

No. _____

In the Supreme Court of the United States

G.W., A MINOR, BY AND THROUGH HER GUARDIAN AD LITEM,
NICOLE WARD; NICOLE WARD; AND TRACY L. HENDERSON,
Petitioners,

v.

CORONADO UNIFIED SCHOOL DISTRICT, ET AL.,
Respondents.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF CALIFORNIA,
FOURTH APPELLATE DISTRICT, DIVISION ONE**

PETITION FOR WRIT OF CERTIORARI

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MARCH, MMXXVI

QUESTIONS PRESENTED

1. California’s anti-SLAPP statute authorizes dismissal and mandatory fee shifting only if the moving defendant first establishes that the challenged claim arises from that defendant’s protected activity. Cal. Civ. Proc. Code § 425.16(b)(1); *Baral v. Schnitt*, 1 Cal. 5th 376, 384, 396 (2016); *Park v. Bd. of Trs. of Cal. State Univ.*, 2 Cal. 5th 1057, 1062–64 (2017); *Bonni v. St. Joseph Health Sys.*, 11 Cal. 5th 995, 1009–10 (2021). Here, however, the California Court of Appeal expressly stated that it could not determine whether the claims against each defendant arose from protected activity without a defendant-specific factual showing, but nevertheless affirmed dismissal by treating that missing showing from petitioner’s opening brief as petitioners’ appellate “forfeiture.” App.12-17. Petitioners later challenged the resulting fee award on the ground that the anti-SLAPP dismissal had been entered in excess of the authority conferred by statute and thus could not support mandatory fee shifting. Even if that defect rendered the dismissal only voidable, not fundamentally void, California law recognizes direct attack by appeal as the proper method of challenging such an excess-of-jurisdiction act. *People v. Am. Contractors Indem. Co.*, 33 Cal. 4th 653, 660–61 (2004). The same court nevertheless invoked law of the case, rejected that collateral attack as “frivolous,” and sanctioned counsel. App.39-46.

The question presented is:

Whether, consistent with the Due Process Clause and this Court’s adequate-and-independent-state-ground doctrine, a state court may extinguish federal civil-rights claims by invoking a novel appellate

forfeiture rule that relieves anti-SLAPP movants of their statutory threshold burden, then invoke law of the case to reject as frivolous a later direct attack on the derivative fee award that collaterally challenges the predicate dismissal as an excess-of-jurisdiction order.

2. Petitioners do not seek review of any question concerning the District’s antecedent decision to adopt a mask policy. That policy preexisted the events at issue by many months. The federal injury pressed here is later viewpoint-discriminatory punishment of a student’s alleged peaceful and non-disruptive dissent from that preexisting policy. Petitioners alleged that school officials excluded G.W. from class, isolated her outdoors, marked her absent, threatened transfer and truancy consequences, involved police, and effectively drove her from school because of her dissenting protest. App.71-79. The courts below nevertheless treated those enforcement measures as respondents’ own “protected activity” under California’s anti-SLAPP statute. App.13-24; App.60-70.

The question presented is:

Whether public-school officials may use a state anti-SLAPP statute to strike claims alleging viewpoint-discriminatory punishment of a student’s peaceful dissent from a preexisting school policy by recasting coercive enforcement as the government’s own protected speech or petitioning activity.

3. At the threshold dismissal stage, the trial judge took judicial notice of disputed propositions about asymptomatic spread (a medical fact requiring expert testimony), invoked personal knowledge, analogized G.W. to a student bringing a gun to school due to her

purported danger as an asymptomatic carrier of COVID-19, and called the case frivolous. App.80-85. Petitioners’ request to present evidence on “danger to other students” and alleged disruption was thus supplanted by judicial notice and then foreclosed on appeal by the same novel procedural bar. App.12-25; App.80-83. After those rulings, the Ninth Circuit held in a closely analogous student-speech case that Tinker remains a “demanding standard,” that the school bears the burden of showing its action was reasonably undertaken to protect safety and the rights of others, and that disputed facts on disruption or danger preclude judgment as a matter of law. *B.B. v. Capistrano Unified Sch. Dist.*, No. 24-1770, slip op. at 20–25 (9th Cir. Mar. 10, 2026), App.113-118.

The question presented is:

Whether due process and the First Amendment are violated when courts use judicial notice, personal knowledge, and a novel procedural bar to prevent a student and her parent from presenting evidence on Tinker’s “disruption” and “rights of others” inquiries, even though the school bears the burden of justifying suppression.

PARTIES TO THE PROCEEDING

Petitioners are G.W., a minor, by and through her guardian ad litem Nicole Ward and Nicole Ward.

Respondents are Coronado Unified School District; Esther Valdes-Clayton; Helen Anderson-Cruz; Whitney Antrim; Lee Pontes; Bruce Sheperd; Karl Mueller; Donnie Salamanca; Niamh Foley; Karen Mellina; Shane Bavis; Joshua Dean; Michelle Walker; William Lemei; Shane Schneichel; Barbara Wolf; Kimberly Strassburger; David McBean; Katherine Sapper; Donny Gersonde; Chelsea Zeffiro; and Does 1–50. App.121-126.

RELATED PROCEEDINGS

San Diego County Superior Court

G.W. v. Coronado Unified School District, No. 37-2022-00034756-CU-NP-CTL (order granting anti-SLAPP motions entered May 12, 2023; trial-level fee award entered after anti-SLAPP dismissal; notice of ruling granting appellate fees issued May 16, 2025; respondents' new motion for additional appellate attorneys' fees and costs filed Feb. 17, 2026, with hearing noticed for Aug. 21, 2026)

Court of Appeal of California, Fourth Appellate District, Division One

G.W. v. Coronado Unified School District, No. D082619 (opinion filed Sept. 19, 2024)

G.W. v. Coronado Unified School District, No. D083991 (opinion filed Sept. 29, 2025)

v

Supreme Court of California

G.W. v. Coronado Unified School District, No.
S293866 (review denied Dec. 30, 2025)

Supreme Court of the United States

G.W. v. Coronado Unified School District, No.
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The opinion of the Court of Appeal in No. D082619 is reproduced at App.1-28. The opinion of the Court of Appeal in No. D083991 is reproduced at App.29-46. The California Supreme Court's order denying review is reproduced at App.47. The remittitur is reproduced at App.48. The trial court's order granting respondents' anti-SLAPP motions is reproduced at App.50-70.

JURISDICTION

The California Supreme Court denied review on December 30, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment provides, in relevant part: "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people . . . to petition the Government for a redress of grievances." U.S.Const., Amdt. I.

The Fourteenth Amendment provides, in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S.Const., Amdt. XIV, § 1.

California's anti-SLAPP statute provides, in relevant part:

A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special

motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

Cal. Civ. Proc. Code § 425.16(b)(1).

CURRENT STATUS OF THE CASE

Since remittitur issued, respondents have filed a new superior-court motion seeking \$23,323.08 in additional appellate attorneys’ fees and costs, with a hearing noticed for August 21, 2026. App.124-126; App.139-143. Respondents further request leave to file a supplemental declaration or a further motion to seek additional fees and costs incurred in connection with petitioners’ proceedings in this Court if respondents prevail. App.141-143. Because attorney-fee proceedings are collateral, the pending motion does not disturb the finality of the judgment under review. *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 199–200 (1988). It does, however, underscore that the constitutional errors below continue to produce coercive consequences while petitioners seek this Court’s review.

INTRODUCTION

This petition concerns the First Amendment rights of a public-school student who peacefully dissented from official orthodoxy—and the state courts’ refusal to adjudicate her federal claims under the proper burdens and procedures.

The District’s mask policy was already in place months before G.W.’s alleged injuries. Petitioners do not seek review of any question concerning the District’s antecedent adoption of that policy. The federal

injury pressed here is later, viewpoint-discriminatory punishment of G.W.'s peaceful dissent, including prolonged exclusion from class, outdoor isolation, absence markings, threats of transfer and truancy consequences, police involvement, and effective removal from school because she protested the official line by removing her mask as an act of expressive conduct and politely saying "No thank you" when asked to wear one. App.71-79.

The central defect in the rulings below is not merely that the courts got the merits wrong. It is that California's courts exercised the anti-SLAPP statute's extraordinary summary-dismissal and fee-shifting power without the threshold predicate the statute requires. The Court of Appeal expressly admitted that it could not determine whether the claims against each defendant arose from protected activity without a specific defendant-by-defendant factual showing, but then converted that missing showing into petitioners' appellate "forfeiture." App.12-17. That maneuver relieved respondents of the burden the statute places on them, authorized dismissal and mandatory fees without the statutory predicate, and thereby produced an order entered at least in excess of the authority conferred by statute. When petitioners later challenged the derivative fee award on that basis, the same court invoked law of the case, labeled the challenge "frivolous," and imposed a separate \$13,000 sanctions order against Mrs. Henderson. App.39-46. This sanction was required to be reported to the California State Bar and Mrs. Henderson now risks losing her license because she is actively being investigated.

The courts below also inverted the First Amendment. The trial court reasoned that teachers and

school officials retained their own free-speech rights and that respondents' comments and actions in enforcing the District's COVID policy by abusing G.W. to shut down her alternative viewpoint were "clearly" protected. App.64-69. In substance, the court treated viewpoint-discriminatory punishment as protected speech. But petitioners did not sue respondents for speaking on a matter of public concern; they sued because respondents allegedly used governmental authority to punitively suppress a student's dissent. *Barnette* and *Tinker* protect students from that exact sort of official coercion. *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509, 511–14 (1969).

The due-process violation is equally stark. The trial judge decided disputed questions about "danger to others" through judicial notice while citing his personal knowledge, stating, among other things, "Guns kill and so does COVID," taking judicial notice (over repeated objections) that "COVID can be transmitted by an asymptomatic carrier," invoking personal experience with asymptomatic spread, and calling the lawsuit frivolous while suggesting G.W. was being used as a "political pawn." App.80-85. When counsel asked for an evidentiary hearing so petitioners could present expert proof on asymptomatic spread and danger, the court refused. App.80. The Court of Appeal then treated petitioners' effort to challenge that procedure as forfeited and, later, as frivolous. App.16-26; App.40-43.

The rulings below also burden petitioners' separate right to petition the courts for redress. The State has not merely dismissed petitioners' claims. It has

attached escalating financial punishment to petitioners' continued pursuit of review: a trial-level anti-SLAPP fee award, appellate fees, a sanctions award that has initiated a state bar investigation, and now a pending request for still more fees tied to proceedings in this Court. App.34-35; App.45-46; App.86; App.124-126; App.141-143. The practical message is that a family and its counsel may challenge alleged viewpoint discrimination by school officials only at the risk of compounding penalties for each additional effort to obtain judicial review. That chilling effect heightens the need for this Court's intervention.

A new Ninth Circuit decision confirms the federal significance of the error. In *B.B. v. Capistrano Unified Sch. Dist.*, decided after the rulings below, the court held that Tinker remains a "demanding standard," that the school bears the burden of showing its actions were reasonably undertaken to protect the safety and well-being of students, and that disputed facts on disruption and danger preclude threshold judgment. No. 24-1770, slip op. at 20–25 (9th Cir. Mar. 10, 2026), App.113-118; see also *Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 193 (2021). If those questions required evidence there, they required evidence here.

This Court should grant review.

STATEMENT OF THE CASE

A. The District's policy predated G.W.'s alleged injury; the federal injury pressed here is punitive viewpoint-discriminatory punishment of her peaceful dissent.

Coronado Unified School District adopted a mandatory school mask policy months before the events causing G.W.'s injuries. The Court of Appeal itself

described the complaint as alleging that respondents adopted the policy from February 2, 2021, and maintained it until it was lifted on March 14, 2022. App.13-14. The policy's antecedent existence is not the injury for which review is sought here. The injury came later, when respondents allegedly chose to punitively enforce that already-existing policy against G.W. because she dissented from it.

Petitioners alleged that G.W., then a student in a specialized performing-arts program at Coronado High School, politely expressed her dissent by removing her mask indoors and always declining to wear one with the phrase, "No thank you." App.74-75. They alleged that she was not ill, that her protest was peaceful, and that any claimed disruption stemmed from the school's own chosen response. App.71-79. According to the complaint, school officials excluded her from class, forced her to sit outside in bitter cold and sweltering heat, placed her where she could not meaningfully participate in instruction, marked her absent, threatened consequences for her interdistrict transfer, threatened truancy charges for G.W.'s mother, involved police, and subjected her to dehumanizing treatment during a lockdown drill. App.72-78. G.W. alleged resulting educational loss, humiliation, severe emotional trauma, anxiety, and withdrawal from school. App.72-79.

This petition does not ask the Court to decide whether the District could lawfully adopt a mask policy in the abstract. Nor does it present any claim directed solely to that antecedent act of policy adoption. The federal questions presented concern later retaliatory and viewpoint-discriminatory enforcement of the policy against G.W. as a dissenter. But for that later

punitive enforcement, G.W. would not have suffered the injuries alleged here. To the extent the complaint contained broader rhetoric or prayers for relief about the policy itself, Opinion I used that contextual material to recast the entire case as an attack on the policy’s adoption, even though the policy had been in place for months before G.W. was injured. App.13-15. But California’s own anti-SLAPP framework required the courts to separate claims and theories based on protected activity from those based on later liability-producing conduct. *Baral*, 1 Cal. 5th at 396; *Bonni*, 11 Cal. 5th at 1010; *Park*, 2 Cal. 5th at 1063–64. G.W. was not afforded that procedural protection.

B. Respondents filed four anti-SLAPP motions, and the trial court resolved disputed factual questions through judicial notice and personal knowledge.

Respondents moved to strike the complaint under California’s anti-SLAPP statute. App.8-9; App.50-70. Under that statute, respondents explicitly bore the threshold burden of showing that the challenged claims arose from their protected activity. Cal. Civ. Proc. Code § 425.16(b)(1); *Baral*, 1 Cal. 5th at 384.

The trial court dismissed the action. In its written order, it ignored competing allegations and sworn testimony, holding that G.W.’s conduct was “clearly disruptive of the orderly operation of the school,” reasoning in part that it “le[d] to moving 50 students to a different classroom or outside.” App.60-64. In other words, the court resolved the disruption component of the Tinker inquiry against G.W. as a matter of fact at the threshold. The court further took judicial notice that “potentially deadly COVID can be transmitted

from a healthy-appearing, asymptomatic individual.” App.62-64. On that basis, it concluded that G.W.’s protest created health risks to teachers and other students and that respondents had carried anti-SLAPP step one. App.62-70.

