EXHIBIT A

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

ANDREA PRICHETT, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No. 5:25-cv-09443-NW

AMERICAN JEWISH COMMITTEE'S AMICUS BRIEF IN OPPOSITITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Date: December 17, 2025
Time: 9:00 am
Judge: Honorable Noël Wise
Ctrm: 3, 5th Floor

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INTEREST OF AMICUS CURIAE

The American Jewish Committee ("AJC") is a non-profit international human rights organization founded in 1906. Today, the AJC represents roughly 170,000 members, in 25 regional offices across the United States. AJC has three offices in California (San Francisco, Los Angeles, and San Diego) and has actively pursued its work in California for over 80 years.

Throughout its history, the AJC has maintained a long-standing commitment to combatting antisemitism and protecting the civil rights of, and promoting racial justice for, all Americans. For example, in 1913 the AJC advocated for the passage of a civil rights law in New York prohibiting discrimination on the basis of "race, creed, or color" in all places of public accommodation "in the interest of the equality of all citizens before the law."[1] This law was among the earliest examples of civil rights legislation and served as a model for state and federal civil rights legislation in the 1960s.

Building upon this early work, the AJC filed an influential amicus brief in the landmark 1954 case, *Brown v. Board of Education*. The AJC's involvement in *Brown* began in 1950, when it hired Dr. Kenneth Clark, a psychology professor, to prepare a study of the harmful impact that school segregation has on minority children. Relying on this study, the AJC argued that segregation violated core principles of equality under the Constitution and caused harm to both minority and majority communities. The Supreme Court cited this study as evidence that school segregation has a negative psychological impact on minority children, inhibiting their educational and mental development and depriving them of benefits associated with integrated schools. *See Brown v. Bd. of Educ.*, 347 U.S. 483, 494-495 n.11 (1954).

In a 1965 speech, Dr. Martin Luther King, Jr. recognized the AJC's role in the passage of the 1913 New York state law, and the Court's holding in *Brown v. Board*, noting that these efforts reflect the AJC's commitment to the principle that "the struggle for equal rights" is "part of the fulfillment of this country's highest and most cherished ideals . . . honoring the truth that all life is interrelated."[2]

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[1] *See* Civil Rights, *The American Jewish Year Book*, Vol. 16, (Jan. 1, 1914), *available at* https://ajcarchives.org/Portal/Default/en-US/RecordView/Index/845.

[2] *See* Text of Reverend Martin Luther King Jr.'s Speech Delivered at the AJC's Annual Dinner, (May 2, 1965), *available at* https://ajcarchives.org/Portal/Default/en-US/RecordView/Index/1465.

AJC has continued to advocate for religious liberty and civil rights in the courts. It has filed numerous amicus briefs in a litany of United States federal courts, to provide AJC's unique perspective on issues central to its mission. *See, e.g., Ark. Times LP v. Waldrip as Tr. of Univ. of Ark. Bd. of Trs.*, 37 F. 4th 1386, 1388 (8th Cir. 2022) (recognizing amicus brief submitted on behalf of the AJC); *State v. Dep't of Just.*, 951 F.3d 84, 89 (2d Cir. 2020) (same); *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F. 3d 954, 956 (9th Cir. 2010) (same); *see also Zivotofsky v. Kerry*, 576 U.S. 1, 23 (2015) (citing AJC's amicus brief and noting it was "of considerable assistance to the Court" in giving "a more complete account of the relevant history").

The AJC's long-standing and thoughtful commitment to ending discrimination, gives it authority to speak to the importance and Constitutionality of Assembly Bill 715, which amends the Education Code to protect against and remedy all forms of unlawful discrimination including antisemitism.

SUMMARY OF ARGUMENT

California law guarantees its public-school children an education free from discrimination based on religion or nationality. Cal. Educ. Code § 220. However, after extensive legislative hearings and the development of a lengthy evidentiary record, the Legislature found that California's Jewish children have been subjected to "antisemitic … [d]iscrimination, harassment, and bullying . . . so severe and pervasive that it has placed Jewish pupils at risk and limited, or completely impeded, their ability to learn or engage in school programs or activities." AB 715, Section 1(c). In response, the California Legislature enacted, and Governor Newsom signed into law, Assembly Bill ("AB") 715 to protect California's Jewish children from discrimination. ***The Legislature passed AB 715 unanimously with the Assembly voting 71-0 and the Senate voting 35-0.***[3]

AB 715 confirms that antisemitism is a form of unlawful discrimination equal to all other types of discrimination. It prohibits the adoption or approval of curricula, instructional materials, or

[3] *See* https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=202520260AB715. The bill had a broad coalition of support from the Black, Latino, Asian American Pacific Islander, and Jewish caucuses, with Senator Dr. Akilah Weber Pierson, Senator Lena Gonzalez, Assemblymember Mike Fong, Senator Scott Wiener, and Assemblymember Jesse Gabriel serving as the principal co-authors of the bill. *See* Summary, AB 715: Educational equity: discrimination: antisemitism prevention, DIGITAL DEMOCRACY CALMATTERS, *available at* https://calmatters.digitaldemocracy.org/bills/ca_202520260ab715.

professional development materials in California public K-12 schools "that would subject a pupil to unlawful discrimination" of any kind, including antisemitism. AB 715. It also forbids teachers from instructing their students in a way that promotes unlawful discriminatory bias of any kind, requiring instruction to be factually accurate, aligned with their school's adopted curriculum—which itself must conform to standards previously prescribed by law—and consistent with accepted standards of professional responsibility. It prohibits teachers from including advocacy, personal opinion, bias, or partisanship in their school instruction. In short, AB 715 demands that school districts and their teachers take care that their lesson plans, instructional materials, and classroom teachings not cause harm to the students they are supposed to nurture, including their Jewish students. AB 715 reflects the Legislature's unanimous judgment about what is needed to permit all students to attend school in safety, both physically and mentally.

AB 715 does not violate Plaintiffs' First or Fourteenth Amendment rights. If AB 715 addresses speech at all, it addresses government-employee speech, not private speech. The content of K-12 public school instruction, including textbooks, lesson plans, instructional materials, and the teacher's classroom instruction, is within the Legislature's purview. As the Ninth Circuit has held, a public-school teacher's instructional speech is "is not subject to the constraints of constitutional safeguards." *Downs v. Los Angeles Unified Sch. Dist.*, 228 F.3d 1003, 1011-13 (9th Cir. 2000). After all, it is "the government itself speaking," and "when the State is the speaker, it may make content-based choices." *Id.*

To the extent that Plaintiffs allege AB 715 will be enforced in a way they disagree with, that fear is entirely speculative. AB 715 is not in effect. It has not yet been enforced against anyone for any lesson plan or course of instruction (much less the examples articulated in the complaint). Further, under *Downs*, the First Amendment allows the Legislature (through its school districts) to establish the state's public K-12 educational policy. Plaintiffs' claims therefore have no likelihood of success and the motion for preliminary injunction should be denied on these grounds alone.

Nor can Plaintiffs make a successful facial challenge to AB 715. First, under Plaintiffs' own precedent, a facial challenge is inappropriate because they have failed to plead, much less support with evidence, that AB 715 clearly implicates their free speech rights. They do not and cannot assert that

they face a concrete, imminent or even threatened curtailment of their speech. They allege only that they "may" or "will likely" refrain from teaching certain lessons that they essentially admit amount to one-sided advocacy of their point of view.

