

FILED
CIVIL BUSINESS OFFICE
CENTRAL DIVISION
APR 01 2008
CLERK - SUPERIOR COURT
SAN DIEGO COUNTY, CA

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16
17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **IN AND FOR THE COUNTY OF SAN DIEGO**

BY FAX

19 CALIFORNIA EDUCATION COMMITTEE,
20 LLC and PRISCILLA SCHREIBER,

21 Plaintiffs,

22 v.

23 ARNOLD SCHWARZENEGGER, in his
official capacity as Governor of the State of
24 California; EDMUND G. BROWN, JR., in his
official capacity as Attorney General of the
25 State of California; JACK O'CONNELL in his
official capacity as California Superintendent of
26 Public Instruction; and DOES 1 through 20
inclusive,

27 Defendants.
28

CASE NO. 37-2008-00077546-CU-CRCTL

Dept: 60
Judge: Hon Yuri Hoffman

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Nature of Action

**Civil Rights Suit Under 42 U.S.C. § 1983
and California Constitution Article 1,
Sections 1 and 7**

Filing Date: April 1, 2008
Trial Date: TBD

1 Plaintiffs CALIFORNIA EDUCATION COMMITTEE, LLC and PRISCILLA
2 SCHREIBER do hereby allege as follows:

3 **I.**

4 **INTRODUCTION**

5 1. The Governor of California recently signed into law Senate Bill 777, which took
6 effect on January 11, 2008. Senate Bill 777, in conjunction with the California Penal Code,
7 introduces a new definition of "gender" into the California Education Code and is part of an
8 overall nondiscrimination scheme applicable to schools in California. Senate Bill 777 recklessly
9 abandons the traditional understanding of biological sex in favor of an elusive definition that is
10 unconstitutionally vague. This lawsuit facially challenges the redefinition of the term "gender,"
11 as it will be impossible for school administrators and educators to enforce this new definition.
12 Further, it will be impossible for administrators and educators to know whether they themselves
13 are violating the nondiscrimination provisions of the Education Code or the Penal Code.
14 Additionally, the special treatment intended for a select few students through the enforcement of
15 Senate Bill 777 will result in the violation of the privacy rights of the remainder of students not
16 targeted for special treatment under Senate Bill 777. For these reasons, Plaintiffs bring this
17 lawsuit based upon the prohibition against vague enactments as established in both the U.S. and
18 California Constitutions, and the right to privacy founded in the California Constitution.

19 **II.**

20 **JURISDICTION AND VENUE**

21 2. This action arises under the First and Fourteenth Amendments to the United States
22 Constitution, the Civil Rights Act (42 U.S.C. §§ 1983 and 1985), and the California Constitution
23 Article 1, Sections 1 and 7.

24 3. California Constitution, Article VI, § 10 confers original jurisdiction on this Court,
25 as this is an unlimited civil matter and involves a claim for equitable relief.

26 4. Venue is proper in this County pursuant to California Code of Civil Procedure
27 §393(1)(b) Defendant ARNOLD SCHWARZENEGGER and Defendant EDMUND G.
28 BROWN, JR. maintain offices in this district, and a substantial part of the cause of action arose

1 in the County of San Diego. Plaintiff PRISCILLA SCHREIBER is a school board member for
2 the Grossmont Union High School District, a public school district located in San Diego County,
3 California, and as such will be required, along with other school board members who are
4 additionally members of Plaintiff CALIFORNIA EDUCATION COMMITTEE, LLC, to
5 implement and enforce the challenged laws within San Diego County.

6 5. This Court is authorized to grant Plaintiffs' prayer for relief regarding costs,
7 including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988 and Cal. C.C.P. § 1021.5

8 III.

9 IDENTIFICATION OF THE PARTIES

10 6. Plaintiff California Education Committee, LLC ("CEC") is an association of
11 California taxpaying persons directly involved in the California public education environment,
12 inclusive of school board members, teachers, school counselors, parents and students. CEC
13 represents numerous individuals residing in San Diego County, California, and elsewhere in
14 California. Members of CEC include, but are not limited to, the following:

15 a. CEC members Larry Urdahl, Robert Shield, and Jim Kelly are California
16 taxpayers and school board members for the Grossmont Union High
17 School District, a public school district located in San Diego County,
18 California. As school board members, they are responsible for the
19 implementation and enforcement of laws applicable to public schools and
20 will be responsible as trustees to apply and enforce Senate Bill 777 and
21 California's definition of "gender."

