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14 UNITED STATES DISTRICT COURT
15 SOUTHERN DISTRICT OF CALIFORNIA
16

17 CITIZENS FOR QUALITY
EDUCATION SAN DIEGO, et al.,
18
19 Plaintiffs,
20 vs.
21 SAN DIEGO UNIFIED SCHOOL
DISTRICT, et al.,
22 Defendants.

Case No. 3:17-cv-1054-BAS-JMA

**BRIEF OF AMICUS CURIAE CAIR-
CA IN SUPPORT OF DEFENDANTS’
OPPOSITION TO PRELIMINARY
INJUNCTION**

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27
28

TABLE OF CONTENTS

1			<u>Page</u>
2			
3	I.	STATEMENT OF INTEREST	1
4	II.	INTRODUCTION	1
5	III.	BACKGROUND	4
6	A.	The Modern Rise of Islamophobia in America.....	4
7	B.	The 2016 Presidential Election and Vilification of Muslims	5
8	C.	The Increase In Hate Crimes Following the Election.....	5
9	D.	The Widespread Prevalence of Anti-Muslim Bullying in	
10		Schools	6
11	E.	The Intensification of Anti-Muslim Bullying Following the	
12		Election.....	8
13	F.	The Impact of Bullying on Students and Education	8
14	G.	California’s Avowed Policy of Combating All	
15		Discrimination.....	9
16	H.	Cultural Education Enriches Students and Reduces	
17		Bullying.....	10
18	I.	CAIR-CA Offers to Work With The School District to	
19		Promote Tolerance	11
20	J.	What The Partnership Would Have Involved.....	11
21	K.	The School District Decides To Not Work With CAIR-CA	14
22	IV.	ARGUMENT	14
23	A.	Standard for Preliminary Injunction	14
24	B.	School Lessons About the World’s Religions Do Not	
25		Violate The Establishment Clause	14
26	1.	The Anti-Islamophobia Initiative Has a Secular	
27		Purpose.....	15
28	2.	The Primary Effect of the Anti-Islamophobia	
		Initiative Is to Educate and Promote Diversity.....	17
	3.	The Anti-Islamophobia Initiative Does Not Require	
		an Excessive Entanglement With Religion	20
	C.	The Anti-Islamophobia Initiative Does Not Violate	
		California’s No Aid Clause.....	22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS (cont.)

	<u>Page</u>
1. The Anti-Islamophobia Initiative Does Not Provide a Benefit to a Sectarian Purpose.....	23
2. Teaching Cultural Awareness Is Not a Sectarian Purpose.....	23
3. Any Sectarian Benefit Is Incidental to the Secular Effect of the Anti-Islamophobia Initiative.....	24
V. CONCLUSION	25

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>Cases</u>	
1 <i>Altman v. Bedford Cent. Sch. Dist.</i> , 245 F.3d 49 (2d Cir. 2001)	15
2	
3 <i>Am. Atheists, Inc. v. Port Authority of N.Y. & N.J.</i> , 760 F.3d 227 (2d Cir. 2014)	16
4	
5 <i>Awad v. Ziriach</i> , 670 F.3d 1111 (10th Cir. 2012)	4
6	
7 <i>Barnes-Wallace v. City of San Diego</i> , 607 F.3d 1167 (9th Cir. 2010)	22
8	
9 <i>Barnes-Wallace v. City of San Diego</i> , 704 F.3d 1067 (9th Cir. 2012)	15, 22
10	
11 <i>Bd. of Educ. of Kiryas Joel Village Sch. Dist. v. Grumet</i> , 512 U.S. 687 (1994)	17
12	
13 <i>Bd. of Educ. v. Pico</i> , 457 U.S. 853 (1982)	15
14	
15 <i>Brown v. Woodland Joint Unified Sch. Dist.</i> , 27 F.3d 1373 (9th Cir. 1994)	17, 18, 25
16	
17 <i>Cal. Educ. Facilities Auth. v. Priest</i> , 526 P.2d 513 (Cal. 1974)	22
18	
19 <i>Cal. Parents for Equalization of Educ. Materials v. Noonan</i> , 600 F. Supp. 2d 1088 (E.D. Cal. 2009)	18
20	
21 <i>Cal. Parents for Equalization of Educ. Materials v. Torlakson</i> , 267 F. Supp. 3d 1218 (N.D. Cal. 2017)	15
22	
23 <i>Cal. Statewide Communities Dev. Auth. v. All Persons Interested in the Matter of the Validity of a Purchase Agreement</i> , 152 P.3d 1070 (Cal. 2007)	22
24	
25 <i>Cholla Ready Mix, Inc. v. Civish</i> , 382 F.3d 969 (9th Cir. 2004)	20
26	
27 <i>Davies v. L.A. Cnty. Bd. of Supervisors</i> , 177 F. Supp. 3d 1194 (C.D. Cal. 2016)	23
28	
<i>Doe v. Kelly</i> , 878 F.3d 710 (9th Cir. 2017)	14
<i>E. Bay Asian Local Dev. Corp. v. California</i> , 13 P.3d 1122 (Cal. 2000)	15

TABLE OF AUTHORITIES (cont.)

	<u>Page(s)</u>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
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TABLE OF AUTHORITIES (cont.)

Page(s)

Skoros v. City of New York,
437 F.3d 1 (2d Cir. 2006) 15

Stone v. Graham,
449 U.S. 39 (1980) 15

T.K. v. N.Y.C. Dep’t of Educ.,
779 F. Supp. 2d 289 (E.D.N.Y. 2011)..... 6, 8, 9

Van Orden v. Perry,
545 U.S. 677 (2005) 14

Vasquez v. Los Angeles Cnty.,
487 F.3d 1246 (9th Cir. 2007) 17

Williams v. California,
764 F.3d 1002 (9th Cir. 2014) 12, 20

Wygant v. Jackson Bd. of Educ.,
476 U.S. 267 (1986) 10

Statutes

Cal. Educ. Code § 201 10

Cal. Educ. Code § 233.5 10

Cal. Educ. Code § 234(b)..... 10

Other Authorities

Gayle L. Macklem, *Bullying and Teasing: Social Power in Children’s
Groups*,
68 (2003)..... 9

Gwen M. Glew et. al., *Bullying Psychological Adjustment, and
Academic Performance in Elementary School*,
159 Archives of Pediatric and Adolescent Med. 1026 (2005) 9

Kevin C. McDowell, *The Paradox of Inclusion by Exclusion: The
Accommodation of Religion in the Public Schools*,
40 Ind. L. Rev. 499 (2007) 18

Constitutional Provisions

Cal. Const. art. XVI 22

1 **I. STATEMENT OF INTEREST**

2 *Amicus curiae* is the Council on American-Islamic Relations, California
3 (“CAIR-CA” and “CAIR,” respectively), a 501(c)(3) which serves Muslims in
4 California through its civil rights and advocacy efforts. CAIR-CA’s offices are
5 dedicated to enhancing a general understanding of Islam, encouraging dialogue,
6 protecting civil liberties, empowering American Muslims, and building coalitions that
7 promote justice and mutual understanding.

8 CAIR-CA’s interest in this case derives from its committed interest in
9 addressing the increasing bullying of Muslim students in schools. It intended to assist
10 Defendants in developing tools that Defendants could use, should they so choose, to
11 help prevent bullying. CAIR-CA desires to offer both crucial background on the
12 growing epidemic of anti-Muslim bullying and Islamophobia, as well as set forth the
13 relevant precedent of the Establishment Clause and the California constitution’s
14 religious clauses.¹

15 **II. INTRODUCTION**

16 California law guarantees each student, regardless of religion, equal rights and
17 opportunities in the schools of this state. *See* Cal. Const., Article IX, Sec. 1; California
18 Educ. Code § 200; *Serrano v. Priest*, 18 Cal. 3d 728 (1976). In order for these
19 promises to be fulfilled, all California’s students must be allowed to learn in an
20 environment free from bullying, harassment, and torment.

