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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

MILIANI RODRIGUEZ; SANDRA RAMIREZ; RAUL LEON; PERLA PENALBER; KARESHA BOYD; D'ARCY VILLERE; BRENDA CONTRERAS; AUDREY KITTY CASAS; BRENDA RIVERA; CYNTHIA PÉREZ; NORMA SANDOVAL; ARELI LANDA; HERBERT JAMES HOPKINS, ANGELICA G., through her guardian ad litem, ANGELA CARDENAS GUTIERREZ; TRUE NORTH ORGANIZING NETWORK; ALIANZA COACHELLA VALLEY; AND INLAND CONGREGATIONS UNITED FOR CHANGE,

Plaintiffs,

v.

STATE OF CALIFORNIA; STATE ALLOCATION BOARD; OFFICE OF PUBLIC SCHOOL CONSTRUCTION; STATE SCHOOL BUILDING FINANCE COMMITTEE; CALIFORNIA DEPARTMENT OF EDUCATION; AND DOES 1-100,

Defendants.

Case No. 25CV150626

ASSIGNED FOR ALL PURPOSES TO:
JUDGE PATRICK R. MCKINNEY II
DEPARTMENT 18

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Date: May 20, 2026
Time: 1:30 p.m.

Trial Date: Not set
Action Filed: October 23, 2025

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INTRODUCTION

Defendants share the goal of ensuring that all school districts have equitable access to financial assistance from the state School Facility Program (SFP) to modernize school facilities. Indeed, defendants are implementing reforms enacted by the Legislature in July 2024 in furtherance of this goal, including by distributing funds from bonds authorized by California voters in November 2024 for the SFP. As a result, hundreds of districts—including districts plaintiffs identify as "low-wealth" districts—are expected soon to receive state funding sought for critical capital projects, including to address immediate health and safety hazards. Plaintiffs' belated request to freeze further distributions of funds for the duration of this action would harm these districts and their students, cause uncertainty and chaos, and lacks any underlying legal merit. Their request should be denied.

Plaintiffs fail to show that allowing schools to receive SFP funding for facility projects while this case proceeds would cause them irreparable harm. Just two plaintiffs are students, and one of their districts is expected to soon receive nearly $5.8 million in SFP funds it has been seeking for a modernization project. The remaining plaintiffs—including parents (none of whom are guardians ad litem), teachers, school staff, a pastor, and three organizations—fail to show that they face any irreparable harm if apportionments of SFP modernization funds continue. At the same time, because an injunction would halt and jeopardize disbursement of SFP funds authorized by state voters for critically needed school upgrades that districts have been awaiting in most instances for several years, the equities tip decidedly against preliminary relief.

Plaintiffs also fail to show they are likely to establish that the SFP modernization program is clearly and unmistakably unconstitutional, as necessary to enjoin a statutory program, particularly one designed to address equity concerns and endorsed by state voters. The SFP does not allocate modernization funds or draw distinctions on the basis of "district wealth," as they contend. And plaintiffs fail to show that the program is causing educational opportunities in plaintiffs' or other districts to fall fundamentally below prevailing statewide standards, as they must to establish a violation of students' rights to educational equity under the State constitution.

Plaintiffs' request for preliminary injunctive relief, therefore, should be denied.

BACKGROUND

The criteria and processes under which California school districts may apply for and receive funding for school facility projects under the SFP, and other pertinent background, is discussed in greater detail in the accompanying Declaration of Michael Watanabe, Deputy Executive Officer for the Office of Public School Construction (OPSC) (Watanabe Decl.), the agency that administers the SFP. Salient points include:

- The SFP provides more funding to school districts (districts) for new construction at existing and new school sites than for facility modernization, and studies on which plaintiffs themselves rely conclude that SFP funding for new construction is "much higher" for lower-wealth districts on a per-pupil basis. Total SFP funding, likewise, has been higher among "low-wealth" districts as defined by plaintiffs; i.e., those with the lowest assessed property values per-pupil (AVPP) according to plaintiffs' data. (Watanabe Decl. ¶ 45, 49–51.)

- Local sources are by far the primary source of funding for school facility projects statewide. The SFP merely supplements local funding. (Watanabe Decl. ¶ 11.)

- The SFP's "financial hardship" program enables districts with limited ability to raise local matching funds to access SFP funding with no contribution or a reduced share of matching funds, and several of plaintiffs' own districts have obtained such hardship grants. Plaintiffs' "expert" recognizes that various factors apart from district wealth affect voter support for local school bond measures. (Watanabe Decl. ¶¶ 30–38; 66.)