Further, AB 715 is not impermissibly vague. Plaintiffs assert that the statute fails to define antisemitism, leaving them unsure of what conduct and instructional materials they must avoid. *See* ECF No. 15, Plaintiffs' Motion for Preliminary Injunction (the "Motion") at 14. But the prohibitions of AB 715 apply to all forms of discrimination identified in Section 220 of California's Code of Education, which has long prohibited discrimination in education based on nationality, race, ethnicity or religion (among other things). Like AB 715, Section 220 does not define what constitutes discrimination based on race, ethnicity or religion, yet Plaintiffs do not contend that Section 220 is facially unconstitutional. They have not (and will not) contend that a teacher has a First Amendment right to defy Section 220 because of the absence of a specific statutory definition of, for example, racism or Islamophobia. The same should be true for antisemitism.

ARGUMENT

I. AB 715 IS A CRITICAL TOOL TO COMBAT ANTISEMITISM IN CALIFORNIA SCHOOLS.

A. Antisemitism in California's Schools Is Pervasive and Causing Harm to Jewish K-12 Students.

Antisemitism presents a systemic and growing problem in California. Official state law enforcement statistics show that "Jewish people make up about 3% of California's population, but anti-Jewish hate crimes accounted for 62.4% of all reported hate crimes involving religious bias in the state in 2022."[4] Jewish people have been the target of *at least* 82 hate crimes per year since the state began recording such data in 2015 and, in 2024, that number jumped to 310.[5] To put those numbers in perspective, no other identified religious group has been the target of more than 50 hate crimes in *any* of the nine years that California has collected such data.[6]

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[4] *Golden State Plan to Counter Antisemitism*, p. 1 (Apr. 2024), *available at* https://www.gov.ca.gov/wp-content/uploads/2024/04/Golden-State-Plan-to-Counter-Antisemitism.pdf.

[5] *See* Hate Crime in California in 2024, p. 34, Table 19 (June 25, 2025), *available at* https://data-openjustice.doj.ca.gov/sites/default/files/2025-06/Hate%20Crime%20In%20CA%202024.pdf.

[6] *Id*.

Perhaps predictably, Jewish children in California's public schools are experiencing the effects of this increased antisemitism. For example, in 2021, the Assembly enacted AB 101 requiring California high school students to take a one-semester ethnic studies course. The goal was to expose children to the history and culture of marginalized communities to provide students with the opportunity to see themselves and their family's experiences reflected in the curriculum and learn about the life experiences of others with different backgrounds.[7] In developing its ethnic studies curriculum, the Santa Ana Unified School District (SAUSD) took the position that "we don't need to give both sides" because "[w]e only support the oppressed, and the Jews are the oppressors."[8] They bullied the one Jewish school official involved in the curriculum development, characterizing him as a "colonized Jewish mind."[9] They referred to the Jewish Federation of Orange County as "racist Zionists."[10] In online chats, they stated "Jews greatly benefit from White privilege and so have it better."[11] When Jewish parents challenged the blatantly antisemitic curriculum, they were harassed, heckled, and called "racists" and "killers."[12] The school board did nothing to protect its Jewish students or parents until it was sued; it then agreed to re-design the curriculum.[13]

In Berkeley, a public high school permitted a "walkout" to protest Israel's military response to Hamas's October 7, 2023 attack.[14] Jewish students were left in tears amidst reported chants of "From the river to the sea, Palestine will be free" and other slogans often used to call for the elimination of

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[7] *See* AB 101, Section 2(a)(1)(G), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB101.

[8] EdSource, *"Liberated" Ethnic Studies Courses Challenged Amid Allegations of Antisemitism*, EdSource (Aug 20, 2024), *available at* https://edsource.org/2024/liberated-ethnic-studies-course-challenged-amid-allegations-of-antisemitism/718347.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] Complaint, ¶¶ 16-18, *Louis D. Brandeis Ctr. For Human Rights Under Law v. Santa Ana Unified Sch. Dist.*, ECF No. 3, No. 30-2023-01349344-CU-JR-CJC (Sup. Ct. Orange Cnty. Sept. 9, 2023).

[13] *See* Brandeis Center, *Santa Ana Public Schools Prevented from Teaching Anti-Semitic Ethnic Studies* (Brandeis Center) (Feb. 20, 2025), *available at* https://brandeiscenter.com/santa-ana-public-schools-prevented-from-teaching-anti-semitic-ethnic-studies/.

[14] *See* Franklin Foer, *The Golden Age of American Jews Is Ending*, THE ATLANTIC (Mar. 4, 2024), *available at* https://www.theatlantic.com/magazine/archive/2024/04/us-anti-semitism-jewish-american-safety/677469/?gift=MI46uTCVEMyTrRUaGMjqGwpSj72KbyJ987PPnbR0gt8.

Israel, the expulsion of Israeli Jews, or the harassment of Jews generally.[15] A second-grade elementary school teacher had her students write "messages of anti-hate." Several students delivered a note to the only Jewish teacher in the school that said, "Stop Bombing Babies."[16]

A ninth-grade student at San Lorenzo Valley high school used his arts & crafts class to create a Nazi flag and a puppet of Hitler. No teacher intervened to question why such hateful symbols were being made in the art class. The student then taped the Nazi flag and Hitler puppet to the back of an unwitting Jewish classmate, Lev, while other students watched, and used their phones to take pictures.[17] Lev then walked around the school noticing people laughing at him but not knowing why. Lev testified to the Assembly that he did not feel comfortable going back to that school and ultimately left because "[t]he school did not seem to take what happened to me seriously."[18]

The California Department of Education ("CDE") found that an Oakland Unified School District ("OUSC") high school "contributed to a discriminatory environment" for its Jewish students and staff by flying a Palestinian flag for over a month "in the immediate aftermath" of October 7, 2023.[19] The CDE found that another OUSD school repeatedly sent students a map of the Middle East that erased Israel and replaced it with Palestine.[20] And, a dozen OUSD teachers led an unauthorized "teach-in" relating to October 7th that violated the school district's policy for teaching controversial

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[15] *Id.* In the 1960s and 1970s, the Palestine Liberation Organization used the phrase to indicate the replacement of the State of Israel with a State of Palestine extending "from the river to the sea," including the expulsion of Jews who entered the land after 1947. The phrase soon after became a rallying cry for terrorist groups including Hamas. Not all who use the phrase "From the River to the Sea" use it with harmful intent. *See* https://www.ajc.org/translatehate/From-the-River-to-the-Sea.

[16] *See* Thomas Buckley, *Hating Jews in Elementary School: Berkeley Public Schools Tolerating Antisemitism*, California Globe (May 6, 2024), *available at* https://californiaglobe.com/fr/hating-jews-in-elementary-school-berkeley-public-schools-tolerating-antisemitism/.

[17] *See* Senate Standing Committee on Education, at 16:29-18:27 (Sept. 10, 2025), *available at* https://calmatters.digitaldemocracy.org/hearings/278258.

[18] *Id.*

[19] California Department of Education, *Decision on Appeal*, Case No. 2025-053 (Oct. 24, 2025), p. 3. Importantly, the CDE also found that the OUSD violated CDE Regulations by taking 18 months (rather than the required 60 days) to adjudicate the complaint and then failing to address whether "flying the Palestinian flag in the immediate aftermath of the events of October 7, 2023 could create a hostile or intimidating environment for Jewish students or staff" notwithstanding allegations that certain teachers publicly supported flying the flag and reiterated that public support after the school finally took it down. Such deliberate sluggishness by school districts is addressed in the AB 715. *See* AB 715 Sections 3(a)(2) & (d).

