VENTURA COUNTY BAR ASSOCIATION Est. 1928

CITATIONS

SEPTEMBER – TWO THOUSAND TWENTY FOUR

SENATE BILL 343 BRINGS CHANGES TO CHILD SUPPORT IN CALIFORNIA

By Jim Allen

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PRESIDENT'S MESSAGE

By Joshua S. Hopstone

Summertime has historically been a quiet period for the Ventura County Bar Association. Your Board of Directors bucked that trend this year and leaned in to a full spectrum of valuable programming.

On June 15, VCBA was proud to collaborate with Black Lawyers of Ventura County on the 33rd Annual Juneteenth Celebration in Oxnard, which BLVC has sponsored for several years. Your Board of Directors also moved for, voted and unanimously approved VCBA's observation of Juneteenth as a holiday, meaning the Bar offices will be closed this day in future years in its honor.

On June 27, the Estate Planning & Probate Section offered a timely presentation on evolving legal trends concerning elimination of the Medi-Cal Resource Limit for estate planning professionals.

On June 29, Barristers welcomed attorneys, judges, law students, and other colleagues at their annual Trivia Night event, held for the first time at the Colleges of Law. The event was well-attended and overall a great success.

On July 9, the VCBA Sexual Orientation and Gender Identity Section presented a timely and captivating MCLE on Minimizing Implicit Bias, featuring award-winning speaker Catherine Mattice.

On July 10, the Board of Directors held a membership drive to encourage renewals, resulting in the renewal of dozens of delinquent members and registration of some new members within the County. As a result of this push, membership is in line with or slightly above past years.

On July 12, the Ventura County Unity Bar (formerly the Diversity Bar Alliance), in collaboration with Women Lawyers of Ventura County, held its Inaugural Event at the Ventura City Hall.

On July 25, the Estate Planning & Probate Section presented an update on the lasting impact of recent cases affecting trustee liability.

On August 21, the Family Law Bar offered an important presentation featuring four representatives of the Ventura County Department of Child Support Services on upcoming changes to the child support guidelines. Take a look at **Jim Allen's** companion article in this month's issue of CITATIONS.

On August 27, the Ventura County Trial Lawyers Association presented a Judge's Panel: Court Update and Judicial Thoughts on Effective Jury Trials in Ventura County. This will have included a "State of the Bench" presentation by **Judge Kevin DeNoce** before a discussion joined by **Judge Benjamin Coats** and **Judge Matthew Guasco** on effective jury trial practices in Ventura County.

On September 5, the Federal Bar Association and U.S. District Court for the Central District of California is hosting a multi-location Bench & Bar Reception at the Ventura and Santa Barbara Colleges of Law, featuring a panel of distinguished speakers including Ventura attorneys **Al Vargas** and **Monique Fierro**.

Beyond this attorney-specific programming, VCBA has continued to facilitate its ongoing community programming throughout the summer of 2024. VCBA continues to operate its Court Tours Program to campers and students on an ongoing basis and has received over 40 thank you letters from local students impacted by the program since it reopened in March. VCBA also used these "quiet" summer months to lay the groundwork for another heavy calendar of presentations and programming in local school districts in the upcoming school year, through federal TRiO programs and the local ASK Program (Attorneys Sharing Knowledge).

Looking forward, Barristers is pleased to welcome the entire VCBA community to attend its Annual Wine and Cheese Mixer on September 10 at the FCOP courtyard in Ventura. Unlike many Barristers events, this is open (and free) to all attorneys, judges and law students.

Finally, please mark your calendars for the VCBA Annual Installation & Awards Dinner on Saturday November 16 at the Courtyard by Marriott in Oxnard. It is sure to be a night to remember.

I hope each and all of you had a fulfilling summer, and look forward to seeing you at upcoming events this fall.

Joshua S. Hopstone *is a partner at Ferguson Case Orr Paterson LLP. His practice focuses on business and real estate litigation, trust/probate litigation, and appeals.*

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HOME-TOWN HEROES: 2024 PARIS OLYMPICS RECAP

By Christal Joy Porter

The 2024 Summer Olympics in Paris, France hosted athletes from nearly 200 countries across the globe. Ventura County was fortunate to claim eight (8) of those athletes who competed in Paris. What does it take to have the heart of a champion? One thing that comes to mind is **perseverance**. Each one of the athletes who competed in the 2024 Summer Olympics had to surmount numerous obstacles, whether in their sport or in their personal lives, to make it to the Olympic stage. The common denominator is that each Olympic athlete chose not to quit when faced with these obstacles but instead chose to press forward in pursuing their dream of excellence. Ventura County can proudly boast the performances of these Olympians who represented their country *and county* with pride and excellence:

Tara Davis - Woodhall USA women's track and field, long jump: Tara Davis-Woodhall is an Agoura High School and University of Texas graduate who made her Olympic debut at the 2021 Summer Olympics in Tokyo. After finishing sixth in the 2021 Tokyo Olympics, Davis-Woodhall pushed herself further than she imagined while training for the Paris Olympics and it paid off. Davis-Woodhall secured a gold medal with a long jump of 7.1 meters (more than 23 feet).

