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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

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

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' NOTICE OF MOTION AND MOTION TO STRIKE UNDER CCP § 425.16; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: January 16, 2024
Time: 8:30 a.m.
Dept.: 5

RESERVATION ID 120583609746

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on January 16, 2024, at 8:30 a.m., in Department 5, located 4050 Main St. Riverside, CA 92501 at 30755-A Auld Road, Suite D, Murrieta, California 92563, Defendants, will and hereby do move this Court, pursuant to Code of Civil Procedure section 425.16, for an order striking Plaintiffs' First Amended Complaint ("FAC").

This motion is made on the grounds that the FAC falls within the scope of Code of Civil Procedure section 425.16(e)(1-4) because the FAC arises from the Temecula Valley School Board members' collective and individual free speech activities. Consequently, the burden shifts to Plaintiffs to present admissible evidence establishing a probability that they will prevail on their claims. (§ 425.16, subd. (b)(1).)

Plaintiffs cannot meet this burden. All ten of Plaintiffs' causes of action are legally and factually deficient.

Thus, Plaintiffs cannot meet their burden under section 425.16, subdivision (b)(1), and their FAC should be stricken. Pursuant to section 425.16, subdivision (c), Defendants also are entitled to recover their attorneys' fees and costs incurred in this action.

This motion is based on this Notice of Motion; on the attached Memorandum of Points and Authorities; on the Declaration of Mariah Gondeiro; on all matters of which this Court may take judicial notice; on all pleadings, files, and records in this action; and on such other argument as may be received by this Court at the hearing on this motion.

DATED: November 17, 2023

ADVOCATES FOR FAITH & FREEDOM

By: Mariah Gondeiro

Mariah Gondeiro, Esq.
Attorney for Defendants

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I. INTRODUCTION

In a direct and unprecedented attack on Defendants'[1] ability to represent their district, Plaintiffs seek to dismantle their recently enacted resolution, which restricts the teaching of certain elements of Critical Race Theory ("CRT"), and Board Policy 5020.10 ("Policy 5020.10"), which 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. Plaintiffs' lawsuit is a strategic lawsuit against public participation ("SLAPP"). Plaintiff's First Amended Complaint ("FAC") is thus subject to the anti-SLAPP statute.

Plaintiffs' attempts to restrain and punish the Board's exercise of its constitutional right of freedom of speech is legally untenable. Specifically, California's anti-SLAPP statute requires this Court to strike Plaintiffs' FAC because the resolution and the members supporting comments and votes, as well as Policy 5020.10 and supporting comments, are the exact types of speech protected by Code of Civil Procedure section 425.16(e)(1-4). Plaintiffs cannot demonstrate a reasonable probability of success on the merits of their claims against the Board.

II. STATEMENT OF FACTS

On December 13, 2022, the Board enacted Resolution No. 2022/23/21 ("Resolution"). (First Amended Complaint ("FAC"), Ex. 1, on file.) Plaintiffs primarily challenge the Resolution because it prohibits the teaching of certain elements and doctrines 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.*)

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[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 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.*, p. 2.)

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.*, p. 2.) The Resolution explains what "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.*)

Policy 5020.01 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.*) Policy 5020.01 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.)

Plaintiffs Mae M., Susan C, Gwen S., Carson L., David P., Violet B., and Stella B. (collectively, "Student Plaintiffs") sue under Article I, section 2(a) of the California Constitution for infringement of the right to receive information (Count II), under Article I, section 7 and Article IV, section 16(a) of the California Constitution for infringement of the fundamental right to education

(Count III) and intentional discrimination on the basis of race (Count IV), and under California Government Code section 11135 for discrimination on the basis of protected characteristics. (*Id.*, ¶¶ 157-84.) Plaintiff Gwen S. is an LGBTQ student and sues under Article I, section 7 and Article IV, section 16(a) for intentional discrimination on the basis of sexual orientation, gender identity, and sex regarding the Resolution (Count V) and Policy 5020.1 (Count VIII), and under Article 1, section 1 regarding the right to privacy (Count IX). (*Id.*, ¶¶ 173-74, 191-95.)