[20] California Department of Education, *Decision on Appeal*, Case No. 2025-152 (Oct. 20, 2025), p. 3.

subjects, teaching that the Palestinians were the victims and Israelis were the "oppressors."[21]

In Los Angeles, in August 2024, teachers met to learn how to be "a teacher and an organizer and not get fired." A videorecording of their meeting shows a teacher discussing how he organized his students to attend "pro-Palestine" rallies but avoided accountability by arranging for non-LAUSD employees to drive his students to the rally that he "just happened" to be at. He also provided advice and education to students who "just happened" to want to lead their classmates in anti-Zionist teach-ins. The teacher stressed the need to be "really intelligent on how we do that" because "Zionists and others are going to try to catch us in any way that they can to get us into trouble." He also stressed the need to organize the students, so they and their parents will "back us up," and the school district will know that disciplining these teachers will be "a bigger headache than it's worth."[22]

B. California Enacts AB 715 to Create a Safe, Inclusive Learning Environment For All K-12 Students – Including Jews.

In response to this pervasive hostile environment for Jewish students in the State's K-12 public schools, Assemblymember Rick Chavez Zbur introduced AB 715 to help ensure mental and physical safety for young students by "strengthen[ing] protections against antisemitism and all forms of discrimination in order to address increased instances of antisemitism in TK-12 education, and by foster[ing] safe and supportive schools for all students."[23] The Legislature held extensive hearings and collected a substantial evidentiary record detailing example after example of antisemitic behavior occurring at California public schools. At a hearing before the Assembly Standing Committee on Education held on May 14, 2025, Assemblyman Zbur spoke directly to the conduct of the SAUSD, *supra* at 5, noting that it "tried to hide the adoption of course materials that they knew the Jewish community considered objectionable, and even considered holding board meetings to adopt those

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[21] *See also* John Fensterwald, *State finds Oakland Unified created 'discriminatory environment' for Jewish students*, Los Angeles Times (Nov. 16, 2025), *available at* https://www.latimes.com/california/story/2025-11-16/state-finds-oakland-unified-created-discriminatory-environment-for-jewish-students.

[22] *See* Abigail Shrier, *The Kindergarten Intifada*, The Free Press (Oct. 31, 2024), *available at* https://www.thefp.com/p/abigail-shrier-the-kinderfada-revolution. *See* embedded video at minutes 31 -39.

[23] *See* Sen. Education & Judiciary Com. Rep. on A.B. 715, Sess. 2025-26, at p. 8 (Sept. 9, 2025).

materials on Jewish holidays so that Jews could not attend and object."[24] Zbur went on to note these additional examples of antisemitism throughout California:

- "Last year, the San Francisco Unified School District maintained a resource library for teachers that included educational material that justified the slaughter of civilians on October 7th. Shockingly, that material originated from Hamas, the internationally recognized terrorist organization that was responsible for the October 7 terror attack." *Id*.
- "Recently, in the Pajaro Valley School District, Jewish parents who were raising concerns about the adoption of what they considered to be antisemitic curriculum were publicly castigated by two board members who made antisemitic comments about the entire Jewish community. And when called out by the County Superintendent of Schools, the Pajaro Valley School Board refused to sanction its members for their antisemitic comments." *Id*.
- "Just last month, [the] California Department of Education ruled that lessons taught in a class [] in the Campbell Union High School District discriminated against Jewish students." *Id*.
- "School districts have adopted harmful course materials, ignoring the concerns of Jewish parents. When Jewish families express concern, they have been berated and ignored. And when they file UCP[25] complaints, those complaints are generally ignored as well." *Id*.
- "We cannot hide from the profoundly unfortunate truth that Jewish kids are being isolated, made to feel unwelcome, and verbally and physically attacked. And far too often, our schools are failing to protect them. Some Jewish parents even feel compelled to go so far as to remove their students from California public schools." *Id*.

Assemblywoman Dawn Addis also testified to the Education Committee that day, emphasizing that "Jewish students . . . , particularly since the October 7 Hamas attacks, have faced increasingly dangerous antisemitic rhetoric, tropes, discrimination, and even physical attacks in our K-12 schools." *Id.* She added: "[N]o child should ever experience hateful behavior when let alone at school, simply for being who they are." *Id*.

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[24] May 14, 2025, Assembly Standing Committee on Education Hearing on AB 715, at 7:52. https://calmatters.digitaldemocracy.org/hearings/259095.

[25] Uniform Complaints Procedures ("UCP"). Cal. Code Regs. Tit., §§ 4600-4687.

Offering a student perspective, Ella testified to her heartbreaking experience as a seventh grader in a public middle school in San Jose, California:

> "I was a seventh grader in a public middle school in San Jose. October 7, 2023, changed my life. From a happy middle schooler with many friends, I was reduced to loneliness and abuse. All my friends turned their backs on me. They called me "the Jew." They yelled at me that I was a murderer and that Jews were terrorists. I was made fun of, harassed, and followed around when I spoke in Hebrew. . . . They hated me because of my identity, my religion, and my parent's nationality. I did not say or do anything to deserve this. At first, I hoped that the school staff would help and protect me. But some teachers and the school board continued to say and do biased things that made it seem like Jews were bad people, giving additional fuel to the students who said those awful things about me. . . . Some days I have to stay home. I couldn't stand it, and I feared for my own safety. The fall semester of 2023 was when I lost all trust in peers, friendships, adults, and good intentions. I struggled to sleep at night and with my self-esteem."[26]

After being presented with this (and other) evidence, the Legislature unanimously found that "Jewish and Israeli American pupils across California are facing antisemitic discrimination, harassment, and bullying" in California's K-12 schools. AB 715, Section 1(c). "Jewish kids are being hurt by 'slurs' and 'physical and verbal assaults,'" and "collective blame and generalizations about Jewish people." *Id.* School Districts are teaching "distortions of Jewish religion, ancestry, history, and identity" in their classrooms and "using inappropriate instructional materials and instruction" that have "deeply impacted Jewish pupils across California and the nation resulting in the vilification and ostracization of Jewish pupils." *Id.*

The Legislature enacted AB 715 "to address increased instances of antisemitism in K-12 education, and foster[] safe and supportive schools for all students."[27] More specifically, the Legislature acted to prevent classroom instruction based on advocacy, personal bias and opinion from continuing to foster a hostile environment for Jewish students, which, as the Legislature found, was too often resulting in harassment, bullying, ostracization, and vilification of students because of their

[26] *See* September 12, 2025, Assembly Standing Committee on Education Hearing on AB 715, at 18:42. https://calmatters.digitaldemocracy.org/hearings/278285?t=1122&f=1d00930e10c1072619dc35b5d3af8074.

[27] *See* Sen. Education & Judiciary Com. Rep. on A.B. 715, Sess. 2025-26, at p. 8 (Sept. 9, 2025).