Marcos Giron USA men's tennis: Marcos Giron is a Thousand Oaks High School and UCLA graduate. Giron's 2024 Paris Olympics appearance was his second Olympic appearance after falling to Kei Nishikori of Japan in the second round of the 2021 Tokyo Summer Olympics. This summer, despite his quality returns and heavy groundstrokes, Giron fell to Felix Auger-Aliassime of Canada in the first round of the Paris Olympics.

Ben Hallock and Adrian Weinberg USA men's water polo: Ben Hallock secured his second Olympic appearance on the USA men's water polo team, Hallock was one of ten returning U.S. players from the Tokyo Olympics. Hallock is a native of Westlake Village and graduate of Harvard-Westlake School and Stanford University. Adrian Weinberg was also on the USA men's water polo team in his debut Olympic event. Weinberg is a former Oak Park resident and graduate of Oaks Christian School and University of California, Berkeley. Hallock and Weinberg helped the USA men's water polo team win their first Olympic medal since 2008. The USA men's water polo team secured a bronze medal with an 11-8 victory over historical powerhouse Hungary. Hallock served as the captain of the American team and lead team USA in scoring with two goals. Weinberg defended the American goal against a crucial penalty shot by Hungary.

Amanda Longan USA women's water polo: Amanda Longan is a Moorpark native and Oaks Christian School and University of Southern California graduate. She played as goalie for the American women's water polo team. The women's water polo team beat Greece and France, but lost the bronze medal round 11-10 to the Netherlands. Until the Paris games, the USA women's water polo team had been the only program to medal in each women's water polo tournament at the Olympics since it started in 2000.

Kareem Maddox USA men's basketball 3x3: Kareem Maddox made his Olympic debut in the 2024 Paris Summer Olympics. Maddox had 4 points and 10 rebounds in the USA 21-17 win over China and 3 points and 2 rebounds in the 21-19 win over France. Ultimately the team fell to a final Olympic record of 2-5, and left Paris without a medal. Maddox is an Oak Park High School and Princeton University graduate.

Sami Whitcomb Australia women's basketball: Sami Whitcomb scored her first Olympic medal playing with the Australian National Women's Basketball Team. The team clinched an 85-81 bronze medal victory over Belgium. Whitcomb had 14 points, 5 assists, 4 rebounds, and 3 steals during the dramatic bronze medal victory. Whitcomb is a dual citizen of Australia and the USA. Whitcomb is a Buena High School and University of Washington graduate. Whitcomb also plays with the Seattle Storm WNBA team.

Nico Young USA men's track and field, 10,000 meters: Nico Young made his Olympic debut and finished 12th in the men's 10,000-meter race. Young was the youngest American in the race since 2004 (no pun intended). Young is a Camarillo native, Newbury Park High School, and Northern Arizona University graduate.

The road to the Olympic stage is grueling both physically and emotionally. Not every athlete will obtain the gold medal, and many receive no medal at all, but seeing the athletes just "show up" to the games is an inspiration to all watching.

Although most of us do not have the physical physique or ability of Olympic athletes, we can certainly choose to have the heart of a champion.

Six Degrees of Olympic Separation?

As an undergraduate at Rice University, CITATIONS' Christal Porter played on the Rice Women's Basketball Team. During her time with the Rice "Owls," Porter played against Brittney Griner, a star at Baylor University, who would go on to play for the U.S. Women's National Team in Rio (2016), Tokyo (2020), and Paris (2024), winning gold medals each year.

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SENATE BILL 343 BRINGS CHANGES TO CHILD SUPPORT IN CALIFORNIA

By Jim Allen

Child Support and Senate Bill 343

On September 1, 2024, the California Statewide Uniform Child Support Guideline will change for the first time in more than 30 years, a product of decades-long research into improving the effectiveness of the formula. Senate Bill 343 also changed other statutes to bring them in line with State and Federal objectives as outlined in the Final Rule: Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs published December 2016.

Changes to California Family Code

California uses an 'Income Share' model to calculate child support, which uses a proportional share of each parent's income and timeshare with each child. California's formula is complex and one component, the K Factor, has been significantly modified by SB 343.