22 b. CEC member Louis F. Russo is a California taxpayer, high school teacher,
23 and cross country coach for Bonita Vista High School in San Diego
24 County. As a coach of both boys and girls' teams, Mr. Russo is
25 responsible for the supervision of students. He is responsible for the
26 implementation and enforcement of laws applicable to public schools and
27 will be responsible as a teacher and coach to apply and enforce Senate Bill
28 777 and California's definition of "gender." This responsibility extends to

- 1 the use of locker rooms and restrooms by students.
- 2 c. CEC member Tom Petrich is a California taxpayer, public high school
3 teacher, and counselor within the Murrieta Valley Unified School District.
4 As a school teacher and counselor, Mr. Petrich is responsible for the
5 implementation and enforcement of laws applicable to public schools and
6 will be responsible as a teacher and counselor to apply and enforce Senate
7 Bill 777 and California's definition of "gender."
- 8 d. CEC member Lawrence Martinez is a California taxpayer and middle
9 school physical education teacher within the Los Angeles Unified School
10 District. As a physical education teacher, Mr. Martinez is responsible for
11 the implementation and enforcement of laws applicable to public schools
12 and will be responsible as a physical education teacher to apply and
13 enforce Senate Bill 777 and California's definition of "gender."
- 14 e. CEC member Elizabeth A., by and through her parents Lloyd and Rosa A.,
15 is a California public high school student in San Diego County and is
16 involved in extracurricular athletics at her high school where she regularly
17 uses the girls' restroom and girls' locker room facilities provided at her
18 school. This student is representative of other CEC members and other
19 California public school students whose privacy rights will be impacted by
20 Senate Bill 777 and California's definition of "gender."

21 7. Plaintiff PRISCILLA SCHREIBER is a California taxpayer and school board
22 member for the Grossmont Union High School District, a public school district located in San
23 Diego County, California. As a school board member, she is responsible for the implementation
24 and enforcement of laws applicable to public schools and will be responsible as a trustee to apply
25 and enforce Senate Bill 777 and California's definition of "gender."

26 8. Defendant ARNOLD SCHWARZENEGGER at all times relevant herein was and
27 is the Governor for the State of California. This defendant is sued in his official capacity. The
28 Office of Governor maintains an office in San Diego County, California, and is established,

1 organized, and authorized under and pursuant to the laws of California with the authority to sue
2 and be sued in its own name. Defendant ARNOLD SCHWARZENEGGER, as Governor, signed
3 Senate Bill 777 into law and is responsible to uphold and enforce the laws of California,
4 including Senate Bill 777 and California's prohibition of discrimination against persons on the
5 basis of "gender" as defined in California law.

6 9. Defendant EDMUND G. BROWN, JR., at all times relevant herein was and is the
7 Attorney General for the State of California. This defendant is sued in his official capacity. The
8 Office of Attorney General maintains an office in San Diego County, California, and is
9 established, organized, and authorized under and pursuant to the laws of California with the
10 authority to sue and be sued in its own name. Defendant EDMUND G. BROWN, JR., as
11 Attorney General, is responsible to prosecute and enforce the laws of California, including
12 Senate Bill 777 and California's prohibition of discrimination against persons on the basis of
13 "gender" as defined in California law.

14 10. Defendant JACK O'CONNELL at all times relevant herein was and is the
15 Superintendent of Public Instruction for the State of California. This defendant is sued in his
16 official capacity. The Superintendent of Public Instruction is established, organized, and
17 authorized under and pursuant to the laws of California with the authority to sue and be sued in
18 its own name. Defendant JACK O'CONNELL is responsible to enforce the education laws of
19 California, including Senate Bill 777 and California's prohibition of discrimination against
20 persons on the basis of "gender" as defined in the California Education Code.

21 11. DOE Defendants 1 through 20 are unknown to Plaintiffs at this time, but each is to
22 be identified in this case as a resident of the State of California and acting in all particulars
23 material to this case in his or her official capacity and under color of state law.

24 IV.

25 FACTUAL ALLEGATIONS

26 12. The California Secretary of State chaptered Senate Bill 777 into law on October 12,
27 2007, after it was signed by Governor Schwarzenegger. Senate Bill 777 took effect on January
28 1, 2008.