21 For many Muslim students in San Diego and around the country, their right to
22 an equal and fair education is being denied and disrupted by discrimination and
23 harassment. Islamophobia² and anti-Muslim bullying has reached its modern peak in
24

25 _____
26 ¹ It is important to note that Islam is not a monolith: there are more than 70 different
27 interpretations and practices observed by those describing themselves as Muslim. And
28 while CAIR and CAIR-CA endeavor to support all American Muslims, their positions
do not necessarily reflect the entire breadth of the American Muslim experience.

² Defined as an “irrational fear of, aversion to, or discrimination against Islam or
people who practice Islam.”

1 this country. Nearly half of Muslim students in California report being bullied on the
2 basis of their faith. This is nearly double the national average for all students. Many
3 incidents of bullying go unreported, but those who have come forward describe
4 terrifying situations. A seventh-grader threatened to shoot a Muslim student whom he
5 deemed a “towel head and terrorist.” A sixth-grade girl wearing a hijab was punched
6 by three male students who called her “ISIS.” Plainly, no student, regardless of gender,
7 nationality, race, sexual orientation, or religion should be treated this way.

8 Against this backdrop, the San Diego Unified School District (the “School
9 District”) decided to take action against bullying that targeted Muslim students (the
10 “Anti-Islamophobia Initiative”). There are three fundamental principles underlying
11 the wisdom and propriety of the Anti-Islamophobia Initiative. *First*, it cannot
12 reasonably be disputed that educating young people about different cultures and
13 religions is a social good. *See Brown v. Board of Ed.*, 347 U.S. 483, 493 (1954)
14 (“[E]ducation is perhaps the most important function of state and local
15 governments...It is the very foundation of good citizenship. Today it is a principal
16 instrument in awakening the child to cultural values...”). *Second*, it cannot reasonably
17 be disputed that bullying and harassment significantly impede the learning
18 opportunities for the victims (and, indeed, their peers), and school districts have a duty
19 to protect their students against such treatment. (*See, e.g., Kaba Decl., Ex. 16*
20 (“Students who are repeatedly bullied receive poorer grades and participate less in
21 class discussions.”); Cal. Educ. Code § 220.) And finally, knowledge about
22 differences leads to tolerance and acceptance.

23 To achieve these ends, the School District directed its Superintendent to address
24 the plague of anti-Muslim bullying, in conformance with California law. But the
25 School District was ill-equipped to understand the particular challenges and issues that
26 faced Muslim youth. Though growing, Muslims comprise only a small proportion of
27 San Diego’s population, and many Americans remain unfamiliar with Islam. At the
28 same time, CAIR-CA had published multiple reports tracking and analyzing anti-

1 Muslim bullying and Islamophobia in California’s schools.³ The fit was clear, and the
2 School District and CAIR-CA discussed potentially entering into a partnership (the
3 “Partnership”) by which CAIR-CA would offer its knowledge and experience with
4 Muslim students to the School District to assist in the latter’s efforts to promote
5 tolerance.

6 The actual services contemplated by the Partnership, and intended steps to be
7 taken by the Anti-Islamophobia Initiative, were quite narrow. Students would not read
8 the Qur’an, participate in prayer, or otherwise practice Islam. Instead, CAIR-CA
9 would offer resources that the School District would consider, accepting some and
10 rejecting others, to use to teach its students about Muslims and to curtail anti-Muslim
11 bullying in schools.

12 Plaintiffs object to these basic lessons on the world’s second largest religion as
13 somehow endorsing Islam as the chosen religion of San Diego, and by implication
14 denigrating all other faiths. Although Plaintiffs’ Motion is long on incorrect
15 pronouncements of law, it is short on actual analysis. Neither the Establishment
16 Clause nor California’s analogous provisions have ever been read so broadly as to
17 compel a world in which religion is never acknowledged as a fact of life. Both the
18 Supreme Court and the Ninth Circuit have steadfastly rejected challenges to school
19 curricula which teach students about religion. As the Supreme Court has
20 acknowledged, “one’s education is not complete without a study of comparative
21 religion or the history of religion and its relationship to the advancement of
22 civilization.” *Sch. Dist. of Abington Tp., Pa. v. Schempp*, 374 U.S. 203, 225 (1963);
23 *see also Engel v. Vitale*, 370 U.S. 421, 434 (1962) (“The history of man is inseparable
24 from the history of religion.”).

25
26 ³ Suffice to say that CAIR-CA rejects Plaintiff’s mischaracterizations about, attacks
27 on, and demonizations of CAIR-CA. CAIR-CA does not believe it would be
28 productive to use this brief to “set the record straight”. Rather, this brief focuses on
the harms of anti-Muslim bullying and the benefits of proactive intervention by school
districts to educate and protect their students.

1

2 At its core, this lawsuit asks whether schools can protect vulnerable students by
3 dispelling ignorance and fear through education. That education, in this case, included
4 teaching about certain cultural and religious practices of the world's billion
5 Muslims. Both the Supreme Court and the Ninth Circuit have answered that question
6 in the affirmative.

7 When a school district, like San Diego's, seeks to ensure equal opportunities for
8 learning for all of its pupils, it should be celebrated not punished. Plaintiffs' Motion
9 for a Preliminary Injunction should be denied.

10 **III. BACKGROUND**

11 **A. The Modern Rise of Islamophobia in America**

12 Islamophobia in America is in some ways a recent phenomenon. "Before 9/11,
13 the general attitude toward Islam in America was one of tolerance, or at worst,
14 indifference." (Kaba Decl., Ex. 1 at 12.) The events of 9/11, two protracted wars in
15 Muslim-majority nations, the rise and fall of Daesh (*i.e.*, ISIS), as well as a deepening
16 geopolitical rivalry with Iran, have intensified anti-Muslim sentiment. Somewhere
17 along the way, Muslims, including American Muslims, have come to be viewed as
18 outsiders, inconsistent with American values. *Id.* The visceral reaction to the proposed
19 construction of an Islamic community center approximately two blocks north of
20 Ground Zero in Lower Manhattan (described by its opponents as the "Ground Zero
21 Mosque"), the spate of legislatures rushing to ban courts from applying Sharia law⁴
22 (despite no evidence courts were doing so), and countless other instances of
23 Islamophobia⁵ reflect a growing fear by many that America and Islam are
24 fundamentally incompatible.

25

26 ⁴ See, e.g., *Awad v. Ziriax*, 670 F.3d 1111 (10th Cir. 2012) (invalidating Oklahoma's
27 constitutional ban on courts using Sharia law where the state "did not know of even a
single instance where an Oklahoma court had applied Sharia law").