SB 343 also modified the existing low-income adjustment. Historically, the low-income adjustment threshold was set at $1,500 per month, adjusted for cost-of-living increases by the Annual California Consumer Price Index for All Urban Consumers, published annually by the California Department of Industrial Relations, Division of Statistics and Research – a site you no doubt have saved as a bookmark in your search browser. The new legislation amends **Family Code Section 4055** and the threshold is now equal to California State minimum wage for a person working full-time (40 hours per week, 52 weeks per year). Prior to September 1, 2024, the low-income adjustment figure was $2,137. As amended, it will be $2,773.33. From 2018 through 2023, the average increase year over year was four percent (4%). The September 1, 2024, increase will be substantial – 29.8%. As such, you should expect to see the greatest changes in guideline support in cases where the obligor is earning minimum wage or less.

SB 343 also changes Family Code Sections 4057, 4058, 4061, 4062, and 4063. **Family Code section 4057** concerns itself mainly with deviations from guideline. Subsection (b)(5) was added, which gives the Court another reason to deviate from guideline child support if the obligor qualifies for the low-income adjustment. If the Court deviates under this provision, the result of the deviation is capped at no more than 50 percent of the obligor's net disposable income. For example, if the low end of the low-income adjustment range is $1,100 and if the support obligor's net disposable income is $2,000 per month, the Court cannot use this section to deviate by more than $100, because 50 percent of the obligor's income is $1,000 per month.

Family Code section 4057 was also amended to add subsection (c), which states that whenever a Court is made aware that a support obligor is subject to multiple child support orders from a different case or cases, the Court "may take steps to determine how to allocate the parent's income and support obligation appropriately across the cases." The amended statute also allows a Court to issue a temporary order and continue a matter if a party represents that it will file an appropriate request to modify support in a related case, which may be helpful for any attorney that is added to a case after a motion has already been filed.

Family Code section 4058 defines the gross annual income of each parent, and a few items were specifically added – severance pay, veteran's benefits not based on need, and military allowances for food and housing. These items were likely already included in most definitions of 'gross annual income,' but the statute makes this consistent statewide

Amendments to **Family Code Section 4061** result in a change to the default way that child support add-ons are allocated. Prior versions of the statute defaulted to a 50 percent allocation of childcare, uninsured health care costs, educational or other costs for the special needs of a child, and travel expenses for visitation. Effective September 1, 2024, the default is to divide these expenses in proportion to the parents' net income unless a party requests some other way to allocate the expenses. It is important to note that when determining the net income of the parties, if there is a spousal support order, that amount is subtracted from the parent paying spousal support's gross income and added to the parent receiving spousal support's gross income – so long as the obligation is actually paid. Child support orders work differently, however. The amount of child support paid is deducted from the obligor's net disposable income, but it is **not** added to the person receiving child support's net disposable income.

With changes to **Family Code section 4062,** the Court must now either include childcare costs in the guideline calculation itself, which has been the default for cases administered by the child support agency, or to treat them in the same manner that uninsured medical expenses were historically treated. If the Court chooses the latter, it will order the childcare costs actually incurred to be split in whichever percentage it deems appropriate, but then leaves the parties to work out payments themselves. If the parties cannot, then they will be required to file a motion for reimbursement of these costs. To qualify under this section, childcare costs must be incurred due to employment or reasonably necessary education or training for employment skills.

Previously, a parent had 30 days to notify the other parent of a cost that is to be reimbursed. Amendments to **Family Code section 4063** increase that period to 90 days. The statute now includes a rebuttable presumption that childcare costs incurred for training or employment are reasonable in subsection (d). The legislation also amends subsection (g) by adding guidance on what should be considered when making an order for reimbursement. When considering a request for healthcare reimbursement, refer to subsection (g)(1), and when considering childcare, refer to subsection (g)(2).

The "K" Factor

California adopted the Statewide Uniform Child Support Guideline effective July 1, 1992, and the initial version is hardly distinguishable from what is currently found in Family Code section 4055: **CS = K · [HN – (H% · TN)].** In fact, the formula as enacted in 1992 remains unchanged today, the only difference being the so-called "K-Factor." The child support formula determines the total net income

available to both (or in some rare cases, all) parents, considers the amount of time each parent is spending with the child, and, depending on the total income available for support, applies a percentage of that income that is to be used for purposes of child support. At its most basic level, the formula tries to ensure that the child has the same standard of living in both households – a child gets to share in a parent's success and goes through hard times with them as well. If a parent spends more time with the child, it is presumed that they are spending more money on the child, and vice versa. **"CS"** is the child support amount. "**HN**" refers to the higher-earning parent's net monthly disposable income, while **"H%"** represents the time spent by the higher-earning parent with the child(ren), and **"TN"** is the combined total net monthly disposable income of both parents.

To determine how much of the parents' money is to be spent on the children, the legislature created income bands. The very first version of the formula had five separate bands, with the lowest being those who earn less than $800 per month. The statute was amended to include only four bands in 1993 – those earning less than $800 per month, between $801 and $6,666, between $6,607 and $10,000, and over $10,000 per month. It has stayed this way for over thirty years.

