DAVID M. ROSENBERG-WOHL (Cal. Bar No. 132924)
HERSHENSON ROSENBERG-WOHL,
A PROFESSIONAL CORPORATION
3080 Washington St.
San Francisco, CA 94115
(415) 317-7756
david@hrw-law.com
Attorneys for
Bay Area Jewish Coalition,
San Francisco Jews in School,
CHAI Marin,
Jewish Coalition of Berkeley,
Oakland Jewish Alliance,
Palo Alto Jewish Alliance, and
Bay Area Center to Counter Antisemitism and Hate, Inc.,
Proposed Amicus Curiae

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

[PROPOSED]
AMICUS CURIAE BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION BY:
BAY AREA JEWISH COALITION, SAN FRANCISCO JEWS IN SCHOOL, CHAI MARIN, JEWISH COALITION OF BERKELEY, OAKLAND JEWISH ALLIANCE, PALO ALTO JEWISH ALLIANCE, AND
BAY AREA CENTER TO COUNTER ANTISEMITISM AND HATE, INC.

Judge: Honorable Noël Wise
Ctrm: 3, 5th Floor

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In enacting AB 715, the Legislature and the Governor established a framework for assuring that the State's public schools remain free of discrimination. The State of California, a Defendant in this case, is not at all likely to argue that its present enforcement of State law prohibiting discriminatory instruction in schools is inconsistent – a primary justification for the enactment of AB 715. But we grassroots organizations – the volunteer-led Bay Area Jewish Coalition, San Francisco Jews in School, CHAI Marin, Jewish Coalition of Berkeley, Oakland Jewish Alliance, Palo Alto Jewish Alliance, and the Bay Area Center to Counter Antisemitism and Hate, Inc. -- are focused on protecting all students, including Jewish students, in the Bay Area's K-12 schools from discrimination (the "BAJ grassroots groups"), the volunteer-led groups have submitted numerous complaints to Local Education Agencies ("LEAs") about antisemitic conduct specifically, and have observed how the LEAs delay, deny, or ignore those complaints in ways that can be not just inconsistent but arbitrary and capricious. There are dozens of complaints that have received inconsistent responses and disparate enforcement of the law by the California Department of Education ("CDE"). This brief delineates this inconsistency. California students need AB 715 to create clear guidelines, and add transparency and accountability to ensure consistent, effective protection of students' rights.

At the same time, the BAJ grassroots groups have every reason to believe that the CDE will welcome the framework, additional support and direction now provided by AB 715 and come to embrace a consistent, legally appropriate approach to enforcing antidiscrimination law. It needs time to do so. A preliminary injunction stopping its efforts at consistency does not just

delay needed justice to California's K-12 students, without having developed the consistency directed by AB 715, adjudication of the law is not yet ripe.

AB 715 neither establishes nor recommends the establishment of a definition of antisemitism. Rather, it clarifies the Legislature's expectation that the California Department of Education ("CDE"), and the local educational institutions under its aegis, enforce State law properly and consistently, protecting students. It provides a framework to enforce existing law.

The BAJ grassroots groups submit, by this brief, numerous examples of CDE determinations of discrimination complaints arising out of CA K-12 public schools[1] that demonstrate the inconsistent application of law that AB 715 aims to address – and that, if given time to enact the framework directed by that law – CDE will be able to do.

I. AB 715 Seeks To Clarify and Unify CDE Guidance.

AB 715 clarifies, and as a result, will likely affect and unify CDE guidance regarding prohibiting discrimination in three principal areas:

A. Classroom instruction should be based on the presentation of facts and exclude political advocacy, *see* EC 51500(b);

B. Antisemitism has consequences even where direct harm to a Jewish student is absent because no Jewish student is present, *see* EC 51500(a)(2); and

[1] Discrimination complaints (*i.e.*, "UCP complaints"), are made first at the local school district and then may be appealed to the CDE. *See* EC section 33315; Title 5 CCR section 4600-87). Such CDE determinations are identified by year and number (*e.g.*, 2025-0129) and will be designated herein on that basis (*i.e.*, CDE 2025-0129). As indicated in the CDE DECISIONS table (page iv, *supra*), the decisions accompany this MPA as Exhibits A-Q, in order of numerical/calendar order of processing, *i.e.*, Exh. A = 2024-0133, Exh. B = 2024-0151, Exh. P = 2025-0200. A discrete CDE response (without a processing number) is Exh. Q (10/3/24).