Plaintiffs Temecula Valley Education Association ("TVEA"), Amy Eytchison, Katrina Miles, Jennifer Scharf, and Dawn Sibby (collectively "Teacher Plaintiffs") also bring Counts I through III and Count VI. (*Id.*, ¶¶ 151-65, 175-85.) They also sue for a violation of California Code of Civil Procedure section 526(a) (Count VII), a violation of Article I, section 7 of the California Constitution regarding Policy 5020.1 (Count VIII), and a violation of Article I, section 1 regarding the right to privacy (Count IX). (*Id.*, ¶¶ 185-98.) Plaintiff Katrina Miles is a minority teacher and sues under Article I, section 7 and Article IV, section 16(a) for intentional discrimination on the basis of race (Count IV), and California Government Code section 11135 ("Section 11135") for discrimination on the basis of protected characteristics (Count VI). (*Id.*, ¶¶ 166-72, 175-84.)

Plaintiffs Rachel P. and Inez B. (collectively, "Parent Plaintiffs") are parents of David P. and Violet B, respectively, and also bring Counts II, III, VI, and VII. (*Id.*, ¶¶ 157-72, 185-90.) Plaintiff Inez B. also brings Count IV. (*Id.*, ¶¶ 166-72.)

Plaintiff TVEA is an affiliate of the California Teachers Association and represents teachers in the District, as well as nurses, counselors, social workers, psychologists, and speech pathologists. (*Id.*, ¶ 24.) TVEA brings Counts IV and V. (*Id.*, ¶¶ 66-74.) TVEA's members include individual teachers: Plaintiffs Amy Eytchison, Katrina Miles, Jennifer Scharf, and Dawn Sibby. (*Id.*, ¶ 33.)

III. ARGUMENT

A. Section 425.16 Applies To Plaintiffs' Lawsuit

1. The anti-SLAPP statute is applied broadly to protect free speech activities

In 1992, the Legislature enacted Code of Civil Procedure section 425.16 "to nip SLAPP litigation in the bud[,]" by quickly disposing of claims that target the exercise of free-speech rights. (*Braun v. Chronicle Publishing Co.* (1997) 52 Cal.App.4th 1036, 1042.) Under the statute, any

"cause of action against a person arising from any act … in furtherance of the person's right of … free speech … in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (Code Civ. Proc. § 425.16, subd. (b)(1).) Section 425.16 "shall be construed broadly." (§ 425.16, subd. (a)(1); *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1120–21.) A public official or government body, just like any private litigant, may make an anti-SLAPP motion where appropriate. (*See Mission Oaks Ranch, Ltd. v. Cty of Santa Barbara* (1998) 65 Cal.App.4th 713, 730, disapproved on other grounds in *Briggs v. Eden Council for Hope & Opportunity, supra,* 19 Cal.4th at p. 1123, fn. 10; *Bradbury v. Superior Court* (1996) 49 Cal.App.4th 1108, 1113–16; *see also Schroeder v. Irvine City Council* (2002) 97 Cal.App.4th 174, 183–84.)

Courts follow a two-step process to determine whether to strike a cause of action under California's anti-SLAPP statute. In step one, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one "arising from protected activity." (*Barry v. State Bar of California* (2017) 2 Cal.5th 318, 321 ["Barry"].) Although the anti-SLAPP statute does not actually use the term "protected activity," that is the shorthand phrase adopted in the case law to describe speech or petitioning activities. (*See, e.g*., *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89 ["Navellier"] [interpreting § 425.16, subd. (b)(1), to require that the court first decide whether "the challenged cause of action is one arising from protected activity"].) Four categories of "protected activity" are set forth in section 425.16, subdivision (e).

If Defendants' activity is protected, the burden shifts to Plaintiffs to demonstrate "a probability of prevailing on the claim." (*Barry*, *supra*, 2 Cal.5th at p. 321.) "The court accepts as true the evidence favorable to the plaintiff and evaluates the defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law." (*Ibid* [cleaned up].) The plaintiff is required to show that there is admissible evidence that, if credited, would be sufficient to sustain a favorable judgment. (*Navellier*, *supra*, 29 Cal. 4th at 89, 93; *Taus v. Loftus* (2017) 40 Cal.4th 683, 714.) "Only a cause of action that satisfies both prongs of the anti-SLAPP statute … is a SLAPP, subject to being stricken under the statute." (*Barry*, *supra*, 2 Cal.5th at 321).