28 ⁵ And while the Anti-Islamophobia Initiative and this brief speak in terms of
"Islamophobia" and anti-Muslim feelings, these sentiments impact more than just

1 **B. The 2016 Presidential Election and Vilification of Muslims**

2 The 2016 Presidential Election heightened and in some ways harnessed for
3 political ends the anti-Muslim sentiments that had been brewing over the past 15 years.
4 On a backdrop of Daesh’s acts of genocide in the Middle East, then-candidate Trump
5 began identifying Islam *qua* religion as opposed to the United States. In a CNN
6 interview, he stated: “I think Islam hates us.” (Kaba Decl., Ex. 2.) Following an attack
7 in Belgium, Mr. Trump told Fox Business that “We’re having problems with the
8 Muslims, and we’re having problems with Muslims coming into the country.” (*Id.*)
9 Then at a town hall meeting when a participant told Mr. Trump that “We have a
10 problem in this country; it’s called Muslims,” he did not refute the assertion. (*Id.*)
11 Even the families of American Muslims who gave their *lives* in support of the country
12 were not immune from his rancor. Mr. Trump infamously denigrated the mother of
13 Humayun Khan, an Army Captain killed in Iraq while saving the lives of his soldiers,
14 sneering that “she was standing there, she had nothing to say, she probably - maybe
15 she wasn’t allowed to have anything to say, you tell me.” (Kaba Decl., Ex. 4.)⁶

16 **C. The Increase In Hate Crimes Following the Election**

17 Individuals throughout the United States have followed President Trump’s lead.
18 Hate crimes spiked the day after the 2016 election. “There were more reported hate

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20 Muslims. Sikhs, Hindus, Christian Arabs, and others are often subjected to hate crimes
21 under a mistaken belief they are Muslim. These mistakes are often fatal: Balbir Singh
22 Sodhi, a Sikh-American living in Arizona, was murdered four days after 9/11 by a man
23 who thought Mr. Sodhi’s turban (a religious obligation of Sikh men) indicated that he
24 was Muslim. (Kaba Decl., Ex. 3.)

25 ⁶ And Mr. Trump was not alone in this dark vein during the campaign. Ben Carson, a
26 then-candidate for the Republican nomination and current Secretary of Health and
27 Human Services, was asked in an interview on *Meet the Press*: “So do you believe that
28 Islam is consistent with the Constitution?” His response was simple: “No, I don’t, I
do not. I would not advocate that we put a Muslim in charge of this nation. I absolutely
would not agree with that.” (Kaba Decl. Ex. 7.) Ted Cruz, another candidate for the
Republican nomination and current United States Senator, released a statement that
law enforcement needed to be able to “patrol and secure Muslim neighborhoods before
they become radicalized.” (Kaba Decl. Ex. 8.) President Trump’s infamous series of
Executive Orders banning visas for residents of certain Muslim-majority countries
only further hammered home the message, this time with the full weight of the United
States government, that Islam and America were fundamentally opposed.

1 crimes on Nov. 9 than any other day in 2016, and the daily number of such incidents
2 exceeded the level on Election Day for the next 10 days.” (Kaba Decl., Ex. 5.) This
3 was not a one-day effect: hate crimes against Muslims rose by twenty percent in 2016.
4 (Kaba Decl., Ex. 6.) They similarly rose 91% in the first half of 2017 compared to the
5 same period in 2016. (Kaba Decl., Ex. 9.) In the year following the election, President
6 Trump’s name was invoked in approximately twenty percent of hate crimes committed
7 against South Asians and Middle Easterners. (Kaba Decl., Ex. 10.) Even in San Diego,
8 a Muslim woman wearing a hijab was robbed in November 2016 by men referencing
9 President-elect Trump and the Muslim community. (Kaba Decl., Ex. 11.) That
10 incident reflected a growing trend, as reported anti-Muslim hate crimes doubled in
11 California between 2015 and 2016. (Kaba Decl., Ex. 22.) While the dramatic uptick
12 in hate crimes has received the lion’s share of the media’s attention, Islamophobia has
13 manifested itself in more subtle, everyday ways including anti-Muslim bullying at
14 schools.

15 **D. The Widespread Prevalence of Anti-Muslim Bullying in Schools**

16 Bullying has a long and disturbing history in this nation’s schools. “Were
17 bullying characterized as a disease affecting America’s youth, a team from the Center
18 for Disease Control charged with investigating epidemics would have been called in
19 to study it.” *T.K. v. N.Y.C. Dep’t of Educ.*, 779 F. Supp. 2d 289, 297 (E.D.N.Y. 2011).
20 “Differences among students in areas such as religion, disability, or ethnicity have the
21 ability to affect the struggle for power among young people and lead to a student being
22 singled out as an object of harassment.” *Id.* at 301. Muslim students, who adhere to
23 an oft-vilified religion, are at a particular risk to be bullied on the basis of their faith.
24 At a national level, they are nearly twice as likely to be bullied on the basis of their
25 faith than any other religious group. (Kaba Decl., Ex. 12.) These incidents derive
26
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28

1 from the same source as anti-Muslim hate crimes generally: a belief that Islam and
2 America are incompatible.⁷

3 And despite California's image as a bastion of tolerance, the state is not immune
4 to such incidents. Muslim students in California surveyed in 2017 reported being
5 accused of bringing explosives to school or being members of Isis. (Kaba Decl., Ex.
6 13 at 117.) Another refrain students have reported is being called a "terrorist" or
7 related to Osama Bin Laden. (Kaba Decl., Ex. 1 at 20.) These incidents have long
8 plagued California schools. For example, in San Francisco "a boy approached a 17
9 year-old *hijab*-wearing student during lunch and began screaming, 'Her father is bin
10 Laden! She's going to blow up the school; she's going to blow it up! She has a bomb
11 under her sweater! Everybody run, this jihad[i] girl is going to kill us!'" (*Id.* at 13.)⁸

12 CAIR-CA's research demonstrates this is not an isolated incident and paints a
13 stark picture of the everyday realities for Muslim students. CAIR-CA's surveys show
14 that bullying of Muslim students on the basis of their religion is a widespread problem
15 in California. In 2014, 52% of Californian Muslim students surveyed stated that they
16 had been verbally insulted or abused because of their religion. (Kaba Decl., Ex. 1 at
17 15.) This figure is *twice* the average for students generally. (Kaba Decl., Ex. 13 at
18 105.)

19 Disturbingly, students are not alone responsible for all the anti-Muslim bullying
20 taking place at schools. The studies instead show that teachers are increasingly
21 involved in bullying incidents involving Muslims. A national survey discovered that
22

23
24 ⁷ An incident at a New York high school is telling. As part of the National Foreign
25 Language Week at school, a student recited the Pledge of Allegiance in Arabic over
26 the school's intercom. Multiple students complained, leading the principal to issue an
27 apology for allowing the recitation to occur in Arabic. The reciting student was called
28 "a terrorist" and told to "go to the Middle East." (Kaba Decl., Ex. 1 at 13.)

⁸ Similar incidents involving claims that a Muslim student has a bomb are common.
A Dallas-area Muslim student set off a national incident when he brought a homemade
clock to class, resulting in his arrest and repeated questioning by the police under
suspicion of having manufactured an explosive device. (Kaba Decl., Ex. 1 at 13.)

1 teachers or other school officials were reported to have been involved in one in four
 2 bullying incidents involving Muslims. (Kaba Decl., Ex. 12.) A 2016-2017 survey of
 3 Californian Muslim students showed that 38% of responding students stated they had
 4 been the recipients of offensive comments from teachers. (Kaba Decl., Ex. 13.)⁹

5 **E. The Intensification of Anti-Muslim Bullying Following the Election**

6 As with hate crimes generally, the anti-Muslim bullying situation has only
 7 deteriorated following the 2016 Presidential Election. In analyzing a nationwide
 8 survey of educators, the Southern Poverty Law Center observed that a “Trump Effect”
 9 has infected schools causing a “profoundly negative impact on schools and students.”
 10 (Kaba Decl., Ex. 14.) That study’s author stated “children were imitating him both in
 11 word, tone and behavior.” (Kaba Decl., Ex. 15.) This has predictably led to an
 12 increased level of Islamophobic behavior in schools including California’s. CAIR-
 13 CA’s survey conducted between 2016 and 2017 revealed that 53% of Californian
 14 Muslim students reported being bullied for being Muslim. (Kaba Decl., Ex. 13.) The
 15 study further showed an even more troubling statistic: 38% of respondents reported
 16 bullying by school officials, nearly doubling the 2014 response. (*Id.*; *see also* Kaba
 17 Decl., Ex. 12 (“A teacher or other school official is reported to have been involved in
 18 one in four bullying incidents involving Muslims.”)) Muslim students were moreover
 19 approximately twice as likely to be bullied on the basis of their faith than other
 20 students. (Kaba Decl., Ex. 15.)

