

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

A. F. et al Plaintiff/Petitioner(s) VS. State of California et al Defendant/Respondent (s)	No. 25CV150626 Date: 07/07/2026 Time: 3:18 PM Dept: 18 Judge: Patrick McKinney ORDER Ruling on Submitted Matter filed by Miliani R. (Minor); Sandra Ramirez (Plaintiff); Raul Leon (Plaintiff) et al. on 05/06/2026
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The Court, having taken the matter under submission on 05/27/2026, now rules as follows:

Plaintiffs' motion for a preliminary injunction was heard on May 27, 2026. After consideration of the papers and arguments of counsel at the hearing, the court DENIES the motion.

BACKGROUND

Plaintiffs—a group including public school students, parents, educators, and community organizers—filed this action for declaratory and injunctive relief on October 23, 2025 against Defendants State of California, State Allocation Board, Office of Public School Construction, State School Building Finance Committee, and California Department of Education. Plaintiffs allege that Defendants, through the School Facility Program (“SFP”), distribute “modernization” funds in way that discriminates against low-income districts in violation of the Equal Protection and Education Clauses of the California Constitution. Plaintiffs move to preliminarily enjoin further allocation of modernization funds during the pendency of this action.

The SFP provides state financial assistance for school facilities, including modernization funds. “Modernization,” under the Leroy F. Greene School Facilities Act of 1998, “means any modification or replacement of a permanent structure that is at least 25 years old, or in the case of a portable classroom, that is at least 20 years old, that will enhance the ability of the structure to achieve educational purposes.” (Educ. Code, § 17070.15, subd. (l).) Districts apply for funding to the Office of Public School Construction (“OPSC”) which reviews for eligibility and forwards applications to the State Allocation Board for approval. Approved projects are placed on an unfunded approval list until state funds become available. When bond funds are authorized, OPSC opens a “priority funding round,” during which projects on the unfunded approval list may receive funding in the order based on the date of the district’s original application. In

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November 2024, voters approved Proposition 2 (“Prop 2” or “AB 247”) authorizing a \$10 billion facilities bond including \$4 billion for K–12 school facility modernization.

Historically, SFP modernization funding required applicants to fund 40 percent of approved projects from local funds. Prop 2, however, introduced adjustments applicable to projects submitted on or after October 31, 2024, creating a sliding scale that allows for up to 65% state matching based on a district’s bonding capacity and enrollment. (See Ed. Code, § 17074.16.) Separately, the statute includes “financial hardship” provisions: when a district cannot raise the required local funding, it may apply for hardship status, which allows the state to contribute more of the funding. (See Ed. Code, § 17075.15 et seq.)

Plaintiffs seek a preliminary injunction pausing further allocation of the Prop 2 modernization funds, beginning with the round that opened on May 13, 2026, until the merits of their challenge can be determined. Plaintiffs allege that once the Prop 2 funds are spent, no additional modernization funds will become available until voters approve a future bond initiative.

SFP has committed \$800 million of the modernization funds in prior rounds, and the State Allocation Board has approved applications for over \$147 million, which will be eligible in the current priority funding round. Applications for another \$2.25 billion of Prop 2 modernization funds are under review. Plaintiffs allege that there is a substantial backlog of SFP modernization applications and that SFP will spend approximately \$3.47 billion of the \$4 billion Prop 2 modernization funds on applications submitted before October 31, 2024, all using the 60/40 allocation method. Plaintiffs contend a pause is necessary to prevent exhaustion of the remaining Prop 2 under an unconstitutional scheme.

EVIDENTIARY RULINGS

Defendants’ unopposed request for judicial notice of legislative history records is granted.

Defendants’ objections to the declarations of district superintendents, teachers, staff, and others are overruled. The foundation, speculation, improper opinion, authentication, and relevance objections go to weight, which the court assesses in deciding the motion. Plaintiffs disclaim any intent to rely on the truth of hearsay statements contained within the declarations.

Defendants’ objections to the declarations translated from Spanish are overruled based on Plaintiffs’ subsequent submission of certified translations. Defendants did not object to the contents of the declarations.

Defendants’ authentication, foundation, and hearsay objections to the Stephens Declaration are sustained. Matthew R. Stephens attests that he has personal knowledge that the exhibits are true and correct copies of various source materials apparently relevant to the expert analysis provided by Bruce D. Baker. Stephens is not qualified to authenticate or explain the significance of the various government publications, academic papers, news articles, and reports, and Plaintiffs rely on the documents for the truth of the statements they contain. An *expert witness* may rely on matter—admissible or not—that is “of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates, unless an expert is precluded

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by law from using such matter as a basis for his opinion.” (Evid. Code., § 801.) Any out-of-court case-specific statements relied on the expert, however, are still hearsay. (*People v. Sanchez* (2016) 63 Cal.4th 665, 686 [expert cannot relate “case-specific facts asserted in hearsay statements, unless they are independently proven by competent evidence or are covered by a hearsay exception”].) The standalone documents, therefore, are inadmissible for purposes of this motion. Some of the documents attached as exhibits to the Stephens Declaration might have been admissible under a hearsay exception or a proper subject for judicial notice, but Plaintiffs did not identify any such basis for admitting the evidence.