Jewish identity.[28] Additionally, AB 715 requires school districts to investigate and, if needed, remediate discrimination complaints within 60 days. It also establishes a state-level Office of Civil Rights for K-12 education that includes an Antisemitism Prevention Coordinator to "ensure complaints of discrimination can be elevated to the State Superintendent when a local educational agency fails to respond." *Id.* AB 715 also requires school districts that are found to be using improper instructional materials to comply with corrective action plans. *Id.* To achieve the foregoing, the legislation addresses the following six areas:

a) Curricula. "AB 715 prohibits the governing board of a school district, a county board of education, or the governing body of a charter school" [collectively School Districts] "from adop[ting] or approv[ing] the use of any textbook, instructional material, supplemental instructional material, professional development materials, or curriculum for classroom instruction if the use of the textbook, instructional material, supplemental instructional material, or curriculum [collectively, Curricula] would subject a pupil to unlawful discrimination pursuant to Section 220."[29]

b) Professional Development Materials and Services. AB 715 also prohibits School Districts from adopting or approving the use of professional development materials or services that the School District knows or has reason to know would "promote, endorse, or otherwise support actions or the use of Curricula that would subject a pupil to unlawful discrimination pursuant to Section 220."[30]

c) Teacher Instruction. AB 715 prohibits a teacher from "giv[ing] instruction" and proscribes School Districts from sponsoring "any activity that promotes a discriminatory bias on the basis of race or ethnicity, gender, religion, disability, nationality, or sexual orientation, or pursuant to a characteristic listed in Section 220."[31] AB 715 also requires that "[t]eacher instruction shall be factually accurate and align with the adopted curriculum and standards as described in paragraph (3) of subdivision (c) of Section 60200, and be consistent with accepted standards of professional responsibility, rather than advocacy, personal opinion, bias, or partisanship."

d) Teacher Education. AB 715 creates a new position of Antisemitism Prevention Coordinator ("APC") within the newly created Office of Civil Rights. Among other things, the APC shall provide antisemitism education to teachers, school staff, and leadership.[32]

e) Accountability and Oversight. Potential violations by teachers or schools do not require Jewish students to be present when antisemitism is occurring in the classroom or at the

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[28] "Governor Newsom Signs bills further cracking down on hate and antisemitism in California Schools," (Oct. 7, 2025), https://www.gov.ca.gov/2025/10/07/governor-newsom-signs-bills-further-cracking-down-on-hate-and-antisemitism-in-california-schools/.

[29] AB 715 § 2(a)(1).

[30] AB 715 § 2(b)(1).

[31] AB 715.

[32] AB 715 § 5 (amending Education Code § 33803.1(b)(1).)

school, and complaints of discrimination must be investigated and, if needed, addressed within 60 days and in consultation with the relevant discrimination prevention coordinator.[33]

f) Reporting. AB 715 requires annual notification to all schools on the protections, requirements, and responsibilities in this bill, as well as the creation of a website with information about antisemitism.[34]

In parallel with AB 715, the Legislature and Governor passed and signed into law Senate Bill 48 entitled "Educational equity: discrimination prevention coordinators." This companion bill requires the Office of Civil Rights to employ (1) a Religious Discrimination Prevention Coordinator, (2) a Race and Ethnicity Discrimination Prevention Coordinator, (3) a Gender Discrimination Prevention Coordinator, and (4) an LGBTQ Discrimination Prevention Coordinator. The purpose of this companion legislation was to fulfill the intent of AB 715, which was to protect all school children, not just Jewish children, from all forms of unlawful discrimination.

II. A PRELIMINARY INJUNCTION WILL SUBJECT JEWISH STUDENTS TO ADDITIONAL HARM AND IS UNWARRANTED.

A. Plaintiffs Seek to Enjoin Enforcement of California's Legislative Mandate That Public School Students Should Not Be Subject to Antisemitism in the Classroom.

Just weeks after Governor Newsom signed AB 715 into law, and a month before the law would go into effect, a group of plaintiffs filed this lawsuit alleging that AB 715 is unconstitutional. The Plaintiffs are four individual California public school teachers and a Los Angeles-based organization of teachers supporting Palestine (collectively, "Teachers"); and three parents bringing suit on behalf of their minor children, who are students in the California public school system ("Students"). Plaintiffs allege three causes of action: (1) a claim by the Teachers that AB 715 violates their due process rights by being void-for-vagueness; (Count I, Compl. ¶¶ 247-269); (2) a claim by the Teachers that AB 715

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[33] AB 715 § 2 (amending Section 244 of the Education Code to require, *inter alia*, any member of the public to file a complaint, even anonymously, for a violation of the new law and allowing a complaint to be filed with the State Superintendent who can act without waiting for an investigation by the local school authorities); *id.* § 7 ("Discriminatory bias in instruction and school-sponsored activities does not require a showing of direct harm to members of a protected group. Members of a protected group do not need to be present while the discriminatory bias is occurring for the act to be considered discriminatory bias."); *id.* § 9 (requiring corrective action by a local school authority within 60 days if the State Superintendent finds a violation and providing for additional remedial measures if such corrective action is not taken).

[34] AB 715 §§ 4, 6.

is both overbroad and constitutes viewpoint discrimination, in violation of their First Amendment right to free speech (Count II, *id*. ¶¶ 270-292); and (3) the same free speech violation, brought by the Students (Count III, *id*. ¶¶ 293-306). Based on these claims, Plaintiffs have also moved for a preliminary injunction.

To obtain a preliminary injunction, a plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Airbnb, Inc. v. City & Cnty. of San Francisco*, 217 F. Supp. 3d 1066, 1072 (N.D. Cal. 2016) (internal citations omitted) (finding no likelihood of success on First Amendment content-based speech restriction claim). The Ninth Circuit applies a "sliding scale" approach to preliminary injunctions, such that "a stronger showing of one element may offset a weaker showing of another . . . but at an irreducible minimum, the party seeking an injunction must demonstrate a fair chance of success on the merits, or questions serious enough to require litigation." *Id.* Only "purposeful unconstitutional suppression of speech" constitutes irreparable harm. *CTIA - The Wireless Ass'n v. City of Berkeley*, 928 F.3d 832, 851 (9th Cir. 2019) (affirming denial of preliminary injunction where ordinance complied with the First Amendment).

The four individual teacher-plaintiffs have previously taught students in the classroom based on their own views about issues involving Arabs and Israelis, Muslims and Jews, and the State of Israel and Zionism. As alleged in the Complaint, they are "activist[s] in the movement for justice in Palestine." *See* e.g., Complaint ("Compl.") ¶ 61 (Andrea Prichett); ¶ 77) (Jonah Olson (same)). Plaintiff Andrea Prichett claims to have witnessed "the Israeli system of segregation imposed on the West Bank, and how Israeli settlers steal Palestinians' lives on a daily basis." *Id.* ¶ 61. Similarly, Plaintiff Dunia Hassan refers to the creation of the State of Israel as a "catastrophe" or "Nakba" in Arabic. *See Id.* ¶ 83.

In their complaint, the individual teacher-plaintiffs assert the importance of teaching from their personal perspectives and beliefs and express the fear AB 715 will prohibit them from doing so. For example, Ms. Prichett discusses colonialism in her eighth-grade U.S. History class, and points to Israel's treatment of Palestine as an example of the "process by which people from one place arrive in

another and take over other people's land." *Id.* ¶ 54. Mr. Olson, a seventh-grade science teacher, believes that Zionism is "based on the idea that Jews are superior to non-Jews, and that they have the right to a majority in a land that was inhabited primarily by Palestinians for hundreds of years and to occupy Palestine in order to preserve that majority." *Id.* ¶ 76. The complaint does not explain how Mr. Olson's beliefs relate to his role as a science teacher. Apparently, he is concerned that AB 715 may prevent him from instructing about his idiosyncratic, personal views of Zionism and teaching as fact his opinion that "Judaism does not include support for the State of Israel." *Id.* ¶¶ 151, 156. Ms. Hassan is concerned that AB 715 may limit her ability to teach Spanish "honest[ly]" because she may not be able to discuss her opinion as to "how the creation of Israel has harmed Palestinians and deprived them of their rights to self-determination." *Id.* ¶ 153. Likewise, Plaintiff Adenwala is concerned that AB 715 means that she may no longer be able to teach how Palestine is an example of "modern human rights violations." *Id.* ¶¶ 98, 103.