- Districts are responsible for maintaining their facilities in good repair, and determine whether and when to seek SFP funding and/or raise local funds for facility projects. (Watanabe Decl. ¶¶ 16–19, 41–44.) Allegations of poor conditions at a school, standing alone, are not probative of alleged inequities between districts in accessing SFP funding or of any causal link to the SFP modernization funding system.

- The Legislature in July 2024 adopted reforms to help ensure equitable access to SFP modernization funding in Assembly Bill (AB) 247. Voters authorized these measures to take effect under Proposition 2 in November 2024. An injunction would halt distribution of $400 million in funding authorized under Proposition 2 to small districts, $115 million for testing and remediation of lead in school drinking water systems, and delay or jeopardize $2.4 billion in state funding for other modernization and hazard remediation projects, including in plaintiffs' own districts. (Watanabe Decl. ¶¶ 53–57, 68–80 & Ex. F; RJN, Exs. A-B.)

ARGUMENT

I. PLAINTIFFS DO NOT FACE IRREPARABLE HARM IF THEIR MOTION IS DENIED

Plaintiffs fail to demonstrate they are likely to be irreparably harmed if SFP modernization apportionments continue while their claims remain pending.

Plaintiffs' assertion of irreparable harm rings hollow in light of their substantial and unexplained delay in seeking interim injunctive relief. Plaintiffs and their counsel, some of whom threatened litigation against the State during deliberations over AB 247 on the same bases asserted here (see Watanabe Decl. ¶ 56 & Ex. C), delayed more than *20 months* since AB 247 was enacted—when SFP was distributing state funding available before Proposition 2 (*id*. ¶ 9)—and over *16 months* after voters authorized bonds to fund the SFP under Proposition 2, before moving on March 6, 2026, to preliminarily enjoin further apportionments of SFP modernization funds. The court must consider plaintiffs' delay in determining "what weight to give plaintiffs' claim of imminent irreparable injury." (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1481–1482 (*O'Connell*) [holding trial court improperly failed to take into account that "[p]laintiffs, and their counsel" were "well aware" at the beginning of the school year that certain high school seniors were at risk of being denied diplomas, but failed until just several months before the end of the school year to seek an injunction].) Plaintiffs' delay casts substantial doubt on their claim of irreparable harm if preliminary relief is denied.

Plaintiffs, additionally, fail to identify any cognizable irreparable harm they are likely to face. To support their request, plaintiffs must demonstrate that a "*plaintiff* is likely to sustain" irreparable harm if their motion is denied. (*White v. Davis* (2003) 30 Cal.4th 528, 554 (*White*), italics added.). Plaintiffs argue that absent an injunction, defendants will continue to allocate remaining Proposition 2 modernization funds and that plaintiffs will be denied "educational opportunities" allegedly "tied to those funds." (Pltffs.' Mem. iso Motion (Mem) at 14:10–15.) Only two plaintiffs, however, are students. This is not a class action, none of the parent-plaintiffs has been appointed as a guardian ad litem for any plaintiff who is a minor, and the organizational plaintiffs are pursuing claims as taxpayers, not on behalf of student members, if any. (First Am. Compl. (FAC) ¶¶ 24–27.) Plaintiffs who are not students do not contend, let alone establish, that they would suffer irreparable harm if preliminary relief is denied, and those plaintiffs cannot show irreparable harm based on their interests as taxpayers. (*White*, *supra*, 30 Cal.4th at p. 557.)

As for the two students: plaintiff Miliani Rodriguez is a senior at Coachella Valley High School (CVHS) and may be expected to graduate by mid-June, just weeks after the hearing on

plaintiffs' motion, and long before any of the apportionments plaintiffs seek to enjoin would begin in the Fall of this year. (See M. Rodriguez Decl. ¶ 2; Watanabe Decl. ¶ 25.) Plaintiff Rodriguez, thus, does not face any harm if distribution of SFP modernization funds continues this Fall. Moreover, her district has potential modernization eligibility for at least $23.7 million but has not sought to establish or utilize it. (Watanabe Decl. ¶ 81.) Thus, it is speculative whether her district would seek to establish eligibility for or seek modernization funding for CVHS preserved by a preliminary injunction or be entitled to greater funding under any new criteria necessitated by a final judgment.