21 **F. The Impact of Bullying on Students and Education**

22 Bullying is not a harmless rite of passage in American schools. Instead, “the
 23 day-to-day adverse effects of bullying in damaging educational opportunities to
 24 students are as real as they are unnoticed. It is a problem that affects the school
 25 performance, emotional well-being, mental health, and social development of school
 26 children throughout the United States.” *T.K.*, 779 F. Supp. 2d at 298. Bullying both
 27

28 ⁹ Islamophobic acts by school officials has likely led to an artificial deflation of the reported acts of anti-Muslim bullying.

1 prevents students from achieving in school and inflicts a punishing toll on their mental
2 and physical health.

3 Students who are bullied perform worse in school than those who are not. *Id.*
4 at 304 (citing Gayle L. Macklem, *Bullying and Teasing: Social Power in Children's*
5 *Groups* 42, 68 (2003) (“Being the victim of bullying is related to sliding grades,
6 absenteeism, poor academic achievement, being lonely, exhibiting withdrawal
7 behaviors, difficulty acting assertively, or being aggressive.”)). A UCLA study of
8 2,300 public school students demonstrated that the “students who were rated the most-
9 bullied performed substantially worse academically than their peers.” (Kaba Decl.,
10 Ex. 16 (“Projecting the findings on grade-point average across all three years of middle
11 school, a one-point increase on the four-point bullying scale was associated with a 1.5-
12 point decrease in GPA for one academic subject (e.g., math) - a very large drop.”)).
13 The academic cost of bullying would alone be enough to justify determined action to
14 stop it.

15 But bullying also exacts a toll on the mental health of students. The Centers for
16 Disease Control has recognized that bullied “youth are at increased risk for depression,
17 anxiety, sleep difficulties, and poor school adjustment.” (Kaba Decl., Ex. 17.)
18 “Additionally, victims are more likely to engage in antisocial behavior, have increased
19 health problems, and struggle to adjust emotionally.” *T.K.*, 779 F. Supp. 2d at 305-06
20 (citing Macklem, *supra*, 68). Bullying victims “have lower self-esteem and begin
21 blaming themselves for what is happening,” and “carry lasting emotional and
22 psychological scars into adulthood.” *Id.* It is therefore unsurprising that bullying
23 victims are more likely than other students to engage in suicide-related behavior.
24 (Kaba Decl., Ex. 18.)

25 **G. California’s Avowed Policy of Combating All Discrimination**

26 The School District enacted the Anti-Islamophobia Initiative on a backdrop of
27 California’s longstanding anti-bullying policies. The State has consistently directed
28 its schools to take action to combat bullying. The Education Code guarantees “the

1 right to participate fully in the educational process, free from discrimination and
2 harassment.” Cal. Educ. Code § 201 (recognizing “an urgent need to prevent and
3 respond to acts of hate violence and bias-related incidents that are occurring at an
4 increasing rate in California’s public schools”). Teachers are similarly “encouraged
5 to create and foster an environment that encourages pupils to realize their full potential
6 and that is free from discriminatory attitudes, practices, events, or activities, in order
7 to prevent acts of hate violence.” *Id.* § 233.5. And California enacted the Safe Place
8 to Learn Act in 2016, which proclaimed the State’s policy “to ensure that all local
9 educational agencies continue to work to reduce discrimination, harassment, violence,
10 intimidation, and bullying.” *Id.* § 234(b). That act specifically noted that Muslim,
11 Sikh, and South Asian students face an outsized risk of harassment in California’s
12 schools. (Kaba Decl., Ex. 19.) The School District followed the legislature’s directive
13 to address an unacceptable rise in bullying against a minority population in order to
14 guarantee California’s promise of harassment-free public education.

15 **H. Cultural Education Enriches Students and Reduces Bullying**

16 Children are not born destined to bully their peers. Instead, bullying is a learned
17 behavior from “influences in the environment, e.g., home, school, peer groups, even
18 the media. As such, it also can be unlearned or, better yet, prevented.” (Kaba Decl.,
19 Ex. 20.) And education about cultural differences is an effective tool to combat
20 bullying. “For one of the most important lessons that the American public schools
21 teach is that the diverse ethnic, cultural, and national backgrounds that have been
22 brought together in our famous ‘melting pot’ do not identify essential differences
23 among the human beings that inhabit our land.” *Wygant v. Jackson Bd. of Educ.*, 476
24 U.S. 267, 314 (1986) (Stevens, J., dissenting).

25 Learning about other cultures also benefits students personally. The ethnic and
26 religious diversity of the United States is ever-increasing, all while the world becomes
27 more interconnected by the day. Current public school students will enter a
28 professional world that requires cultural competency to be competitive in the global

1 economy. Unsurprisingly, “major American businesses have made clear that the skills
2 needed in today’s increasingly global marketplace can only be developed through
3 exposure to widely diverse people, cultures, ideas, and viewpoints.” *Grutter v.*
4 *Bollinger*, 539 U.S. 306, 330 (2003). Thus, learning about diverse cultures and
5 religions serves a public school’s mission of equipping its students with the skills and
6 knowledge to succeed in the world.

7 **I. CAIR-CA Offers to Work With The School District to Promote**
8 **Tolerance**

9 In July 2016 the board directed the School District to develop a plan to address
10 Islamophobia and discrimination against Muslim students and their families.
11 (LiMandri Decl., Ex. 2.) The School District is admittedly not an expert in Islam or
12 the concerns of Muslim students. In order to most effectively address issues that
13 contribute to their bullying, the School District considered working with CAIR-CA,
14 the largest civil rights organization for American Muslims. As the School District
15 noted, “CAIR has broad reach” and it is “helpful to have input on what the specific
16 concerns of our Muslim community are and on what actions might serve to address
17 those concerns.” (LiMandri Decl., Ex. 23.) The School District and CAIR-CA
18 therefore discussed the potential of entering into an agreement, through which CAIR-
19 CA would offer its knowledge to support the School District’s goal of eliminating anti-
20 Muslim bullying. (LiMandri Decl., Ex. 7.)

21 **J. What The Partnership Would Have Involved**

22 Plaintiffs’ Motion has not just given a slanted description of the Partnership, it
23 has given an incomprehensible one.¹⁰ At a basic level, CAIR-CA offered to work with
24 the School District to provide it with CAIR-CA’s understanding of the breadth of the
25

26
27 ¹⁰ The “Background” section of Plaintiff’s Motion veers erratically between the School
28 District’s decision to address growing Islamophobia in its schools, some decades-old
quotes confirming the “I” in CAIR stands for Islamic, the School District’s decision to
purchase some children’s books, and then abruptly the School District’s decision to
not continue a partnership with CAIR after Plaintiffs’ litigation threats.

1 Muslim experience in the United States in order to assist the School District in
2 pursuing its legally required goal of providing a safe environment for Muslim students.
3 CAIR-CA, which had begun conducting surveys tracking Muslim bullying in schools
4 since 2012, was a natural fit for the School District.