Plaintiffs Los Angeles Educators for Justice in Palestine allege that many of their members "have been targeted" for "teaching various curricula in English and Social Sciences that discuss Palestinian culture, Middle East history, and the factual events surrounding the 1948 creation of the state of Israel and the ongoing UN-recognized genocide in Gaza." *Id.* ¶ 110. Ultimately, the teacher-plaintiffs assert in conclusory fashion that they "may" change how they have instructed students in the past because they "may" violate the new law. *See, e.g., id.*, ¶ 8 ("the new law leaves Teacher Plaintiffs *fearing they will* be charged with engaging in unlawful discrimination"); *id.* ¶ 259 ("they *will likely* self-censor on topics related to Israel-Palestine, and refrain from teaching the lessons they have taught in the past, in order to avoid negative professional consequences") (emphasis added).

In support of their preliminary injunction application, two teacher-plaintiffs submitted sworn testimony about the "teaching" they would like to use to educate their students and what they believe AB 715 "may" prevent. For example, Ms. Prichett questions whether she will be permitted to continue teaching her eighth grade U.S. history students that Israel has a "system of segregation and separation [that] has destroyed families and communities in the West Bank," that "Israeli settlers impose their will on Palestinians, steal their land, and threaten their lives on a daily basis," that "Palestinian citizens of Israel do not have equal rights . . . and Palestinians living in the West Bank and Gaza, under Israeli

occupation have almost no rights at all," that "the international consensus is that Israel is occupying Palestine," and that "most international human rights organizations have concluded that Israel is committing genocide against the Palestinians." *See* ECF 15-2, Decl. of Andrea Prichett ("Prichett Decl.") in support of Motion, ¶¶ 12-13, 37, 41, 44, & 48. Similarly, Mr. Olson, as an anti-Zionist, believes that the new law "will strip [his] right to express support for Palestinian people and Palestine" in science class. *See* ECF 15-3, Decl. of Jonah Olson in support of Motion, ¶¶ 3-4, 13.

Throughout their Complaint, Plaintiffs complain that they have been unfairly accused of antisemitism and express resentment of what they characterize as "appeasement" of Jewish parents. (Compl. ¶¶ 65, 66-73, 77, 91, 101, 101, 116.) But AB 715 does not itself silence Plaintiffs' beliefs about Palestine and Israel. Instead, AB 715 establishes a mechanism for California to oversee what is taught in its schools, to assure that instruction is factually accurate, reflects curricula and standards prescribed by law, is free from advocacy, personal opinion, or bias, and does not create a hostile learning environment injurious to its Jewish students. Given the record of antisemitic discrimination, harassment, and bullying in California schools, such oversight is not unconstitutional.

B. Plaintiffs Have No Likelihood of Success on the Merits.

Plaintiffs allege that AB 715 is facially unconstitutional and should be invalidated in its entirety. But "[f]acial invalidation is, manifestly, strong medicine that has been employed by the Court sparingly and only as a last resort." *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 580 (1998) (quotation marks omitted). *See also Moody v. NetChoice, LLC*, 603 U.S. 707, 743–44 (2024) (observing that "facial challenges are disfavored" and "hard to win," finding that to succeed on a facial challenge in the First Amendment context, the movant "must show that the law at issue . . . prohibits a substantial amount of protected speech relative to its plainly legitimate sweep"). Nothing in AB 715 warrants this "disfavored" response, particularly when so much of AB 715, e.g., the creation of the Office of Civil Rights, is unchallenged and undeniably constitutional.

1. Plaintiffs' First Amendment Challenge Fails Because AB 715 Only Regulates School Speech.

AB 715 regulates teachers' instructional speech, which is legally akin to government-employee speech. The Supreme Court has held that, when the government acts both as a sovereign and an

employer, and public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes. *Garcetti v. Ceballos*, 547 U.S. 410 (2006); *City of San Diego, Cal. v. Roe*, 543 U.S. 77, 80 (2004) ("[A] governmental employer may impose certain restraints on the speech of its employees, restraints that would be unconstitutional if applied to the general public."). Plainly, then, a public-school teacher's instructional speech "is not subject to the constraints of constitutional safeguards." *Downs*, 228 F.3d at 1011-13. After all, in this instance, it is "the government itself speaking," and "when the State is the speaker, it may make content-based choices." *Id.* at 1011-13 (quoting *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828, 833 (1995)); *see also Rosenberger*, 515 U.S. at 834 ("A holding that the University may not discriminate based on the viewpoint of private persons whose speech it facilitates does not restrict the University's own speech which is controlled by different principles."); *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 235 (2000) ("Where the University speaks, either in its own name through its regents or officers, or in myriad other ways through its diverse faculties, the analysis likely would be altogether different [from traditional viewpoint neutrality analysis].").

Plaintiffs acknowledge a teacher's instructional speech does not receive the same First Amendment protections as other speech. *See* Motion at 19-20. But they attempt to blur the lines by relying on precedent where the forum was a school or a university but where a teacher's speech, was not at issue.[35] Such cases are inapposite. *See Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 963-64 (9th Cir. 2011) ("[T]he appropriate guide for measuring the legality of the government's curtailment of employee speech in the workplace, including that of teachers, would be th[e] Supreme Court's 'case law governing employee speech in the workplace.'") (quoting *Tucker v. Cal. Dep't of Educ.*, 97 F.3d 1204, 1210 (9th Cir. 1996). For example, *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 263 (1988), deals with censorship of a *student* paper on topics of pregnancy and divorce—not teachers' instructional speech. And *Rosenberger*, 515 U.S. at 834, concerns a university's decision not to subsidize student publications with religious viewpoints—again, not teachers' instructional speech.

[35] Plaintiffs also cite *C.F. ex rel. Farnan v. Capistrano United Sch Dist.*, 654 F.3d 975, 988 (9th Cir. 2011), in which the Establishment Clause, rather than the Free Speech Clause, was at issue.

Such cases are distinguishable from this case, where the government is "policing the boundaries of its own message." *Downs*, 228 F.3d at 1017 (emphasis added). In *Downs*, a public high school teacher claimed a violation of his First Amendment rights because he was prevented from displaying materials condemning homosexual behavior in a school hallway. *Id.* at 1006. During Gay and Lesbian Awareness month, observance of which was mandated by the Los Angeles Unified School District ("LAUSD") in accordance with its policies promoting diversity and tolerance, the plaintiff-teacher created a bulletin board with materials that stated, for example, that "60% of Americans hold the belief that homosexuality is immoral." *Id.* at 1005. The school demanded he remove the materials. *Id.* at 1007.

The district court granted summary judgment for LAUSD, and the Ninth Circuit affirmed, holding that this was "a case of the government itself speaking"—not students like in *Hazelwood* and *Rosenberger*. *Id.* at 1010, 1014. Unlike in those cases, LAUSD without a question, "had the authority to enforce and give voice to school district and school board policy." *Id.* at 1011. Stated differently, "the First Amendment allow[ed] LAUSD to decide that [plaintiff-teacher] may not speak as its representative," especially because "his message is one with which the district disagrees." *Id.* at 1013. The court explained that an "arm of local government—such as a school board—may decide not only to talk about gay and lesbian awareness and tolerance in general, but also to advocate such tolerance if it so decides, and restrict the contrary speech of one of its representatives." *Id.* at 1014.