The other student, Angelica G., is a sophomore at San Bernadino High School (SBHS) in San Bernadino City Unified School District (SBUSD). Notably, SBUSD is expected to receive an apportionment of $5.78 million from the SFP in April 2026 for modernization at SBHS, including to demolish and rebuild several classroom buildings. (Watanabe Decl. ¶ 82.) In addition, SBUSD has received several other SFP modernization grants for permanent structures at SBHS since 2008, totaling $18.8 million, making those buildings ineligible for further grants until 2033 or later. (*Ibid*.) Thus, it remains speculative whether SBUSD would be eligible for, seek, or be entitled to any further or greater modernization funds for SBHS preserved by an injunction.

Even if irreparable harm to students who are not plaintiffs could properly be taken into account, plaintiffs fail to establish that any harm to educational opportunities for students in "low-wealth" districts would be likely or irreparable if interim relief is denied. Plaintiffs cannot demonstrate what, if any, *greater* SFP modernization funding a district would be able to receive, or might pursue, beyond any being pursued already, under any new program criteria necessitated by a final judgment in plaintiffs' favor. Moreover, plaintiffs fail to and cannot establish that poor conditions at any particular school are the result of SFP modernization funding rules. Thus, whether educational quality for students in lower-wealth districts would be irreparably harmed by disbursements of Proposition 2 funds pending a final decision remains speculative and attenuated.

II. THE BALANCE OF EQUITIES WEIGHS SHARPLY AGAINST PRELIMINARY RELIEF

In contrast to the lack of any irreparable harm faced by plaintiffs in the absence of a preliminary injunction, an injunction against further apportionments of Proposition 2 funds until a

final judgment would cause certain, substantial, and tangible harm to the State, school districts, and California students—including students in plaintiffs' own districts and other "low-wealth" districts. A preliminary injunction for the duration of this case would delay urgently needed modernization projects that otherwise would soon be initiated, including projects aimed at remediating health and safety hazards and other projects in plaintiffs' and other "low-wealth" districts. The "*ultimate goal*" of the standard governing a preliminary injunction is "*to minimize the harm which an erroneous interim decision may cause*." (*White*, *supra*, 30 Cal.4th at p. 554, quoting with italics added, *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 73). As plaintiffs' requested relief would cause rather than avoid harm, their motion should be denied.

Plaintiffs' blithe argument that they "simply" seek to "enjoin further allocation of SFP funds pending the resolution of this action" fails to recognize, and dramatically understates, the immediate and tangible harm a preliminary injunction would cause. (Mem. at 14:18-21.) Plaintiffs argue that an indefinite halt to apportionments ("a year or so") would be "insignificant," because districts are not guaranteed funding until an apportionment is approved, and districts could receive funds when any injunction is lifted. (*Id.* at 14:22–15:1.) However, a delay would cause immediate tangible harm to a large number of schools and districts urgently awaiting SFP funding. Modernization funding is designed to help districts remediate and improve facilities that are decades old, and plaintiffs themselves argue that adequate facilities are important to the educational experience and student outcomes. (See Mem. at 8:22–10:9.) Yet, plaintiffs' request asks this Court to *delay*, for an indeterminate period, funding necessary to make critical improvements to aging school facilities and address immediate health and safety hazards.

The State Allocation Board, as of its February 25, 2026 meeting, has already approved the applications of 29 school districts for modernization projects at 51 school sites, totaling over $147 million, that would be eligible for funding apportionments in the next "Priority Funding Round" that plaintiffs seek to enjoin. (Watanabe Decl. ¶ 71.) Relying on plaintiffs' own data regarding district AVPP, 17 of the 44 applications from districts for which plaintiffs provide AVPP data, or 39 percent (39%), are from districts in the lowest two AVPP quintiles, including for projects at four schools in allegedly disadvantaged districts plaintiffs highlight in their motion–Del Norte

USD, Firebaugh-Las Deltas USD, and plaintiff Angelica G.'s own district, SBUSD. (*Id*. ¶ 72.)

