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State of California

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

<p>J</p> <p style="text-align: right;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> <p>State of California</p> <hr/> <p style="text-align: right;">Defendant/Respondent(s) (Abbreviated Title)</p>	<p style="text-align: center;">No. <u>RG20084386</u></p> <p style="text-align: center;">Order</p> <p style="text-align: center;">Motion for Preliminary Injunction Denied</p>
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The Motion for Preliminary Injunction filed for Alex R. and Natalia T. and The Oakland Reach and Community Coalition and Daniel A. and Billy T. and Isaac I and Joshua I. and Tamara I. and Bella R. and Megan O. and Matilda O. and Jordan E. and Matthew E. and Ellori J. and Kai J. and Cayla J. was set for hearing on 06/08/2021 at 10:00 AM in Department 21 before the Honorable Winifred Y. Smith. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The motion of plaintiff Cayla J et al for preliminary injunction is **DENIED**.

BACKGROUND

The public education system in California is complex and over the years has been the subject of various lawsuits regarding the access to a quality education and the equality of the access to a quality education. (E.g. Campaign for Quality Education v. State of California (2016) 246 Cal.App.4th 896.) (See also US CivicLeague.org v. Torlakson et al. (A156698) [Unpublished].)

The COVID-19 pandemic started in March 2020. The COVID-19 pandemic has exposed and highlighted certain deficiencies in the California educational system

In June 2020, the State of California enacted SB 98, which authorized distance learning and authorized \$5.3 billion to assist school districts with that and other COVID related challenges.

As of June 2021 (the date of the hearing), the COVID-19 pandemic is not over. As of June 2021, however, the Governor has directed that schools will reopen in September 2021.

When the pandemic is over, California schools might have many of the same funding and quality issues that they had before the COVID-19 pandemic. Those are matters of very serious concern for the students, for their families, and for the long term social and economic interest of the State of California.

In the complaint, plaintiffs allege that the state's response to the pandemic has been inadequate. The complaint asserts claims for (1) equal protection - race discrimination (Art I, sec 7), (2) equal protection - wealth discrimination (Art I, sec 7), (3) equal protection (Art I, sec 7), (4) public education (Art I, sec 5), adequate distance learning (Ed Code 51865), (6) adequate education (Ed Code 60119), (7) race discrimination (Ed Code 11135), (8) writ of mandamus, (9) declaratory relief (CCP 1060).

All causes of action are to a large degree based on the duty to provide " 'basically equal' " education to all students attending California public schools. (Butt v. State of

California (1992) 4 Cal.4th 668 (Butt).) In Butt, the California Supreme Court held: "California[']s Constitution makes public education uniquely a fundamental concern of the State and prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts. The State itself bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity." (Butt, supra, 4 Cal.4th at 685.)

In this motion plaintiffs seek an order that directs the state to (1) address disparities in remote education aka the digital divide, (2) provide mental health and behavioral support for students and teachers, (3) develop and implement a plan to address the learning loss during the pandemic.

PROCEDURE/EVIDENCE

The Court has considered all the evidence submitted. The Court's consideration of the evidence is limited to this motion and should not be construed as an indication of admissibility in future motions or at trial.

The court has considered the amicus brief of Compton Unified School District et al.

PRELIMINARY INJUNCTION - STANDARD

This is a motion for preliminary injunction. Plaintiff must do more than demonstrate that the claim will survive a demurrer. (Collins v. Thurmond (2019) 41 Cal.App.5th 879, 896 [demurrer]; Campaign for Quality Education v. State of California (2016) 246 Cal.App.4th 896 [demurrer]; Hartzell v. Connell (1984) 35 Cal.3d 899 [appears to be demurrer].)

"[T]he general purpose of a preliminary injunction is to preserve the status quo pending a final adjudication of the claims on the merits." (O'Connell v. Superior Court (2006) 141 Cal.App.4th 1452, 1471.) "The judicial resistance to injunctive relief increases when the attempt is made to compel the doing of affirmative acts. A preliminary mandatory injunction is rarely granted." (O'ye v. Fox (2012) 211 Cal.App.4th 1036, 1048.)