5 CAIR-CA's anticipated role in the Partnership can roughly be divided into two
6 categories: (i) working with school faculty and officials to increase their understanding
7 of Muslim culture; and (ii) providing the School District with resources with which
8 they may choose to instruct students about Muslims. Neither category involves
9 providing any "benefit" to Muslim students. Instead, both categories benefit the
10 School District by enabling the School District to comply with State law and protect
11 students.

12 And despite Plaintiffs' implication that lessons about Islam are a new addition
13 to the curriculum, religion, including Islam, has been a subject of lessons in California
14 schools since 1998. (Kaba Decl., Ex. 21 ("Apparently lost on many people who
15 complained about the [Anti-Islamophobia Initiative] was the fact that religion already
16 is studied in California public schools as part of state standards in place since 1998.")).

17 The materials CAIR-CA identified of potential use for the School District are
18 conspicuously only referenced in pejorative, misleading terms by Plaintiffs' Motion.
19 These "CAIR Books" and "propaganda" are not copies of the Qur'an or doctrinal texts.
20 Instead, the "CAIR Books" are the sort of children's books one expects to find in a
21 school library:¹¹

- 22 • *Lailah's Lunchbox*, by Reem Faruqi, tells the story of a recent
23 Muslim immigrant's experience of fasting during Ramadan at a
24 school where well-meaning students offer her food.
- 25 • *Four Feet, Two Sandals*, by Karen Lynn Williams and Khadra
26 Mohammed, tells the story of two girls living in a refugee camp
27 who bond over the fact that each has one sandal that fits and

28 ¹¹ Copies of these books will be lodged with the Clerk's office.

1 begin sharing them, reminding them of the importance of
2 friendship.

- 3 • *I'm New Here*, by Anne Sibley O'Brien, tells the story of three
4 students who are immigrants from Guatemala, South Korea, and
5 Somalia, who persevere through difficulties in a new country and
6 ultimately become comfortable in their new school without
7 losing a sense of their home country, language, and identity.
- 8 • *Does My Head Look Big In This?*, by Randa Abdel-Fattah, tells
9 the story of a high school girl who decides to wear a hijab to
10 school and the reactions of her classmates and teachers.

11 Reviewing the so-called "propaganda" similarly demonstrates the irreligious
12 nature of the information exchanged in the Partnership. The "Know Your Rights as a
13 Muslim Youth at School" pamphlet informs students of their rights under the law for
14 religious accommodation and how to react to being bullied. (LiMandri Decl., Ex. 11).
15 "An Educator's Guide to Islamic Religious Practices" is a pamphlet for school officials
16 which explains basic cultural points of many, but not all, Muslims including the
17 following:

- 18 • "The Qur'an (Islam's scripture) prohibits consumption of
19 alcohol, pork, and any pork by-products or derivatives.
20 Therefore, practicing Muslims are careful about the food they
21 consume and how it is prepared."
- 22 • "Prayer, fasting, pilgrimage, religious celebrations, as well as
23 dietary and clothing requirements are practices of the Muslim
24 faith."
- 25 • "For example, many Muslims are reluctant to shake hands with
26 the opposite sex, even with teachers or administrators. This
27 should not be taken as an insult, but as a sign of personal
28 modesty."

Notably absent from these materials are instructions to students on what they
should and should not believe. Indeed, these materials are studiously careful in

1 describing *what Muslims believe*, not *what is universally true*. At no point did the
 2 Anti-Islamophobia Initiative contemplate teaching students the Qur'an, studying the
 3 Hadith,¹² requiring students to celebrate Muslim holidays, or in any way suggest that
 4 Islam is the correct faith. Put simply, all the Partnership would have been designed to
 5 do was provide resources to assist the School District in enhancing its curriculum to
 6 better instruct the School District's students and faculty about Muslim culture for the
 7 purpose of enriching those students' knowledge and promoting tolerance.

8 **K. The School District Decides To Not Work With CAIR-CA**

9 Despite their discussions, the School District ultimately decided not to enter into
 10 a formal relationship with CAIR-CA. (LiMandri Decl., Ex. 30.) The School District
 11 reaffirmed its intention to combat bullying of all students, describing its prior action
 12 as assuring the "Muslim community that their children will [be] given the same
 13 protection from bullying as all other students in the District." (*Id.*) The School District
 14 and CAIR-CA therefore never entered into any formal agreements at any time.

15 **IV. ARGUMENT**

16 **A. Standard for Preliminary Injunction**

17 Plaintiffs are only "entitled to preliminary injunctive relief if they show:
 18 (1) likely success on the merits; (2) likely irreparable harm absent preliminary relief;
 19 (3) the balance of equities tips in their favor; and (4) an injunction is in the public's
 20 interest." *Doe v. Kelly*, 878 F.3d 710, 719 (9th Cir. 2017).

21 **B. School Lessons About the World's Religions Do Not Violate The** 22 **Establishment Clause**

23 "[T]he Establishment Clause does not compel the government to purge from the
 24 public sphere all that in any way partakes of the religious." *Van Orden v. Perry*, 545
 25 U.S. 677, 699 (2005) (Breyer, J., concurring in judgment). It therefore does "not mean
 26 that the Constitution prohibits public schools from making any mention of religion
 27

28 ¹² The Hadith are a collection of the actions and sayings of the Prophet Muhammad.

1 when teaching a secular lesson about pluralism and tolerance.” *Skoros v. City of New*
 2 *York*, 437 F.3d 1, 31 (2d Cir. 2006); *see also Altman v. Bedford Cent. Sch. Dist.*, 245
 3 F.3d 49, 76 (2d Cir. 2001) (“[T]he Establishment Clause does not prohibit schools
 4 from teaching about religion.”) (citing *Stone v. Graham*, 449 U.S. 39, 42 (1980) (per
 5 curiam)). Instead, a school’s policies satisfy the *Lemon* test and therefore the
 6 Establishment Clause so long as they: “(1) have a secular purpose, (2) have a primary
 7 effect that neither advances nor inhibits religion, and (3) not foster an excessive
 8 entanglement with religion.” *Barnes-Wallace v. City of San Diego*, 704 F.3d 1067,
 9 1082-83 (9th Cir. 2012) (citing *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971)).

10 Schools are moreover entrusted with “broad discretion in the management of
 11 school affairs.” *Bd. of Educ. v. Pico*, 457 U.S. 853, 863 (1982). “Judicial interposition
 12 in the operation of the public school system of the Nation raises problems requiring
 13 care and restraint,’ and courts should only intervene if basic constitutional values are
 14 ‘directly and sharply implicate[d].” *Cal. Parents for Equalization of Educ. Materials*
 15 *v. Torlakson*, 267 F. Supp. 3d 1218, 1227 (N.D. Cal. 2017) (quoting *Epperson v.*
 16 *Arkansas*, 393 U.S. 97, 104 (1968)). The Anti-Islamophobia Initiative, which the
 17 School District designed to educate students about an often unfamiliar religion in order
 18 to combat a surge in discrimination, does not violate the Establishment Clause.¹³

19 *I. The Anti-Islamophobia Initiative Has a Secular Purpose*

20 “Under *Lemon*’s first prong, governmental action is unconstitutional only if it
 21 has the ‘ostensible and predominant purpose of advancing religion.’” *Newdow v. Rio*
 22 *Linda Sch. Dist.*, 597 F.3d 1007, 1019 (9th Cir. 2010) (quoting *McCreary Cnty., Ky.*
 23 *v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 864 (2005)). Courts “must defer to
 24 the government’s articulation of a secular purpose” so long as it is sincere. *Id.*; *see*
 25 *also Kreisner v. City of San Diego*, 1 F.3d 775, 782 (9th Cir. 1993) (“A reviewing
 26

27 ¹³ Because conduct which satisfies the *Lemon* test “necessarily passes muster under
 28 the California No Preference Clause,” *Barnes-Wallace*, 704 F.3d at 1082 (citing *E.*
Bay Asian Local Dev. Corp. v. California, 13 P.3d 1122, 1138 (Cal. 2000)), CAIR
 does not separately discuss that clause.

