not prevail on Count VIII because Policy 5020.01 does not discriminate against transgender and gender nonconforming students**

Plaintiffs will not prevail on Count VIII because they must demonstrate discriminatory intent or purpose. (*See Mansourian v. Bd. of Regents of the Univ. of California at Davis* (E.D. Cal. 2010) 757 F.Supp.2d 1030, 1046.) Discriminatory purpose "implies that the decisionmaker…selected or reaffirmed a particular course of action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group." (*Pers. Adm'r of Massachusetts v. Feeney* (1979) 442 U.S. 256, 279 [cleaned up].) "The historical background of the decision is one evidentiary source, particularly

if it reveals a series of official actions taken for invidious purposes." (*Id*.) Courts also look at the specific sequence of events leading up to the act, as well as the legislative or administrative history. (*Id.* at pp. 267-68.)

The Board implemented Policy 5020.01 to foster open and positive relationships between parents/guardians and students "that promote the best outcomes for pupils' academic and social-emotional success." (FAC, Ex. 2, p. 1; Komrosky Decl., ¶ 12.) The Board did not act in a discriminatory manner because they seek to involve parents in important medical decisions regarding their children. The policy affirms the constitutional right of parents to "direct the upbringing and education of children under their control." (*Pierce v. Soc'y of Sisters* (1925) 268 U.S. 510, 535.) Moreover, contrary to the Plaintiffs' contention, Policy 5020.1 applies to all students who wish to be identified or treated as a gender other than their biological sex, "including the students who are not diagnosed as transgender, etc." (Mot. at p. 36; Komrosky Decl., ¶ 13.) "It also applies to any student who wishes to use a bathroom that does not align with their biological sex or gender listed on their birth certificate, or a student requesting a change in their official or unofficial records." (*Id.*) Because Plaintiffs cannot prove discrimination, they have failed to demonstrate a likelihood of success as to Count VIII.

C. The Balance Of Harm Weighs Against Injunctive Relief

In evaluating the balance of harms at the preliminary injunction stage, the inquiry is whether the harm that will befall the moving party if the motion is not granted exceeds any harm to the party to be restrained if the preliminary injunction is imposed. (*California State Univ., Hayward v. National Collegiate Athletic Ass'n* (1975) 47 Cal.App.3d 533, 544.) The plaintiff must offer evidence of "irreparable injury or interim harm that it will suffer if an injunction is not issued pending an adjudication of the merits." (*White v. Davis* (2003) 30 Cal.4th 528, 554.) A plaintiff must make a "significant" showing of immediate irreparable injury to enjoin a public agency from performing its duties. (*Tahoe Keys Property Owners' Assn. v. State Water Resources Control Board, supra*, 23 Cal.App.4th at p. 1471.) Plaintiffs cannot meet that high burden here.

Plaintiffs claim they will suffer irreparable harm because Student Plaintiffs are being deprived of their right to basic educational autonomy and their right to receive information and ideas. (Mot. at pp. 42-43.) Plaintiffs also claim Defendants' conduct has caused some students to

experience fears of abuse and violence. (Mot. at p. 43.) As established above, neither the Resolution nor Policy 5020.01 violates Plaintiffs' constitutional rights. Plaintiffs cannot enjoin a statue out of fear alone. When facial challenges are "wide-ranging, conclusory, and unfocused," a district court is permitted to deny a preliminary injunction. (*Harmon v. City of Norman* (10th Cir. 2020) 981 F.3d 1141, 1150.) "Because facial challenges push the judiciary towards the edge of its traditional purview and expertise, courts must be vigilant in applying a most exacting analysis to such claims." (*Ward v. Utah* (10 Cir. 2005) 398 F.3d 1239, 1247.)

Moreover, an injunction threatens the public welfare because it deprives children of a public education crafted out of the District's democratic process and policy judgments. It is axiomatic that "[a]ny time a [government] is enjoined by a court from effectuating statutes enacted by the people, it suffers a form of irreparable injury." *Maryland v. King, supra*, 133 S. Ct. at p. 3.) Defendants' decisions fall within the broad discretion granted to local school board members. Thus, an injunction is not warranted here.

V. CONCLUSION

Considering the foregoing, this Court should deny Plaintiffs' request for a preliminary injunction.

DATED: January 10, 2024

ADVOCATES FOR FAITH & FREEDOM

By: Mariah Gondeiro

Mariah R. Gondeiro, Esq.
Attorneys for Defendant **Temecula Valley Unified School District**

PROOF OF SERVICE

I am an employee in the County of Riverside. I am over the age of 18 years and not a party to the within entitled action; my business address is 25026 Las Brisas Road, Murrieta, California 92562.

On January 10, 2024, I served a copy of the following document(s) described as **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** on the interested party(ies) in this action as follows:

SEE ATTACHED SERVICE LIST

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I transmitted copies of the above-referenced document(s) on the interested parties in this action by electronic transmission. Said electronic transmission reported as complete and without error.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am an employee in the office of a member of the bar of this Court who directed this service.

Susan Y. Kenney

SERVICE LIST

Mark Rosenbaum
mrosenbaum@publiccounsel.org
Amada Manaser Savage
asavage@publiccounsel.org
Mustafa Ishaq Filat
ifilat@publiccounsel.org
Kathryn Eidmann
keidmann@publiccounsel.org
Public Counsel

Scott Humphreys
humphreyss@ballardspahr.com
Elizabeth Schilken
schilkene@ballardspahr.com
Ballard Spahr LLP

Maxwell S. Mishkin
mishkin@ballardspahr.com
Pro Hac Vice