The hearing transcript shows how those conclusions were reached. When petitioners argued that there was no evidence G.W. endangered anyone, the court responded: “Guns kill and so does COVID.” App.80-82. When counsel objected that no expert evidence supported the proposition that G.W. posed an asymptomatic-spread threat, the court stated: “I’ll take judicial notice that COVID can be transmitted by an asymptomatic carrier.” App.80-81. Counsel then asked for an evidentiary hearing so the parties could present experts; the court refused: “No, I’ll take judicial notice of it.” *Ibid.* Later, the court added that it was “common knowledge” that asymptomatic transmission occurs and that “I know people who got COVID through asymptomatic transmission.” App.82-83. The judge also questioned why a parent or lawyer would “use this 15-year-old girl as a political pawn,” said “I think this is a frivolous lawsuit,” and stated that he felt bad that G.W. had been used “as a pawn.” App.83-85.

C. Opinion I admitted the record lacked the defendant-specific showing required for anti-SLAPP step one, then transformed that gap into petitioners’ forfeiture.

On appeal, the Court of Appeal, conducting de novo review, recognized that the anti-SLAPP inquiry could not be performed on the basis presented. It stated:

“We cannot assess whether the claims against each of these defendants arise from protected activity without a proper factual summary of the allegations against them, including the statements each is alleged to have made regarding the mask mandate.”

App.12-13.

That concession should have ended step one. California law generally requires the moving defendant to identify the acts that allegedly supply the elements of the challenged claim. *Park*, 2 Cal. 5th at 1063–64; *Bonni*, 11 Cal. 5th at 1009–10. Instead, the Court of Appeal treated the absence of that showing as petitioners’ appellate “forfeiture” under Rule 8.204 because their opening brief did not provide the court with a full factual summary identifying each respondent’s statements and actions and explaining why they did not arise from protected activity. App.12-17.

The court then “briefly address[ed]” step one notwithstanding the supposed forfeiture. App.13-14. It concluded that the complaint challenged the adoption and validity of the masking policy itself because some allegations and prayers for relief referred to the policy’s adoption. App.13-15. It did not parse the complaint claim by claim, act by act, or defendant by defendant, as *Baral*, *Park*, and *Bonni* require. Nor did it separate board-level adoption allegations from the later, school-level enforcement conduct aimed at injuring G.W. App.12-17.

On step two, the court held that petitioners had also forfeited their principal challenges by failing to address each state-immunity and merits rationale separately. App.16-17. It then approved the trial court’s

judicial notice of asymptomatic transmission and rejected petitioners’ constitutional arguments. App.17-26.

D. Opinion II treated petitioners’ due-process and excess-of-jurisdiction objection as “frivolous,” invoked law of the case, and sanctioned counsel.

After the anti-SLAPP dismissal, respondents obtained a trial-level fee award of \$68,238.62. App.34-35. They later obtained an additional appellate-fee award as well. App.86-88.

Petitioners appealed the fee award and argued, among other things, that the anti-SLAPP judgment rested on an impermissible burden shift in excess of the authority conferred by statute because the Court of Appeal had acknowledged the absence of the defendant-specific step-one showing yet affirmed dismissal by invoking appellate forfeiture. That appeal did not simply seek a second merits review of the anti-SLAPP order. It challenged the fee award’s indispensable predicate—the anti-SLAPP dismissal—on the ground that the statute’s prerequisite to dismissal and mandatory fees had never been established. Under California law, when a court with fundamental subject-matter jurisdiction acts without the statutory preconditions to a special remedy, it acts in excess of jurisdiction. *Abelleira v. Dist. Ct. of Appeal*, 17 Cal. 2d 280, 288–91 (1941); *People v. Am. Contractors Indem. Co.*, 33 Cal. 4th 653, 660–61 (2004).¹

¹ Even apart from California’s terminology, the principle that a tribunal exceeds its lawful authority when it exercises a special statutory power without satisfying the statute’s conditions is

Opinion II rejected that argument, made a conclusory holding that the earlier ruling was law of the case, declared petitioners’ due-process and jurisdictional argument “specious,” and simply stated there was “no conceivable due process violation.” App.39-43. The court then held the appeal frivolous and imposed \$13,000 in sanctions on petitioner Henderson, together with State Bar reporting consequences. App.45-46.

E. Respondents are now seeking still more fees.

The consequences of the rulings below remain ongoing. On February 17, 2026, respondents filed a new

well recognized in this Court’s jurisprudence. This Court has repeatedly held that when a statute confers authority subject to specified limitations, action taken without those prerequisites is beyond the power the statute grants. See *Leedom v. Kyne*, 358 U.S. 184, 188–89 (1958) (review permitted where an agency acted “in excess of its delegated powers and contrary to a specific prohibition” in the governing statute); *Harmon v. Brucker*, 355 U.S. 579, 581–82 (1958) (courts may determine whether an official has exceeded the authority granted by statute); *Law v. Siegel*, 571 U.S. 415, 421–25 (2014) (bankruptcy court exceeded its authority by granting relief inconsistent with statutory limits); cf. *Smith v. Bayer Corp.*, 564 U.S. 299, 318 (2011) (court exceeded authority where statutory conditions for a special injunction were not satisfied). These cases reflect a basic rule of adjudicative power: even where a tribunal has general jurisdiction over the subject matter, it may not employ a special statutory remedy unless the statute’s conditions are met. That principle applies here. California’s anti-SLAPP statute authorized dismissal and mandatory fee shifting only if respondents first carried the statutory step one burden. Because the Court of Appeal acknowledged it could not determine whether that predicate had been established, affirming dismissal and fee shifting nonetheless permitted the exercise of a special statutory power without the statutory authorization required for its use.

superior-court motion seeking \$23,323.08 in additional appellate attorneys’ fees and costs, with a hearing noticed for August 21, 2026. App.124-126; App.139-143. The same motion further requests leave to file a supplemental declaration or a further motion to quantify fees and costs incurred in connection with proceedings in this Court if respondents prevail. App.141-143.

REASONS FOR GRANTING THE PETITION

- I. The anti-SLAPP dismissal and derivative fee awards rest on a missing statutory predicate; the Court of Appeal excused that defect through an unprecedented forfeiture rule and then misused law of the case to defeat a legitimate direct attack and collateral challenge.**
- A. California’s anti-SLAPP statute confers extraordinary summary-dismissal and fee-shifting authority only when the moving defendant satisfies the threshold statutory predicate.**

California’s anti-SLAPP statute authorizes extraordinary relief—early dismissal and mandatory fee shifting—only when defendants satisfy defined statutory prerequisites. The threshold requirement, known as step one or “prong one,” demands that the moving defendant identify the activity on which each challenged claim rests and demonstrate that the activity is protected by the statute. *Bonni*, 11 Cal. 5th at 1009; *Baral*, 1 Cal. 5th at 396; *Park*, 2 Cal. 5th at 1061–64. This is generally the defendant’s burden. *Baral*, 1 Cal.

5th at 396 (“The burden is on the defendant to identify the activity that each challenged claim rests on.”).

Until defendants carry that burden, the statute does not authorize dismissal or fees. That is not a mere pleading nicety. It is the threshold condition for invoking anti-SLAPP’s special power to terminate litigation early and impose mandatory, non-discretionary attorney-fee awards. See Cal. Civ. Proc. Code § 425.16(b)(1), (c); *Navellier v. Sletten*, 29 Cal. 4th 82, 88 (2002).

B. Under California law, granting that special statutory remedy without the required predicate is at least an act in excess of jurisdiction.

Petitioners do not contend that the California courts lacked fundamental subject-matter jurisdiction over civil litigation. The point is California’s settled distinction between fundamental jurisdiction and acts in excess of jurisdiction. *Abelleira* explains that a court may act “in excess of jurisdiction” when, though it has fundamental power over the parties and subject matter, it has no authority to act except in a particular manner, to give certain kinds of relief, or to proceed without the occurrence of specified procedural prerequisites. 17 Cal. 2d at 288–90. *American Contractors* reiterates the same rule: when a statute prescribes a procedure and the court acts contrary to the authority thus conferred, it has exceeded its jurisdiction. 33 Cal. 4th at 660–61.

That is exactly what happened here. Anti-SLAPP granted the courts special authority to summarily dismiss petitioners’ complaint and impose mandatory fees only if respondents carried step one. Because the

Court of Appeal conceded it could not determine whether respondents had carried that burden, the statute's threshold predicate was missing. Granting anti-SLAPP relief and mandatory fees anyway was therefore, at minimum, an act in excess of the authority conferred by statute.

C. Opinion I admitted the required predicate was missing, then manufactured a new forfeiture rule to excuse the defect.

The Court of Appeal expressly stated that it could not determine whether the claims against each defendant arose from protected activity without a proper defendant-specific factual showing. App.12-13. That should have ended the anti-SLAPP inquiry. If the reviewing court conducting de novo review could not determine whether the statutory predicate existed, then the predicate had not been established and the motion should have failed.

Instead, the Court of Appeal manufactured an unprecedented forfeiture rule. It faulted petitioners—the plaintiffs opposing the motions—for not supplying the very factual summary that California law explicitly required respondents to provide. App.12-17. It then affirmed dismissal and mandatory fee shifting despite its own acknowledgment that the statutory predicate had not been established.

That was not ordinary appellate housekeeping. It was a merits-dispositive reallocation of the anti-SLAPP burden. Anti-SLAPP movants are supposed to prove that the challenged claims “arise from” protected activity. They are not supposed to prevail because a reviewing court says it cannot tell whether they did.

D. Petitioners' later challenge to the fee award was legitimate; law of the case could not supply the missing statutory predicate or render the challenge frivolous.

Opinion II treated petitioners' excess-of-jurisdiction argument as foreclosed by law of the case. App.39-43. That was error.

First, petitioners' later appeal did not seek to relitigate the merits in some free-floating way. It directly challenged the fee award and collaterally attacked the award's sole predicate—the anti-SLAPP dismissal—on the ground that the statutory condition precedent to dismissal and mandatory fees had never been established. Where a fee entitlement depends entirely on a special statutory dismissal, a challenge to the legality of that predicate is a challenge to the fee award itself.

Second, law of the case cannot retroactively manufacture a statutory predicate that the movants never established. The doctrine is one of judicial administration; it does not enlarge the power conferred by statute. A court's prior decision cannot transform relief entered in excess of jurisdiction into a valid basis for mandatory fee shifting.

Third, even on respondents' best characterization of the defect as merely voidable, not void, petitioners' later appeal was still the correct procedural vehicle and therefore could not reasonably be called frivolous. *American Contractors* makes clear that acts in excess of jurisdiction are ordinarily challenged by direct attack—through appeal or timely motion—not ignored. 33 Cal. 4th at 660–61. Petitioners did exactly that.

They appealed the derivative fee award and argued that its indispensable statutory predicate had been entered in excess of jurisdiction. That is not abusive relitigation. It is the very mechanism California law contemplates for challenging voidable excess-of-jurisdiction acts.

Fourth, the label “law of the case” does not answer the jurisdictional objection. A prior merits ruling may guide later proceedings on issues actually decided, but it does not transmute a missing statutory prerequisite into a satisfied one. The question in the fee appeal was whether the State could continue to impose mandatory financial consequences on the basis of a dismissal entered without the statutory predicate the Court of Appeal itself acknowledged was missing. Treating that as foreclosed by law of the case only deepened the original error.

E. The forfeiture rule applied below is not an adequate state ground.

A state procedural rule is inadequate to bar federal review when it is novel, unexpected, or inconsistently applied. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 457–58 (1958); *Lee v. Kemna*, 534 U.S. 362, 376 (2002). The rule must be “firmly established and regularly followed” before it can constitute an independent state ground foreclosing this Court’s review. *Walker v. Martin*, 562 U.S. 307, 316 (2011) (quoting *Beard v. Kindler*, 558 U.S. 53, 60–61 (2009)).

No published California decision holds that a plaintiff-appellant must construct the defendant-movant’s anti-SLAPP step-one showing as a condition of appellate review. To the contrary, California anti-SLAPP law uniformly places that burden on the defendant.

Baral, 1 Cal. 5th at 396; *Bonni*, 11 Cal. 5th at 1009; *Park*, 2 Cal. 5th at 1063–64. The Court of Appeal’s demand that petitioners provide a “proper factual summary” of each defendant’s allegedly protected conduct—and its use of petitioners’ failure to do so as a ground for affirmance—was unprecedented. Petitioners had no fair notice that such a showing was required of them, because California law assigned that burden to their adversaries.

A procedural default rule sprung for the first time on appeal cannot constitute an adequate state ground. *Ford v. Georgia*, 498 U.S. 411, 423–24 (1991).

F. The forfeiture rule is not independent of the federal question.

A state procedural ground is not independent when it is intertwined with the merits of the federal claim, particularly one involving fundamental constitutional questions. *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985); *Enterprise Irrigation Dist. v. Farmers Mut. Canal Co.*, 243 U.S. 157, 164 (1917). Here, the forfeiture holding and the federal due-process question are inseparable.

Petitioners’ federal constitutional claim is that the anti-SLAPP rulings deprived them of due process by imposing mandatory dismissal and fee shifting without the threshold determination the statute explicitly requires. The forfeiture holding is the mechanism by which the state courts avoided making that determination. To decide whether the forfeiture rule was properly applied, this Court must necessarily consider whether due process permits a state court to skip the statutory-predicate analysis while still imposing the statute’s drastic consequences. The procedural ruling

and the underlying federal constitutional issue cannot be disentangled.

G. The forfeiture rule, as applied, independently violated due process.

Even apart from the adequate-and-independent-state-ground problem, the forfeiture rule as applied here violated due process for at least three reasons.

First, due process requires that before a State imposes severe financial penalties through a specialized procedural device, the statutory prerequisites for invoking that device must actually be satisfied. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Anti-SLAPP is not an ordinary motion. It is a statutory authorization for early termination of litigation, stripping plaintiffs of ordinary merits adjudication, and imposing mandatory fee awards that can exceed six figures—as they did here. When a statute carries such severe automatic consequences, the private interest in accurate adjudication is at its apex. A rule that excuses courts from determining whether defendants carried their threshold burden—while still imposing the full weight of anti-SLAPP’s penalties—denies plaintiffs the process they are due.