Numerous other courts in various jurisdictions have likewise concluded that government employees, including teachers, have limited First Amendment rights when speaking within their official duties, as representatives of the state. For example, in *Johnson*, the Ninth Circuit emphasized that, when "a high school calculus teacher goes to work and performs the duties he is paid to perform, he speaks not as an individual, but as a public employee." 658 F.3d at 957. Because of the plaintiff's status as a government employee, the "school district [was] free to 'take legitimate and appropriate steps to ensure that its message is neither garbled nor distorted'" by individual messengers. *Id.* at 957; *see also, e.g.*, *Evans-Marshall v. Bd. of Educ. of Tipp City Exempted Vill. Sch. Dist.*, 624 F.3d 332 (6th Cir. 2011) (teacher's curricular speech was made pursuant to her duties as employee of board of education); *Brown v. Chicago Bd. of Educ.*, 824 F.3d 713 (7th Cir. 2016) (teacher was not speaking

as a citizen when he used a racial slur, and Board's policies were not so vague as to violate the Due Process Clause); *Bradley v. Pittsburgh Board of Ed.*, 910 F.2d 1172, 1176 (3d Cir. 1990) (holding that a public high school teacher had no right "to choos[e her] own curriculum or classroom management techniques in contravention of school policy or dictates," because "her in-class conduct is not [protected by the First Amendment].").

Teachers who provide school instruction in a K-12 classroom setting do not act as private citizens when they go to school and teach class, take "attendance, supervise[] students, or regulate[] their comings-and-goings; [they] act[] as a teacher—a government employee." *Johnson*, 658 F.3d at 967. They do not have an independent First Amendment right to instruct in a manner inconsistent with the curricula and standards set by the school. *See id.* at 970 ("Because the speech at issue owes its existence to Johnson's position as a teacher, [the school] acted well within constitutional limits in ordering Johnson not to speak in a manner it did not desire."); *cf. Ceballos*, 547 U.S. at 422 ("Ceballos did not act as a citizen when he went about conducting his daily professional activities, such as supervising attorneys, investigating charges, and preparing filings . . . . When he went to work and performed the tasks he was paid to perform, Ceballos acted as a government employee.").

Teachers' *private* First Amendment interests, of course, are not implicated. They remain free to propound their own opinions on any matters "on the sidewalks, in the parks, through the chat-rooms, at [their] dinner table, and in countless other locations." *Downs*, 228 F.3d at 1016; *Johnson*, 658 F.3d at 957 (same). But when they are "speaking as the government," *Downs*, 228 F.3d at 1016, and "conducting the education of captive audiences," they do not have the right "to cover topics, or advocate viewpoints, that depart from the curriculum adopted by the school system." *Mayer v. Monroe Cnty. Cmty. Sch. Corp.*, 474 F.3d 477, 479–80 (7th Cir. 2007). Therefore, the Teachers' claims fail because they have no First Amendment rights in the speech that is regulated by AB 715. Nor do Student-Plaintiffs have a First Amendment right to receive instruction inconsistent with school policy. *See Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 867 (1982) (the First Amendment right to receive information "follows ineluctably from the sender's . . . right to send" it); *Chiras v. Miller*, 432 F.3d 606, 618–20 (5th Cir. 2005) (concluding "the selection of curricular materials by the [State] Board [of Education] is clearly government speech" so "students have no

constitutional right to compel the Board" to allow use of certain textbooks).

AB 715 is aimed at regulating school curricula and instruction, which is government speech (if it is speech at all). For example, Section 2 of AB 715 regulates the content of school "textbook(s), instructional material, supplemental instructional material, professional development materials, or curriculum for classroom instruction." AB 715, § 2(a)(1). And it does so in a very limited way—by prohibiting only the "adoption" and "use" of such materials "if the use of the textbook, instructional material, supplemental instructional material, or curriculum would subject a pupil to unlawful discrimination pursuant to Section 220." *Id*. Importantly, AB 715 contemplates that the schools are doing the "adopting" and "using" for their own account in providing educational services to students. In other words, AB 715 does not purport to regulate private speech outside the K-12 instructional setting.

The same can also be said for Section 7 of AB 715, which regulates teacher instruction and school activities. Like Section 2, Section 7(a) of AB 715 regulates narrowly, prohibiting only instruction or activities that "promotes a discriminatory bias on the basis of race or ethnicity, gender, religion, disability, nationality, or sexual orientation." Similarly, Section 7(b) only purports to regulate teacher instruction in their official capacity as schoolteachers. It sets policies of the State with respect to classroom standards that it expects of all teachers in the State's K-12 schools. These are instructions of a school employer when the schoolteacher is acting officially as a California schoolteacher. Under the cases cited above, California is entitled to regulate how teachers instruct in its schools.

The Teachers' complaint and request for a preliminary injunction are premised on disagreement with the limits AB 715 may place on in-school instruction. Motion at 14 ("[AB 715] seeks to regulate teachers' classroom instruction . . .."); Compl. ¶ 258 ("Teacher Plaintiffs cannot know what they may and may not teach and say in class and what instructional materials they may use."); ¶ 268 (AB 715 impairs Teacher Plaintiffs' ability "to conform their speech in the classroom and during professional development trainings to the law's strictures;" ¶ 286 ("under AB 715, plaintiffs will be much more reluctant to discuss subjects related to Israel-Palestine, to answer students' questions on the subject, and to teach Palestinian perspective on the conflict . . . ."). *See also* Motion at 8 ("AB 715 will severely curtail Teacher Plaintiffs' ability to teach their students."). Given

the clear premise of their Complaint and Motion, Plaintiffs have pleaded themselves out of court. As noted, the Ninth Circuit and numerous other courts have held that California determines what and how instruction is given in its public schools. A public-school teacher's instructional speech is not subject to the constraints of constitutional safeguards. *Downs*, 228 F. 3d at 1013. After all, it is "the government itself speaking," and "when the State is the speaker, it may make content-based choices." *Id*. at 1011-13.

2. AB 715 Is Neither Impermissibly Vague Nor Overbroad.

Even assuming Plaintiff is correct that "teachers' instructional speech is entitled to some degree of First Amendment protection," Motion at 20, AB 715 is not impermissibly vague. A statute is impermissibly vague if it "fails to provide a reasonable opportunity to know what conduct is prohibited, or is so indefinite as to allow arbitrary and discriminatory enforcement." *United States v. Mincoff*, 574 F.3d 1186, 1201 (9th Cir. 2009). Plaintiffs correctly assert that, "when First Amendment freedoms are at stake, courts apply the vagueness analysis more strictly, requiring statutes to provide a greater degree of specificity and clarity than would be necessary under ordinary due process principles." Motion at 13-14 (quoting *Vill. Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982)). But "perfect clarity is not required even when a law regulates protected speech." *Cal. Tchrs. Ass'n v. State Bd. of Educ.*, 271 F.3d 1141, 1150 (9th Cir. 1982). Thus, "even when a law implicates First Amendment rights, the constitution must tolerate a certain amount of vagueness." *Id*. at 1151. Here, AB 715 is sufficiently clear to satisfy due process requirements.