An even larger group of districts—184 districts with over 650 facilities projects totaling over $2 billion—had applications on OPSC's "Workload List" as of February 25, 2026, that could be funded with proceeds from Proposition 2's remaining modernization bonding authority. (Watanabe Decl. ¶ 73.) Importantly, nine of those applications are for "facility hardship" funding to address imminent health and safety issues. (*Ibid.*) If this Court enjoins further allocations of modernization funding for the duration of this action, students in these districts will be forced to continue to attend schools in facilities that present health and safety hazards. Two hundred and twenty-nine (229) of the 633 modernization funding applications on this Workload List from districts for which plaintiffs provide AVPP data, or thirty-six percent (36%), were submitted by districts in the lowest two AVPP quintiles. (*Ibid*.) These include several "low-wealth" school districts featured by plaintiffs in their own motion, including Lynwood USD (seven applications totaling over $12 million); San Bernadino City USD (one application seeking over $4 million); Parlier USD (one application seeking more than $9 million, including more than $2.7 million in financial hardship funding); and Pittsburg USD (three applications seeking over $43 million). (*Id.* ¶ 74.) If the Court enjoins further allocation of SFP modernization funding for the duration of this case, students in these districts will continue to attend school in facilities in need of state assistance for facility modernization.

Moreover, a preliminary injunction would put a halt to implementation of the Small School District Program and Lead in Water Testing and Remediation Program authorized under AB 247 with Proposition 2 funding set aside to help small districts access SFP modernization funding and ensure safe drinking water supply at schools. (Watanabe Decl. ¶¶ 57, 62, 78.)

A preliminary injunction also would be inequitable in light of plaintiffs' delay. The SFP funding process is not a simple one that can easily be toggled on or off. Substantial planning goes into each application and much of it is carefully coordinated along a specific timeline: architectural plan approvals are subject to expiration; plans incorporate construction and building codes that may change and call for redesign, causing districts to incur additional costs; districts must negotiate with contractors that will take other work when funding disappears; and

applications must include cost proposals that are only accurate for limited periods before cost increases occur. (Watanabe Decl. ¶ 76.) Given these time constraints, delaying funding will not only postpone urgently needed facility upgrades, harming students as buildings continue to age: it also will likely jeopardize many funding applications as costs increase, contractors become unavailable, and uncertainty that applications for funding may be rendered moot by a final judgment. (*Ibid.*) More than 200 districts have undertaken the process to develop plans, receive necessary approvals, and apply for SFP modernization funds since AB 247's passage in July 2024, when plaintiffs could have sought to enjoin distribution of further modernization funding if they believed the legislation did not sufficiently address constitutional equity concerns. (*Id.* ¶¶ 9, 59.) Enjoining distribution of further apportionments now could render those efforts for naught.

A preliminary injunction also would create uncertainty and cause chaos for the SFP. OPSC could be forced to downsize staff members with years of experience and institutional knowledge, meaning that when any injunction is lifted funding approvals cannot simply restart automatically. (Watanabe Decl. ¶ 76.) Instead, OPSC will have to recruit and train new staff, further harming students and districts needing SFP funding. (*Ibid.*)

Finally, a preliminary injunction would contravene clearly established public policy. In assessing the balance of harms, "consideration of public policy is not only permissible but mandatory." (*O'Connell*, *supra*, 141 Cal.App.4th at p. 1471.) The Legislature, recognizing that belated constitutional challenges to statutes governing funding for local public entities inevitably harms the public, has established a strict 90-day statute of limitations on challenges by school districts and other local entities to "any statute relating to state funding" for such entities. (Code Civ. Proc., § 341.5) "The patent objective of the Legislature" in enacting section 341.5 "was to ensure that disputes over the constitutional validity of local agency funding statutes be judicially resolved as expeditiously as possible." (*San Diego Unified School Dist. v. Yee* (2018) 30 Cal.App.5th 723, 733 [holding district's action time-barred].) Allowing plaintiffs, who delayed far longer than 90 days to challenge the SFP modernization program, as amended under AB 247, to circumvent the policy expressed in section 341.5 and obtain a preliminary injunction would be contrary to the unambiguous public policy expressed in the statute.