1 court must be reluctant to attribute unconstitutional motives to government actors in
2 the face of a plausible secular purpose.”) (internal quotations omitted). Importantly,
3 “*Lemon’s* secular purpose requirement is not intended to favor the secular over the
4 religious, but to prevent government from abandoning neutrality and acting with the
5 intent of promoting a particular point of view in religious matters.” *Am. Atheists, Inc.*
6 *v. Port Authority of N.Y. & N.J.*, 760 F.3d 227, 238 (2d Cir. 2014) (internal quotations
7 omitted). The Anti-Islamophobia Initiative, which the School District passed in order
8 to combat bullying, is patently secular.

9 Despite instructing the Court to “read the words of the government enactment,”
10 Plaintiffs’ brief is studiously silent on those words. The reason is self-evident: the
11 uniform stated purpose of the Anti-Islamophobia Initiative is to address Islamophobia
12 and bullying in schools through cultural education. As recognized by the California
13 legislature in AB 2845, “[p]upils who are Muslim, Sikh, or of South Asian descent
14 often face verbal, physical, or online harassment, all of which have significant effects
15 on their academic achievement and mental health.” (Kaba Decl., Ex. 19.) In order to
16 put into effect the legislature’s directive to protect these at-risk students, the Board
17 agreed to “direct the superintendent to bring back to the board a plan to address
18 Islamophobia and the reports of bullying of Muslim students.” (LiMandri Decl., Ex.
19 10; *see also id.* Ex. 23 at 1 (“As we have done *with other vulnerable segments of our*
20 *student population*, our intent in drawing attention to the bullying of Muslim students,
21 in particular, is to raise awareness of the issue, and to promote tolerance and
22 understanding.”) (emphasis added); *id.* (“This initiative to combat Islamophobia is
23 focused on promoting awareness and understanding among students of different
24 cultures, with the intent of eliminating the fear faced by children.”)) The School
25 District’s enactment of the Anti-Islamophobia Initiative further elucidates its purpose:
26 “To ensure that: Schools are safe learning spaces for each and every student; Bullying
27 is not to be tolerated in any form; Practices at the schools are culturally responsive and
28 adequate social/emotional supports and services exist; Restorative Practices and

1 Trauma Informed Practices expand.” (LiMandri Decl., Ex. 5.)¹⁴ Here there can be no
 2 question that the Anti-Islamophobia Initiative was launched “for the entirely non-
 3 religious (*i.e.*, secular) and commendable purpose of exposing students to different
 4 cultural attitudes and outlooks.” *Grove v. Mead Sch. Dist. No. 354*, 753 F.2d 1528,
 5 1539 (9th Cir. 1985) (Canby, J., concurring); *see also Bd. of Educ. of Kiryas Joel*
 6 *Village Sch. Dist. v. Grumet*, 512 U.S. 687, 711 (1994) (Stevens, J., concurring)
 7 (noting that teaching children to “be tolerant and respectful” of religious customs
 8 “would raise no constitutional concerns and would further the strong public interest in
 9 promoting diversity and understanding in the public schools.”); *Lee v. Weisman*, 505
 10 U.S. 577, 638 (1992) (Scalia, J., dissenting) (“[M]aintaining respect for the religious
 11 observances of others is a fundamental civil virtue that government (including the
 12 public schools) can and should cultivate....”).

13 2. *The Primary Effect of the Anti-Islamophobia Initiative Is to*
 14 *Educate and Promote Diversity*

15 “Governmental action has the primary effect of advancing or disapproving of
 16 religion if it is sufficiently likely to be perceived by adherents of the controlling
 17 denominations as an endorsement, and by the nonadherents as a disapproval, of their
 18 individual religious choices.” *Vasquez v. Los Angeles Cnty.*, 487 F.3d 1246, 1256 (9th
 19 Cir. 2007) (quoting *Brown v. Woodland Joint Unified Sch. Dist.*, 27 F.3d 1373, 1378
 20 (9th Cir. 1994)) (internal quotations omitted). Courts evaluate this “from the point of
 21 view of a reasonable observer who is informed and familiar with the history of the
 22 government practice at issue.” *Id.* There can be no reasonable argument that a school
 23 board containing no Muslims with oversight of a school district with few adherents
 24 has taken action to “endorse” Islam. Only by demonizing and misconstruing can
 25

26 _____
 27 ¹⁴ Even if the Court were to conclude that the Anti-Islamophobia Initiative had some
 28 attenuated religious purpose, a “religious purpose alone is not enough to invalidate an
 act of a state legislature. The religious purpose must predominate.” *Newdow*, 597
 F.3d at 1034 (quoting *Edwards v. Aguillard*, 482 U.S. 578, 598 (1987) (Powell, J.,
 concurring)).

1 Plaintiffs plausibly argue that the School District’s attempts to educate students about
2 one of the world’s largest religions and its adherents have elevated Muslims to primacy
3 in San Diego.

4 Plaintiffs have cited no case for the proposition that teaching students about one
5 of the world’s largest religions conveys a message that the religion is “favored.” This
6 is unsurprising, as it would render most history classes unconstitutional violations of
7 the Establishment Clause. Courts instead routinely uphold curricula and lessons that
8 instruct students about faiths that range from Christianity to Wicca. The Establishment
9 Clause contemplates even the direct teaching of a *holy text* so long as its use is in the
10 service of a secular end. *See Sch. Dist. of Abington Tp., Pa. v. Schempp*, 374 U.S. 203,
11 300-301 (1963) (“The holding of the Court today plainly does not foreclose teaching
12 about the Holy Scriptures or about the differences between religious sects in classes in
13 literature or history.”); *see also Cal. Parents for Equalization of Educ. Materials v.*
14 *Noonan*, 600 F. Supp. 2d 1088, 1117 (E.D. Cal. 2009) (“[W]hen teaching about
15 religion is incorporated into a larger secular curriculum, courts have consistently found
16 no Establishment Clause violation.”). School lessons which “involve no more than
17 merely reading, discussion or contemplating [religious adherents], their behavior, or
18 [their religion]” do not violate the Establishment Clause. *See Brown*, 27 F.3d at 1380
19 (noting that certain religious texts taught “thus are not reasonably viewed as
20 communicating a message of endorsement”). “This is often stated in more simplified
21 terms: Public schools can teach *about religion* rather than *teach religion*.” Kevin C.
22 McDowell, *The Paradox of Inclusion by Exclusion: The Accommodation of Religion*
23 *in the Public Schools*, 40 Ind. L. Rev. 499, 511 (2007) (emphasis added). Courts
24 therefore routinely reject Establishment Clause challenges to curriculum decisions
25 which involve the teaching of religion for secular ends.