2. **The conduct underlying Plaintiffs' causes of actions is the Board's collective and individual exercises of free speech**

In analyzing the first prong of the anti-SLAPP statute, "the critical point is whether the plaintiff's cause of action itself was based on an act in furtherance of the defendant's right of petition or free speech." (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.) Defendants' requirement is satisfied if the suit "potentially impairs the right of free speech." (*Beilenson v. Superior Court* (1996) 44 Cal.App.4th 944, 950.) The anti-SLAPP statute identifies four categories of protected activity. (Code Civ. Proc. § 425.16, subd. (e)(1)–(4).) The Board's collective enactment of the Resolution and the individual members' comments and votes leading up to the Resolution's enactment fall within the range of speech entitled to anti-SLAPP protection.

TVUSD Board. The Board's collective enactments of the Resolution and Policy 5020.01 qualify for protection under subdivision (e)(3) of section 425.16, which covers "any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest," or under subdivision (e)(4), which covers "any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest."

A public entity's speech-related enactment implicates its exercise of free speech for anti-SLAPP purposes. (*See San Ramon Valley Fire Protection Dist. v. Contra Costa County Employees' Retirement Assn.* (2004) 125 Cal.App.4th 343, 357 [implying that a public entity's speech-related enactment may implicate its exercise of free speech for anti-SLAPP purposes]; *Hastings Coll. Conservation Comm. v. Faigman* (2023) 92 Cal.App.5th 323, 333, review filed (July 14, 2023) ["assuming that [an enactment] is a "speech-related" measure and that plaintiffs' challenge to its enactment may be subject to an anti-SLAPP motion"].) The Resolution is a speech-related measure, as it regulates speech regarding CRT concepts in TVUSD classrooms. (FAC, Ex. 1). Policy 5020.01 is a speech-related measure, as it regulates speech between TVUSD and parents regarding students' gender identities. (*Id.*, Ex. 2). These are governmental actions which are speech-related, and thus the Board's own exercise of free speech is implicated.

Individual Board Members. The votes and comments of the individual board members, including Joseph Komrosky, Jennifer Wiersma, Danny Gonzalez, Allison Barclay, and Steven Schwartz, are also entitled to anti-SLAPP protection. (*See Schwarzburd v. Kensington Police Protection & Community Services Dist. Bd.* (2014) 225 Cal.App.4th 1345, 1355 [holding that the actions of individual board members, including "First Amendment voting and legislative deliberative activities," are protected by the anti-SLAPP statute."]. (*See also Vargas v. City of Salinas*, 46 Cal. 4th 1, 19 fn. 9 (2009) ["Just as SLAPPs filed against individuals have a 'chilling' effect on their participation in government decision making, SLAPPs filed against public officials, who often serve for little or no compensation, may likely have a similarly 'chilling' effect on their willingness to participate in governmental processes"].) The Board members' votes, as well as any statements made in the course of their deliberations at the school board meeting where the votes were taken, qualify as "any written or oral statement or writing made before a legislative ... proceeding." (Code Civ. Proc. § 425.16, subd. (e)(1).) Anything the Board members said or wrote when considering the Resolution or Policy 5020.01 qualify as "any written or oral statement or writing made in connection with an issue under consideration or review by a legislative ... body...." (§ 425.16, subd. (e)(2).)

Here, Plaintiffs' lawsuit relies on the comments and votes of the individual board members who voted in support of Resolution and Policy 5020.01 as evidence of the invalidity of those measures. Notably, Plaintiffs devote an entire section of their FAC to addressing the protected comments of the individual Board members regarding the Resolution. (FAC, ¶¶ 138-139.) The Plaintiffs also devote a section of their brief to addressing the Board members' comments in support of Policy 5020.01. (*Id.*, ¶¶ 142-144, 148.) The individual board members' exercises of free speech are implicated by Plaintiffs' FAC.