The court evaluates the two interrelated factors of (1) the likelihood that the plaintiff will prevail on the merits at trial and (2) the interim harm the plaintiff may suffer if the injunction is denied as compared to the harm that the defendant may suffer if the injunction is granted. (Tahoe Keys Property Owners' Ass'n v. State Water Res. Co. (1994) 23 Cal. App. 4th 1459, 1470-1471.) Finally, "It is well established that when injunctive relief is sought, consideration of public policy is not only permissible but mandatory." (O'Connell v. Superior Court (2006) 141 Cal.App.4th 1452, 1471.)

On a motion for preliminary injunction, "[t]he court evaluates the credibility of witnesses and makes factual findings on disputed evidence." (Fleishman v. Superior Court (2002) 102 Cal.App.4th 350, 356.)

The Court's analysis of the issues on preliminary injunction is preliminary. "The granting or denial of a preliminary injunction does not amount to an adjudication of the ultimate rights in controversy." Woods v. Superior Court (1980) 102 Cal. App. 3d 608, 615-616. See also Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty (2005) 129 Cal. App. 4th 1228, 1248-1249."

NATURE OF INJUNCTION SOUGHT IN THIS MOTION

The purpose of a preliminary injunction is generally to maintain the status quo, so the court is reluctant to grant a mandatory injunction that changes the status quo. (ITV Gurney Holding v. Gurney (2017) 18 Cal.App.5th 22, 28-29.) The status quo to be maintained is not necessarily the state of affairs as of the date of the hearing. To the extent that a defendant's actions are at issue, the status quo is "the last actual peaceable, uncontested status which preceded the pending controversy." (People v. Hill (1977) 66 Cal. App. 3d 320, 331.)

Plaintiffs are not seeking to maintain the status quo during the litigation. Plaintiffs assert that the status quo is a Constitutional violation. Plaintiffs seek a change from the current situation through an order that would direct the state to (1) address disparities in remote education aka the digital divide, (2) provide mental health and behavioral support for students and teachers, (3) develop and implement a plan to address the learning loss during the pandemic.

Plaintiffs are not seeking a return to the pre-pandemic status quo. The digital divide existed before the pandemic. The allegedly inadequate mental health and behavioral support for students and teachers is the status quo. The learning loss from the pandemic and the allegedly inadequate attention to the learning loss is the status quo.

Plaintiffs seek a mandatory injunction that would direct the state to change the current situation.

LIKELIHOOD OF SUCCESS ON THE MERITS

EQUAL PROTECTION - EQUIVALENT EDUCATION - RACE

Plaintiffs assert violations of equal protection based on race under the California Constitution. Race is a protected category and the court applies a high level of scrutiny.

Plaintiffs can identify a class identified by some characteristic other than asserted harm. (Compare *Vergara v. State of California* (2016) 246 Cal.App.4th 619, 647 ["every equal protection case based on the infringement of a fundamental right has involved a class identified by some characteristic other than asserted harm"].)

Plaintiffs have presented evidence that shows some likelihood of prevailing on the claim for race discrimination.

EQUAL PROTECTION - EQUIVALENT EDUCATION - WEALTH

Petitioner asserts violations of equal protection based on wealth. "In the context of education, under California law, wealth is considered a suspect classification." (*Vergara v. State of California* (2016) 246 Cal.App.4th 619, 648.) The court applies a high level of scrutiny.

Plaintiffs have presented evidence that shows some likelihood of prevailing on the claim for wealth discrimination.

EQUAL PROTECTION - EQUIVALENT EDUCATION - ACCESS TO EDUCATION

Petitioner asserts violations of equal protection based on alleged failure to provide equal access to education. "California has enshrined the right to education within its own Constitution. Accordingly, established California case law holds that there is a fundamental right of equal access to public education, warranting strict scrutiny of legislative and executive action that is alleged to infringe on that right." (*Collins v. Thurmond* (2019) 41 Cal.App.5th 879, 896.)

Plaintiffs have presented evidence that shows some likelihood of prevailing on the claim for unequal access to education.

INTERIM HARM

The court finds that the interim harm the students may suffer if the injunction is not granted is difficult to measure against the harm that the state may suffer if the injunction is granted. The harm to the students is the harm of maintaining the status quo, and that harm is both immediate and potentially significant. The harm to the state is the harm of judicial interference with issues that are the responsibility of the legislative and executive branches of State government.