In 1993, California minimum wage was $4.25 per hour, or $736.67 per month. Therefore, a family would qualify in the lowest band where only one parent worked and earned a minimum wage salary. In 2024, minimum wage was $16.00 per hour, meaning any case where the parents work more than 50 hours per month combined are automatically out of the lowest income band.

In recognition of wages increases over time, as well as the increased cost of living, SB 343 amended the income bands, increasing them from four to five, and adjusting the income ranges within them. Now, the lowest band is for those earning $2,900 or less, with the following bands being for those earning between $2,901 and $5,000, then between $5,001 and $10,000, then between $10,001 and $15,000, and finally for those earning over $15,000. Keep in mind that these figures are for the total net income of the parties, not for individuals.

We must now return to our original formula for child support, where **CS = K · [HN – (H% · TN)]**. Taking each part in turn, we can see the formula is multiplying a timeshare percentage by the total net income of the parties, then subtracting that figure from net income of the higher earner. This figure is then multiplied by the K Factor, which is a percentage based on each income band. The new K Factor bands are as follows:

Total Net (TN)	K	Approximate Percentages
$0 - $2,900	0.165 + TN/82,857	16% - 20%
$2,901 - $5,000	0.131 + TN/42149	20% - 25%
$5,100 - $10,000	0.25	25%
$10,001 - $15,000	.10 + 1,499/TN	25% - 20%
Over $15,000	.12 + 1,200/TN	20% - 12%

The effect of this change is that for those in the lower income bands, child support will generally go down, and for those in the higher income bands, child support will generally go up. Those in the middle will likely have similar amounts owed.

SB 343 is the first of many upcoming and significant changes to the California child support program coming in the next few years. As always, the Department of Child Support Services is here to help you and your client establish and enforce child support orders, obtain parentage orders, and enforce spousal support orders alongside an ongoing child support order. If you have any questions about any area of child support, please contact the Department and we will be happy to assist.

***Jim Allen** is a Senior Attorney with the Ventura County Department of Child Support Services.*

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COURTS SHARPEN THEIR PENCILS FOR SCHOOL-RELATED CULTURE WARS

By Panda Kroll

As children head back to school this fall, several California school boards are embroiled in legislation and lawsuits arising from "culture war" resolutions they have passed. A San Bernadino County school board passed a resolution requiring teachers to notify parents when students request gender nonconforming pronouns or bathroom access. In Riverside County, a school board passed a resolution banning Critical Race Theory (CRT). Disputes over these types of resolutions reach beyond the Inland Empire. In San Diego County, a school board found itself defending a policy requiring teachers to use pronouns or gender-specific names requested by students but preventing them from informing the students' parents of the request.

Since the COVID-19 pandemic, many school boards have become a battleground for ideological conflict, and state lawmakers have joined the fray. In California, the legislature has *banned* "book bans" and prospectively struck down district rules requiring teachers to "out" gender-nonconforming students to their parents. Conservatives and liberals alike have challenged not only school policies but also legislation reacting to these policies in pending state and federal court actions.

It has been widely reported that conservative groups have fared well in local school board races: *See, e.g.*, Newsweek, Nov. 9, 2022, "Moms for Liberty Ride Wave of 'Anti-Wokeness' to School Board Victories" citing the group's success in endorsing hundreds of candidates nationwide who touted "similar messaging in the culture wars between conservatives and progressives: school closures during COVID were overwrought and destructive; Critical Race Theory is itself racist; boys and girls are different and should not share the same locker rooms and restrooms; and there's way too much focus on a pro-LGBTQ agenda."

Many California communities have elected conservative school board members promoting "anti-Woke" policies at odds with the state's Democratic leadership, resulting in litigation over how schools should teach subjects related to race and LGBTQ+ concerns, and how schools should address the competing rights of nonbinary/transgender students and their parents.

In 2023, a noisy confrontation between parents attending a Chino Valley Unified School District (CVUSD) meeting, and the California State Superintendent of Schools Tony Thurmond, resulted in police escorting Thurmond out of the building at the request of school board leadership. Thurmond had expressed opposition to a CVUSD policy requiring teachers to inform parents if their child identifies as transgender, questioning whether the policy violated student privacy laws and cautioning that it would increase risks faced by LGBTQ+ students who "may not be in homes where they can be safe." Over this opposition, the board voted 4-1 to approve a "parental notification" system requiring school officials to alert parents if a student requests to use a name or pronoun, or to use bathrooms that "do not align with the gender stated" on the student's birth certificate.

School boards in Riverside, Placer, and Shasta counties passed similar policies. Although a corresponding bill failed in the California legislature, eight states (Idaho, North Dakota, Iowa, Indiana, Tennessee, North Carolina, South Carolina and Alabama) have enacted "parental notification" legislation while five others (Utah, Arizona, Montana, Kentucky, and Florida) have enacted laws that promote, but do not require school officials to notify the parents of transgender youth in all circumstances.