Second, the forfeiture rule conscripted petitioners into constructing their opponents’ case. Standard forfeiture doctrine penalizes a party for failing to raise arguments available to that party. But anti-SLAPP step one is the movant’s burden. Petitioners could not “forfeit” the right to have respondents satisfy their own statutory obligation. Requiring plaintiffs to identify defendants’ protected activity—and penalizing them when they fail to do so—transforms the

adversarial system into one where plaintiffs must both oppose the motion and make it for their adversaries.

Third, the forfeiture rule creates a one-way ratchet insulating vague anti-SLAPP motions from meaningful review. Under the Court of Appeal’s approach, a defendant may file a boilerplate motion asserting that “the claims arise from protected activity,” obtain dismissal from a trial court that does not scrutinize the assertion, and then defeat any appeal by arguing that the plaintiff failed to supply the missing specificity. Vague motions are affirmed because plaintiffs did not fill in the gaps; specific motions are reviewed on the merits. That systematically disadvantages civil-rights plaintiffs and denies them the “fair opportunity to be heard” that due process guarantees. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970).

H. The ruling below also burdens the First Amendment right to petition by attaching escalating punishment to continued resort to the courts.

The state courts’ approach threatens more than the right to speak in school. It also burdens the right to petition in court. Petitioners filed suit alleging viewpoint discrimination by public officials. For doing so, they have faced threshold dismissal, mandatory fee shifting, an appellate fee award, a sanctions order, and now a pending motion for still more fees expressly tied in part to their continued effort to seek review here. App.34-35; App.45-46; App.86-88; App. 124-126; App.141-143.

That escalating penalty structure matters. When a state court both misapplies a summary-dismissal

statute and compounds the error by layering fees and sanctions on each additional effort to obtain judicial review, the practical effect is to chill future resort to the courts by similarly situated families and counsel. The danger is particularly acute where, as here, the underlying suit alleges official suppression of dissent. This Court has been especially vigilant when procedural rules are used in ways that burden speech and petitioning activity. *NAACP*, 357 U.S. at 457–58. Review is warranted for that independent reason as well.

This Court should grant review to make clear that state courts may not use novel procedural bars to extinguish federal rights, invoke law of the case to preserve the resulting defect, and then punish litigants or counsel for continuing to petition for redress.

II. The decision below allows public officials to recast viewpoint-discriminatory punishment as the government’s own protected activity.

A. This petition does not challenge the District’s antecedent adoption of a mask policy.

A critical clarification is necessary. Petitioners do not ask this Court to review whether school districts could adopt mask policies in 2021 or 2022. The District’s policy predated G.W.’s harm by many months. The federal injury pressed here is the later punitive punishment of G.W. because she politely dissented from that already-existing policy. Petitioners’ challenge is to viewpoint discrimination and retaliatory enforcement, not to policy adoption as such.

Opinion I treated broader complaint language as converting the entire case into a challenge to the

policy’s adoption and validity. App.13-15. But even if some allegations or prayers swept more broadly than the federal questions presented here, that would not justify what the state courts did. Under *Baral* and *Bonni*, mixed allegations require parsing, not wholesale dismissal. 1 Cal. 5th at 396; 11 Cal. 5th at 1009–10. And under *Park*, liability does not “arise from” protected activity merely because that activity forms part of the background or context. 2 Cal. 5th at 1064–65.

Here, the preexisting policy was at most background. The conduct that supplied the elements of petitioners’ federal claims was later exclusion, isolation, threats, police involvement, and other alleged punishment directed at G.W. because of her dissenting protest. App.71-79. At minimum, those claims required separate analysis.

B. The courts below inverted both California anti-SLAPP doctrine and the First Amendment by treating coercive enforcement as protected activity.

The trial court reasoned that respondents’ “comments and actions” in formulating and enforcing the policy were “clearly” protected activity and even invoked the free-speech rights of teachers and school employees. App.64-69. That framing mistakes the nature of the lawsuit. Petitioners did not sue to punish school officials for speaking about COVID, masks, or public policy. They sued because those officials allegedly used the coercive power of the State to punish a student’s dissenting viewpoint.

That distinction is constitutionally fundamental. *Barnette* holds that no official may prescribe orthodoxy in matters of opinion or force citizens to confess

by word or act their faith in the government’s preferred position. 319 U.S. at 642. *Tinker* holds that students are not “closed-circuit recipients of only that which the State chooses to communicate” and may not be confined to officially approved sentiments. 393 U.S. at 511. Viewpoint discrimination is the “egregious form” of content discrimination. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). And government may not burden speech because of disfavored ideas or messages. *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 565–66 (2011).

Those principles apply here regardless of whether bare nonmasking, in the abstract, might always qualify as expressive conduct. Petitioners alleged that respondents understood G.W.’s conduct as protest and punished her because of that message. App.71-79; App.80-83. At minimum, that states a claim for viewpoint discrimination and retaliation under *Tinker* and *Barnette*.

C. The state court’s refusal to separate policy adoption from later enforcement only underscores the federal problem.

This is precisely where the state-law parsing requirement and the federal constitutional problem converge. The complaint, as Opinion I read it, included both board-level allegations about policy adoption and school-level allegations about later enforcement. App.13-15. But instead of separating those theories, the court used the presence of some adoption-related language to immunize the later enforcement as well. That is the opposite of what *Baral*, *Park*, and *Bonni* require.

If a school board’s prior discussion or adoption of a policy counts as protected activity, that does not mean later punishment of a student dissenter “arises from” that protected activity. The later punishment is the liability-producing conduct. *Park*, 2 Cal. 5th at 1063–64. To hold otherwise is to allow the government to immunize almost any coercive enforcement of public policy so long as the policy itself once involved public deliberation.

The implications are serious and recurring. If the decision below stands, public schools can punish dissent on contested subjects and then invoke anti-SLAPP by characterizing the case as one about the government’s own policy speech. That cannot be squared with *Barnette*, *Tinker*, or the anti-SLAPP framework California itself has adopted.

III. Due process and *Tinker* required an evidentiary opportunity on disruption and danger; the courts instead used judicial notice, personal knowledge, and the novel procedural bar.

A. The trial court decided disputed factual questions itself.

Under *Tinker*, school officials may not suppress student expression merely because it is unpopular or uncomfortable. They must show that the expression materially disrupts classwork or invades the rights of others. 393 U.S. at 509, 513. Those are factual inquiries, not matters for judicial fiat.

Yet the trial court resolved them through judicial notice and personal knowledge. The judge took judicial notice that “COVID can be transmitted by an asymptomatic carrier,” rejected petitioners’ request

for an evidentiary hearing, stated that asymptomatic spread was “common knowledge,” invoked personal experience with acquaintances who had contracted COVID asymptotically, and analogized G.W.’s protest to bringing a gun to school because “Guns kill and so does COVID.” App.80-83. The judge then concluded that G.W.’s conduct endangered others and was “clearly disruptive.” App.60-67.

That was not a neutral evaluation of evidence presented by the parties. It was the court’s own substitution of extra-record assumptions for the adversarial process. Due process does not permit a judge to decide the dispositive disputed facts, refuse an evidentiary hearing, and then dismiss constitutional claims on that basis. See *In re Murchison*, 349 U.S. 133, 136 (1955); *Mathews*, 424 U.S. at 333.

B. B.B. confirms that the “disruption” and “rights of others” questions here required evidence, not judicial notice.

The Ninth Circuit’s recent decision in B.B. makes the federal error below even clearer. There, in a student-speech case involving a far younger child, the court held that schools bear the burden of showing their actions were reasonably undertaken to protect the safety and well-being of students, that *Tinker* remains a “demanding standard,” and that disputed facts about whether speech infringed the rights of others preclude threshold judgment. B.B., No. 24-1770, slip op. at 20–25, App.113-118; see also *Mahanoy*, 594 U.S. at 193.

B.B. is especially pertinent for three reasons.

First, it confirms that the burden rests with the school. The Ninth Circuit expressly stated that “the

school has the burden, under the Tinker balancing test, of showing that its actions were reasonably undertaken to protect the safety and well-being of its students.” *B.B.*, No. 24-1770, slip op. at 20, App.113-114. That is the opposite of what happened here, where the courts below effectively required petitioners to disprove danger and disruption after the judge supplied those propositions himself.

Second, *B.B.* confirms that such questions are fact dependent. Even where a school offered evidence that a student’s expression may have hurt another child, the Ninth Circuit held that conflicting evidence created genuine disputes of material fact. *Id.* at 21–23, App.114-117. Here, petitioners alleged G.W. was healthy, that her protest was peaceful, and that the asserted disruption was a product of officials’ own response (i.e, disruption was the result of the school’s decision to punitively enforce the policy). App.71-79. Those were classic evidentiary disputes.

Third, *B.B.* underscores why judicial notice was especially improper here. The Ninth Circuit did not assume danger. It required proof. And it explained that even with appropriate deference to school officials, “schools must prove that they meet” Tinker’s demanding standard. *Id.* at 23, App.116-118. That is precisely what respondents were never required to do below.

C. The combination of judicial notice and the appellate procedural bar denied petitioners any meaningful opportunity to contest “disruption” and “danger.”

The due-process defect here lies not only in the use of judicial notice, but in how that use interacted with the appellate forfeiture ruling.

Petitioners specifically attempted to contest the “danger to others” theory. Counsel objected that there was no expert evidence supporting asymptomatic spread as applied to G.W. and requested an evidentiary hearing. App.80-81. The judge refused and resolved the issue by judicial notice and personal knowledge. App.80-83. When petitioners later challenged that procedure, the Court of Appeal held that their step-two arguments were forfeited or meritless and approved the judicial-notice ruling. App.16-26. Opinion II then called the due-process argument “specious” and frivolous. App.40-43.

That sequence meant petitioners were never allowed to litigate whether G.W. posed a cognizable danger, whether asymptomatic spread in the asserted form was actually relevant to the school’s actions toward her, whether the alleged disruption was caused by her expression or by the school’s chosen response, or whether the rights of other students were genuinely at issue. In other words, the precise factual questions Tinker makes central were removed from adversarial testing and then insulated from review by a novel procedural bar.

This Court should grant review to make clear that when a school invokes disruption or danger to justify suppressing student expression, due process requires an actual evidentiary opportunity to contest those propositions.

IV. This case is an excellent vehicle, and the stakes are current and ongoing.

This case cleanly presents the questions of whether a state court may use a novel forfeiture rule to relieve anti-SLAPP movants of their burden, whether public-

school officials may recast viewpoint-discriminatory punishment as their own protected activity, and whether judicial notice and personal knowledge may substitute for evidence on Tinker’s disruption and danger inquiries.

The record is fully developed. The relevant orders and transcripts are all reproduced in the appendix. App.1-143. The federal questions are outcome determinative. If petitioners are correct that respondents were never held to anti-SLAPP step one, that the courts improperly refused to parse adoption-related allegations from later enforcement conduct, and that the “disruption” and “danger” issues were decided without the evidentiary process Tinker and due process require, then the dismissal, fee awards, and sanctions order cannot stand.

The stakes are also immediate. Respondents have already obtained a trial-level fee award, later secured a separate appellate-fee award, and now seek \$23,323.08 more, while expressly asking the superior court to preserve their ability to seek still more fees incurred in opposing proceedings in this Court. App.34-35; App.86-88; App.124-126; App.141-143. Counsel also remains subject to a separate \$13,000 sanctions order and State Bar reporting consequences. App.45-46. The constitutional errors below are therefore not historical abstractions. They continue to generate fresh and escalating consequences.

Those consequences matter not only because they increase the monetary stakes in this case, but because they amplify the chilling effect on further resort to the courts. Each additional filing has become a potential occasion for more fees, more sanctions, or both. That feature makes this case an unusually strong vehicle

for clarifying that States may not weaponize procedural doctrines to deter continued petitioning for redress in cases alleging official viewpoint discrimination.

Finally, this case is important beyond its immediate facts. Anti-SLAPP statutes have been adopted in the majority of states, and they are increasingly invoked in public-law litigation. If state courts may use anti-SLAPP, together with novel appellate forfeiture rules and law-of-the-case doctrine, to avoid adjudicating viewpoint-discrimination claims brought by students against school officials, the practical effect will be to shield official coercion from review whenever the challenged conduct can be associated with a preexisting public policy. That result is incompatible with the First Amendment and with elementary due process.

CONCLUSION

This Court should grant certiorari.

Respectfully submitted,

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March 23, 2026 *Attorneys for Petitioners*

No. _____

In the Supreme Court of the United States

G.W., A MINOR, BY AND THROUGH HER GUARDIAN AD LITEM,
NICOLE WARD; NICOLE WARD; AND TRACY L. HENDERSON,
Petitioners,

v.

CORONADO UNIFIED SCHOOL DISTRICT, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF CALIFORNIA,
FOURTH APPELLATE DISTRICT, DIVISION ONE

APPENDIX

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Appendix A

Filed 9/19/24

**NOT TO BE PUBLISHED
IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL,
FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

G.W., a Minor, etc., et al.,
Plaintiffs and
Appellants,

v.

CORONADO UNIFIED
SCHOOL DISTRICT et al.,
Defendants and
Respondents.

D082619

(Super. Ct. No. 37-
2022-00034756-CU-
NP-CTL)

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APPEAL from an order of the Superior Court of San Diego County, Gregory W. Pollack, Judge. Affirmed.

Law Offices of Tracy L. Henderson, Tracy L. Henderson; The Gavel Project, and Ryan Heath for Plaintiffs and Appellants.

Winet Patrick Gayer Creighton & Hanes, Randall L. Winet, and Erin N. Taylor for Defendants and Respondents.

G.W., a minor, and her mother Nicole W. (plaintiffs) sued the Coronado Unified School District (District) and 20 individual defendants, including members of the District's Board of Trustees (Trustees), District and school administrators (administrators), and several Coronado High School (CHS) teachers (Teachers) (collectively, defendants). Plaintiffs alleged that defendants' adoption and enforcement of a mask policy at CHS to prevent the spread of COVID-19 during the pandemic violated G.W.'s constitutional rights and were tortious. The District, Trustees, administrators, and Teachers filed motions to strike plaintiffs' complaint as a strategic lawsuit against public participation (SLAPP) under Code of Civil Procedure¹ section 425.16. In a single order, the trial court granted all four anti-SLAPP motions (one for each group of defendants), ruling that: (1) plaintiffs' suit arose from defendants' protected activity, and (2) plaintiffs failed to demonstrate a probability of prevailing on their claims.