III. PLAINTIFFS HAVE NO LIKELIHOOD OF SUCCESS ON THE MERITS

Because plaintiffs challenge the constitutionality of a duly enacted statutory program endorsed by state voters most recently under Proposition 2, plaintiffs carry a "heavy burden" in seeking to demonstrate that the facilities modernization program would "likely" be found unconstitutional. (*City of Los Angeles v. Superior Court* (2002) 29 Cal.4th 1, 10.) Statutes and approved ballot measures are presumed constitutional and cannot be invalidated unless their unconstitutionality is "'clearly, positively, and unmistakably'" demonstrated. (*Id*., 29 Cal.4th at pp. 10–11, quoting *People v. Falsetta* (1999) 21 Cal.4th 903, 912–913 [statute]; *Coalition of County Unions v. Los Angeles County Bd. of Supervisors* (2023) 93 Cal.App.5th 1367, 1383 ["voter-adopted measure"].) This presumption is "particularly appropriate," where, as here, the Legislature has adopted amendments designed to address constitutional equity concerns, (see RJN, Exs. A, B; Watanabe Decl. ¶¶ 57), as such amendments represent "'a considered legislative judgment as to the appropriate reach of the constitutional provision.'" (*Wilson v. State Bd. of Educ.* (1999) 75 Cal.App.4th 1125, 1134, quoting *Pac. Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180.) Plaintiffs fail to demonstrate any likelihood of success in light of the "particularly appropriate" presumption of constitutionality applicable here.

A. Plaintiffs Fail to Show a Violation of Students' Rights to Equal Protection

1. The SFP does not discriminate on the basis of district wealth

Plaintiffs cannot succeed on their claim that the SFP discriminates "based on district wealth." (Mem. at 10:27.) Plaintiffs premise their "wealth-based" argument primarily on the California Supreme Court's decisions in *Serrano v. Priest* (1971) 5 Cal.3d 584, 603 (*Serrano I*) and *Serrano v. Priest* (1976) 18 Cal.3d 728, 766 (*Serrano II*), in which the Court determined that prior state system for funding public schools, before and after certain amendments, violated students' rights to equal protection because they were primarily dependent on district wealth. (See Mem. at 10:21; FAC ¶¶ 1, 107, 110.) *Serrano*, however, does not support plaintiffs' claims. In *Serrano*, the Court found that the prior methodologies for financing schools, before and after certain amendments, discriminated on the basis of wealth because they relied in large part on local taxes and in light of "government action" drawing district lines, resulted in a system that

"drew distinctions on the basis of district wealth." (*Serrano II*, *supra*, 18 Cal.3d at p. 766; see also *Serrano I*, *supra*, 5 Cal.3d at p. 603.) The SFP modernization funding program, in contrast, is not based on and does not draw distinctions based on district wealth. The sole basis for SFP modernization funding—having age-eligible facilities at a school and a calculation involving the number of pupils and a per-pupil rate—applies equally to all districts. (See Ed. Code, §§ 17073.15, 17074, subd. (a); Watanabe Decl. ¶ 16.) Thus, unlike the school funding systems at issue in *Serrano*, the SFP does not establish any district-based "wealth classification," as plaintiffs allege. (See FAC ¶ 110.) Program requirements that plaintiffs argue result in wealth–based disparities, as to modernization funding on a per-pupil basis, similarly do not draw distinctions based on wealth. Plaintiffs also fail to offer admissible evidence that "high-wealth" districts have obtained more SFP modernization funding per pupil than "low-wealth" districts. (See Defts.' Objections to Baker and Stephens Decls.)

The local matching fund requirement, which can be limited or waived entirely based on a showing by the district of financial hardship, does not directly create a suspect "wealth-based classification" under *Serrano* principles. As even plaintiffs' own "expert" acknowledges, a wide variety of factors play a role in voter support for local school bond measures, of which district wealth based on AVPP is only one: these include, among others, the share of voters without school age children, the extent of other sources of district wealth beyond residential property values, district size, district type (rural, urban, suburban), and the political affiliation of district voters. (See Baker Decl. ¶¶ 24–26; Watanabe Decl. ¶ 66.) Notably, the very same analyses plaintiffs cite in support of their claims, if considered, have concluded that "low-wealth" districts, as measured by AVPP, have secured "much higher" funding amounts for new construction than high-wealth districts on a per-capita basis (Stephens Decl., Ex. 11, at 0213; see Watanabe Decl. ¶¶ 49–51.) Yet, the local match requirement is even higher for new construction funding under the SFP than for modernization. (Ed. Code, § 17072.30; Watanabe Decl. ¶ 48.) Plaintiffs fail to establish that the local match requirement necessarily disadvantages "low-wealth" districts.