C. The process of handling instruction that violates the law because it is discriminatory should be open to the public, to assure scrutiny of a consistent, appropriate approach to similar factual situations, *see*, *e.g.*, EC 280(a) (CDE to issue, annually, a bulletin describing protections, requirements and responsibilities); EC 60151(a)(2)-(4) (CDE corrective action should include requiring regular reporting to the new Office of Civil Rights ("OCR"), an improvement plan coordinated with the new position of the OCR's Antisemitism Prevention Coordinator, immediate and permanent omission of instructional materials, and use of alternative instructional materials, *inter alia*); EC 33802(b) and (d) (annual public disclosure of CDE determinations); EC 60152(b)(2) (public disclosure by third party vendors of instructional materials determined to be antisemitic); and EC 244(a)(2) (governing board of school district should consider restorative justice practices).

(A) Facts, not political advocacy in the classroom

AB 715 provides guidance to the CDE that it shall consider the role of a teacher to be exclusively as an instructor, not a political advocate, and to consider the impact of a teacher's personal advocacy messaging on the dignity and education of their students, Jew and non-Jew alike. *See* EC 51500(b) ("Teacher instruction shall be factually accurate and align with the adopted curriculum and standards … and be consistent with accepted standards of professional responsibility, rather than advocacy, personal opinion, bias, or partisanship").

1. Factual accuracy

In schools, BAJ grassroots groups have seen that students are often presented with biased and false information about the State of Israel, mischaracterizing the Jewish people's historical connection to their ancestral homeland, the internationally recognized basis for the re-establishment of the State, and the nature of its government.

A common example of biased and incorrect information is false maps that erroneously eradicate the State of Israel and label it, in its entirety or in part, as "Palestine." The CDE has chosen on occasion to require some LEAs to present an accurate map of the world, such as CDE 2025-0200 (content of a multicultural fair), CDE 2024-0133 (biased, misrepresentation of Israel), and CDE 2025-0152 (map of Israel labeled as Palestine).

These stand in stark contrast to cases where the CDE dismissed identical concerns about factual presentation, like CDE 2025-0129 (map of Israel labeled as Palestine, and multicultural fair content) and CDE 2025-0112 (Crusades said to justify Hamas resistance; Palestine as a name for the "Holy Land").

Some districts remain in opposition to any attempt by CDE to enforce the teaching of facts. *See, e.g.,* request for reconsideration, CDE 2025-0008: "District denies and questions the definition the CDE uses to determine what "materials and instruction discriminated against Jewish students;" a teacher *should* teach unbalanced information to correct students' "prior knowledge."

2. Advocacy, bias, and partisanship

"When [a high school teacher] goes to work and performs the duties he is paid to perform, he speaks not as an individual, but as a public employee, and the school district is free to "take legitimate and appropriate steps to ensure that its message is neither garbled nor distorted." *Johnson v. Poway Unified Sch. Dist.,* 658 F.3d 954, 957 (9th Cir. 2011) (citing *Rosenberger v. Rector & Visitors of the Univ. of Va*., 515 U.S. 819, 833, 115 S. Ct. 2510, 132 L. Ed. 2d 700 (1995). *See Garcetti v. Ceballos*, 547 U.S. 410, 421, 126 S. Ct. 1951, 164 L. Ed. 2d 689 (2006) ("when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline").

The Supreme Court has long held that districts have a responsibility to regulate classroom speech and instruction. The State and districts have an obligation to ensure that instruction serves the educational and social interests of students, not teachers. "The State exerts great authority and coercive power through mandatory attendance requirements, and because of the students' emulation of teachers as role models and the children's susceptibility to peer pressure." *Edwards v. Aguillard*, 482 U.S. 578, 584, 107 S.Ct. 2573, 96 L.Ed. 2d 510 (1987). To permit a teacher to use the classroom as a soapbox or seek to influence the politics or religion of students under their control is at odds with the interests of the State. "Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family. Students in such institutions are impressionable, and their

attendance is involuntary. … The State exerts great authority and coercive power through mandatory attendance requirements, and because of the students' emulation of teachers as role models and the children's susceptibility to peer pressure." *Id*. *See also Webster v. New Lenox School Dist. No. 122*, 917 F.2d 1004, 1007 (7th Cir. 1990) (internal citation omitted) ("Parents have a vital interest in what their children are taught. Their representatives have, in general, prescribed a curriculum. There is a compelling state interest in the choice and adherence to a suitable curriculum for the benefit of our young citizens and society. It cannot be left to individual teachers to teach what they please"); *cf. Melzer v. Bd. of Educ.,* (2d Cir. 2003) 336 F.3d 185, 198 (2nd Cir. 2003) (to be a public school teacher "requires a degree of public trust not found in many other positions of public employment," such that the government may even regulate "off-duty affiliations").