3. **Plaintiffs' lawsuit arises from the Board's exercise of free speech**

"A claim arises from protected activity when that activity underlies or forms the basis for the claim. Critically, the defendant's act underlying the plaintiff's cause of action must itself have been an act in furtherance of the right of petition or free speech." (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1062–63 ["Park"] [cleaned up].) In other words,

"a claim may be struck only if the speech or petitioning activity itself is the wrong complained of, and not just evidence of liability . . . ." (*Id*. at p. 1060.)

In this case, as discussed above, the Board members, collectively and individually, engaged in protected activity when they considered, discussed, voted, and enacted Resolution and Policy 5020.10. Plaintiffs' lawsuit arises from these exercises of free speech because all ten of Plaintiffs' causes of action in the FAC are based on the Board's discussion and enactment of either the Resolution (Counts I through VII) or Policy 5020.10 (Counts VIII through X). (FAC, ¶¶ 151-202.). Additionally, Counts IV, V, and VII specifically reference the Resolution's legislative history and related comments by Board members, while count VIII specifically refers to the comments of the Board regarding Policy 5020.01. (*Id.*, ¶¶ 166-184, 191-195.). Accordingly, Plaintiffs' lawsuit arises from the Board members' exercises of free speech.

B. Plaintiffs Cannot Demonstrate A Probability Of Prevailing Against TVUSD

Because Defendants' speech plainly falls within the scope of section 425.16, the burden shifts to Plaintiffs to present admissible evidence showing they have a probability of success on the merits of their action. (Code Civ. Proc. § 425.16 (b)(1); *Macias v. Hartwell* (1997) 55 Cal.App.4th 669, 675.) To satisfy this burden, it is not sufficient that Plaintiffs' FAC survive a demurrer. (*Navellier, supra,* 106 Cal.App.4th at p. 776.) Nor can Plaintiffs rely on the bare allegations of their own pleading; instead, they must "'establish evidentiary support for [their] claim.'" (*Id.* at pp. 775–76 [citation omitted]; *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67 [recognizing that plaintiff must provide the court with sufficient evidence, not the theories in the complaint, to permit the court to determine whether he can prevail].) Plaintiffs also must "meet the defendant's constitutional defenses, such as lack of actual malice." (*Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 359.)

When reviewing a special motion to strike, courts apply a summary judgment-like standard. (*Taus v. Loftus* (2007) 40 Cal.4th 683, 713-14.) Plaintiffs' claims must be "supported by sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." (*Id*.) If Plaintiffs fail to satisfy their evidentiary burden, then the Court must

strike the FAC. (Code Civ. Proc. § 425.16, subd. (b)(1).) For the reasons set forth below, Plaintiffs cannot meet their burden.[2]

Count I. Teacher Plaintiffs cannot prevail on the merits of Count I because the Resolution is not vague. Teacher Plaintiffs claim they do not know what "other similar frameworks" in the Resolution means, nor do they know what classroom discussions of racism or gender discrimination are permissible. (FAC, ¶¶ 154-55.) Viewed in the context of the entire Resolution, it is clear what "other similar frameworks" refer to. The Resolution lists five specific elements of CRT and eight specific doctrines of CRT. (*Id.*, Ex. 1, pp. 2-3.) The Teacher Plaintiffs do not explain how any of the challenged elements or doctrines are ambiguous. Thus, Teacher Plaintiffs cannot prevail.

Count II. Student Plaintiffs, Teacher Plaintiffs, and Plaintiffs Rachel P. and Inez B. cannot prove a violation Of Article I, section 2(a). School boards have broad discretion in the management of school affairs. (*Board of Education v. Pico* (1982) 457 U.S. 853.) "[L]ocal school boards must be permitted 'to establish and apply their curriculum in such a way as to transmit community values.…'" (*Id.* at p. 864.) The Board's conduct does not offend the First Amendment so long as it is "reasonably related to legitimate pedagogical concerns." (*Hazelwood Sch. Dist. v. Kuhlmeier* (1988) 484 U.S. 260, 273.) Moreover, 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.)