1 13. Pursuant to Senate Bill 777, California Education Code § 220 was amended to add
2 "gender" and "sexual orientation" expressly to the classifications of protected groups and
3 removed the term "sex" as a classification. Education Code § 220 now reads as follows: "No
4 person shall be subjected to discrimination on the basis of disability, gender, nationality, race or
5 ethnicity, religion, sexual orientation, or any other characteristic that is contained in the
6 definition of hate crimes set forth in Section 422.55 of the Penal Code in any program or activity
7 conducted by an educational institution that receives, or benefits from, state financial assistance
8 or enrolls pupils who receive state student financial aid."

9 14. Previously, Education Code § 220 provided as follows: "No person shall be
10 subjected to discrimination on the basis of sex, ethnic group identification, race, national origin,
11 religion, color, mental or physical disability, or any actual or perceived characteristic that is
12 contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code in any
13 program or activity conducted by an educational institution that receives, or benefits from, state
14 financial assistance or enrolls pupils who receive state student financial aid."

15 15. Senate Bill 777 redefined the term "gender" by adding Education Code § 210.7,
16 which now reads as follows: "'Gender' means sex, and includes a person's gender identity and
17 gender related appearance and behavior whether or not stereotypically associated with the
18 person's assigned sex at birth."

19 16. Senate Bill 777 eliminates the biological understanding of the term "gender" and
20 repealed Education Code § 212, which previously defined "sex" as "the biological condition or
21 quality of being a male or female human being."

22 17. Senate Bill 777 added Education Code § 212.6, which defines "sexual orientation"
23 to mean "heterosexuality, homosexuality, or bisexuality."

24 18. Senate Bill 777 requires educators to avoid discriminating against any individual
25 employee, student, or other person based upon that individual's self-identification of being a
26 male or female, regardless of his or her actual sex. This requires educators to have
27 foreknowledge of the private mental impressions, thoughts, and disabilities of each person with
28 whom the educational institution comes into contact.

1 19. Senate Bill 777 places educators in the impossible position of (1) reading the minds
2 of individuals to determine the individual's self-defined sexual identity so as not to inadvertently
3 discriminate against an individual based upon their self-defined sex and (2) protecting the
4 privacy and safety of all students from persons of the opposite sex. There is no limitation on
5 how often a person may change their self-defined sex, and there are no applicable standards upon
6 which educators may rely in order to implement Senate Bill 777.

7 20. Senate Bill 777 also amended Education Code § 51500 to state as follows: "No
8 teacher shall give instruction nor shall any school district sponsor any activity that promotes a
9 discriminatory bias because of a characteristic listed in Section 220." This provision is
10 unconstitutionally vague because it places an educator in the impossible position of knowing
11 whether an instruction or activity "promotes a discriminatory bias." For example, any
12 curriculum or instruction that pre-assumes the existence of a mother and father in a family
13 relationship might be construed to promote a discriminatory bias against persons choosing
14 alternative relationships. A violation of this provision would cause educators to be disciplined
15 by their employers or cause educators to be guilty of discrimination.

16 21. Educators are also in the vulnerable position of being in violation of the California
17 Penal Code should they fail to guess properly at an individual's self-defined sex. California
18 Penal Code § 422.55(a)-(b) establishes the definition of a hate crime:

19 (a) "Hate crime" means a criminal act committed, in whole or in part,
20 because of one or more of the following actual or perceived
21 characteristics of the victim: (1) Disability. (2) Gender. (3) Nationality.
22 (4) Race or ethnicity. (5) Religion. (6) Sexual orientation. (7)
23 Association with a person or group with one or more of these actual or
24 perceived characteristics.

25 (b) "Hate crime" includes, but is not limited to, a violation of Section 422.6.

26 22. Like the California Education Code, California Penal Code § 422.56(c) defines
27 "gender" to mean "sex, and includes a person's gender identity and gender related appearance
28 and behavior whether or not stereotypically associated with the person's assigned sex at birth."

1 23. Further, California Penal Code § 422.6(a) places an extremely broad category of
2 actions that would amount to a crime:

3 (a) No person, whether or not acting under color of law, shall by force or
4 threat of force, willfully injure, intimidate, interfere with, oppress, or
5 threaten any other person in the free exercise or enjoyment of any right or
6 privilege secured to him or her by the Constitution or laws of this state or
7 by the Constitution or laws of the United States in whole or in part
8 because of one or more of the actual or perceived characteristics of the
9 victim listed in subdivision (a) of Section 422.55.

10 24. As public school educators are responsible in their normal functions to separate
11 males and females in school restrooms, locker rooms, and other facilities for the sake of
12 student/employee privacy and public safety, educators and administrators will be in criminal
13 violation of the Penal Code if they physically or forcefully interfere with, or threaten to interfere
14 with, any student or employee seeking access to facilities traditionally reserved to the opposite
15 sex, whether by intimidation, oppression, or threat of suspension.