Plaintiffs contend on appeal that the court erred because: (1) their claims did not arise from activity protected by the anti-SLAPP statute; (2) defendants'

¹ Further undesignated statutory references are to the Code of Civil Procedure.

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enforcement of the mask policy was “illegal as a matter of constitutional law”; and (3) the court should not have taken judicial notice of COVID-19’s “asymptomatic transmission.” Plaintiffs further contend that the trial court judge, the Honorable Gregory W. Pollock, should be disqualified for demonstrating bias.

We conclude that plaintiffs have forfeited their claims of error by failing to include a factual summary of the significant facts in their opening brief and failing to address the multiple legal grounds for the trial court’s ruling on the merits of their claims. We also reject plaintiffs’ arguments on the merits and conclude they have failed to demonstrate a probability of prevailing on their constitutional and other claims. Accordingly, we affirm the trial court’s order.²

FACTUAL AND PROCEDURAL BACKGROUND

A. G.W.’s Non-Compliance with CHS’s Mask Policy

In March 2020, California Governor Gavin Newsom declared a state of emergency in response to the COVID-19 pandemic. Public high schools across the state, including CHS, closed their campuses and provided remote instruction for the remainder of 2020. CHS returned to in-person learning for the 2020 to 2021 school year under a reopening plan based on state mandates and public health directives. Assistant superintendent Donnie Salamanca was involved in developing the reopening plan, which included a

² Plaintiffs’ request for judicial notice filed September 4, 2024 (one week before oral argument) is denied as untimely and irrelevant, and also because plaintiffs failed to request judicial notice of the November 2020 article in the trial court.

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requirement that all CHS staff and students wear masks indoors while at the school site, with limited exemptions, in accordance with state and California Department of Public Health directives at the time. Reopening procedures were to be updated “as necessary” based on COVID-19 transmission and case rates.

The District’s mask policy continued into the 2021–2022 school year. In August 2021, superintendent Karl Mueller disseminated a statement through a District newsletter explaining that the District would comply with and enforce the mask policy. A local news outlet reported that according to Salamanca, defying the masking order could expose the District and the Trustees to liability. State agency guidance explained that masks were a low-cost, minimally intrusive way to mitigate the spread of COVID-19 within schools and the broader community. During the 2021 to 2022 school year, students had the option of either attending classes in person or virtually.

In January 2022, G.W. started attending classes at CHS in person without a mask, intending to protest the District’s mask policy. The Teachers and three administrators, Niamh Foley, the District’s director of student services, Karin Mellina, the CHS principal, and Shane Bavis, a CHS assistant principal, requested that G.W. abide by the policy, but she refused. When it became clear she would not wear a mask, Bavis called Nicole and asked her to bring G.W. home, but Nicole refused. Nicole and G.W. also refused to enroll in remote classes, asserting that G.W. was constitutionally entitled to an in-person education without having to wear a mask.

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Over the several weeks that followed, G.W. continued to come to school in person without a mask. The Teachers, Mellina, Foley, and Bavis facilitated G.W.'s participation in classes from just outside the classroom doors or remotely from other locations on campus. G.W. insisted, however, that she should be allowed to attend in person and repeatedly attempted to enter classrooms without a mask. On many of those occasions, teachers had to move all the other students in the classroom to another classroom, or hold class outdoors, to comply with safety policies. Plaintiffs allege that when G.W. participated in classes from outside, she was subjected to "miserable cold" on days where the regional highs were in the low to mid-60s, "scorching heat," and "exposure to the elements." Plaintiffs also allege that while G.W. was outside, she could not participate in an emergency lockdown drill with her peers. Bavis allegedly instructed G.W. to lockdown in a nearby bathroom, which plaintiffs claim was unsafe because it had no interior lock to protect her against an emergency such as an active shooter.

As a result of her non-compliance, G.W. was suspended twice in February 2022 for willfully defying school policy, disrupting school activities, and defying the direction of school staff and administration. On February 1, about two weeks before G.W. was first suspended, Salamanca e-mailed Nicole to explain that the District was required by state law to enforce the mask mandate and that G.W.'s failure to comply was causing her exclusion from classrooms. He wrote that the school would continue to offer G.W. independent study options as an alternative. The e-mail also stated that G.W.'s absences from the classroom were unexcused, could negatively impact her academic

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standing and her inter-district transfer agreement, and could result in “potential discipline.”

After G.W. continued to come to school without a mask, Salamanca e-mailed Nicole again on February 7, 2022, informing her that beginning the next day, G.W. would no longer be allowed to attend classes remotely from on campus and would have to either wear a mask, obtain an exemption, or enroll in independent study. Salamanca also offered G.W. the short-term option of participating in classes remotely from off-campus along with students who are in temporary quarantine. He warned, however, that if G.W. continued her non-compliance, she might “be subject to disciplinary action” for her behavior in accordance with “the district’s Discipline Action Guide[.]”³ After Nicole turned down Salamanca’s proposed alternatives, Salamanca wrote back that same day to inform Nicole that the school had consulted with its legal counsel. He stated that because Nicole had failed to submit a policy exemption request as she previously indicated she would, G.W. would be marked unexcused if she showed up to school the next day without a mask, and the school would “proceed with disciplinary action.”

G.W. came to school for several days afterwards without a mask. During that time, she was barred from entering her classrooms and marked with unexcused absences.

On February 16, 2022, G.W. again attempted to enter one of her classrooms without a mask. But this time she refused to leave when asked, so Bavis came to the classroom and requested that she put on a

³ This guide is not included in the record before us.

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mask. After the students in that class were moved to another room, G.W. attempted to follow them and again refused to leave when asked. Bavis warned G.W. that if she continued to refuse to comply, she could be suspended. When G.W. entered yet another classroom without a mask, Mellina exercised her discretion as principal to suspend G.W. for one day. Mellina agreed to allow G.W. access to campus during that suspension and attend classes remotely.

When G.W. attempted to enter classrooms without a mask on February 23, 2022, Mellina suspended G.W. again. This time, G.W. was prohibited from being on campus for the duration of her suspension—but G.W. still returned the next day and attempted to enter one of her classrooms. Plaintiffs allege that Mellina physically blocked her from entering the classroom and threatened to report G.W. for assault. A school resource officer then told G.W. and Nicole, who was also present, to go home and return the following day to attend classes remotely.

G.W. continued to refuse to wear a mask for two weeks after her second suspension ended. During that time, she participated in classes virtually from outdoor locations on campus, or by sitting outside of the classroom door. Mellina, Foley, Bavis, and various Teachers continued telling plaintiffs that G.W. had to adhere to the mask mandate, and they also continued to prevent her from entering classrooms.

On March 11, 2022, G.W. disenrolled from CHS. Around that time, the District lifted its indoor mask requirement in accordance with updated health guidance from the Governor's office.

B. The Complaint

Plaintiffs sued defendants under title 42 United States Code section 1983 alleging violations of G.W.'s rights to freedom of speech and expression under the First and Fourteenth Amendments to the United States Constitution, article I, section 2(a) of the California Constitution, and Education Code section 48907, subdivision (a). Plaintiffs also alleged violations of the Bane Act (Civ. Code, § 52.1) and tort claims for negligence and intentional infliction of emotional distress (IIED). The complaint alleged that the mask policy was illegal and that defendants "intentionally isolated and belittled G.W. by excluding her from the educational process," caused G.W. harm by forcing her to sit outside in the "miserable cold," penalized G.W. academically, and caused both plaintiffs severe trauma, anxiety, and stress. Plaintiffs sought declaratory relief, damages, civil penalties, attorney's fees, punitive damages, and costs.

Each of the four groups of defendants filed an anti-SLAPP motion, arguing that plaintiffs' complaint arose from protected activity under section 425.16, subdivisions (e)(1) through (e)(4). Defendants also argued that plaintiffs could not demonstrate a probability of prevailing because: (1) defendants are immune from liability under various state statutes, the Eleventh Amendment to the United States Constitution, and the qualified immunity doctrine; (2) requiring that students wear a mask consistent with public health orders does not violate constitutional rights; (3) there is no evidence any of defendants engaged in threats of violence, intimidation, or coercion; and (4) no evidence supports plaintiffs' claims for negligence

or intentional infliction of emotional distress. Each of the four motions was supported by an identical set of 45 exhibits plus declarations of each of the 20 individual defendants.

Plaintiffs opposed the anti-SLAPP motions, contending that defendants' conduct in enforcing the mask policy did not constitute protected activity and was also illegal as a matter of law. They also argued that defendants are not immunized from liability and there is sufficient evidence that, if credited, would demonstrate a probability of prevailing on the merits. In opposition to the anti-SLAPP motions, plaintiffs submitted an 11-page declaration of G.W. with three exhibits and a six-page declaration of her mother with seven exhibits.

C. Motion Hearing and Ruling

Judge Pollack presided over the hearing on defendants' anti-SLAPP motions. During arguments, plaintiffs' counsel asserted that the case was "not about a mask policy," but rather about "the punitive implementation" of the policy. Judge Pollack asked how a mask policy implemented for safety reasons would be different from a rule prohibiting firearms, and he commented that "[g]uns kill and so does COVID." Plaintiffs' counsel asserted that COVID-19's dangerousness and transmissibility were irrelevant, but also argued that medical testimony would be required before the court could make findings on those topics. Judge Pollack stated more than once that he would take judicial notice of the fact that COVID-19 can be transmitted by an asymptomatic carrier, which plaintiffs' counsel disputed. Judge Pollack also expressed concern that G.W. was being used as a

“political pawn,” and he voiced skepticism of some allegations in the complaint.

In a single written order issued after the hearing, the trial court granted each of defendants’ anti-SLAPP motions. The court first found that the mask policy at CHS was legal as a matter of law, and that defendants were “entitled to undertake all reasonable efforts to enforce” the policy. The court noted that G.W.’s conduct was “clearly disruptive of the orderly operation of the school[,]” and that the school took efforts to accommodate G.W. before resorting to suspension. The court further found that the promulgation and enforcement of mask policies are “public issues of great public interest,” and that the anti-SLAPP statute protects defendants’ comments and actions.

As to plaintiffs’ probability of prevailing on the merits, the court ruled that several immunities barred plaintiffs’ claims, specifically under Education Code section 44805, Government Code sections 818.2, 820.2, 820.4, and 855.4, Civil Code section 47, subdivision (a), and the Eleventh Amendment to the United States Constitution. The court also found that plaintiffs had not met their burden of establishing a probability of prevailing on their Bane Act or IIED claims because defendants’ conduct “was quite appropriate” and “reasonable” as a matter of law. The court did not separately address the merits of G.W.’s negligence claim.

On these grounds, the court granted each of defendants’ four anti-SLAPP motions.

DISCUSSION

I

A. Statutory Framework

The anti-SLAPP statute provides in relevant part that “[a] cause of action against a person arising from any act of that person in furtherance of the person’s right of petition or free speech . . . in connection with a public issue shall be subject to a special motion to strike [anti-SLAPP motion], unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.” (§ 425.16, subd. (b)(1).) Ruling on an anti-SLAPP motion typically involves two steps. First, defendants moving to strike a cause of action must show the act underlying the claim falls within one of the four categories of protected activity listed in section 425.16, subdivision (e). (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396 (*Baral*); *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 66; *Bowen v. Lin* (2022) 80 Cal.App.5th 155, 160 (*Bowen*).)

Those four categories include: “(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the

constitutional right of free speech in connection with a public issue or an issue of public interest.” (§ 425.16, subd. (e)(1)–(4).)

If defendants make a sufficient showing under the first prong of the anti-SLAPP analysis, the burden shifts to plaintiffs to show the targeted causes of action are legally sufficient and supported by evidence that, if credited, would sustain a judgment for plaintiffs. (*Baral, supra*, 1 Cal.5th at pp. 384, 396; *Bowen, supra*, 80 Cal.App.5th at p. 160.) “Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning *and* lacks even minimal merit—is a SLAPP, subject to being stricken under the statute.” (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89; accord, *Bowen*, at p. 160.) The trial court’s decision on both prongs is subject to de novo review on appeal. (*Geiser v. Kuhns* (2022) 13 Cal.5th 1238, 1250; *Monster Energy Co. v. Schechter* (2019) 7 Cal.5th 781, 796; *Starr v. Ashbrook* (2023) 87 Cal.App.5th 999, 1018.)

B. Forfeiture

An appellant’s opening brief must include a summary of the significant facts with appropriate citations to the record. (Cal. Rules of Court, rule 8.204(a)(1)(C), (a)(2)(C).) The facts significant to this anti-SLAPP appeal are based on: (1) the allegations of the 315-paragraph complaint, (2) the 45 exhibits and 20 declarations submitted by defendants in support of their anti-SLAPP motions, and (3) the two declarations with 10 attached exhibits submitted by plaintiffs in opposition.

Plaintiffs’ opening brief contains no factual summary of the allegations of their own complaint and no

mention of the evidence submitted by both sides in connection with the anti-SLAPP motions. The opening brief never even identifies the 20 individually named defendants or describes what role each played in the masking dispute or what the factual basis for liability is against each of them. We cannot assess whether the claims against each of these defendants arise from protected activity without a proper factual summary of the allegations against them, including the statements each is alleged to have made regarding the mask mandate. Nor can we assess whether plaintiffs have demonstrated a sufficient probability of prevailing without a proper summary of the evidence submitted by both sides.

Even on de novo review, we are not “obligate[d] . . . to cull the record for the benefit of the appellant . . .” (*Bains v. Moores* (2009) 172 Cal.App.4th 445, 455; see also *People v. ex rel. Reisig v. Acuna* (2010) 182 Cal.App.4th 866, 879 [“It is not the function of this court to comb the record looking for evidence or the absence of evidence to support [appellants’] argument.”].) We conclude that plaintiffs have forfeited their claims of error because their opening brief does not comply with the factual summary requirement of California Rules of Court, rule 8.204. (*Perry v. Kia Motors America, Inc.* (2023) 91 Cal.App.5th 1088, 1096; *Singh v. Lipworth* (2014) 227 Cal.App.4th 813, 817.)

C. Prong One

Notwithstanding the forfeiture, we will briefly address the two arguments plaintiffs make on prong one. First, plaintiffs contend that the trial court mischaracterized their claims by finding they were

challenging the lawfulness of the District’s mask policy itself, rather than its “punitive” implementation or enforcement. Plaintiffs now concede that the adoption of the mask policy is “undisputably” protected activity but deny that their complaint challenges the validity of the policy.