Defendants’ objections to the Baker Declaration are overruled. Plaintiffs inexplicably failed to lay a foundation for Baker’s expertise with their opening brief. Technically, however, “a party offering expert testimony need not establish the witness’s qualifications absent an objection.” (*People v. Dowl* (2013) 57 Cal.4th 1079, 1088 [citing Evid. Code, § 720 [“Against the objection of a party, such special knowledge, skill, experience, training, or education must be shown before the witness may testify as an expert.”].) Dr. Baker supplies his qualifications in a reply declaration, filed on May 6, 2026. The far better practice would have been to qualify Dr. Baker on the motion, giving Defendants an opportunity to respond. Dr. Baker is a Professor at the University of Miami, the co-director and creator of the School Finance Indicators Database, and a qualified expert on the funding of public education and school finance. (May 6, 2026 Baker Decl. ¶ 2.) Defendants’ other objections go to weight, which the court will assess.

Plaintiffs, in turn, object to Michael Watanabe as an undisclosed expert, contending that Defendants failed to proffer him as an expert or explain his qualifications. These objections are overruled. Mr. Watanabe, OPSC’s Deputy Executive Officer, described his professional experience and authenticates at least some of the exhibits attached to his declaration. Mr. Watanabe has years of relevant work experience in both administering and evaluation school funding programs. He is a “percipient expert,” who became familiar with the issues through his work experience, rather than being retained in litigation for the purpose of offering an opinion. (*Schreiber v. Est. of Kiser* (1999) 22 Cal.4th 31, 35 [“A treating physician is a percipient expert, but that does not mean that his testimony is limited only to personal observations. Rather, like any other expert, he may provide both fact and opinion testimony.”].) Plaintiffs’ objections to Watanabe Declaration paragraphs 4–7 & 11 based on lack of foundation and hearsay are sustained, as Watanabe does not claim personal knowledge of the facts. Plaintiffs’ other objections are overruled.

LEGAL STANDARD

Code of Civil Procedure section 526 authorizes trial courts to issue injunctions during the litigation. “A preliminary injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if the complaint in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds exist therefor.” (Code Civ. Proc § 527, subd. (a).) “In deciding whether to issue a preliminary injunction, a court must weigh two ‘interrelated’ factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction.” (*Butt v. State of California* (1992) 4 Cal.4th 668, 677.) “The trial court’s determination must be guided by a ‘mix’ of the potential-merit and interim-harm factors; the greater the plaintiff’s showing on one, the

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less must be shown on the other to support an injunction.” (*Id.*, p. 678.)

A plaintiff, as the moving party, has the burden “to show all elements necessary to support issuance of a preliminary injunction.” (*O’Connell v. Superior Ct.* (2006) 141 Cal.App.4th 1452, 1481.) The “general purpose of a preliminary injunction is to preserve the status quo pending a final adjudication of the claims on the merits” and “to minimize the harm which an erroneous interim decision may cause.” (*Id.*, pp. 1468, 1472.) A “court should always strive for the least disruptive remedy adequate to its legitimate task.” (*Id.*, p. 1476.)

DISCUSSION

I. Likelihood of Prevailing on Merits

Plaintiffs seek injunctive and declaratory relief to address violations of equal protection and education clauses of the California Constitution. (Cal. Const., art. I, §§ 7, 5.) Plaintiffs have some reasonable probability of succeeding on the merits of at least the equal protection cause of action.

a. Equal Protection

The California Constitution, like the Fourteenth Amendment, provides that the state may not deny any person the “equal protection of the laws.” (Cal. Const., art. I, § 7, subd. (a).) Persons “similarly situated with respect to the legitimate purpose of the law” must receive “like treatment.” (*Walgreen Co. v. City & Cnty. of San Francisco* (2010) 185 Cal.App.4th 424, 434.) Established California case law holds that “there is a fundamental right of equal access to public education, warranting strict scrutiny of legislative and executive action that is alleged to infringe on that right.” (*O’Connell v. Superior Ct.* (2006) 141 Cal.App.4th 1452, 1465 [citing *Butt v. State of California* (1992) 4 Cal.4th 668, 685 [“California Constitution makes public education uniquely a fundamental concern of the State”] and *Serrano v. Priest* (1971) 5 Cal.3d 584, 589 [“right to an education in our public schools is a fundamental interest which cannot be conditioned on wealth”].)

Plaintiffs’ expert contends that, from 1998–2023, highest-wealth districts received roughly double the per-pupil SFP modernization funds of lowest-wealth districts, attributing the disparities to the local match requirement combined with unequal local bonding capacity and access to first-come processing. (See, e.g., Baker Decl., ¶¶ 38–39; 45, 57[.]) Plaintiffs also cite evidence that the narrow sliding scale adjustments make “little difference,” and financial hardship aid has been “trivial.” (*Id.*, ¶¶ 10, 53.)