On Aug. 28, 2023, California filed *People v. Chino Valley Unified School District*, and on Sept. 6, 2023, San Bernardino County Judge Thomas Garza preliminarily enjoined enforcement of the CVUSD parental notification policy. On April 10, 2024, the state filed *California Department of Education v. Rocklin Unified School District* against a second district that enacted a similar policy. In June 2024, the California Public Employment Relations Board (PERB) ruled that the policy was an unfair labor practice.

On July 15, 2024, Governor Gavin Newsom signed the SAFETY ("Support Academic Futures and Educators for Today's Youth") Act, a first-in-the-nation law prohibiting school districts from enacting "forced outing." Tony Hoang, Executive Director of Equality California, the nation's largest statewide LGBTQ+ civil rights organization, expressed support for the Act: "LGBTQ+ youth across California can now have these important family conversations when they are ready and in ways that strengthen the relationship between parent and child, not as a result of extremist politicians intruding into the parent-child relationship."

The day after the law was signed, Texas-based non-profit Liberty Justice Center filed *Chino Valley Unified School District v. Newsom* in the United States District Court for the Eastern District of California to prevent the law from taking effect on Jan, 1, 2025. In addition to the district, eight parent plaintiffs each allege he or she is a "devout Christian who believes God created man and woman as distinct, immutable genders." The plaintiffs argue the law violates the First and Fourteenth Amendments, as well as the Family Educational Rights and Privacy Act (FERPA). Liberty Justice Center said in a press release, "School officials do not have the right to keep secrets from parents, but parents do have a constitutional right to know what their minor children are doing at school." The Governor's office said in a statement, "This is a deeply unserious lawsuit, seemingly designed to stoke the dumpster fire formerly known as Twitter rather than surface legitimate legal claims."

In a First Amended Complaint filed Aug. 8, 2024, several school districts in Shasta County as well as the Orange County Board of Education joined CVUSD as plaintiffs.

Another pending federal lawsuit challenges a San Diego County school district -- along with the California Department of Education -- for being *too* "Woke." On April 27, 2023, the Thomas More Society filed *Mirabelli v. Olson* in the United States District Court for the Southern District of California, originally on behalf of two teachers who objected to an Escondido Union School District that allegedly "required school personnel to participate in a student's social transition to a new gender and to withhold any information about this social transition from the student's parents …[in violation of] Plaintiffs' moral and religious views." The teachers sought and received a religious accommodation related to the use of student-preferred names and pronouns (permitting the teachers to refer to these students by their

last names), but EUSD denied the teachers a religious accommodation related to disclosure to parents. The Second Amended Complaint adds additional prospective class plaintiffs, several of whom allege he or she is "a devout Roman Catholic and the parent of a gender incongruent middle school-aged child attending California public schools." The lawsuit alleges violations of the plaintiffs' constitutional right to free speech, free exercise, and substantive due process (parental rights), and religious discrimination/failure to accommodate in violation of Title VII.

On Sept. 14, 2023, District Judge Benitez enjoined the defendants from enforcing what the plaintiffs referred to as "parental exclusion policies." In his ruling, the Judge found:

"The school's policy is a trifecta of harm: it harms the child who needs parental guidance and possibly mental health intervention to determine if the [gender] incongruence is organic or whether it is the result of bullying, peer pressure, or a fleeting impulse. It harms the parents by depriving them of the long-recognized Fourteenth Amendment right to care, guide, and make health care decisions for their children. And finally, it harms plaintiffs who are compelled to violate the parent's rights by forcing plaintiffs to conceal information they feel is critical for the welfare of their students -- violating plaintiffs' religious beliefs."

The plaintiffs' motions for partial summary judgment and class certification are currently set for a hearing on Sept. 23, 2024.

Turning to Riverside County, in November 2022, the Temecula Valley Unified School District elected three conservative school board members during the pandemic, including Joseph Komrosky. At the newly constituted board's first meeting, Komrosky successfully sponsored a resolution that banned instruction on critical race theory. The Board additionally voted to remove a textbook, "Social Studies Alive!" because its supplemental materials provided to teachers (but not students) included a discussion of former San Francisco supervisor and LGBTQ+ rights activist Harvey Milk, who was assassinated in 1978 along with San Francisco Mayor George Moscone by a disgruntled former supervisor. The resolution stated that CRT "is an ideology based on false assumptions about the United States of America and its population," that CRT is a divisive and racist ideology, and that TVUSD's goal is to "uplift and unite students by not imposing the responsibility of historical transgressions in the past." Soon after, the Board passed a parental notification resolution identical to CVUSD's.