Plaintiffs misstate the allegations of their own complaint. The complaint clearly alleges that “[f]rom February 2, 2021, until lifting the policy on March 14, 2022, Defendants collectively chose to adopt and maintain an illegal indoor mask mandate for all students within CUSD’s jurisdiction.” It further alleges that the mask mandate was “illegal” because it was based on “non-binding” guidance from the California Department of Public Health. Plaintiffs named as defendants the individual members of the school board who they allege adopted the masking policy, and the complaint does not allege that they participated in CHS’s enforcement of the policy. The complaint also attaches and incorporates by reference an “ULTIMATUM RE: YOUR SCHOOL’S COVID-19 POLICIES” that G.W. provided to the school. This document referred to “your institution’s unconstitutional COVID-19 policies” including “masking, testing, and vaccination policies.” It also threatened suit against “all involved in the adoption or enforcement of such policies.” Finally, in the prayer for relief, plaintiffs’ complaint explicitly sought “a judicial declaration that school district policy relating to forced masking is invalid and unenforceable”

These allegations make abundantly clear that plaintiffs are in fact challenging the adoption and validity of the masking policy itself. For purposes of an anti-SLAPP motion, the court must “assume [the]

complaint means what it says.” (*Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1017.) Plaintiffs cannot prevail on appeal merely by denying a central theory pled in their complaint.

In their opening brief, plaintiffs make no effort to differentiate between the allegations of their complaint challenging the masking policy itself and those challenging its enforcement or implementation. Nor do they distinguish between those individual defendants responsible for adopting the policy and those responsible for enforcing it. They also do not discuss which defendants allegedly made public statements about the mask policy (such as the statements to the press quoted in the complaint) and which allegedly engaged in “punitive” conduct enforcing the policy. Without a properly developed argument and factual summary of the allegations made against each defendant in the opening brief, “[w]e are not bound to develop appellants’ arguments for them.” (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) Even applying a de novo standard of review, our review is limited to issues which have been adequately raised and supported in the opening brief. (*Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 554–555.) Confining ourselves to the issues raised in the opening brief, we reject plaintiffs’ contention that their complaint did not challenge the adoption of the masking policy, which they concede is protected activity.

We also reject the only other argument plaintiffs make on prong one: that the anti-SLAPP statute is inapplicable because the mask policy was illegal as a matter of law for infringing on G.W.’s First Amendment rights. Where an anti-SLAPP motion concerns

alleged protected activity that “the defendant concedes, or the evidence conclusively establishes . . . was illegal as a matter of law, the defendant is precluded from using the anti-SLAPP statute to strike the plaintiff’s action.” (*Mendoza v. ADP Screening & Selection Services, Inc.* (2010) 182 Cal.App.4th 1644, 1654 (*Mendoza*), italics omitted.)

Defendants have not conceded, nor has the evidence conclusively shown, that the mask policy was illegal as a matter of law. First, courts have found that the illegality exception narrowly applies only to criminal conduct. (See *Dziubla v. Piazza* (2020) 59 Cal.App.5th 140, 151 (*Dziubla*); *Mendoza, supra*, 182 Cal.App.4th at p. 1654.) Second, “it is not sufficient that plaintiffs can reasonably argue or offer some evidence that defendant’s conduct was unlawful.” (*Dziubla*, at p. 151, italics omitted.) As we discuss below under the second prong of the anti-SLAPP analysis, the evidence is far from conclusive that the mask policy violated plaintiffs’ constitutional rights. We therefore find that the illegality exception to the anti-SLAPP statute does not apply.

D. Probability of Prevailing

Under the second prong, the burden shifts to plaintiffs to establish a probability of prevailing on their claims against defendants for their protected activities. As we shall explain, we conclude that plaintiffs have forfeited their arguments as to this prong as well, but to the extent they have preserved an argument that their constitutional claims have minimal merit, we disagree.

Plaintiffs’ only prong-two argument on appeal is that the trial court erroneously took judicial notice of

COVID-19's asymptomatic transmission. This position is puzzling because plaintiffs' counsel herself asserted that COVID-19's transmission was "irrelevant" to their theory of the case. But more importantly, plaintiffs have failed to contest any of the substantive grounds for the trial court's prong-two ruling having nothing to do with asymptomatic transmission. The court ruled that several immunities barred plaintiffs' claims, specifically under Education Code section 44805; Government Code sections 818.2, 820.2, 820.4, 855.4; Civil Code section 47, subdivision (a); and the Eleventh Amendment to the United States Constitution. The court also found that plaintiffs had not met their burden of establishing a probability of prevailing on their Bane Act or IIED claims because defendants' conduct "was quite appropriate" and "reasonable" as a matter of law. Plaintiffs addressed none of these prong two rulings in their opening brief. Although the court did not expressly address the merits of G.W.'s negligence claim, it is plaintiffs' burden to show their claim has minimal merit, and they have put forth no argument on appeal to meet that burden. Accordingly, we conclude plaintiffs forfeited any challenge on appeal to the court's finding that they failed to establish a probability of prevailing under prong two.⁴ (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655–656.)

⁴ We also disagree that the trial court erred by taking judicial notice of COVID-19's asymptomatic transmission. Courts may take judicial notice of established scientific facts, even those that may be controversial to some in the general public. (Evid. Code, § 452, subd. (h); *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1142–1143 [taking judicial notice of safety and effectiveness of vaccines].) As other California courts have acknowledged, "it is

Plaintiffs did argue under prong one that the mask policy was illegal as a matter of law because it violated G.W.’s constitutional right to free speech. Specifically, plaintiffs claim G.W.’s refusal to wear a mask was an expressive act of protest protected by the First Amendment. To the extent those arguments can be construed as contending that their constitutional claims have minimal merit under prong two, we disagree.

The First Amendment guarantees that “Congress shall make no law . . . abridging the freedom of speech[.]” (U.S. Const., 1st Amend.) Article I, section 2(a) of the California Constitution similarly provides that “[e]very person may freely speak” and laws “may not restrain or abridge liberty of speech[.]” These provisions afford protection to symbolic or

undisputed that the disease [COVID-19] spreads through airborne transmission from an infected person (who may be asymptomatic) to an infected member of the community” (*County of Los Angeles Dept. of Public Health v. Superior Court* (2021) 61 Cal.App.5th 478, 482 (*County of Los Angeles*); see also *Western Growers Assn v. Occupational Safety & Health Standards Bd.* (2021) 73 Cal.App.5th 916, 938 [discussing November 2020 Cal/OSHA findings of emergency which “discussed the specific challenge posed by COVID-19 because infected individuals may be asymptomatic, yet able to transmit the disease to others”]; *See’s Candies, Inc. v. Superior Court* (2021) 73 Cal.App.5th 66, 85 [stating “[i]t is well known that people may transmit viruses, including the virus that causes COVID-19, before they themselves have developed symptoms” and citing guidance of Centers for Disease Control and Prevention “noting that persons afflicted with ‘asymptomatic’ or ‘pre-symptomatic’ COVID-19 can transmit the virus to others”]; *Midway Venture LLC v. County of San Diego* (2021) 60 Cal.App.5th 58, 66 [“The virus can be transmitted even by individuals who do not show symptoms.”].)

expressive conduct as well as actual speech. (*People v. Peterson* (2023) 95 Cal.App.5th 1061, 1068.)

We reject plaintiffs’ argument that enforcement of the mask mandate constituted compelled speech or violated G.W.’s rights by preventing her from attending school unmasked as a form of protest. As the Eleventh Circuit has explained, “wearing a mask is not speech or expressive conduct protected by the First Amendment.” (*Zinman v. Nova Southeastern University, Inc.* (11th Cir., Mar. 29, 2023, No. 21-13476) 2023 WL 2669904, *5 (*Zinman*) [rejecting student’s challenge to mask mandate adopted during COVID-19 pandemic].) For expressive conduct, “the likelihood must be great that ‘the message would be understood by those who viewed it.’ “ (*Ibid.*, quoting *Tex. v. Johnson* (1989) 491 U.S. 397, 404.) But there are “many more probable explanations for a person’s decision to go unmasked that have nothing to do with conveying any sort of message -- political, religious, or otherwise. Thus, for example, a person may not be masked for medical reasons, or because he left his mask at home, or perhaps just on account of a personal dislike for masking.” (*Zinman*, at p. *5.)

Enforcement of such a school mask requirement does not constitute compelled speech either. In the context of the COVID-19 pandemic, a mask mandate does not constitute compelled speech because wearing a mask would not reasonably be understood as conveying any message. (*Antietam Battlefield KOA v. Hogan* (D. Md. 2020) 461 F.Supp.3d 214, 236–237 (*Antietam Battlefield*).) “Instead, especially in the context of COVID-19, wearing a face covering would be viewed as a means of preventing the spread of COVID-19, not as expressing any message.” (*Id.* at p. 237;

see also *Jacobs v. Clark County School Dist.* (9th Cir. 2008) 526 F.3d 419, 437–438 [school uniform requirement did not constitute compelled speech].) The remote possibility that someone might view wearing a mask during the COVID-19 pandemic as a message is not enough to confer First Amendment protection. “It is possible to find some kernel of expression in almost every activity a person undertakes—for example, walking down the street or meeting one’s friends at a shopping mall—but such a kernel is not sufficient to bring the activity within the protection of the First Amendment.” (*Dallas v. Stanglin* (1989) 490 U.S. 19, 25.)

Nor did G.W. have a constitutional right to protest the mask mandate by violating it. As another court has explained in rejecting the same argument: “[S]imply framing defiance of a law or regulation as a means of communicating disagreement with that law or regulation cannot alone trigger a First Amendment analysis. . . . [¶] . . . [¶] The same might be said of, say, refusing to wear a seatbelt or a motorcycle helmet, despite laws requiring such safety measures, in protest of being told to do so.” (*Zinman v. Nova Southeastern University, Inc.* (S.D. Fla., Aug. 30, 2021, No. 21-CV-60723) 2021 WL 4025722, at *13, report and recommendation adopted in *Zinman v. Nova Southeastern University* (S.D. Fla., Sept. 15, 2021, No. 21-CIV-60723-RAR) 2021 WL 4226028, affd. *Zinman, supra*, 2023 WL 2669904.) As the trial court observed: “The fundamental flaw in plaintiffs’ case is the assumption that a student can violate any school rule so long as it is done for protest reasons. This logic would allow a student to attend school totally nude so long as the student’s nudity was to protest the sexually-

repressive Puritan norms of our society being advanced by the school.” G.W. has made no effort to refute this reasoning—and we agree with it.

Even if G.W.’s refusal to wear a mask were expressive conduct, however, we would still find no violation. Constitutional rights “may at times, under the pressure of great dangers” be restricted “as the safety of the general public may demand.” (*Jacobson v. Massachusetts* (1905) 197 U.S. 11, 29 (*Jacobson*).) *Jacobson* established the longstanding precedent of an “extremely deferential standard of review applicable to emergency exercises of governmental authority during a public health emergency.” (*County of Los Angeles, supra*, 61 Cal.App.5th at pp. 487–488.) And when reviewing the constitutionality of public health mandates, “courts should be extremely deferential to public health authorities, particularly during a pandemic, and particularly where . . . the public health authorities have demonstrated a rational basis for their actions. Wisdom and precedent dictate that elected officials and their expert public health officers, rather than the judiciary, generally should decide how best to respond to health emergencies in cases not involving core constitutional freedoms.” (*Id.* at p. 483.)

Furthermore, in the school context, the United States Supreme Court has explained that student-speech claims must be evaluated “in light of the special characteristics of the school environment.” (*Tinker v. Des Moines Indep. Cmty. Sch. Dist.* (1969) 393 U.S. 503, 506 (*Tinker*).) Those characteristics include “the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.” (*Id.* at p. 507.) Considering the

need to set standards for student conduct, the Court held that restrictions on student speech are constitutionally justified if school officials can show that the speech in question “would materially and substantially disrupt the work and discipline of the school” or invade the rights of others. (*Id.* at p. 513.)

Few California state courts have addressed the constitutionality of COVID-19 health mandates outside of the Sixth Amendment context involving the rights to public trial, speedy trial, and confrontation. But we find one court’s analysis of a health agency’s temporary prohibition of outdoor dining helpful here. In *County of Los Angeles*, the Court of Appeal observed “it is undisputed that [COVID-19] spreads through airborne transmission from an infected person (who may be asymptomatic) to an uninfected member of the community, if the latter receives a sufficient dose to overcome his or her defenses. The risk of transmission thus increases when people from different households gather in close proximity for extended periods without masks or other face coverings.” (*County of Los Angeles, supra*, 61 Cal.App.5th at p. 482.) In analyzing a restaurateur’s constitutional challenge to the county’s mandate, the court in *County of Los Angeles* concluded that the order did not violate First Amendment freedom-of-assembly rights because it did “not regulate assembly based on the expressive content of the assembly,” “limiting the spread of COVID-19 [was] a legitimate and substantial government interest,” and the order left open “alternative channels for assembling, i.e., videoconference or in-person socially distant gatherings with face coverings.” (*County of Los Angeles*, at p. 496.)

Similarly, the District’s policy did not regulate G.W.’s anti-mask speech based on its content—the policy applied to all students with only limited exemptions. The policy also had the compelling aim of stemming the spread of COVID-19 in schools. (See *Roman Catholic Diocese v. Cuomo* (2020) 592 U.S. 14, 18 [stemming the spread of COVID-19 was “unquestionably a compelling interest”]; cf. *Love v. State Dept. of Education* (2018) 29 Cal.App.5th 980, 990 [“It is well established that laws mandating vaccination of school-aged children promote a compelling governmental interest of ensuring health and safety by preventing the spread of contagious diseases.”].) It was narrowly tailored in that masks only had to be worn indoors where the risk of transmission is higher, and re-opening plans left room for policy adjustments as needed based on changing COVID-19 case rates. (See *Ward v. Rock Against Racism* (1989) 491 U.S. 781, 800 [“So long as the means chosen are not substantially broader than necessary to achieve the government’s interest . . . the regulation will not be invalid simply because a court concludes that the government’s interest could be adequately served by some less-speech-restrictive alternative.”].) There is no evidence G.W. lacked alternate ways to express her opposition to the mask policy without creating health risks, such as by voicing her disagreement while still wearing a mask, handing out leaflets to explain her protest (as the complaint alleges she did), or displaying anti-mask slogans. Therefore, even setting aside that G.W.’s expressive speech occurred at school, the District’s mask policy passes constitutional muster.