Plaintiffs' argument that the local match requirement "amplifies" wealth disparities because of limits on district bonding capacity also is misleading. (See Mem. at 2:27–3:6.) Districts may

qualify for financial hardship funding to cover their local match in whole or part if they are levying authorized developer fees and have low bonding capacity (expanded to $15 million or below under AB 247), have existing debt of 60 percent (60%) of their capacity, or have had a successful bond election within the past two years meeting the single-measure indebtedness limits allowed by law. (Cal. Code Regs., tit. 2, § 1859.81, subd. (c)(1-4).) In addition, they may request financial hardship assistance based on "other evidence of reasonable effort" to secure local funding. (*Id.,* § 1859.81, subd. (c)(5).) Further, bonding capacity limits may be waived: at least five of the 12 "low-wealth" districts featured by plaintiffs in their motion have obtained such waivers, many on multiple occasions. (Watanabe Decl. ¶ 67.) The SFP does not create wealth-based classifications by requiring districts to provide sufficient documentation of their eligibility for financial hardship assistance, as plaintiffs suggest. (See Mem. at 11:10-12.) To the contrary, in *Sanchez v. State of California* (2009) 179 Cal.App.4th 467 (*Sanchez*), the court rejected claims closely similar to plaintiffs' here alleging that distribution of SFP funding for new construction and the operation of the financial hardship program "discriminate[] against low-income areas." (*Id*. at p. 486.) The court held that the SFP does not discriminate because it "gives every school district in the state an opportunity to apply for financial hardship status." (*Id*. at p. 487.)

Plaintiffs' blinkered focus on the historical distribution of SFP facility modernization funding, alone, necessarily provides an incomplete picture of funding to districts as it ignores an even *larger* source of SFP funds to districts: grants for new school construction. (See Watanabe Decl. ¶ 45.) As plaintiffs contend that students in "low-wealth" districts, on a district-wide basis, are being denied equal educational opportunity, the Court necessarily must also consider other funding provided to districts by the SFP. (See *California Redevelopment Assn. v. Matosantos* (2013) 212 Cal.App.4th 1457, 1495–1496 [denying equal protection challenge to alleged inequitable reallocation of redevelopment funds to schools because there would be "no net increase" to allegedly advantaged districts in light of offsets and considering "rough equality" of regular education funding].) Critically, a different picture emerges when SFP support for construction funding is considered: as several studies on which plaintiffs themselves rely have concluded, lower-wealth districts have received a much *greater* proportion of funding for *new*

construction on a per-pupil basis than high-wealth districts. (See Watanabe Decl. ¶¶ 49–51.) And, as the State Auditor concluded in its 2022 report, when both new construction and modernization funding are considered together, "state funding has been weighted towards less wealthy areas of the State," and has been "more concentrated among districts with the lowest assessed property value per pupil." (Stephens Decl., Ex. 3 at 0065-0066 & Fig. 4.) As the Auditor stated, "the way the State distributes its bond funding generally promotes greater equity in school facility modernization efforts than local funding does: since 1998 the State has generally provided more funding to districts with lower assessed property values." (*Id*. at 0042.)

Because the SFP does not draw distinctions based on district wealth, there also is no basis to subject the modernization program to strict scrutiny. As the program rules undoubtedly have a rational basis, plaintiffs cannot succeed on their "wealth-based" classification argument.

2. Plaintiffs fail to show that the SFP is depriving students of an education meeting prevailing statewide standards

While plaintiffs acknowledge the standard they must meet to demonstrate that the SFP is violating students' rights to "basic educational equality" under the principles of *Butt v. State* (1992) 4 Cal.4th 668, 685 (*Butt*) (Mem. at 11:21-23), they fail to provide any evidence sufficient to demonstrate that they are likely to be able to meet it. For this reason, as well, plaintiffs lack any likelihood of success on their claim that the SFP violates students' rights to equal protection.

In *Butt*, the Court recognized that districts have principal responsibility for education under the State's tiered system of responsibility for public education, and held that a violation of rights to "basic educational equality" giving rise to State responsibility for corrective action occurs only if the "actual quality" of a district's educational program "viewed as a whole, falls fundamentally below prevailing statewide standards." (*Butt*, *supra*, 4 Cal.4th at pp. 686–687.) Such a finding must be based on an evidentiary showing of "prevailing" standards of education being provided in districts throughout the State, on the one hand, and on the other, the education provided in the allegedly disadvantaged or affected district(s), from which an appropriate comparison may be drawn. (*Id*. at p. 687 & fn. 14.) In *Butt*, evidence established that the prevailing statewide standard with respect to prevailing number of instructional days per year was that "virtually every

established school district in California operated for at least 175 days during the 1990-1991 school year," while Richmond Unified School District would have operated for six fewer weeks than the other districts. (*Id*. at p. 687 & fn. 14.) This showing suggested that an early closure of the Richmond schools would cause "an extreme and unprecedented disparity in educational service and progress." (*Id*. at p. 687.)