In contrast to the Chino Valley community's visible support of the CVUSD's parental notification resolution at the meeting in which the rule was enacted, in Temecula, students, parents and teachers associated with the district's three high schools protested the TVUSD resolution, staging demonstrations and a coordinated walkout in January 2023.

Students protesting TVUSD's Anti-CRT Resolution (Figure 1 from Civil Complaint, *Mae M. v. Komrosky)*

On Aug. 2, 2023, Los Angeles-based non-profit Public Counsel filed a lawsuit, *Mae M. v. Komrosky* in Riverside Superior Court against TVUSD on behalf of 10 students, the California Teachers Association, and four teachers, several of whom have taught at TVUSD for decades, arguing that the resolution has caused a chilling effect on any topic or classroom conversation that could be construed as violative. The plaintiffs allege that books targeted for removal include "*The Kite Runner"* by Khaled Hosseini, "*The Bluest Eye"* by Toni Morrison, and "*Looking for Alaska"* by John Green.

The complaint alleges violation of the California Constitution's "void for vagueness" and "right to receive information" clauses, violation of California equal protection and anti-discrimination statutes, and violation of a California statute prohibiting unlawful expenditure of taxpayer funds. California's Attorney General, ACLU, Penguin Random House, The Authors Guild, First Amendment Coalition, The Freedom to Read Foundation, PEN America, and Freedom to Learn Advocates all filed amicus briefs in support of the plaintiffs' motion to enjoin enforcement of the resolutions.

On Feb. 16, 2024, Riverside County Judge Keen denied the defendants' anti-SLAPP motion to strike the complaint, however, a week later Judge Keen denied plaintiffs' motion for a preliminary injunction. Judge Keen quoted defendant Komrosky's supporting affidavit, which declares that the resolution "does not interfere with the teaching of ethnic studies, history, or any other subject," and teachers "can still teach on accurate historical events and individuals, such as Dr. Martin Luther King, the Holocaust, and slavery."

Judge Keen additionally found that the resolution was reasonably related to a "legitimate pedagogical concern."

> "The Resolution allows instruction in CRT, but specifically prohibits instruction on theories such as 'only individuals classified as "white" people can be racist because only "white" people control society,' or 'racism is ordinary, the usual way society does business,' or 'an individual, by virtue of his or her race or sex, is inherently racist and/or sexist' or finally, that 'an individual is inherently morally or otherwise superior to another individual because of race or sex.' Theories such as these (and others banned by the Resolution) which are precepts taught within Critical Race Theory would seem to lack any legitimate pedagogical concern and would not be reasonably related to legitimate educational concerns."

On June 14, 2024, the plaintiffs filed a notice of appeal challenging the denial of their motion for a preliminary injunction. In their brief, they argue that the Board's "censorship hinders the learning of all schoolchildren. But it particularly injures children of color and LGBTQ children, stigmatizing (when not outright erasing) their identities, histories, and cultures. On top of this,

the Board enacted a new policy requiring Temecula teachers and school staff to 'out' transgender and gender nonconforming students to their parents, regardless of the abuse those students risk as a result of the disclosure." The brief further argues that the board passed the parental disclosure policy as "part of a wave of anti-LGBTQ measures," citing the board's "excision of State-mandated curricular content on the LGBTQ movement," its ban on Pride flags, and "its rejection of a proposed resolution prohibiting discrimination, bullying, and harassment of all students, including LGBTQ students."

As background to the CRT debate, in 2011, California passed the FAIR (Fair, Accurate, Inclusive and Respectful) Education Act, which updated the individuals and groups whose contributions to the history of California and the United States are to be taught, to include "Native Americans, African Americans, Mexican Americans, Asian Americans, Pacific Islanders, European Americans, lesbian, gay, bisexual, and transgender Americans, persons with disabilities, and members of other ethnic and cultural groups, to the economic, political, and social development of California and the United States of America." FAIR also prohibits instructional materials with a discriminatory bias or negative stereotypes based on gender, sexual orientation or disability.

Citing the 2022 Temecula resolution, on Sept. 25, 2023, Governor Newsom signed AB 1078 into law, a bill banning "book bans" in California schools. The law expands the FAIR Act, prohibiting censorship of instructional materials and strengthening California law requiring students to provide all students access to textbooks that teach about California's diverse communities. The bill's author, State Assemblymember Dr. Corey Jackson, in announcing the enactment, said "[t]he act of banning books, particularly those that shed light on diverse perspectives, cultural histories, and underrepresented voices, deprives our students of a well-rounded education. … [W]e will not tolerate the erasure of history or the suppression of diverse voices."

On June 4, 2024, Temecula Valley voters ousted TVUSD board president Komrosky in a recall election. Citing the narrow margin (4,963 voting yes and 4,751 voting no), Komrosky suggested he would run in the next election in November.

The group that spearheaded the special election stated in a press release that Komrosky's recall was another step in making "Temecula boring again."