BAJ grassroots groups have seen the CDE struggle to find a consistent approach to addressing discriminatory political activism in schools. The CDE's inconsistent approach includes how to address teachers' political clothing (*e.g.*, a keffiyeh, or a graphic shirt with slogans like "Free Palestine"), posters (*e.g.*, "Resistance until liberation"), and political pins.

Are these appropriate in the classroom? And if so, under what circumstances? Compare CDE 2025-0059 (political attire and political items displayed in classroom constitute instruction promoting discriminatory bias) (San Francisco USD) and CDE 2025-0153 (flag at school), with CDE 2025-0112 (political attire and political items displayed were not discriminatory; teacher's political criticism of Israel uncorroborated by other students) (Berkeley USD), and CDE 2025-0092 (political attire and political pin were not discriminatory) (Cupertino

USD). And on other occasions, like with CDE 2025-0133 (Mountain View-Los Altos Union HSD), the CDE decided not to weigh in on political attire, stating, "The allegations and findings regarding Allegation One are outside of the investigation timeframe. The CDE will not review these on Appeal."

(B) Antisemitism doesn't require direct harm to Jews

AB 715 provides guidance to the CDE that it shall consider as discriminatory antisemitic conduct and instruction from a teacher, even if there is no direct harm to Jews. *See* EC 51500(a)(2) ("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").

The CDE has seen a resurgence of cases where LEAs have failed to acknowledge discrimination. Consider CDE 2025-0040 (religious-based discrimination "because there are too many Jews") (Tamalpais Union HSD), CDE 2024-0133 (biased lesson) (Mountain View-Los Altos Union HSD), CDE 2025-0008 (biased instruction and lesson content) (Campbell Union HSD), CDE 2025-0186 (discriminatory speaker at a school sponsored activity) (Mountain View-Los Altos Union HSD), CDE 2025-0129 (Palestinian booth erasing Israel at multicultural fair at school not discriminatory because Jewish students not forced to visit) (Santa Clara USD), CDE 2025-0153 (flag at school) (Oakland USD), and CDE 2025-0200 (content of a multicultural fair) (Discovery Charter School).

AB 715 clarifies that it does not serve the purposes of California for non-Jews to be taught false information and to be indoctrinated into hating Jews by convincing themselves that it is only a historical event involving Jews or a particular idea shared by many Jews that they hate.

(C) Remedies, transparency, and due process to ensure consistent, appropriate enforcement

1. Effective remedies

Even when the CDE has determined that K-12 students were directly harmed by antisemitic discrimination, the "corrective action" imposed on districts has been confined to a single one-hour anti-discrimination training for staff. *See* CDE 2024-0133 (Santa Clara USD); CDE 2025-008 (Campbell Union HSD); CDE 2025-0059 (San Francisco USD). Only in one case, CDE 2025-0194 (San Ramon Valley USD), was the district even required to touch on antisemitism. In a couple of cases, BAJ grassroots groups have seen districts required to adopt a new "policy" as a preventative measure, *see* CDE 2025-0186 (Mountain View-Los Altos HSD); CDE 2025-0200 (Discovery Charter School).

Non-discrimination trainings and policies have been in existence for years, yet antisemitic conduct is surging across our schools. Continuing to implement generalized anti-discrimination training is an insufficient mechanism to address it.

Under AB 715, school districts themselves are to be proactive. At present, the only specified guidance for districts dealing with discriminatory instructional material is that may not "approve the [continued] use" of these materials, *see* EC 244(a) [now 244(a)(1), as amended], and the "corrective action" that may be imposed upon the district by CDE is unspecified, *see* EC 60151 [now EC 60151(a)(1), as amended].

Now, school districts are responsible not just to take steps to address the discrimination, *see* EC 244(a)(2) (consider restorative justice practices), but school districts are to make sure that they assure the non-discriminatory nature of the professional development materials used by their staff. Specifically, EC 60152(a) adds that "an organization contracted to provide any textbook, instructional material, professional development material, supplemental instructional material, or curriculum violates subdivision (a) of Section 244, the local educational agency or the Superintendent shall notify the organization that it must take corrective action." EC 60152(b) adds consequences that if the organization contracted is determined to be in such a violation, it shall both: "(1) Reimburse all funds received for their services from the local educational agency; and (2) (A) Disclose the determination that they have been found in violation of the state's antidiscrimination laws by notifying every local educational agency that they are contracted with to provide services for and as part of any proposal to contract their services with a local educational agency. And (B) The disclosure made pursuant to subparagraph (A) shall conspicuously display hyperlinks to the published documentation of the determination." AB 715 adds a separate provision in EC 244(a)(1), incentivizing the governing board of a school district to prohibit antisemitic professional development.