26 The Northern District’s decision in *Eklund v. Byron Union School District* is
27 instructive. 2003 U.S. Dist. LEXIS 27152 (N.D. Cal. Dec. 5, 2003), *aff’d* 154 Fed.
28 App’x 648 (9th Cir. 2005), *cert. denied* 549 U.S. 942 (2006). There, a middle school

1 began using an educational module entitled “Islam: A simulation of Islamic history
 2 and culture,” which involved students roleplaying scenarios to illustrate the five pillars
 3 of Islam.¹⁵ *Id.* at *4. The level of instruction was extensive: the teacher “read Muslim
 4 prayers and portions of the Qur’an aloud in class, required student groups to recite a
 5 line from a Muslim prayer ... on their way out of class,” and create banners stating
 6 prayers in Arabic. *Id.* at *7. Students were also required to “perform volunteer
 7 community service ... in conformance with the Muslim requirement of Zakaat” and to
 8 “give up things for a day, such as watching television or eating candy, to demonstrate
 9 the Islam principle of Ramadan, or fasting.” *Id.* at *7-8. Despite the thoroughness and
 10 pervasiveness of the lessons, the court rejected plaintiff’s argument that the school had
 11 “endorsed” Islam. “[T]he mere fact that the Islam role-playing module involved
 12 approximations of Islamic religious acts is not sufficient to create an endorsement of
 13 the Islamic faith.” *Id.* at *28. The court highlighted the fact that the instructor “also
 14 repeatedly explained to the students the nature of the Islam role-playing assignment,
 15 [and] explained that it did not represent reality.” *Id.* at *29-30. No reasonable student
 16 could interpret the lessons as an “endorsement” of Islam. *Id.*

17 The Anti-Islamophobia Initiative fares no differently under the Establishment
 18 Clause. If anything, the record reflects that the Anti-Islamophobia Initiative, which
 19 contemplated education about Islam and Muslims, and not roleplaying religious acts,
 20 was *less* objectively likely to be perceived as an endorsement of Islam.¹⁶ The only
 21 relevant materials in the record are: (i) a pamphlet titled “Know Your Rights as a
 22 Muslim Youth at School”; (ii) a pamphlet titled “An Educator’s Guide to Islamic
 23 Religious Practices” (the “Educator’s Guide”); and (iii) four books the school district
 24

25 ¹⁵ “The Five Pillars of Islam, practiced by devout Muslims, are: Shahada, or the
 26 profession of faith by Muslims in God; Salaat, prayer five times a day; Ramadan, ritual
 27 fasting from dawn to dusk during the month of Ramadan; Zakaat, or charity; and Haaj
 [sic], a pilgrimage to Mecca.” *Eklund*, 2003 U.S. Dist. LEXIS 27152, at *4 n.4.

28 ¹⁶ Plaintiffs notably fail to discuss what the Anti-Islamophobia Initiative *does* and
 instead focus upon proving up the fact that CAIR is a Muslim advocacy organization.
 That is irrelevant.

1 proposed purchasing. (LiMandri Decl., Exs. 11, 12, 28.) At most, they convey general
2 information *about* Muslims. They do not teach the Qur’an or convey a message that
3 the beliefs of Muslims are correct. (*See, e.g.* LiMandri Decl., Ex. 12 at 5 (“The Qur’an
4 (Islam’s scripture) prohibits consumption of alcohol, pork, and any pork by-products
5 or derivatives. Therefore, practicing Muslims are careful about the food they consume
6 and how it is prepared.”))¹⁷

7 The Establishment Clause presumes students are able to differentiate between
8 being taught religion and being taught *about* religion. And there is no basis to conclude
9 that the students of San Diego could not. Ultimately, the most telling evidence that
10 the primary effect of the Anti-Islamophobia Initiative was to promote tolerance comes
11 from the students who heard the lessons themselves: “To all the people who bully
12 Muslims or Latinos, stop it. Treat them with respect. Even though they’re from a
13 different race or religion, they’re still human beings.” (LiMandri Decl., Ex. 14
14 (quoting an eighth-grader who listened to a speech by a member of CAIR-CA).)

15 3. *The Anti-Islamophobia Initiative Does Not Require an Excessive*
16 *Entanglement With Religion*

17 “The Establishment Clause does not prohibit all entanglements; only excessive
18 ones that demonstrate that a government program has the impermissible effect of
19 advancing or evidencing hostility toward religion.” *Nurre v. Whitehead*, 580 F.3d
20 1087, 1097 (9th Cir. 2009) (internal quotations omitted); *see also Cholla Ready Mix,*
21 *Inc. v. Civish*, 382 F.3d 969, 977 (9th Cir. 2004) (“Some level of interaction between
22 government and religious communities is inevitable.”). “A relationship results in an
23 excessive entanglement with religion if it requires sustained and detailed interaction
24 between church and State for enforcement of statutory or administrative standards.”
25 *Williams v. California*, 764 F.3d 1002, 1016 (9th Cir. 2014) (internal quotations
26 omitted); *see also Nurre*, 580 F.3d 1087 (Entanglement “typically involves
27

28 ¹⁷ The Educator’s Guide was moreover designed to be given to teachers, not students.

1 comprehensive, discriminating, and continuing state surveillance of religion.”).¹⁸ The
2 Anti-Islamophobia Initiative, which involves consulting with CAIR-CA about
3 materials to help the School District combat Islamophobia, requires no such
4 enforcement of standards that would lead to excessive entanglement.

5 Nothing in the potential Partnership between CAIR-CA and the School District
6 requires “sustained and detailed” interaction between them to enforce standards. It
7 instead would have formalized a relationship by which CAIR-CA provides advice to
8 the School District, who is ultimately vested with the authority to make decisions in
9 the best interests of its students. The only alleged “entanglement” that can be
10 deciphered from Plaintiffs’ Motion is a conclusory allegation that the School District
11 has “delegate[d] government power to a religious organization.” (Mot. at 18.)¹⁹ Not
12 only has the School District not delegated power to CAIR-CA, the one case cited by
13 Plaintiffs for the proposition involved a state law that granted churches and schools
14 the ability to veto liquor licenses for premises located near them. *Larkin v. Grendel’s*
15 *Den, Inc.*, 459 U.S. 116, 117-18 (1982). CAIR-CA is moreover a civil rights advocacy
16 organization, not a mosque. There can be no reasonable argument that the School
17 District has abdicated its regulatory authority to a house of worship. Mere consultation
18 between CAIR-CA and the School District does not constitute entanglement within
19 the meaning of the Establishment Clause.

20
21
22
23
24 ¹⁸ While the Ninth Circuit has also recognized “political entanglement,” that form of
25 entanglement typically arises only “in cases involving direct financial subsidies paid
26 to parochial schools or to teachers in parochial schools,” and “by itself is insufficient
to constitute excessive entanglement.” *Nurre*, 580 F.3d at 1097-98. This case involves
no such subsidies.

27 ¹⁹ Plaintiffs’ other allegations therein cannot plausibly be described as leading to
28 “entanglement” within the meaning of the Establishment Clause. (*See* Mot. at 18
(referencing the School District’s “lavish[ing] unique benefits on a religious subset”).

1 **C. The Anti-Islamophobia Initiative Does Not Violate California’s No**
 2 **Aid Clause**

3 The dearth of precedent interpreting the No Aid Clause presents a unique
 4 challenge. As the Ninth Circuit has recognized, the “absence of controlling precedent
 5 in regard to the No Aid Clause presents ... [a] problem, in part because that clause is
 6 without a parallel in the United States Constitution.” *Barnes-Wallace v. City of San*
 7 *Diego*, 607 F.3d 1167, 1176-77 (9th Cir. 2010) (“*Barnes-Wallace I*”) (noting the lack
 8 of precedent analyzing what constituted “aid” or a “sectarian purpose” in the context
 9 of that case).²⁰ The paradigmatic No Aid Clause case involves the direct grant of
 10 financial aid to religious organizations. *See, e.g., Cal. Statewide Communities Dev.*
 11 *Auth. v. All Persons Interested in the Matter of the Validity of a Purchase Agreement*,
 12 152 P.3d 1070 (Cal. 2007) (bond financing agreements between a public entity and
 13 religious schools); *Cal. Educ. Facilities Auth. v. Priest*, 526 P.2d 513 (Cal. 1974)
 14 (issuance of bonds to build facilities at sectarian institutions); *Barnes-Wallace v. City*
 15 *of San Diego*, 704 F.3d 1067, 1078 (9th Cir. 2012) (“*Barnes-Wallace II*”) (leasing of
 16 property to sectarian organization); *Frohlinger v. Richardson*, 218 P. 497 (Cal. Ct. App.
 17 1923) (funding restoration of California’s Catholic missions).