The Resolution "encourages relevant and inclusive teaching practices." (Ex. 1, p. 1.) The Resolution also prohibits doctrines that teach that "[a]n individual is inherently morally or otherwise superior to another individual because of race or sex." (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. (Ex. 1, p. 3.) Accordingly, Teacher Plaintiffs, Student Plaintiffs, and Plaintiffs Rachel P. and Inez B. do not have a probability of success as to Count II.

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[2] The Defendants hereby incorporate in its entirety the argument section in their Demurrer to the Plaintiffs' FAC.

Count III. Student Plaintiffs, Plaintiffs Rachel P. and Inez B., and Teacher Plaintiffs cannot prevail on the merits of Count III because they define the class of students solely by reference to their alleged shared harm**.** 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* (Ct. App. 1987) 192 Cal.App.3d 585, 590-591; *see also Vergara, v. State of California* (2016) 246 Cal.App.4th 619, 629.)

Here, Plaintiffs define the class of students solely by reference to their alleged shared harm. Specifically, Plaintiffs allege that, "[b]y restricting the teaching and learning of content and disciplinary skills mandated under California's academic standards, the Board has denied, and continues to deny, Temecula students 'an education basically equivalent' to what students elsewhere in the State are receiving." (FAC, ¶ 165). Plaintiffs "proposed categories are too loose, too shifting to be useful to courts." (*Corey Airport Servs., Inc. v. Clear Channel Outdoor, Inc.* (11th Cir. 2012) 682 F.3d 1293, 1298.) Therefore, Court III also fails.

Count IV. Plaintiffs Mae M., Susan C., Gwen S., Carson L., Violet B., Stella B., Inez B., Miles, And TVEA cannot demonstrate intentional discrimination on the basis of race. Under the Equal Protection Clause, a law is not "unconstitutional solely because it has a racially disproportionate impact." (*Washington v. Davis* (1976) 426 U.S. 229, 239.) The Supreme Court has held that proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause. (*Vill. of Arlington Heights v. Metro. Housing Dev. Corp.* (1977) 429 U.S. 252, 265.) Here, the Resolution does not explicitly discriminate between separate or distinct classifications of people. It applies to all students. (FAC, Ex. 1.)

Plaintiffs allege Defendants engaged in intentional discrimination because "the Resolution expressly singles out for censorship the teaching of concepts related to race and racism" and "its enactment was characterized by procedural and substantive irregularities and overt expressions of racial animus…." (*Id.*, ¶ 172.) The text of the Resolution belies any intent to discriminate. The Resolution affirms that people should not be judged by the color of their skin. (*Id.*, Ex. 2, p. 1.) The Board values and respects diversity and condones racism. (*Id.*) The Board opposes CRT because it believes it is an ideology based on false assumptions about the United States and improperly assigns

moral fault to individuals solely on the basis of their race. (*Id.*, pp. 1-2.) The Board members' statements on CRT do not reveal racial animus but opinions on CRT. (*Id.*, ¶ 139.) Because Plaintiffs cannot prove intent, Count IV also fails.

Count V. For related reasons, Plaintiffs Gwen S. and the TVEA cannot prevail under Article 1, section 7 and Article IV, section 16(a) of the California Constitution. Plaintiffs Gwen S. and TVEA allege discrimination on the basis of sexual orientation, gender identity, and sex because the Resolution censors "concepts related to sex (and, as indicated by Board members' comments, sexual orientation and gender identity." (FAC, ¶ 174.) They suggest that the Board's removal of specific books that contain LGBTQ material supports a finding of discrimination. (*Id.*, ¶ 139.) The removal of certain books does not show an intent to discriminate, specifically when the Board members emphasize that their decisions are not due to animus towards a specific group of people but a desire to protect parental rights. Indeed, Defendant Komrosky stressed that he desires "more parental involvement." (*Id.*)

Defendant Komrosky's disagreement about the content of certain books or Harvey Milk is not evidence of discrimination either. (*Id.*) Plaintiffs ask this Court to set a dangerous precedent. Essentially, Plaintiffs claim that anytime a school official disagrees about the legitimacy or benefits of a certain curriculum or book, that is tantamount to discrimination. Plaintiffs Gwen S. and TVEA cannot prevail on the merits of Count V.