Panda L. Kroll *is founder of Panda Kroll, Esq. & Associates and the Timeshare Law Library, Inc.*

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SCHOOL CULTURE WARS - *Cajune v. Independent Public Schools* IS A "BLACK LIVES MATTER" CLASSROOM POSTER PUBLIC OR PRIVATE SPEECH?

By Mari K. Rockenstein

When it comes to school culture wars, where is the line between a teacher's private speech and a school district's government speech and viewpoint-based discrimination?

Is a Black Lives Matter poster in a classroom or a pride flag sticker on a classroom door considered government speech?

In *Cajune v. Independent School. Dist. 194*, the Eight Circuit Court of Appeals attempted to answer that question. In *Cajune*, the plaintiffs sued to challenge the school district's permission for some teachers to put up Black Lives Matter posters in classrooms (but not for members of the public to display other posters, such as All Lives Matter or Blue Lives Matter posters). *Cajune v. Independent School Dist. 194* (8th Cir. 2024) 105 F.4th 1070. The plaintiffs claimed that the content and meaning of the BLM posters were shaped by private persons and that the district merely stamped its seal of approval on the posters. The plaintiffs stated that the district created a limited public forum when it allowed private persons to post the BLM posters on the schools' walls. Having done so, the plaintiffs contend that the district could not discriminate against their speech by rejecting the All Lives Matter and Blue Lives Matter posters and shirts. *Id*.

The district court dismissed the plaintiffs' complaint after concluding that the government-speech doctrine barred the plaintiffs' claims. In reversing and remanding the defendants' motion to dismiss, however, the Eight Circuit Court of Appeals held that the plaintiffs stated a First Amendment claim: plaintiffs had sufficiently alleged that the government was allowing private speech (which means the government generally can't discriminate based on viewpoint), rather than engaging in government speech (where the government can select the viewpoints it conveys).

The school district claimed it rejected Cajune's request because the phrases "All Lives Matter" and "Blue Lives Matter" "were created specifically in opposition to "Black Lives Matter." According to the Eighth Circuit Court of Appeals that was impermissible viewpoint discrimination in that the rationale for the restriction was prompted by what the school district viewed as the speaker's "motivating ideology" or their "opinion or perspective." *Id*.

In some situations, difficulties can arise in distinguishing between government speech and government regulation of private expression. To determine whether the government intended to speak for itself or to regulate private expression, the Court conducted a "holistic inquiry," looking to (1) "the history of the expression at issue," (2) "the public's likely perception as to who (the government or a private person) is speaking," and (3) "the extent to which the government has actively shaped or controlled the expression." *Id*. at 1080.

First, the Court considered both the general history of posting messages on school walls as well as the specific history of the district in allowing similar messages to be posted on its walls. As to general history, the parties did not dispute that schools have traditionally controlled and communicated messages on posters placed on their walls. The district's specific history, however, told another story. *Id*. The district had not previously allowed private individuals to display a poster series like the poster series on school walls. Indeed, the superintendent attempted on multiple occasions to exclude the BLM posters in the district but acquiesced to the wishes of private persons after facing backlash from community members. *Id*. at 1081.

The district court found that the first factor favored the school district's claim of government speech because the school district "reviewed, authorized, and provided the posters to support staff [and students]." The Eighth Circuit found that the district court improperly weighed the facts and construed them in the light most favorable to the *defendants*. The district court did not consider the involvement of private actors in the design and adoption of the posters. For instance, the superintendent told the school board that the school district's goal was to allow "teachers" to use the BLM posters if those teachers felt that the posters had instructional value. *Id*. at 1082.

The Eighth Circuit concluded that the statements and actions of the individual teachers could not be impugned to the school district. *See Downs v. Los Angeles Unified Sch. Dist.*, (9th Cir. 2000) 228 F.3d 1003 (distinguishing between a "teacher" and the "Los Angeles Unified School District"). In addition, a school board member told Cajune that the posters were "requested by many staff and families" in the school district. When viewing the facts in the light most favorable to the *plaintiffs*, these statements (and others) supported a finding of private speech. Thus, while general history weighed in the district's favor, specific history weighed in favor of the plaintiffs. *Cajune* 105 F.4th at 1083.

Second, the Eighth Circuit considered the public's likely perception as to who—the government or a private person—was speaking. The teachers were not required to display the posters in their classrooms. The location of BLM posters in the teachers' classrooms, as well as the discretion provided to teachers in choosing whether to display the posters at all, supported a finding of private speech. *Id*.

The school district argued the posters were government speech because they contained the district's logo, slogan, website link, and a statement that "[t]his poster is aligned to school board policy and an unwavering commitment to our Black students and staff." The Eighth Circuit could not conclude that the posters were government speech solely on the basis that the district affixed its seal of approval on them. Viewed in the light most favorable to the plaintiffs, the Court stated the public would perceive private persons, and not the school district, as having spoken through the BLM posters.