The statute is clear in what it proscribes: "instruction . . . that promotes a discriminatory bias on the basis of ethnicity, gender, religion, disability, nationality, or sexual orientation." AB 715 § 51500(a). As Plaintiffs have conceded, that is not materially different from what was already required by the California Code of Education, Motion at 1, which Plaintiffs do not contend is vague on its face. Nor could they. "To the extent that any vagueness exists," it is "an inherent, irreducible part of any anti-discrimination ordinance and does not reach a 'real and substantial' amount of speech." *Good News Emp. Ass'n v. Hicks*, 223 F. App'x 734, 736 (9th Cir. 2007). Similarly worded anti-discrimination ordinances regularly survive vagueness challenges. *See, e.g., Hills v. Scottsdale Unified Sch. Dist. No. 48*, 329 F.3d 1044, 1056 (9th Cir. 2003) (school district policy prohibiting distribution of "religious"

literature was not unconstitutionally vague); *id.* ("Although not perfectly clear, the term 'religious' is a common term and does at least provide some degree of constraint on the District."); *Hicks*, 223 F. App'x at 736 (statute prohibiting discrimination on basis of "sexual orientation" was not impermissibly vague). Nothing in this statute is uniquely vague.

Plaintiffs' arguments to the contrary rest on a series of false predicates. First, they argue that, since AB 715 "purports to strengthen anti-discrimination protections for Jewish students" and, since existing law "already prohibits discrimination on the basis of race, religion, ethnicity, and national origin, . . . the only plausible inference to be made is that [AB 715] seeks to alter or expand the definition [of antisemitism] – but without statutory guidance on how it seeks to do so." Motion at 1. But, as a matter of logic, AB 715 cannot "alter or expand" the meaning of a term that is not "specifically define[d]." Moreover, AB 715 provides plenty of guidance as to what is prohibited under the statute: "antisemitic tropes," "conspiracy theories," "slurs," "discriminatory symbols and expressions," "discrimination by proxy by use of coded language," "generalizations about Jewish people," "vilification of Jews and Israelis," and "collective blame and generalizations about Jewish people." AB 715 Section 1(d). There is sufficient statutory guidance to infer what behavior is prohibited and what behavior is allowed. That is all that is required.

Plaintiffs also overlook the structure of AB 715, which includes an Office of Civil Rights and an Antisemitism Prevention Coordinator whose job is to advise and educate on antisemitism. AB 715 explicitly contemplates that teachers will receive "educational resources to identify and prevent antisemitism and other forms of discrimination and bias." *See* AB 715 Leg. Counsel's Digest at 1-2.

AB 715 also invokes California's longstanding Uniform Complaint Procedures. AB 715, § 2(c). Cases of alleged discrimination are adjudicated administratively and in the courts every day in California. Every anti-discrimination statute in California contemplates that the contours of permissible and impermissible speech and conduct will be determined on their facts, case by case. These case-by-case determinations will also provide guidance as to what classroom instruction is permissible under AB 715. The challenged provisions of AB 715 must be read in context with the statute as a whole. When so read, AB 715 provides more than sufficient guidance, defeating Plaintiffs' vagueness challenge.

Recognizing that AB 715 is no more unconstitutionally vague than any other statute prohibiting discrimination, Plaintiffs argue that AB 715's reference to the United States National Strategy to Counter Antisemitism ("Strategy") constitutes viewpoint discrimination. Motion at 20-22. But AB 715 does not require that schools follow the Strategy like a penal code. Instead, AB 715(1)(i) provides that the "Strategy . . . shall be *a* basis to inform schools on how to identify, respond to, prevent, and counter antisemitism." (emphasis added). "[T]he English indefinite article," a, is "equivalent to 'one' or 'any.'" *Universal Underwriters Ins. Co. v. Leskovar Motors, Inc.*, 1998 WL 94156, *1 (9th Cir. March 4, 1998) (quoting *Black's Law Dictionary* 84 (6th ed. 1990)); *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 633 F.3d 1158, 1171 (9th Cir. 2011) (explaining that by using "the indefinite article 'a' " in the phrase "a mark or trade name in commerce that is likely to cause dilution," Congress "indicate[d] that *any* number of unspecified, junior marks may be likely to dilute the senior mark") (emphasis added) (quoting 15 U.S.C. § 1225(c)). The Strategy is therefore relevant, and must be considered by schools, but that consideration does not preordain or mandate a particular conclusion by a school with respect to any particular textbook, lesson plan or classroom instruction. Likewise, none of the definitions of antisemitism referenced in the Strategy pre-ordain a particular result under AB 715. In fact, because AB 715 applies to *all* discriminatory instruction, it is just as likely to apply to one side of a viewpoint as the other. That is the exact opposite of viewpoint discrimination. *Menotti v. City of Seattle*, 409 F.3d 1113, 1130 n.29 (9th Cir. 2005) ("The Supreme Court has held unequivocally that it 'will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive.'" (quoting *United States v. O'Brien*, 391 U.S. 367, 383 (1968)).[36]

[36] Plaintiffs' "proof" that AB 715 always yields a conclusion contrary to their viewpoint is built on misreading, and in at least one instance, misquoting the Strategy. Plaintiffs criticize the Strategy because it supposedly "conflates antisemitism with antipathy toward or criticism of the State of Israel." Compl. ¶ 41(b). For support, Plaintiffs purport to quote a passage from page 9 of the Strategy. *Id.* But they misquote the passage in a crucial way. The relevant passage states that it is antisemitism when "Jewish students and educators ***are targeted for*** derision and exclusion on college campuses because of their real or perceived views about the State of Israel." Strategy, p 9. Plaintiffs cannot seriously debate that targeting Jews for their real or perceived views on Israel is antisemitism. It is a modern form of the collective guilt trope that has dogged Jews for thousands of years. Instead, Plaintiffs' complaint misquotes the Strategy by dropping the words "are targeted for." They use the word "face" instead. Compl. ¶ 41(b). Facing derision and exclusion is very different from being *targeted* for it. Targeting bespeaks intent and animus, which provides the context that distinguishes pure speech from antisemitism, a context that the Strategy observes and Plaintiffs obscure. Context, of course, matters too for a fair reading of the International Holocaust Remembrance Association ("IHRA") definition

Plaintiffs' overbreadth arguments are similarly unsubstantiated. They argue that AB 715 "appear[s] to forbid factually accurate, First-Amendment-protected speech and the type of discussions that are crucial to students' intellectual development." Motion at 22. On the contrary, "teacher instruction" that is "factually accurate" is exactly what the statute requires. AB 715 § 51500(b); *see also* AB 715 § 51501(b) ("Instructional materials . . . shall be factually accurate"). Plaintiffs cite absolutely nothing in support of their suggestion that "factually accurate" speech will be forbidden, instead relying on pure conjecture that the statute "redefin[es] discrimination to encompass information or opinions that reflect negatively on a foreign government." Motion at 22. Such claims are purely speculative. "Because a facial overbreadth challenge is a strong remedy, the 'mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render it susceptible to an overbreadth challenge.'" *Klein v. San Diego Cnty.*, 463 F.3d 1029, 1038 (9th Cir. 2006) (quoting *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 800 (1984)).

At root, AB 715 is about whether a teacher's classroom instruction will discriminate or improperly inject advocacy, personal opinion, or bias. In other words, it is about whether a teacher's instruction causes harm. For the answer to that question, a teacher cannot take refuge in the nuances of the various definitions of antisemitism referenced in the Strategy, which are beside the point.