2. Transparency

Under existing law, there is no transparency, because CDE decisions, while public, are not publicly distributed. AB 715 makes clear that adequate enforcement requires transparency throughout the K-12 system. The consistency of CDE's overall responsibility is now assisted by the involvement of the new CA Office of Civil Rights and Antisemitism Prevention Coordinator

(APC). *See*, *e.g.*, EC 280(a) (CDE to issue, annually, a bulletin describing protections, requirements and responsibilities); EC 60151(a)(2)-(4) (CDE corrective action should include requiring regular reporting to the new OCR, an improvement plan coordinated with the new position of APC, immediate and permanent omission of instructional materials, and use of alternative instructional materials, inter alia); EC 33802(b) and (d) (annual public disclosure of CDE determinations).

3. Due process

Where school districts are dilatory in conducting investigations, parents are now able to bypass the district and appeal directly to the CDE. At present, even where the CDE has determined a teacher's conduct exposed a student to discrimination, far too often that determination comes far too late to be of much value, especially since school districts have arrogated to themselves the ability (contrary to present law) to unilaterally extend the 60 days they have to investigate a complaint. Compare CDE 2024-0151 (teacher's pressure on Jewish student to cancel event because it would be a "bad look" for Jews was discriminatory) (Santa Clara USD) (4 months unilateral extension by district to act); CDE 2024-0133 (biased lesson) (Mountain View-Los Altos HSD) (5 months unilateral extension by district to act); CDE 2025-0152 (discriminatory, biased materials) (Oakland USD) (15 months); and CDE 2025-0154 (discrimination) (Oakland USD) (17 months).

Before AB 715, the CDE claimed it had no power to act even where the school district investigating the complaint dragged its feet. *See* CDE denial, 10/3/24 ("The CDE is unable to review your appeal because your request did not include the following: A copy of the LEA IR").

Here, the appeal was partially submitted due to the LEA's reluctance to investigate the UCP complaint and its statement that an IR would not, in fact, be issued.

II. Evaluation of AB 715 is premature.

The Legislature's effort at improving consistent and appropriate enforcement of existing law will take some time to roll out, but it is essential. They are important mechanisms in protecting students from discrimination and ensuring their right to quality education free of bias.

There is no "unqualified right to pre-enforcement review of constitutional claims in federal court," and Plaintiffs cannot "justify federal intervention" by asserting a "chilling effect" from a law they say is "potentially unconstitutional." *Whole Woman's Health v. Jackson*, 595 U.S. 30, 49, 142 S.Ct. 522, 211 L. Ed. 2d 316 (2021) (quotations and citation omitted). AB 715 makes it incumbent on the State to enforce existing discrimination law; it does not change the scope of antisemitism itself. Plaintiffs' concerns about how the law will be applied do not justify a facial attack. Rather, prudence requires waiting and letting the facts on the ground develop as the CDE begins to interpret AB 715. *See* 13A Charles A. Wright et al., Federal Practice and Procedure § 3532.2, at 138 (1984) ("many cases deny ripeness on the straightforward ground that the anticipated events and injury are simply too remote and uncertain to justify present adjudication").

Plaintiffs have not identified any particular determination made by the CDE that is problematic, much less one that is likely to be encouraged by AB 715. *See, e.g., New Hanover Township v. United States Army Corps of Engineers*, 992 F.2d 470, 473 (3d Cir. 1993) (even where one agency permit had been granted that could have led to construction alleged to be

problematic, review would await the issuance of the second permit that would greenlight the activity). "The mere fact that close cases can be envisioned does not render an otherwise permissible statute unconstitutionally vague." *Edge v. City of Everett*, 929 F.3d 657, 666-667 (9th Cir. 2019) (citing *U.S. v. Williams*, 553 U.S. 285, 305-06, 128 S.Ct. 1830, 170 L.Ed.2d 650 (2008) (internal quotations omitted).

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Respectfully submitted,

David Rosenberg-Wohl

David M. Rosenberg-Wohl

HERSHENSON ROSENBERG-WOHL
A PROFESSIONAL CORPORATION