*Count VI***.** Individual Plaintiffs cannot prevail under California Government Code section 11135 ("Section 11135") because their claim is moot, and they have not met their burden in establishing disparate impact. Even if Individual Plaintiffs' Section 11135 claim is not moot, they fail to state facts sufficient to state a cause of action under Section 11135. To support their claim of disparate impact, Plaintiffs rely on research that shows that "students of color, female students, and LGBTQ students" benefit from "curriculum that reflects their identities, experiences, and histories." (FAC, ¶ 123.) They further assert that "students without access to inclusive curricula . . . are more likely to be disaffected with or alienated by their studies." (*Id.*, ¶ 124.) Plaintiffs make a broad-sweeping, conclusory allegation that the Resolution subjects Plaintiffs to discrimination, but they do not show *how* they are disparately impacted by the Resolution. Simply belonging to a protected

class is not sufficient to demonstrate disparate impact. (*Villafana v. Cnty. of San Diego* (2020) 57 Cal.App.5th 1012, 1017.) The Resolution disproves any allegations of disparate impact or discrimination. The Resolution prohibits tenets of CRT that seek to elevate one race or sex, and instead promotes diversity "and encourages culturally relevant and inclusive teaching practices." (FAC, Ex. 1, p. 1.)

Even if Individual Plaintiffs can show disparate impact, TVUSD can justify the adoption and implementation of the Resolution. TVUSD was justified in adopting the Resolution because of its vested interest in prohibiting racism. The Resolution states that TVUSD "condemns racism and will not tolerate racism and racist conduct." (*Id.*) The Resolution prohibits certain doctrines of CRT that teach that "only individuals classified as 'white' people can be racist because only 'white' people control society." The Resolution prohibits the teaching of CRT doctrines, including that "[a]n individual is inherently morally or otherwise superior to another individual because of race or sex" or that "[a]n individual should be discriminated against or receive adverse treatment due to the individual's race or sex…." (*Id.*, pp. 2-3.). Any disparate impact on Individual Plaintiffs is justified to ensure that no student (or teacher) is subjected to curricula that promotes racism or places moral blame on a specific race. Individual Plaintiffs, therefore, cannot prevail on Count VI.

Count VII. Plaintiffs Rachel P. and Inez B. and Teacher Plaintiffs cannot prevail under California Code Of Civil Procedure section 526(a). Plaintiffs assert that TVUSD's expenditure of "federal, State, county, and/or municipal funds is "unlawful" under section 526(a) and that they have an interest in enjoining the unlawful expenditure of tax funds. (FAC, ¶ 188.) Plaintiffs' claim fails for two reasons.

First, they have alleged no facts demonstrating an "actual or threatened expenditure of public funds" in implementing the Resolution. (*Collins v. Thurmond* (2019) 41 Cal.App.5th 879, 910.) TVUSD's curriculum is consistent and compliant with all state and federal laws. Again, no state or federal law requires the dissemination of CRT within the classroom. Therefore, to exclude such curriculum has no bearing on the expenditure of state funds.

Second, even if Plaintiffs Rachel P. and Inez B. and Teacher Plaintiffs have stated a cognizable claim, section 526(a) does not apply to agency discretionary decisions. (*See Schmid v.*

City & Cnty. of San Francisco (2021) 60 Cal.App. 5th 470, 495 ["A claim under this statute [Cal. Civ. Proc. § 526(a)] does not lie to attack exercises of administrative discretion and may not be employed to interfere with policymaking."]) TVUSD wielded its discretion in adopting a resolution that reflected "community values" and affirmed TVUSD's condemnation of racism and racist conduct. Because TVUSD's Resolution is compliant with state law and because TVUSD has the discretion to make its own educational decisions, Plaintiffs Rachel P. and Inez B. and Teacher Plaintiffs cannot prevail under section 526(a).