The State has identified efforts that it is currently making to address some of the concerns indemnified in the complaint. For example, Ed Code 43503(b) states "Distance learning shall include all of the following: (1) Confirmation or provision of access for all pupils to connectivity and devices adequate to participate in the educational program and complete assigned work." This includes "provision of access."

PUBLIC POLICY

"It is well established that when injunctive relief is sought, consideration of public policy is not only permissible but mandatory." (O'Connell v. Superior Court (2006) 141 Cal.App.4th 1452, 1471.)

The relevant public policy concern is respect for the proper spheres of the judicial, executive, and legislative branches. "[C]ourts have equitable authority to enforce their

constitutional judgments. ... Of course, principles of comity and separation of powers place significant restraints on courts' authority to order or ratify acts normally committed to the discretion of other branches or officials." ((Butt, 4 Cal.4th at 696.)

"A court has no authority to issue a writ of mandate that interferes with powers exclusively committed to the other branches of government. ... The enactment of a budget bill is fundamentally a legislative act, entrusted to the Legislature and the Governor and not the judiciary." (California School Bds. Assn. v. State of California (2011) 192 Cal.App.4th 770, 799.)

The enforcement of the Constitutional right to a "Basically equal" public education under Butts is not the "level of quality" issue that is a matter for the legislature. (Campaign for Quality Education v. State of California (2016) 246 Cal.App.4th 896, 915-916.) Evaluating whether education is "basically equal" is within the competence of the judicial branch and is not an area where the court would need to resolve complex policy issue better left to the legislature. (Willard v. AT&T Communications of California, Inc. (2012) 204 Cal.App.4th 53, 59-60.)

That noted, the court is cautious about inserting itself into matters where a separate branch of government is taking steps to address the issue. This is not judicial abstention. (Compare Acosta v. Brown (2013) 213 Cal.App.4th 234, 246.) The court can direct the State to meet its responsibility under the State Constitution to provide basically equal education. This is judicial caution at the preliminary injunction stage.

WEIGHING THE FACTORS

The motion of plaintiffs for preliminary injunction is DENIED.

Plaintiffs have demonstrated some likelihood of prevailing on the claims for disparate impact race discrimination and for access to a "basically equal" education. Plaintiffs have demonstrated an immediate and potentially significant harm.

The policy concerns, however, persuade the court that it would be unwise, if not inappropriate, to order the relief that plaintiffs seek on a preliminary injunction. Regarding the appropriateness of judicial involvement, the COVID-era has highlighted certain longstanding problems in the educational system. To the extent those reflect disparities show that the state is not providing "basically equal" education, the court can order the State to address the disparities. To the extent the problems concern the quality of education that the people of the state, acting through their elected officials, choose to provide for their children, that is a legislative concern. (Campaign for Quality Education v. State of California (2016) 246 Cal.App.4th 896, 915-916.) The court is reluctant to address long term issues through the short-term solution of a preliminary injunction.


Regarding the need for a short-term solution to prevent immediate harm, the state has presented evidence that it is taking steps to address the concerns identified in the

complaint. These include AB 86 in March 2021, use of federal funds from the American Rescue Plan in March 2021, and proposals in the Governor's May 2021 revision to the proposed budget for 2021-2022. Although perhaps not completely adequate to provide a "basically equal" education, they mitigate the immediate harm and therefore diminish the need for a preliminary injunction.

The court has also considered that in the CMC statement filed 5/20/21, plaintiffs propose a schedule leading to a trial in May 2022 and the state proposes a schedule leading to a trial in August 2022. The court will expect intervenor Compton to prosecute its claims so that the trial of plaintiffs' claims and the trial of the Compton claims can, if appropriate be in a single trial.

At this time, the court issues no orders on the trial date or on whether the claims of plaintiffs and of Compton will be tried in a single trial or in separate trials. (CCP 598, 1048.) The court does advise the parties, including Compton, that the court is inclined to set a trial date in May 2022 so that if plaintiffs prevail then any remedy can be put in place for the start of the school year in August or September 2022.

Dated: 06/15/2021

Facsimile


Judge Winifred Y. Smith

SHORT TITLE:

J VS State of California

CASE NUMBER:

RG20084386

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