18 The No Aid Clause only prohibits the School District from “granting anything
 19 to or in aid of any religious sect, church, creed, or sectarian purpose.” Cal. Const. art.
 20 XVI. The question is therefore whether educating students about a major world
 21 religion is “granting anything,” and if it is, whether it goes to a “sectarian purpose.”
 22 The Court must look at the surrounding circumstances and the purpose behind the
 23 conduct to determine whether a grant was made to further a “sectarian purpose.” *See*
 24 _____

25 ²⁰ The Ninth Circuit specifically rejected *Paulson*, as *Barnes-Wallace I* involved “a
 26 very different and more challenging question than that presented in *Paulson*.” 530
 27 F.3d at 789 (noting that it would “require expanding our interpretation of California
 28 cases”). *Paulson*, involving the sale of municipal land to a sectarian organization for
 the purpose of maintaining a cross, is far too inapposite to provide guidance here. That
 the Ninth Circuit twice certified these questions to the California Supreme Court
 demonstrates the uncertain ground a No Aid Clause challenge treads, particularly
 without the benefit of a full record.

1 *Davies v. L.A. Cnty. Bd. of Supervisors*, 177 F. Supp. 3d 1194, 1209 (C.D. Cal. 2016)
2 (considering the “history of the depiction of a cross on the County seal” to determine
3 whether the addition of a cross was sectarian or secular). And even a grant of aid to a
4 sectarian purpose is permissible if the benefit is incidental to a larger secular purpose.

5 *1. The Anti-Islamophobia Initiative Does Not Provide a Benefit to a*
6 *Sectarian Purpose*

7 Plaintiffs’ suggestion that educating students about the culture of a major world
8 faith constitutes a “benefit” to that religion would twist the No Aid Clause into a
9 caricature that would lead to constant litigation over school curricula. *Cf. Grove*, 753
10 F.2d at 1540 (Canby, J., concurring) (“[O]bjectivity in education need not inhere in
11 each individual item studied; if that were the requirement, precious little would be left
12 to read.”). As noted above, the vast majority of cases involve a direct transfer of funds
13 to a religious organization. The few cases outside of that context involve similar grants
14 of aid that can be fairly characterized as direct. For example, *Paulson*, the main
15 decision upon which Plaintiffs rely, centered on San Diego’s 27-year battle over a
16 cross on Mount Soledad. The “aid” in that case was the sale of a miniscule portion of
17 Mount Soledad upon which a cross sat, structured to benefit purchasers who agreed to
18 maintain the cross there. *Paulson v. City of San Diego*, 294 F.3d 1124 (9th Cir. 2002)
19 (en banc). The Ninth Circuit predictably concluded that a purpose of displaying a
20 cross was sectarian in nature. In contrast, there are no cases analyzing such a remote
21 and attenuated benefit inherent in increasing cultural awareness. The better view is
22 that fostering tolerance does not “grant anything” within the meaning of the No Aid
23 Clause. Indeed, it is difficult to even identify what it is that has been “granted.”
24 Plaintiffs’ Motion, likely recognizing this issue, elides over the point and fails to
25 identify what specific things, monetary or otherwise, were granted to Islam.

26 *2. Teaching Cultural Awareness Is Not a Sectarian Purpose*

27 The purpose of the Anti-Islamophobia Initiative was to increase the cultural
28 awareness of students at the School District. At its core, the Anti-Islamophobia

1 Initiative is *education* about the culture of a growing and vilified segment of the
2 American population, not support for a religion. No one would claim that teaching
3 students about the role of Quakers in American history, the differences between
4 Catholics and Protestants that led to the formation of the Maryland colony, or the
5 difference in religious beliefs that led the Puritans to board the Mayflower, provides a
6 benefit to a sectarian purpose. Instead, the benefit accrues to all of the students at the
7 School District by learning about the world. “The fact is that, for good or for ill, nearly
8 everything in our culture worth transmitting, everything which gives meaning to life,
9 is saturated with religious influences, derived from paganism, Judaism, Christianity -
10 both Catholic and Protestant - and other faiths accepted by a large part of the world’s
11 peoples. One can hardly respect a system of education that would leave the student
12 wholly ignorant of the currents of religious thought that move the world society for a
13 part in which he is being prepared.” *Illinois ex rel. McCollum v. Bd. of Educ.*, 333
14 U.S. 203, 235-36 (1948) (Jackson, J., concurring). Teaching students about the world
15 is the School District’s sole purpose of existence and enriches those same students.
16 There is no sectarian purpose in doing so.

17 3. *Any Sectarian Benefit Is Incidental to the Secular Effect of the*
18 *Anti-Islamophobia Initiative*

19 And even if the Court were to conclude that merely educating students about a
20 world faith somehow provides a benefit for a sectarian purpose, that benefit is
21 incidental to the secular objective of educating students and promoting tolerance.
22 There is no evidence in the record that the School District does not also teach students
23 about other religions such as Christianity, Judaism, and Hinduism. Plaintiffs’
24 complaint that there “are no lectures from priests on how to accommodate Catholic
25 students during lent,” (Mot. at 13), elevates form over substance. There is no evidence
26 in the record that the School District’s existing support services for Catholic students,
27 whose religious tenets are exponentially better known than that of Muslims, are
28 lacking. Plaintiffs’ core challenge is instead that a lesson about one faith provides a

1 benefit at the expense of other faiths. The Ninth Circuit has already rejected that
2 contention.²¹

3 The *only* on-point case involving educational curricula and the No Aid Clause
4 is *Brown v. Woodland Joint Unified School District*. There, the Ninth Circuit
5 concluded that a school’s teaching about the Wiccan religion was not done “for the
6 purpose of aiding witchcraft,” and “does not give the reasonable appearance that the
7 state is endorsing witchcraft,” meaning that any benefit that arose “can be only indirect
8 and incidental.” 27 F.3d at 1385. This case is no different. As discussed above, the
9 School District’s supplementation of its curriculum to include information about
10 Muslim culture “does not give the reasonable appearance that the state is endorsing”
11 Islam, but that the School District has not intentionally blinded itself to a growing
12 segment of the American population. This provides no aid to a sectarian purpose, let
13 alone directly, and the No Aid Clause challenge should therefore be denied.

14 **V. CONCLUSION**

15 At its heart, this case is a curriculum dispute dressed up as an Establishment
16 Clause challenge and cloaked in the very anti-Muslim rhetoric that the School District
17 was trying to address. Teaching about the culture and adherents of a religion is not,
18 and has never been, unconstitutional. Rather, it is education and familiarity that will
19 dispel fear and ignorance. And by educating its students (rather than punishing them),
20 San Diego can secure a safe and hospitable environment for all in its schools, including
21 Muslim youths. The Court should deny Plaintiffs’ attempt to prevent the School
22 District from complying with its legally mandated duty to prevent bullying and to
23 educate its students.

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27 ²¹ See also *Hobbie v. Unemployment Appeals Comm’n of Fla.*, 480 U.S. 136, 144-45
28 (1987) (“This Court has long recognized that the government may (and sometimes
must) accommodate religious practices and that it may do so without violating the
Establishment Clause.”).

1 DATED this 9th day of April, 2018.

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