Count VIII. Teacher Plaintiffs and Plaintiff Gwen S. cannot demonstrate discrimination on the basis of gender identity, sexual orientation, and sex. Plaintiff Gwen S. and Teacher Plaintiffs allege Policy 5020.1 discriminates against transgender and gender nonconforming students because it requires the school notify parents or guardians of their child's perceived gender identity change. (FAC, ¶¶ 140-44, 192-95.) First, the policy applies equally to all students who wish to transition from their gender listed on their birth certificate. (*Id.*, ¶ 141.)

Plaintiff Gwen S. and Teacher Plaintiffs do not allege evidence of intent to discriminate either. The Board members' statements about politicians or the Democrat party does not amount to discrimination. (*Id.*, ¶ 142.) These members are entitled to their opinions. The Board implemented Policy 5020.1 to foster open and positive relationships between parents/guardians and students "that promote the best outcomes for pupils' academic and social-emotional success." (*Id.*, Ex. 2, p. 1.) It is not discriminatory to 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.) Plaintiff Gwen S. and Teacher Plaintiffs cannot prevail on Count VIII**.**

Count IX. Plaintiff Gwen S. and the Teacher Plaintiffs cannot prevail under Article I, section 1 of the California Constitution. Plaintiff Gwen S. and Teacher Plaintiffs claim Policy 5020.1 violates their right to privacy because it "mandates the disclosure of students' gender identity to their parents or guardians without their consent…." (FAC, ¶ 198.) This allegation is not supported by law. In *Leibert v. Transworld Systems, Inc.* (1995) 32 Cal.App.4th 1693, 1702, the Fifth District of California affirmed the dismissal of an invasion of privacy cause of action because the plaintiff's

sexual orientation was not confidential, and the court concluded that, "as a matter of law," the plaintiff "cannot state a claim for infringement of a legally protected informational privacy interest." The Fifth Circuit also affirmed that a student has no privacy right under the Fourteenth Amendment that precludes school officials from discussing private sexual matters with parents. (*Wyatt v. Fletcher* (5th Cir. 2013) 718 F.3d 496, 499.)

Policy 5020.1 has an express intent that is consistent with the strong and important public policy regarding school officials' duty to communicate with parents about the children under their charge. (*See, e.g.*, Educ. Code §§ 51101, 48980 [mandating annual notice to parents regarding multiple rights and responsibilities of parents]; § 48911 [communicating to parent after suspension of student].) And the Legislature has specifically carved out circumstances where student confidentiality is required. (*See, e.g.*, § 49602 [communications of a personal nature between students age 12 and older and school counselors are confidential]; § 46010.1 [requiring notification to parents that students in grades 7 to 12 may be excused from school to obtain confidential medical services without parental consent].) Plaintiff Gwen S. and Teacher Plaintiffs' claim fails as a matter of law.

Count X. Individual Plaintiffs cannot prevail under Education Code section 200 *et seq*. because section 200 only applies to behavior so severe and pervasive that it has a systemic effect of denying the victim equal access to an educational program or activity—a standard specifically meant to limit the amount of litigation that would be invited by entertaining claims of official indifference to a single instance of one-on-one peer harassment. (*J.E.L. v. San Francisco Unified School District* (N.D. Cal. 2016) 185 F.Supp.3d 1196, 1201.) Individual Plaintiffs do not allege that they suffered from severe and pervasive harassment that effectively deprived them of the right to access educational benefits and opportunities. They do not allege that Defendants were aware of any harassment or acted with deliberate indifference to the harassment. Individual Plaintiffs, therefore, cannot prevail under section 200.

IV. CONCLUSION

For the reasons stated herein, Defendants respectfully requests the Court grant their Anti-SLAPP motion.

DATED: November 17, 2023

ADVOCATES FOR FAITH AND FREEDOM

By: Mariah Gondeiro

Mariah Gondeiro, Esq.
Attorney for Defendants

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 November 17, 2023, I served a copy of the following document(s) described as DEFENDANTS' NOTICE OF MOTION AND MOTION TO STRIKE UNDER CCP § 425.16; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF 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

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