Third, government speech required that the government shape and control the expression. In *Walker v. Texas Div., Sons of Confederate Veterans, Inc.,* (2015) 576 U.S. 200, the United States Supreme Court evaluated whether the issuance of specialty license plates by Texas constituted

government speech. In issuing specialty license plates, Texas had a review process and final approval authority over the content of the plates. However, the mere existence of these elements did not dissuade SCOTUS from inquiring into whether Texas had "actively exercised" its "sole control over the design, typeface, color, and alphanumeric pattern for all license plates." *Id*. at 213.

Here, by contrast, the district stated that the posters were reviewed by an "equity group," "students," "staff," and "other advisory committees." The school district's sole involvement was to replace a blonde girl in one of the posters with a blonde boy. Thus, the district maintained a passive role in the design of the posters. *Cajune*, 105 F.4th at 1082.

School district administrators confirmed on several occasions that the idea of the poster series originated with private persons, including "staff and families" in the district. Moreover, the district did not prescribe the display of posters on specific walls or on any walls at all. Rather, it allowed individual teachers to make that decision, thus showing it relinquished control over the posters to private actors.

Ultimately, the Eighth Circuit held the plaintiffs pled sufficient facts to allow a court to draw the inference that the BLM posters were expressions of private persons. When the school district allowed private persons to display the posters on school walls, it deviated from its prior practice restricting the display of such posters. In doing so, the school district created a limited public forum and could not discriminate against other speech based on its viewpoint. *Id* at 1083.

Aftermath: The defendants' petition for a rehearing en banc or a rehearing by the panel was recently denied by the Court. Cajune v. Indep. Sch. Dist., No. 23-3115, 2024 WL 3592399 (8th Cir. July 31, 2024)

Mari K. Rockenstein *is Counsel for the Department of the Navy, Office of General Counsel and Director of Environmental Law Training - in addition to adjunct professor for Cal Lutheran University and CSUCI.*

HAVE YOU HEARD?

Governor Appoints Commissioner Diana Weiss Aizman to Superior Court Judgeship

On July 17, 2024, Governor Gavin Newsom announced the appointment of Ventura Superior Court **Commissioner Diana Weiss Aizman** to a judgeship in the Ventura Superior Court, filling the vacancy created by the retirement of **Judge David Worley**. The appointment authorized Commissioner Aizman to begin her judicial duties immediately.

Aizman served as a Commissioner with the Ventura Superior Court since February 2024. Before that, Aizman's 16+ years of experience as an attorney was exclusive to criminal law matters. As a Senior Law Clerk, she worked in the Auto Insurance Fraud Division of the Los Angeles District Attorney's Office from 2007 to 2008. As a Deputy City Attorney for the Los Angeles City Attorney's Office from 2008 to 2012, she prosecuted cases in three Los Angeles County criminal courthouses, conducting jury trials to verdict and supervising junior deputies in jury trials. In 2012, she opened her own criminal law defense practice (Aizman Law Firm, APC) focusing on alcohol and drug related offenses and assisting individuals in recovery navigate through the criminal justice system. Beginning in 2019, Aizman began serving as a Judge Pro Tem for the Los Angeles Superior Court in Traffic Court.

Aizman received her Bachelor of Arts (Sociology) from the University of California, San Diego and she earned her Juris Doctor degree from Southwestern Law School.

Ventura Superior Court Selects Courtney Lewis as New Commissioner

The judges of the Ventura Superior Court have announced the selection of **Courtney Lewis** as the Court's newest commissioner. She fills the vacancy created by Commissioner Diana Weiss Aizman. Commissioner Lewis' official start date was Monday, August 19, 2024, and she has been assigned to Courtroom 10 where she will hear traffic matters.

Lewis served as a Senior Deputy District Attorney at the Ventura County District Attorney's Office since November 2020. In this role, she was assigned to the Major Crimes-Homicide Unit, demonstrating her expertise and dedication to handling complex cases. Prior to this, she worked as a Deputy District Attorney at the Kern County District Attorney's Office from January 2011 to November 2020, where she gained extensive experience across various units including Homicide, Family Violence, Traffic Safety, General Felony, Preliminary Hearing, and Misdemeanor units. She began her legal career as a Post-Bar Certified Law Clerk at the Kern County DA's Office, where she conducted preliminary hearings, wrote motions, and organized trial binders.

Lewis holds a Juris Doctor degree from Loyola Law School in Los Angeles, California, where she was an active member of the Byrne Trial Advocacy Team and participated in the Hobbs District Attorney Practicum. She also earned a Master of Science in Criminal Justice from Lamar University in Beaumont, TX, and received a Bachelor of Arts in English from the University of California, Santa Barbara, graduating with high honors.

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