Defendants point out that Plaintiffs have a heavy evidentiary burden as “courts will presume a statute is constitutional unless its unconstitutionality clearly, positively, and unmistakably appears.” (*City of Los Angeles v. Superior Ct.* (2002) 29 Cal.4th 1, 10; see also *Vergara v. State of California* (2016) 246 Cal.App.4th 619, 642–43 [“Policy judgments underlying a statute are left to the Legislature; the judiciary does not pass on the wisdom of legislation.”].) Defendants do not dispute that the SFP has distributed more modernization funds to high-wealth districts than low-wealth districts but maintains that SFP does not draw distinctions based on wealth; that

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the requirements are the same for all districts; and that participation is voluntary. (See, e.g., Watanabe Decl., ¶ 3.) Defendants further argue that low-wealth districts have obtained more new construction funding from SFP than high wealth districts, undercutting any claims of unequal application of the statute. (*Id.*, ¶¶ 48, 66.)

It is difficult for the court to assess the merits, even on a preliminary basis, given the spotty evidentiary record. Plaintiffs' expert evidence, however, raises serious questions regarding whether the funding program has a wealth-based disparate effect and whether hardship meaningfully mitigates it. At this stage, Plaintiffs' chance of success is not certain but more than negligible.

b. Basic Educational Equality

The California Constitution "prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts." (*Butt v. State of California* (1992) 4 Cal.4th 668, 685.) "The State itself bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity" and is "obliged to intervene when a local district's fiscal problems would otherwise deny its students basic educational equality, unless the State can demonstrate a compelling reason for failing to do so." (*Id.*, p. 692.)

The court is not persuaded that Plaintiffs have established a likelihood of success on this theory. Plaintiffs submit anecdotal declarations describing links between deficient facilities (HVAC failures, water intrusion, mold, inadequate labs, plumbing) in low-wealth districts to adverse educational impacts (attendance, concentration, achievement, teacher retention). This evidence does not show that any given district's overall education program falls below prevailing standards. There is no real dispute that poor facilities cause education harm, but making a causal connection between the modernization funding program at issue and any particularly poor conditions will likely be an obstacle for Plaintiffs, especially when Defendants show that local districts have competing responsibilities, as well as other sources of funding.

c. Common Schools

According to Plaintiffs, SFP's wealth-linked funding compromises the function of a "a system of common schools" operating with a "unity of purpose and entirety of operation." (Cal., Const., art. IX, § 5.) Plaintiffs do not cite additional evidence in support of this theory and have not met their burden to show a likelihood of success.

II. Relative Interim Harms

Plaintiffs contend that exhausting the Prop 2 funds under the current system would block equal access to modernization funds for years to come. The court agrees to the extent that once funds are dispersed, they cannot be recouped.

Defendants, on the other hand, argue that Plaintiffs could and should have brought the lawsuit sooner.

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Plaintiffs argue that they were gathering evidence and that there was no urgency in the face of the slow funding process. Defendants did not begin to distribute Prop 2 funds until almost a year after it passed, and this action was initiated the day after Defendants began distributing funds. Plaintiffs, however, allege that the Prop 2 changes negligibly impacted more equitable distribution of funds and did not meaningfully alter the systemic historic inequities. Plaintiffs, based on their own pleading, are challenging a system that has been in place for nearly 30 years.

Plaintiffs cite individualized harm to teachers and students, citing plaintiff declarations regarding the poor conditions in low-wealth districts. The harm to students and teachers who are working and learning in poor conditions is serious, but it cuts both ways in terms of relative interim harm. If SFP cannot distribute funds, no teachers or students, including teachers and students in relatively low wealth districts, will benefit from modernization for the duration of the injunction.

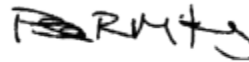
Defendants contend that an injunction would disrupt administration of the funding program and delay urgent projects—including health and safety remediation—and harm students statewide, citing applications from low-wealth districts that would be stalled and Small School District and Lead in Water programs created by AB 247 that would be halted. Plaintiffs “accede to the flow of funding for lead in water abatement and facility hardship funds (to the extent facility hardship projects are funded from modernization money),” but do not explain how programmatic disruption could otherwise be mitigated.

III. Balance of Equities and Public Interest

Consideration of public policy is “not only permissible but mandatory.” (*O’Connell v. Superior Ct.* (2006) 141 Cal.App.4th 1452, 1471.) On balance, the immediate program and public impacts identified by Defendants weigh against an injunction.

Upon consideration of the record, the court denies Plaintiffs’ motion for a preliminary injunction.

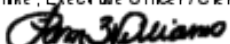
Dated : 07/07/2026



Patrick McKinney / Judge

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COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 07/07/2026
PLAINTIFF/PETITIONER: A. F. et al	Chad Finke, Executive Officer / Clerk of the Court By:  Deputy
DEFENDANT/RESPONDENT: State of California et al	P. Drummer-Williams
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: 25CV150626

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order Ruling on Submitted Matter filed by Miliani R. (Minor); Sandra Ramirez (Plaintiff); Raul Leon (Plaintiff) et al. on 05/06/2026 entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

Matthew Robert Stephens
Morrison & Foerster LLP
mstephens@mofo.com

Dated: 07/07/2026

Chad Finke, Executive Officer / Clerk of the Court

By:



P. Drummer-Williams, Deputy Clerk