The fact that G.W.’s acts of “protest” occurred in a school setting reinforces this conclusion. The record

shows that G.W.’s conduct “materially and substantially” disrupted the work and discipline of the school and invaded the rights of others under the student-speech standard in *Tinker*. (*Tinker, supra*, 393 U.S. at p. 513.) When G.W. repeatedly attempted to enter classrooms without a mask over the course of several weeks, teachers had to move their entire classrooms outdoors or to other indoor locations to comply with District safety policies. Teachers and administrators alike spent substantial time engaging plaintiffs in conversations about G.W.’s refusal to wear a mask, often in the presence of other students because G.W. refused to leave the classroom or campus. According to plaintiffs’ own allegations, in some instances teachers expressed concern over their own safety and the safety of their family members. Unlike in *Tinker*, the extent of these disruptions exceeded “a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint[.]” and reasonably “led school authorities to forecast substantial disruption of or material interference with school activities” on school premises. (*Id.* at p. 509.) Under these circumstances, the District’s mask policy was also constitutionally justified under *Tinker*.

We therefore conclude—in light of the deference owed to exercises of government authority amidst a public health emergency under *Jacobson* and the special characteristics of student speech under *Tinker*—that the District’s facially neutral mask policy did not unlawfully deprive G.W. of her free speech rights, and her constitutional claims lack even minimal merit. Cases in other state and federal jurisdictions further support our conclusion. (See, e.g., *Calm Ventures LLC v. Newsom* (C.D. Cal. 2021) 548 F.Supp.3d 966,

976 [collecting cases concluding that orders aimed at preventing the spread of COVID-19 serve an important and legitimate state interest]; *Bentonville Sch. Dist. v. Sitton* (2022) 2022 Ark. 80, 11 [holding that school district’s mask policy had a “real or substantial relation” to protecting student health during the COVID-19 pandemic]; *Stepien v. Murphy* (D.N.J. 2021) 574 F.Supp.3d 229, 234 [holding that “the government acted within broad constitutional bounds when it enacted the in-school mask requirement” plaintiffs sought to enjoin]; *Megeso-William-Alan v. Ige* (D. Haw. 2021) 538 F.Supp.3d 1063, 1078–1080 [finding that Hawaii’s mask mandate violated neither right to free speech nor right to free assembly]; *Oberheim v. Bason* (M.D. Pa. 2021) 565 F.Supp.3d 607, 618 [holding that “children do not have a fundamental right to attend school without masks on”]; *Antietam Battlefield, supra*, 461 F.Supp.3d at pp. 236–237 [finding that mask requirement did not violate right to free speech].)

II

Lastly, we turn to plaintiffs’ argument that Judge Pollack should be disqualified for demonstrating bias. We disagree.

First, plaintiffs did not properly preserve a claim of judicial bias because they did not file a disqualification motion in the trial court. (See § 170.3, subd. (c)(1) [a party who believes a judge is required to disqualify himself or herself must file a disqualification motion in the trial court “at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification”]; *Kern County Dept. of Child Support Services v. Camacho* (2012) 209

Cal.App.4th 1028, 1038 [“We conclude that appellant’s disqualification arguments are forfeited by his failure to raise them below.”].) Generally, a specific and timely objection to judicial misconduct is required to preserve the claim for appellate review. (*People v. Seumanu* (2015) 61 Cal.4th 1293, 1320 (*Seumanu*); see also *People v. Johnson* (2015) 60 Cal.4th 966, 978 (*Johnson*) [party must seek disqualification at “the earliest practicable opportunity” “to avoid forfeiture].) Plaintiffs rely on *Catchpole v. Brannon* (1995) 36 Cal.App.4th 237 (*Catchpole*) to argue that we should look past their failure to object. But since the Court of Appeal decided *Catchpole*, the Supreme Court has stated in clear terms that a party must object at trial to alleged judicial bias, or the claim is forfeited. (See, e.g., *Seumanu*, at p. 1320; *Johnson*, at p. 978.)

Furthermore, although plaintiffs argue they should be excused from forfeiture because an objection would have been futile, we are not persuaded. Aside from citing the possibility of “severely offend[ing]” an “already offended” court and defense counsel’s “shock, or whatever reason” for failing to object, Plaintiffs point to no other grounds for why an objection would have been fruitless. Plaintiffs again rely on *Catchpole*, but the facts in that case are distinguishable because the Court of Appeal found ample evidence of judicial gender bias in the trial court. (*Catchpole, supra*, 36 Cal.App.4th at p. 249 [finding that comments made over the course of the eight-day trial “collectively create[d] the impression of judicial gender bias”].) The court’s alleged “hostility” in this case did not rise to such a level that we can conclude plaintiffs would have objected in vain. Because “[t]he ritual incantation that an exception applies is not enough[,]” we

conclude that plaintiffs forfeited their disqualification argument and that no futility exception applies. (*People v. Gamache* (2010) 48 Cal.4th 347, 371.)

Second, even if plaintiffs properly raised the issue of disqualification in the trial court, they forfeited it by failing to seek appellate review via a petition for writ of mandate, which is the exclusive appellate remedy. (See § 170.3, subd. (d) [“The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate”]; *Brown v. American Bicycle Group, LLC* (2014) 224 Cal.App.4th 665, 672 (*Brown*) [“Brown’s claim is not cognizable on appeal because a petition for writ of mandate is the exclusive method by which a party may seek review of the question of the disqualification of a judge.”]; *Roth v. Parker* (1997) 57 Cal.App.4th 542, 548–549 [appellant forfeited a non-statutory claim of judicial bias by “fail[ing] to seek writ review”].)

Third, even if we were to reach the disqualification claim despite its forfeiture, we would reject it. Neither Judge Pollack’s disagreements with plaintiffs’ approach to the case, nor the views he expressed on the merits while hearing arguments, demonstrated disqualifying bias. (*Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal.App.4th 1210, 1219–1220.) “When making a ruling, a judge interprets the evidence, weighs credibility, and makes findings. In doing so, the judge necessarily makes and expresses determinations in favor of and against parties.” (*Id.* at p. 1219; see also *Brown, supra*, 224 Cal.App.4th at p. 674 [“[t]he mere fact that the trial court issued rulings adverse to [plaintiff] on several matters in this case, even assuming one or more of those rulings were

erroneous, does not indicate an appearance of bias, much less demonstrate actual bias”].) Although plaintiffs may take issue with Judge Pollack’s “tone,” his skepticism regarding their motives, and his view of the facts, plaintiffs have not shown how his views reflected a disqualifying bias. Indeed, his exchanges with plaintiffs’ counsel were primarily regarding factual disputes that counsel herself asserted were “irrelevant” to their theory of the case. In that regard, unlike in *Catchpole*, there is no indication that Judge Pollack’s comments prejudiced plaintiffs. (Cf. *Catchpole, supra*, 36 Cal.App.4th at p. 249 [“The judge’s expressed hostility to sexual harassment cases and the stereotypical attitudes and misconceptions he adopted provide a reasonable person ample basis upon which to doubt whether appellant received a fair trial.”]; see *Seumanu, supra*, 61 Cal.4th at p. 1321 [considering lack of prejudice in rejecting judicial disqualification argument].) We therefore conclude reversal is not warranted on judicial disqualification grounds.

DISPOSITION

The order granting the anti-SLAPP motions is affirmed. Respondents are entitled to recover their costs on appeal.

BUCHANAN, J.

WE CONCUR:

DO, Acting P. J.

RUBIN, J.

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Appendix B

Filed 9/29/25

**NOT TO BE PUBLISHED
IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**COURT OF APPEAL,
FOURTH APPELLATE DISTRICT**

DIVISION ONE

STATE OF CALIFORNIA

G.W., a Minor, etc., et al.,
Plaintiffs and
Appellants,

v.

CORONADO UNIFIED
SCHOOL DISTRICT et al.,
Defendants and
Respondents.

D083991

(Super. Ct. No. 37-
2022-00034756-CU-
NP-CTL)

APPEAL from an order of the Superior Court of San Diego County, Gregory W. Pollack, Judge. Affirmed.

Law Offices of Tracy L. Henderson, Tracy L. Henderson; The Gavel Project, and Ryan Heath for Plaintiffs and Appellants.

Winet Patrick Gayer Creighton & Hanes, Randall L. Winet, and Erin N. Taylor for Defendants and Respondents.

G.W. and her mother Nicole W. (together, plaintiffs) appeal from a fees award against them under the anti-SLAPP statute (Code Civ. Proc.,¹ § 425.16) after the dismissal of their complaint against the Coronado Unified School District (CUSD) and associated individuals challenging the adoption and enforcement of a masking policy at Coronado High School (CHS) during the COVID-19 pandemic. In a prior appeal, we affirmed the underlying order dismissing plaintiffs' complaint in its entirety under the anti-SLAPP statute. (*G.W. v. Coronado Unified School Dist.* (Sept. 19, 2024, D082619) [nonpub. opn.].) In this appeal from the subsequent fees order, plaintiffs make no genuine challenge to the fees order itself and instead seek to relitigate the validity of the underlying anti-SLAPP ruling and the merits of their prior appeal. We conclude that this appeal is frivolous. Accordingly, we affirm the fees order and impose sanctions against appellants' counsel Tracy L. Henderson for prosecuting a frivolous appeal.²

¹ Further undesignated statutory references are to the Code of Civil Procedure.

² On the court's own motion, we take judicial notice of the appellate record, briefs, opinion, petition for rehearing, and order denying rehearing in the prior appeal. (*G.W. v. Coronado*

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Anti-SLAPP Ruling*

G.W. was a student at CHS. In early 2022, she refused to comply with CUSD's masking policy adopted during the COVID-19 pandemic. After she was suspended twice, she continued to refuse to wear a mask at school. In March 2022, she disenrolled from CHS.

G.W. and her mother sued CUSD and 20 individual defendants, including members of the CUSD's board of trustees, administrators for CUSD and CHS, and CHS teachers. Plaintiffs were represented in the trial court by attorney Tracy L. Henderson. Plaintiffs asserted a claim under title 42 United States Code section 1983 alleging violations of G.W.'s rights to freedom of speech and expression under the First and Fourteenth Amendments to the United States Constitution, article I, section 2(a) of the California Constitution, and Education Code section 48907, subdivision (a). Plaintiffs also alleged violations of the Bane Act (Civ. Code, § 52.1) and tort claims for negligence and intentional infliction of emotional distress.

Each of the four groups of defendants (CUSD, the administrators, the trustees, and the teachers) filed an anti-SLAPP motion, arguing that plaintiffs' complaint arose from protected activity under section 425.16, subdivisions (e)(1) through (e)(4).

Unified School Dist., supra, D082619.) Plaintiffs' second motion to augment the record, filed February 19, 2025 is granted as to Exhibits A, B, and C. Having previously denied plaintiffs' first motion to augment the record, filed January 13, 2025, as to Exhibit C, we now deny it as moot as to Exhibits A and B because they are duplicative of Exhibits A and B to the second motion to augment.

Defendants also argued that plaintiffs could not demonstrate a probability of prevailing because: (1) defendants were immune from liability under various state statutes, the Eleventh Amendment to the United States Constitution, and the qualified immunity doctrine; (2) requiring that students wear a mask consistent with public health orders does not violate G.W.'s constitutional rights; (3) there was no evidence any of defendants engaged in threats of violence, intimidation, or coercion; and (4) no evidence supported plaintiffs' claims for negligence or intentional infliction of emotional distress. Each of the four motions was supported by an identical set of 45 exhibits plus declarations of each of the 20 individual defendants.

Plaintiffs opposed the anti-SLAPP motions, contending that defendants' conduct in enforcing the mask policy did not constitute protected activity and was illegal as a matter of law. They further argued that defendants were not immunized from liability and there was sufficient evidence that, if credited, would demonstrate a probability of prevailing on the merits. In opposition to the anti-SLAPP motions, plaintiffs submitted an 11-page declaration of G.W. with three exhibits and a six-page declaration of her mother with seven exhibits.

In a 10-page written order after a hearing, the trial court granted each of defendants' anti-SLAPP motions. As to prong one (whether plaintiffs' claims arose from protected activity), the court ruled that the targeted comments and actions of the defendants constituted protected activity because they arose out of CUSD's position in formulating and enforcing a COVID-19 policy in compliance with government guidance to prevent transmission of the disease,

which was undeniably an issue of public interest. The court also found that the promulgation and enforcement of masking policies for in-person learning was related to the promotion of a safe workplace, and it cited authority for the proposition that statements and conduct undertaken to promote the public interest in a safe workplace qualify for anti-SLAPP protection. (*Mendoza v. ADP Screening & Selection Services, Inc.* (2010) 182 Cal.App.4th 1644, 1653.) The court further concluded that the actual casting of votes in favor of the masking policy and the surrounding discussion and statements were also protected activity under the anti-SLAPP statute. The court rejected plaintiffs' prong one argument that the defendants' enforcement of the masking policy was illegal as a matter of law. Accordingly, the court concluded that defendants had satisfied their prong one burden, shifting the burden to plaintiffs to establish a probability of prevailing.

As to prong two, the court found plaintiffs had failed to establish a probability of prevailing on any of their claims. The court ruled that several immunities barred plaintiffs' claims, specifically under Education Code section 44805, Government Code sections 818.2, 820.2, 820.4, and 855.4, Civil Code section 47, subdivision (a), and the Eleventh Amendment to the United States Constitution. The court further concluded that CUSD's masking policy was lawful; that defendants were entitled to undertake all reasonable efforts to enforce the policy; that the measures undertaken by the defendants were reasonable and permissible; and that G.W. did not have a constitutional right to attend school unmasked.

B. The Prior Appeal

Plaintiffs appealed the anti-SLAPP ruling. Their trial counsel, attorney Henderson, was one of the attorneys who represented them in the prior appeal. Plaintiffs' opening brief contained no factual summary of the allegations of their own complaint and no mention of the evidence submitted by both sides in connection with the anti-SLAPP motions. The opening brief also did not identify the 20 individually named defendants or describe what role each played in the masking dispute or what the factual basis for liability was against each of them. Plaintiffs did not argue on appeal that the trial court exceeded its jurisdiction in granting the anti-SLAPP motions. Finally, the opening brief did not mention or discuss any of the immunities relied on by the trial court.