Here, however, plaintiffs offer only anecdotal, often conclusory, testimony regarding poor conditions at certain schools in certain "low-wealth" districts, and seek to contrast it with similar anecdotes regarding alleged conditions in certain other "high-wealth" districts. (See Mem. at 6:24–8:21.) This falls woefully short of the showing necessary to demonstrate a likelihood of establishing that the "actual quality" of education in plaintiffs' districts or other allegedly "low-wealth" districts is falling "fundamentally below" prevailing statewide standards. Comparisons with "prevailing" standards are not based on best-worst distinctions. Even accepting that school facility conditions impact the quality of education, plaintiffs' anecdotal and conclusory evidence is insufficient to establish conditions in any district as a whole.

Even to the extent that some disparities in conditions between "low" and "high" wealth districts may exist, "the Constitution does not prohibit all disparities in educational quality or service." (*Butt*, *supra*, 4 Cal.4th at p. 686.) As the Court noted, despite extensive state regulation and standardization, "the experience offered by our vast and diverse public school system undoubtedly differs to a considerable degree among districts, schools, and individual students." (*Ibid*.) Any "'requirement that [the State] provide [strictly] 'equal' educational opportunities would thus seem to present an entirely unworkable standard requiring impossible measurements and comparisons. [Citation.]'" (*Ibid*., alterations in original.) "[P]rinciples of equal protection have never required the State to remedy all ills or eliminate all variances in service." (*Ibid*.) Particularly as the studies plaintiffs cite indicate that the SFP provides *more* total funding to "low-wealth" districts on a per-pupil basis considering modernization and new construction funding together, plaintiffs fail to demonstrate a likelihood of establishing that because "low-wealth" districts allegedly have obtained more from one SFP funding stream on a per-pupil basis, the SFP is responsible for quality of education in lower-wealth districts allegedly falling "fundamentally

below" that being provided elsewhere throughout the state.

Plaintiffs also fail to show they can establish that the SFP's modernization program is *causing* disparities between low-wealth districts in relation to access to facility modernization funds, or in facility conditions, as compared to prevailing access or conditions in districts elsewhere throughout the State. (*See Vergara v. State of California* (2016) 246 Cal.App.4th 619, 649–650 [holding plaintiffs failed to demonstrate that challenged statutes, rather than district-level decisions, caused the assignment of less-experienced teachers to low-income classrooms].) Districts determine whether to seek SFP funding, in the first instance, and how and where to utilize any SFP funding for eligible facilities. (See Watanabe Decl. ¶¶ 3(F), 16–19.) Districts also are required under state law to maintain facilities in good repair using their own funds, and their regular state education funding is designed to include amounts to support this responsibility. (*Id*. ¶¶ 41, 43; Ed. Code, §§ 17565; 52060, subd. (d)(1); 52066, subd. (d)(1).) Districts that receive SFP funding—the vast majority (see Watanabe Decl. ¶ 3(C))—also are required to set aside three percent (3%) of their general fund expenditures for maintenance, and similarly are required to maintain SFP-funded facilities in good repair. (Ed. Code, § 17070.75, subds. (a), (b); Watanabe Decl. ¶¶ 42.) Plaintiffs' anecdotal statements regarding poor facility conditions, without evidence of the complete set of circumstances surrounding each school and its district in regards to the SFP, is probative of districts' inabilities or failures to meet their responsibilities to maintain facilities in good repair, not of any inequity in the availability of SFP modernization funds. The SFP, for example, cannot be considered the cause of allegedly poor conditions at a school when the program *has* provided modernization funding for a school within the past 25 years, and the school or relevant facilities are not yet eligible for further modernization funding. (See Watanabe Decl. ¶ 16.) Plaintiffs fail to, and cannot, demonstrate that responsibility for allegedly poor conditions at either of the two plaintiff students' schools or other schools in "low-wealth" areas can be ascribed to the criteria for or processes to obtain SFP modernization grants.