In her Declaration, Ms. Prichett declares that she wants to continue teaching that: "Israeli settlers impose their will on Palestinians, steal their land, and threaten their lives on a daily basis; Palestinians living in the West Bank and Gaza, under Israeli occupation have almost no rights at all;" "the international consensus is that Israel is occupying Palestine;" and "most international human rights organizations have concluded that Israel is committing genocide against the Palestinians." *See*

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of antisemitism that Plaintiffs use misleadingly to predicate so much of their argument. *See* Motion at 1:15, p. 5:20 – 6:3; Compl. ¶ 41(i) (quoting IHRA definition and examples). Whether speech that fits the IHRA definition is antisemitism depends on context in the particular case, which is why IHRA is informational, not mandatory. It serves as a tool to identify antisemitic animus where relevant, for example, to evaluate a claim of prohibited discrimination or harassment; it does not mandate suppression or punishment of protected speech. Furthermore, IHRA expressly states that "criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic." It distinguishes between legitimate political speech and antisemitism with a list of contemporary examples of when attacks on Israel cross the line into antisemitism—e.g., when they invoke classic antisemitic tropes that portray the State of Israel as possessed of demonic powers, call for the destruction of the Jewish State along with its Jewish inhabitants, or apply standards to the State of Israel that are applied to no other country.

Prichett Decl., ¶¶ 12-13, 41, 44, & 48. She knows very well that her teaching is riddled with personal advocacy, opinion and bias on hotly contested topics closely identified with her Jewish students, and wants the Court to provide her blanket permission to do so without having to consult with the Antisemitism Prevention Coordinator, her school, or her school board. In effect, she proclaims that she is sovereign in her classroom, regardless of the impact and effect of her teaching on her Jewish students, and she wants this Court to protect her from accountability if her classroom instruction creates a hostile environment for her Jewish students, or causes other students to bully, ostracize or vilify them.

The Legislature has properly determined that the state has an interest in promoting a public-school environment that does not have teachers using their classrooms as a bully pulpit to advance relentless one-sided bias, advocacy and personal opinion in a manner that creates an antisemitic learning environment. Nothing in the Constitution requires the Court to provide this protection especially in the context of a facial challenge to AB 715. "[M]argin[al]" vagueness does not "warrant facial invalidation" so long as "it is clear what the statute proscribes 'in the vast majority of its intended applications.'" *Cal. Tchrs.*, 271 F.3d at 1149 (quoting *Hill v. Colorado*, 530 U.S. 703, 733 (2000)). Even if Ms. Prichett is correct that her school may decide AB 715 requires her not to continue instructing on Israel, Palestine and colonialism in the manner she proposes, she has not demonstrated that AB 715 is unclear as generally applied to all forms of discrimination, or so unclear as to antisemitic discrimination that AB 715 is facially invalid.

3. Plaintiffs Cannot Satisfy the *Hazelwood* Test.

Assuming arguendo that regulations of instructional speech are subject to the test articulated in *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988) and such regulations must be "reasonably related to legitimate pedagogical concerns," Plaintiffs cannot establish a First Amendment violation. Plaintiffs insist that "there is no legitimate state interest" in prohibiting criticism of a government, a foreign country or a particular political philosophy. Motion at 24. But Plaintiffs too narrowly characterize the speech sought to be limited by the statute. The "pedagogical interest" of AB 715 is to "reduc[e] antisemitism in schools and ensur[e] that no pupil faces an antisemitic environment." AB 715 § 1(h). It is certainly a "legitimate pedagogical concern" of California to "chill"

speech that gives rise to such effects. Put simply, California had a legitimate (if not compelling) interest in preventing students like Ella and Lev from being called a "murderer" and a "terrorist" and being hated and shamed at school because of their identity, religion or nationality. It certainly has a legitimate interest in stopping teachers who use their authority as teachers to promote the idea that "all Jews are bad people." That pedagogical imperative should suffice to defeat Plaintiffs' facial challenge to AB 715. That some arguably protected speech criticizing Israel **may** inadvertently be chilled is an acceptable side effect of that "legitimate pedagogical concern." *Hazelwood*, 484 U.S. at 273. *See, e.g.*, *Arce v. Douglas*, 793 F.3d 968, 986 (9th Cir. 2015) (statute prohibiting courses and classes that "advocate ethnic solidarity instead of the treatment of pupils as individuals" was "reasonably related to the state's legitimate pedagogical interest in reducing racism").

C. Other Factors Weigh Heavily Against Granting A Preliminary Injunction.

The remaining preliminary injunction factors—irreparable injury, the balance of equities, and public interest—also weigh against granting a preliminary injunction. Plaintiffs offer no arguments for irreparable harm; they seek to establish irreparable harm on the automatic-irreparable-harm-from-constitutional-injury doctrine that they mention in passing. But, given their failure to demonstrate a likelihood of success on their First Amendment claims, Plaintiffs also failed to show irreparable injury. *See Cooley v. Cal. Statewide L. Enf't Ass'n*, 2019 WL 331170, at *4 (E.D. Cal. Jan. 25, 2019) (finding no irreparable harm because plaintiff did not demonstrate likelihood of success); *Am. Soc'y of Journalists & Authors, Inc. v. Becerra*, 2020 WL 1444909, at *11 (C.D. Cal. Mar. 20, 2020) (holding that, "where a constitutional claim is 'too tenuous,'" a presumption of irreparable harm "is not warranted"). Further, their alleged irreparable harm is entirely speculative. *See, e.g.*, Compl. ¶ 8 ("the new law leaves Teacher Plaintiffs *fearing they will* be charged with engaging in unlawful discrimination"); *id.* ¶ 259 ("they *will likely* self-censor on topics related to Israel-Palestine, and refrain from teaching the lessons they have taught in the past, in order to avoid negative professional consequences") (emphasis added). These allegations do not establish likelihood of irreparable harm. "'[P]laintiffs seeking preliminary relief [must] demonstrate that irreparable injury is *likely* in the absence of an injunction,' not merely that it is possible." *Becerra*, 2020 WL 1444909, at *11 (quoting *Arc of Cal. v. Douglas*, 757 F.3d 975, 990 (9th Cir. 2014)) (emphasis in original).

Likewise, Plaintiffs devote no time to the remaining two factors: the balance of equities and public interest. "When the government is a party, these last two factors merge." *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). Plaintiffs make no effort to show that a preliminary injunction is in the public interest, nor do they to even *try* to account for the harm that would result from a preliminary injunction to all K-12 students, not limited to Jews. In passing AB 715, the California Legislature has found it "would promote the public interest." *Becerra*, 2020 WL 1444909, at *11; *see also id*. ("The public interest may be declared in the form of a statute.") (quoting *Golden Gate Rest. Ass'n v. City & Cnty. of San Francisco*, 512 F.3d 1112, 1127 (9th Cir. 2008); Sen. Education & Judiciary Com. Rep. on A.B. 715, Sess. 2025-26, at p. 8 (AB 715's goal was to "foster safe and supportive schools for all students"). Even *if* Plaintiffs had raised serious First Amendment questions and even *if* they had shown that they were likely to succeed on the merits (which they have not), there are times when "the implications of being mistaken . . . indicate it is in the public interest to deny the injunction, and the balance of the equities tips in the Government's favor." *Tracy Rifle & Pistol LLC v. Harris*, 118 F. Supp. 3d 1182, 1193-94 (E.D. Cal. 2015) (denying preliminary injunction motion seeking to enjoin the state from enforcing California statute on gun advertising, where plaintiffs were likely succeeding on the merits on their First Amendment claim); *Stavrianoudakis v. U.S. Dep't of Fish & Wildlife*, 2022 WL 138601, at *71 (E.D. Cal. Jan. 13, 2022) *rev'd in part, on other grounds* (denying preliminary injunction motion because "consideration of the balance of equities and public interest prongs of the applicable standard weigh in favor of defendants") (First Amendment challenge to an environmental statute). These are such times.

III. CONCLUSION

For the reasons set forth above, the Court should deny Plaintiffs' Motion.

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