16 25. Unless and until the above-referenced laws are enjoined, Plaintiffs will suffer
17 irreparable harm to their federal and state constitutional rights to due process and privacy.

18 26. Plaintiffs are informed and believe that Defendants, or the employees and agents
19 under their control, will cause the expenditure of significant funds out of the state treasury in
20 order to carry out, enforce, and implement Senate Bill 777 and the other challenged laws.

21 V.

22 **FIRST CAUSE OF ACTION**

23 **Violation of the Due Process Clause of**

24 **The Fourteenth Amendment to the United States Constitution**

25 27. Plaintiffs re-allege and incorporate herein by reference all preceding paragraphs.

26 28. Education Code § 220 as amended by Senate Bill 777, Education Code § 210.7 as
27 added by Senate Bill 777, Education Code § 212.6 as added by Senate Bill 777, Education Code
28 § 51500 as amended by Senate Bill 777, the removal of Education Code § 212, and the related

1 arbitrary and discriminatory application by person obligated to enforce or apply the law; and,
2 third, they abut sensitive areas of basic constitutional freedoms and in their operation inhibit the
3 exercise of those freedoms.

4 37. Defendants have no compelling reason to justify these vague enactments, and said
5 enactments are not narrowly tailored to further a state interest.

6 38. The laws and Defendants' enforcement thereof violate Article 1, Section 7 of the
7 California Constitution.

8 WHEREFORE, Plaintiffs respectfully pray that the Court grant the equitable and legal
9 relief set forth hereinafter in the prayer for relief. **VII.**

10 **THIRD CAUSE OF ACTION**

11 **California Constitution, Article 1, Section 1**

12 39. Plaintiffs re-allege and incorporate herein by reference all preceding paragraphs.

13 40. Article 1, Section 1, of the California Constitution provides as follows: "All people
14 are by nature free and independent and have inalienable rights. Among these are enjoying and
15 defending life and liberty, acquiring, possessing, and protecting property, and pursuing and
16 obtaining safety, happiness, and privacy."

17 41. Plaintiffs' members, inclusive of public school employees and students, are
18 entitled to safety and privacy. The laws specified in the first cause of action are in contravention
19 to the rights of safety and privacy and amount to a serious invasion of those interests.
20 Particularly, Plaintiffs' members are entitled to safety and privacy in restrooms, locker rooms,
21 and other public facilities where males and females are systematically separated based upon the
22 reasonable expectation of privacy – privacy interests which have long been respected and even
23 celebrated between males and females.

24 42. Unless the above-referenced laws are restrained and enjoined by this Court, there is
25 a substantial danger that Plaintiffs' members will be subjected to extreme embarrassment,
26 humiliation, anxiety, intimidation, and emotional distress. Further, there is a substantial danger
27 to the physical safety of Plaintiffs' members.

28 WHEREFORE, Plaintiffs respectfully pray that the Court grant the equitable and legal

1 relief set forth hereinafter in the prayer for relief.

2 **VIII.**

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs pray for judgment as follows:

5 A. Pursuant to California Code of Civil Procedures §§525 and 526(a), grant
6 preliminary and permanent injunctive relief that prohibits Defendants, its officials, successors,
7 assigns, affiliates, and all persons in active concert or participation with them from implementing,
8 enforcing, carrying out or complying with the laws set forth in the first cause of action;

9 B. That this Court render a Declaratory Judgment declaring that the laws set forth in
10 the first cause of action violate the Fourteenth Amendment to the United States Constitution;

11 C. That this Court render a Declaratory Judgment declaring that the laws set forth in
12 the second cause of action violate the California Constitution Article 1, Section 7;

13 D. That this Court render a Declaratory Judgment declaring that the laws set forth in
14 the third cause of action violate the California Constitution Article 1, Section 1;

15 E. That this Court adjudge, decree, and declare the rights and other legal relations
16 with the subject matter here in controversy, in order that such declaration shall have the force and
17 effect of final judgment;

18 F. That this Court retain jurisdiction of this matter for the purpose of enforcing this
19 Court's order;


20 G. That this Court grant to Plaintiffs reasonable costs and expenses of this action,
21 including attorneys' fees; and

22 H. That this Court grant such other and further relief as this Court deems just and
23 proper.

24 Dated: April 1, 2008

Respectfully submitted,

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26 By:


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