After full briefing and oral argument, we issued a 25-page opinion affirming the order. We concluded that plaintiffs had forfeited their claims of error by failing to include a factual summary of the significant facts in their opening brief and failing to address the multiple legal grounds for the trial court's ruling on the merits. We explained that we could not assess whether the claims against each of these defendants arose from protected activity without a proper factual summary of the allegations against them, including the statements each was alleged to have made regarding the mask mandate.

Despite the forfeiture, we went on to address plaintiffs' prong one and prong two arguments on the merits. As to prong one, we considered and rejected the arguments plaintiffs made on appeal: (1) that the trial court had purportedly mischaracterized their claims

by finding that they were challenging the lawfulness of CUSD's masking policy itself, rather than merely its "punitive" implementation or enforcement; and (2) that the masking policy was illegal as a matter of law for infringing on G.W.'s constitutional rights. In addressing prong two, we discussed at length G.W.'s claims that she had a constitutional right to attend school unmasked, that enforcement of the mask mandate constituted compelled speech, and that she had a First Amendment right to protest the mask mandate by violating it. We also cited cases from other jurisdictions rejecting similar constitutional challenges to mask mandates.

Plaintiffs filed a 37-page petition for rehearing (excluding tables) asserting that our finding of forfeiture and our analysis of both prongs were erroneous. As to prong one, the petition for rehearing asserted that: (1) we had erroneously placed the burden of proof on plaintiffs; (2) we had failed to address whether defendants met their prong one burden of showing the suit arose from protected activity; (3) we had wrongly concluded that plaintiffs misstated the allegations of their own complaint; and (4) we had conflated and confused different issues.

We denied the petition for rehearing. According to the respondents' brief in this appeal, plaintiffs attempted to file a petition for review in the California Supreme Court, but it was rejected as untimely.

C. The Fees Motion and Award

After the trial court granted the anti-SLAPP motions, defendants filed a motion to recover their fees and costs incurred in the trial court in the total amount of \$68,238.62 under the fees provision of the

anti-SLAPP statute. (§ 425.16, subd. (c)(1) [prevailing anti-SLAPP defendant entitled to fees and costs].) The motion was supported by defense counsel’s detailed billing records. Plaintiffs opposed the motion on the ground that the fees requested were excessive and unreasonable. They did not argue that the trial court’s anti-SLAPP ruling was constitutionally void, in excess of its jurisdiction, or violated their due process rights. In February 2024, before we decided the prior appeal, the trial court granted the motion and awarded fees and costs to defendants in the amount requested, subject to either augmentation to include appellate fees and costs if the defendants prevailed in the pending appeal or a “clawback” if the plaintiffs prevailed. Still represented by attorney Henderson, plaintiffs filed another notice of appeal from the fees order.

D. Issues Raised in this Appeal

After we decided the prior appeal affirming the anti-SLAPP ruling, attorney Henderson filed the opening and reply briefs as sole counsel for plaintiffs in this appeal. Aside from a single conclusory sentence in the introduction of the opening brief asserting that the amount of the fees awarded was “punitive and unreasonable,” plaintiffs’ briefs are devoted entirely to relitigating the underlying anti-SLAPP ruling and our prior decision affirming that ruling. Plaintiffs assert that the order dismissing their action under the anti-SLAPP statute is “constitutionally void” because both the trial court and this court purportedly gave no explanation for how the defendants met their prong one burden of demonstrating that the lawsuit arose from protected activity. They claim

that this deficiency constituted a due process violation and the resulting judgment of dismissal “was issued in excess of the court’s jurisdiction—because the trial court had no authority to grant the Defendants’ motions (and the Court of Appeal had no authority to affirm).” The plaintiffs’ opening brief concludes: “For the foregoing reasons, this Court should find that the judgment dismissing the Plaintiffs’ complaint and the Opinion [in the prior appeal] are constitutionally void, and so is the subsequent order of the trial court granting Defendants’ request for attorneys’ fees.”

After completion of briefing, we issued an order advising that we were considering imposing sanctions against attorney Henderson and appellant Nicole W. for prosecuting a frivolous appeal. (Code Civ. Proc., § 907; Cal. Rules of Court, rule 8.276.) Our order noted that “[t]he issues appellants raise in this fees appeal go to the merits of the underlying anti-SLAPP order and were already resolved against them in their prior appeal from that order.” We gave them an opportunity to file a written opposition to sanctions.

In their opposition, appellants and their counsel insisted that their “jurisdictional” argument challenging the underlying anti-SLAPP ruling and this court’s prior decision was not only meritorious, but correct. They argued that this court’s order regarding possible sanctions demonstrated “a fundamental lack of fair, unbiased review” and that the “prior rulings in this case represents [*sic*] an egregious abuse of power by the judiciary (which is exactly why this Court’s prior Opinion, overruling all existing precedent on the interpretation of California’s anti-SLAPP statute and unilaterally expanding its own jurisdiction thereunder, is *unpublished*).” They asserted: “Appellants

are not asking for much—simply a ruling that explains which, if any, of the Appellees’ statements and actions constitute ‘protected activity’ as is required by California’s anti-SLAPP statute.”

Although the parties waived oral argument on the merits of the appeal, we set and heard oral argument on the sanctions issue. Before oral argument, we granted Arizona attorney Ryan Heath’s application to appear *pro hac vice* on behalf of appellants. With Henderson’s consent, Heath represented both Nicole W. and Henderson at the oral argument.

DISCUSSION

Plaintiffs cannot dispute that this appeal is an undisguised effort to relitigate the merits of the trial court’s anti-SLAPP ruling and our prior decision affirming that ruling. They insist that both the trial court and this court got it wrong and that the dismissal of their lawsuit under the anti-SLAPP statute is therefore “constitutionally void.”

We have no difficulty concluding that this appeal is frivolous. We apply both an objective and subjective standard in determining whether an appeal is frivolous. Under the objective standard, an appeal is frivolous if any reasonable attorney would agree it is totally and completely without merit. Under the subjective standard, an appeal is subjectively frivolous if it is prosecuted for an improper motive. (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 649–650 (*Flaherty*)). A finding of frivolousness may be based on either standard by itself, but the two are often used together, with one providing evidence of the other. (*Malek Media Group, LLC v. AXQG Corp.* (2020) 58 Cal.App.5th 817, 834.)

We have already rejected plaintiffs' arguments and affirmed the trial court's anti-SLAPP ruling in the prior appeal. Although we found forfeiture based on plaintiffs' deficient briefing, we nevertheless addressed plaintiffs' claims of error on their merits. Our affirmance of the anti-SLAPP ruling in the prior appeal is conclusive and binding on the parties. Under the law of the case doctrine, " "[t]he decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent . . . appeal in the same case." ' ' ' (*Leider v. Lewis* (2017) 2 Cal.5th 1121, 1127.) "[T]he law-of-the-case doctrine 'prevents the parties from seeking appellate reconsideration of an already decided issue in the same case absent some significant change in circumstances.' ' ' ' (*People v. Boyer* (2006) 38 Cal.4th 412, 441.) "Absent an applicable exception, the doctrine 'requir[es] both trial and appellate courts to follow the rules laid down upon a former appeal whether such rules are right or wrong.' ' ' ' (*People v. Barragan* (2004) 32 Cal.4th 236, 246.) The law of the case doctrine extends to questions that were implicitly determined because they were essential to the prior decision. (*Estate of Horman* (1971) 5 Cal.3d 62, 73.)

Plaintiffs assert that the law of the case doctrine does not apply because we did not explicitly or implicitly decide "the jurisdictional issue that is now raised in this appeal." But the plaintiffs have merely repackaged their attack on the trial court's prong one analysis as a "jurisdictional" issue for this appeal. Their only argument is that the trial court lacked jurisdiction to grant the anti-SLAPP motion because it

purportedly failed to identify which of the defendants' statements and actions constituted protected activity. We have already rejected this argument by addressing plaintiffs' prong one arguments and affirming the trial court's anti-SLAPP ruling in the prior appeal. Moreover, plaintiffs are also trying to relitigate our forfeiture finding based on their deficient briefing in the prior appeal, asserting that it improperly shifted the burden to them under prong one of the anti-SLAPP statute. The law of the case doctrine does not permit plaintiffs to relitigate these issues already decided against them in the prior appeal.

Even without relying on the law of the case doctrine, however, we would still conclude that plaintiffs' arguments are frivolous. Plaintiffs' assertion that neither the trial court nor this court provided any explanation for their prong one analysis is without merit. As we have summarized above, the trial court did explain why it concluded that plaintiffs' claims arose from protected activity. Plaintiffs had every opportunity to contest this ruling in the prior appeal. They did so by expressly conceding that defendants' adoption of the masking policy was "undisputedly protected activity" but claiming that: (1) they were only challenging its enforcement, not its adoption; and (2) the masking policy was illegal as a matter of law because it violated G.W.'s constitutional rights. In our prior opinion, we disagreed with both of these prong one arguments and explained why we were rejecting them on the merits, notwithstanding plaintiffs' forfeiture of the issue. Plaintiffs' refusal to accept the result of the prior appeal is not a basis for attacking the same anti-SLAPP order again in this fees appeal.

Equally devoid of merit is plaintiffs' argument that the dismissal of their case under the anti-SLAPP statute is constitutionally void because the trial court and this court purportedly acted in excess of jurisdiction. This jurisdictional argument is based entirely on the false premise that the trial court and this court failed to explain the basis for the prong one rulings. A court acts in excess of jurisdiction where, though it has jurisdiction over the subject matter and the parties in a fundamental sense, it has no jurisdiction (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 624.) At most, plaintiffs' argument amounts to an assertion that the trial court was mistaken in its prong one analysis and we were mistaken in affirming its anti-SLAPP ruling. Even if we were to accept this premise, "ordinary mistakes of law or procedure do not constitute acts in excess of jurisdiction." (*LAOSD Asbestos Cases* (2018) 28 Cal.App.5th 862, 870–871.) The trial court had jurisdiction and power to grant the anti-SLAPP motions and we had jurisdiction and power to decide the appeal from that ruling. If parties could relitigate final judicial decisions merely by claiming they were erroneous, litigation would be never-ending.

Plaintiffs' claim of a due process violation is also specious. Due process requires notice and an opportunity to be heard. (*City of Santa Monica v. Gonzalez* (2008) 43 Cal.4th 905, 927.) Plaintiffs had ample notice and opportunity to be heard on the anti-SLAPP motions. They were afforded an opportunity to present evidence in opposition to the motions, and they did so. There was full briefing and oral argument on

both the motion and the prior appeal. In a detailed written order, the trial court rendered its ruling based on its evaluation of the evidence presented, and we affirmed the ruling in a reasoned opinion after oral argument. Although plaintiffs may be dissatisfied with the outcome, there was no conceivable due process violation.

Finally, plaintiffs’ argument that our forfeiture finding in the prior appeal improperly shifted the burden to them is meritless. On appeal, a judgment is presumed correct and the appellant bears the burden of affirmatively demonstrating error. (*Association for Los Angeles Deputy Sheriffs v. County of Los Angeles* (2023) 94 Cal.App.5th 764, 776–777.) “The appellant bears this burden of rebutting the presumption of correctness accorded to the trial court’s decision, regardless of the applicable standard of review.” (*Id.* at p. 777.) To meet this burden, the appellant must comply with the applicable appellate rules, including the rule requiring a factual summary of the significant facts with citations to the record. (Cal. Rules of Court, rule 8.204(a)(1)(C), (a)(2)(C).) As we explained in the prior appeal, plaintiffs failed to do so. In finding forfeiture, we merely held the plaintiffs to their ordinary burden of affirmatively demonstrating error on appeal; we did not shift the burden of proof under the anti-SLAPP statute.³

³ Nor have plaintiffs asserted any proper challenge to the amount of the fees awarded by the trial court. As noted, their opening brief includes only a single sentence in the introduction asserting that the amount of the fees was “punitive and unreasonable.” But they did not develop this argument under a proper argument heading with meaningful analysis, citation to the record, or citation to authority. Accordingly, this issue is

For all these reasons, plaintiffs’ attempt to relitigate the trial court’s anti-SLAPP ruling and the prior appeal is frivolous. Any reasonable attorney would agree that this appeal is totally and completely without merit. (*Flaherty, supra*, 31 Cal.3d at p. 650; see also *Pollock v. University of Southern California* (2003) 112 Cal.App.4th 1416, 1433–1444 (*Pollock*) [imposing sanctions for frivolous appeal where the same attorney represented appellant in two appeals; by the time of the second appeal she knew that many of her arguments were unmeritorious; and yet she “persist[ed] in pursuing the same arguments” in the second appeal]; *Beckstead v. International Industries, Inc.* (1982) 127 Cal.App.3d 927, 933–935 [imposing sanctions for frivolous appeal raising issue already decided in prior appeal].)

We further conclude that the appeal was brought for an improper purpose. (*Flaherty, supra*, 31 Cal.3d at p. 650.) “Appellant’s brief is largely devoted to rehashing issues raised and decided in the prior appeal, a totally inappropriate exercise.” (*Hummel v. First Nat’l Bank* (1987) 191 Cal.App.3d 489, 495.) “Repeated litigation of matters previously determined by

forfeited. (Cal. Rules of Court, rules 8.204(a)(1); see *BBBB Bonding Corp. v. Caldwell* (2021) 73 Cal.App.5th 349, 375, fn. 8 [argument made in single sentence without reasoned analysis was forfeited]; *Hollingsworth v. Heavy Transport, Inc.* (2021) 66 Cal.App.5th 1157, 1172, fn. 3 [arguments mentioned in introduction of opening brief but not included in argument section under appropriate headings were forfeited]; *United Grand Corp. v. Malibu Hillbillies, LLC* (2019) 36 Cal.App.5th 142, 146 [assertions of error made without cogent argument supported by legal analysis and citation to record were forfeited]; *City of Tracy v. Cohen* (2016) 3 Cal.App.5th 852, 857, fn. 6 [issue mentioned in passing but not developed in argument was forfeited].)

final judgment constitutes harassment and should be penalized.” (*Weber v. Willard* (1989) 207 Cal.App.3d 1006, 1010; see also *Personal Court Reporters, Inc. v. Rand* (2012) 205 Cal.App.4th 182, 193 [“Where, as here, a party appeals and merely repeats an argument that was soundly rejected by another appellate panel, we have little difficulty concluding that the party lacked good faith in pursuing the appeal”].)