Indeed, plaintiffs acknowledge that school modernization is "primarily" funded through local sources, rather than the SFP. (See Mem. at 3:1.) Studies cited by plaintiffs suggest that the SFP has provided only 16-33 percent (16-33%) of funding for new construction and

modernization at California schools. (See Watanabe Decl. ¶ 11.) To the extent that differences in facility conditions exist between districts, therefore, they exist in spite of, rather than because of, modernization program rules. The SFP cannot be responsible for decisions and actions by districts that are beyond its control.

The court of appeal in *Sanchez*, *supra*, rejected claims brought by a school district and district students, similar to plaintiffs' claims here, alleging that the SFP new construction and financial hardship programs violated rights to basic educational equality under the principles of *Butt*. (*Sanchez*, *supra*, 179 Cal.App.4th at pp. 486, 487–489.) As the court concluded, the State "complies with its duty to prevent financial problems from depriving students of basic educational equality" by maintaining a hardship grant program for districts incurring excessive facility construction costs. (*Id.*, at p. 489.) The SFP continues to meet State responsibility to prevent deprivations of basic educational equality by, among other things, maintaining programs for facility hardship and disaster assistance—given first priority for funding—and for financial hardship, as discussed above, to assist districts unable to meet matching fund requirements. (See Watanabe Decl. ¶¶ 30-40.) Further, the SFP is implementing substantial reforms made under AB 247 aimed at addressing concerns regarding equitable access to modernization funding, including implementing a sliding scale for decreased district match requirements, expanding eligibility for the financial hardship program, making separate funding streams available only to small districts and for safe drinking water, and expanding flexibility in the use of funds. (*Id.* ¶ 57.) In light of these measures, plaintiffs cannot show that defendants are discriminating on the basis of wealth or failing to prevent deprivations of educational equality. (See *Sanchez*, *supra*, 179 Cal.App.4th at pp. 486–489; *Arcadia Unified School Dist. v. State Dept. of Ed.* (1992) 2 Cal.4th 251, 266 [holding school transportation fees did not discriminate on basis of wealth as state law requires indigent students to be exempted].)

B. Plaintiffs Cannot Establish a Violation of the Common Schools Clause

Plaintiffs also have no likelihood of succeeding on their second cause of action alleging that defendants are violating the "free schools" clause of the State constitution, article IX, section 5. (See Mem. at 12:16–13:7.) Article IX, section 5 (section 5) provides simply that: "The Legislature

shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year." (Cal. Const., art. IX, § 5.) Section 5 has "one necessary requirement," that "a free school be kept up and supported at least six months a year." (*Collins v. Thurmond* (2019) 41 Cal.App.5th 879, 902 (*Collins*).) Section 5 also has been construed to require the State to maintain a public school system that provides for a uniform progression from grade to grade. (See *Levi v. O'Connell* (2007) 144 Cal.App.4th 700, 708.) However, section 5 "makes no reference to school financing" and has never been interpreted to require equal school spending. (*Serrano I*, *supra*, 5 Cal.3d at p. 596.) There is no basis, therefore, for plaintiff's claim that the SFP violates section 5 by allegedly "allocating" more modernization funding to high wealth districts on a per-pupil basis. (Mem. at 12:22.) Sections 1 and 5 of article IX also "do not guarantee a right to any particular quality or level of education." (*Collins*, *supra*, 41 Cal.App.5th at p. 902 [affirming demurrer sustained to claim under sections].) Plaintiffs' unsupported argument that the SFP facility modernization program "undermines" the uniformity of the state's educational system by allegedly affecting the quality of education in "low-wealth" districts, thus, is unavailing. (Mem. 12:22–13:4.)

C. Plaintiffs Lack Any Cause of Action Against Non-Involved State Entities

Plaintiffs also fail to establish that defendants State School Building Finance Committee, California Department of Education, or the State have any direct responsibilities regarding the challenged SFP modernization rules sufficient to support claims against those entities. In a constitutional challenge to state law, only state officers or entities "with statewide administrative functions under the challenged statute" and who have a sufficient "direct institutional interest" are properly named as defendants. (*Serrano II*, *supra*, 18 Cal.3d at p. 752; see *Templo v. State* (2018) 24 Cal.App.5th 730, 735–738 [holding Judicial Council was proper defendant, and not State].)

For all the reasons above, plaintiffs have no likelihood of success on the merits.

CONCLUSION

For the foregoing reasons, plaintiffs' motion for a preliminary injunction should be denied.

Dated: April 13, 2026

Respectfully submitted,

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