“An appeal taken for an improper motive represents a time-consuming and disruptive use of the judicial process.” (*Flaherty, supra*, 31 Cal.3d at p. 650.) “Similarly, an appeal taken despite the fact that no reasonable attorney could have thought it meritorious ties up judicial resources and diverts attention from the already burdensome volume of work at the appellate courts.” (*Ibid.*)

We will therefore impose sanctions against appellants’ counsel Tracy L. Henderson for prosecuting a frivolous appeal. (Code Civ. Proc., § 907; Cal. Rules of Court, rule 8.276.) After careful consideration, we elect not to impose sanctions against appellants G.W. and Nicole W. They already face substantial fees awards under the anti-SLAPP statute, which we believe are sufficient to deter them from similar frivolous filings in the future.⁴ (See *Pollock, supra*, 112 Cal.App.4th at p. 1434 [“One goal of sanctions is to deter future frivolous litigation”].)

⁴ Our award of sanctions against plaintiffs’ appellate counsel does not preclude defendants from seeking to recover additional fees for this appeal under the anti-SLAPP statute by motion in the trial court after issuance of the remittitur. (Cal. Rules of Court, rule 3.1702(c).)

Defendants have not requested an award of sanctions payable to them, but we will impose sanctions payable to the clerk of this court to compensate the state for the cost to the taxpayers of processing a frivolous appeal. (*In re Marriage of Gong & Kwong* (2008) 163 Cal.App.4th 510, 520.) A cost analysis undertaken by the clerk's office for the Second District estimated that the cost of processing an appeal resulting in an opinion was approximately \$8,500 in 2008, while another calculation made in 1992 gave a conservative estimate of \$5,900 to \$6,000. (*Ibid.*) According to the United States Bureau of Labor Statistics inflation calculator, these figures are equivalent to approximately \$13,000 in today's dollars. (CPI Inflation Calculator, U.S. Bureau of Labor Statistics (2025) <https://www.bls.gov/data/inflation_calculator.htm> [as of September 18, 2025], archived at <<https://perma.cc/PCB6-MQSZ>>.) We will therefore impose sanctions against appellants' counsel Tracy L. Henderson in the amount of \$13,000, payable to the clerk of this court. This opinion shall serve as a written statement of reasons for imposing the sanctions.

DISPOSITION

The fees order is affirmed. As sanctions for prosecuting this frivolous appeal, appellants' counsel Tracy L. Henderson is ordered to pay \$13,000 in sanctions payable to the clerk of this court no later than 30 days after the remittitur issues. As required by Business and Professions Code section 6086.7, subdivision (a)(3), the clerk of this court is directed to forward a copy of this opinion to the State Bar of California upon issuance of the remittitur. This disposition serves as notice to counsel that the imposition of sanctions will

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be reported to the State Bar of California. (Bus. & Prof. Code, § 6086.7, subd. (b).) Attorney Tracy L. Henderson is also ordered to personally report the sanctions to the State Bar of California. (Bus. & Prof. Code, § 6068, subd. (o)(3).) Respondents are entitled to recover their costs on appeal.

BUCHANAN, J.

WE CONCUR:

DO, Acting P. J.

RUBIN, J.

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Appendix C

[Filed: Dec. 30, 2025]

Court of Appeal, Fourth Appellate District,
Division One - No. D083991

S293866

IN THE SUPREME COURT OF CALIFORNIA

En Banc

G.W., a Minor, etc. et al.,
Plaintiffs and Appellants,

v.

CORONADO UNIFIED SCHOOL DISTRICT et al,
Defendants and Respondents.

The petition for review is denied.

Guerrero, C. J., was recused and did not participate.

EVANS

Acting Chief Justice

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Appendix D

[Filed: Jan. 6, 2026]

COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

San Diego County Superior Court - Main
P.O. Box 120128
San Diego, CA 92112

RE: G. W., a Minor, etc. et al.,
Plaintiffs and Appellants,
v.
CORONADO UNIFIED SCHOOL DISTRICT,
Defendant and Respondent.
D083991
San Diego County Super. Ct. No. 37-2022-
00034756-CU-NP-CTL

*** * * REMITTITUR * * ***

I, Brandon L. Henson, Clerk of the Court of Appeal of the State of California, for the Fourth Appellate District, certify the attached is a true and correct copy of the original opinion or decision entered in the above-entitled case on September 29, 2025, and that this opinion or decision has now become final.

____ Appellant ____ Respondent to recover costs.
____ Each party to bear own costs.
X ____ Other (See Below)

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Respondents are entitled to recover their costs on appeal.

Witness my hand and the seal of the Court affixed this January 6, 2026.

BRANDON L. HENSON, Clerk

By: Jonathan Newton, Deputy Clerk



cc: All Parties (Copy of remittitur only, Cal. Rules of Court, rule 8.272(d).)

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Appendix E

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 05/12/2023
TIME: 09:30:00 AM
DEPT: C-71

JUDICIAL OFFICER PRESIDING:
Gregory W Pollack
CLERK: Terry Abas
REPORTER/ERM: Teri L. Smith CSR# 7949
BAILIFF/COURT ATTENDANT:
Deputy Paul Tomcavage

CASE NO: **37-2022-00034756-CU-NP-CTL**
CASE INIT.DATE: 08/25/2022
CASE TITLE: **G W vs Coronado Unified School
District [IMAGED]**
CASE CATEGORY: Civil - Unlimited
CASE TYPE: Non-PI/PD/WD tort - Other

EVENT TYPE: SLAPP / SLAPPback Motion Hearing

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Additional events listed on last page.

APPEARANCES

Tracy L Henderson, counsel, present for Plaintiff(s).

Randall L. Winet, counsel, present for Defendant(s).

The Court orally advises the parties of its tentative ruling, after which oral argument is conducted. Upon completion of oral argument, the Court (1) makes the following Order, (2) enters the date of this hearing for the following Order, and (3) gives Notice of Entry of the following Order:

I.

INTRODUCTION

This is an action brought by a high school student, plaintiff G.W., and her mother, plaintiff Nicole Ward, arising out of Coronado High School's former COVID policy making indoor mask-wearing mandatory.

Four anti-SLAPP motions have been brought by defendants Coronado Unified School District, as well as members of its Board of Trustees, Administrators, and certain Teachers, as listed below:

1. Coronado Unified School District, a school district;

2. **Esther Valdes-Clayton**, as an individual and in her official capacity as a Board of Trustees member of Coronado Unified School District;

3. **Helen Anderson-Cruz**, as an individual and in her official capacity as a Board of Trustees member of Coronado Unified School District;

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4. **Witney Antrim**, as an individual and in her official capacity as a Board of Trustees member of Coronado Unified School District;

5. **Lee Pontes** as an individual and in her official capacity as a Board of Trustees member of Coronado Unified School District;

6. **Bruce Sheperd**, as an individual and in his official capacity as a Board of Trustees member of Coronado Unified School District;

7. **Karl Mueller**, in his official capacity as Superintendent of Coronado Unified School District;

8. **Donnie Salamanca**, in his official capacity as Assistant Superintendent of Coronado Unified School District;

9. **Niamh Foley**, in her capacity of Director of Student Services at Coronado Unified School District;

10. **Karen Mellina**, in her official capacity of Principal of Coronado High School;

11. **Shane Bavis**, in his official capacity as Teacher at Coronado High School;

12. **Joshua Dean**, in his official capacity as Teacher at Coronado High School;

13. **Michelle Walker**, in her official capacity as Teacher at Coronado High School;

14. **William Lemei**, in his official capacity as Teacher at Coronado High School;

15. **Shane Schneichel**, in his official capacity as Teacher at Coronado High School;

16. **Barbara Wolf**, in her official capacity as Teacher at Coronado High School;

17. **Kimberly Strassburger**, in her official capacity as Teacher at Coronado High School;

18. **David McBean**, in his official capacity as Teacher at Coronado High School;

19. **Katie Sapper**, in her official capacity as Teacher at Coronado High School;

20. **Donny Gersonde**, in his official capacity as Teacher at Coronado High School; and

21. **Chelsea Zeffiro**, in her official capacity as Teacher at Coronado High School.

II.

APPLICABLE LAW

Code of Civil Procedure §425.16(b)(1), the anti-SLAPP statute, provides that “[a] cause of action against a person arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. Pursuant to CCP §425.16(e), an “act in furtherance of a person’s right of petition or free speech” includes:

1. Any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law;

2. Any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law;

3. Any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest;

4. Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

As a first step [Prong 1], defendants carry the burden of showing that the challenged claim arises from their exercise of protected activity, which, *if* established, shifts the second step burden [Prong 2] to plaintiffs to prove a probability of success notwithstanding the fact that the claim arises from protected activity. CCP §425.16(b); Weil & Brown, Jr., RUTTER: Cal. Prac. Guide – Civil Procedure Before Trial, ¶¶7:990, 7:1005, pp. 7(II)-66, 68 (2022). “[Courts] have described this second step as a ‘summary-judgment-like procedure.’ ... The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff’s evidence as true, and evaluates the defendant’s showing only to determine if it defeats the plaintiff’s claim as a matter of law. ... Claims with the requisite minimal merit may proceed.” *Baral v. Schnitt* (2016) 1 Cal.5th 376, 384-385.

III.

ANALYSIS

This case arises out of student G.W.’s refusal to comply with Coronado Unified School District’s 2021-2022 COVID mask policy from January 31, 2022 through March 11, 2022 (Spring term), while a student at Coronado High School. The policy mirrored the state and California Department of Public Health’s (“CDPH”) public health policies and directives during that time that required universal masking indoors at all K-12 schools in response to the COVID crisis. Defendants’ Exhibit M, a 5-page letter to “school leaders” by Tomas J. Aragon, M.D., Dr. P.H., Director & State Public Health Officer for the CDPH, dated August 23, 2021, a date approximately five months prior to G.W.’s commencement of refusing to comply with Coronado High School’s masking policy, explains to school leaders the bases for requiring schools to implement a universal masking policy. Among the numerous points raised in the letter, the following are particularly noteworthy:

1. “Schools throughout the state have implemented the requirement, which was subsequently adopted and endorsed by leading health authorities, including the Centers for Disease Control and Prevention (CDC) and the American Academy of Pediatrics (AAP). The scientific consensus is unequivocal. Unfortunately, some elected officials and school leaders have expressed their intent to violate the law – and risk their students’ safety – by failing to enforce the universal mask requirement for indoor school settings. [¶] To be clear: failure to enforce the mask requirement breaches not only a legal duty, but also the first and

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foremost duty of every school leader – to protect students.”

2. “Violation of mandatory public health guidance puts the health and safety of students, staff, and their families needlessly at risk, and also carries significant legal, financial, and other risks.”

3. “CDPH Guidance for K-12 Schools (Guidance) requires mandatory universal masking indoors in K-12 settings – both public schools and private schools – with limited exemptions as specified in the general Guidance for the Use of Face Coverings.”

4. “There is a strong consensus among public health and medical experts that universal masking in K-12 schools is an important and scientifically based strategy to protect the health and safety of students, staff, and their families. Both the federal CDC and the AAP have issued guidance that recommends precisely the approach that California has taken.”

5. “Implementation of universal masking is also a strategy for maximizing in-person instructional days. Universal masking reduces the risk of outbreaks, thereby avoiding disruptions to school operations, including closure. Furthermore, masks empower schools to implement more targeted quarantine procedures, often eliminating the need for students to miss any instructional time.”

6. “The risks to students and staff of not implementing universal masking is not hypothetical: there are well-documented instances where unmasked students spread COVID-19 within classrooms, resulting in outbreaks and high case rates on staff.”

7. “Masks are one of the most effective and simplest safety mitigation layers to prevent in-school transmission of COVID-19. SARS-CoV-2, the virus that causes COVID-19, is primarily transmitted via airborne particles.”

8. “COVID-19, particularly the Delta variant, poses significant health risks to students, and adults responsible for their safety should do everything possible to minimize those risks. There is a clear public health justification for requiring universal masking in K-12 schools to minimize those risks and avoid the needless tragedy of a student dying from COVID-19 due to exposure that could have been prevented through universal masking.”

9. “In addition to the moral imperative to take this common-sense step to protect the California’s students, school leaders have legal duties to protect the health and safety of students attending school. (See Cal. Const. art. I, §28 [public school students and staff “have the inalienable right to attend campuses which are safe, secure and peaceful”].) Failure to follow the mandatory public health directive will expose schools and school leaders personally to substantial legal and financial risks ...”

10. “In light of the overwhelming evidence detailed above about the risks to students of not implementing the universal masking requirement, schools and school leaders involved in that decision could face significant financial liability if a student or staff member contracts COVID-19 in the absence of universal masking being enforced. Similar liability would exist if the refusal to implement the mask requirement causes a staff member to contract COVID-19. The financial

exposure would be substantial if a student or staff member were to die from COVID-19.”

11. “[S]chools and school officials involved in the decision not to follow the mandatory public health guidance may face civil lawsuits by concerned families and staff compelling them to comply with the guidance. As noted, the public health directive has the force of law, and a mandatory duty therefore exists for schools to implement the guidance.”

12. “[C]ertificated individuals – including school administrators – may be subject to referral to the Commission on Teacher Credentialing for disciplinary action for violating a mandatory legal duty to implement the masking requirement and knowingly exposing students to preventable harm. (See Educ. Code §44421 [authorizing discipline for “refusal to obey ... laws regulating the duties of persons serving in the public school system”].)”

13. “[S]chools and school officials may be subject to fines or civil enforcement actions by local health officers for refusal to adhere to the mandatory masking directive, pursuant to Health and Safety Code section 120175. In fact, Education Code section 49403 states clearly: “the governing board of a school district shall cooperate with the local health officer in measures necessary for the prevention and control of communicable diseases in school age children.”

14. “[M]asking does not pose health risks for children.”

15. “[T]here is no scientific evidence that masks have an adverse mental health impact, in contrast to

the ample evidence that masks prevent illness, school absences, and even death.

16. “Overwhelming scientific evidence and empirical experience in California and elsewhere underscore how universal masking safeguards the health and safety of students, school staff, and their families. Indeed, it would [be] irresponsible and unreasonable to allow personal preference against a common-sense public health measure to put at risk the health, and potentially cause the death, of a child or school employee.”

17. “The universal mask requirement is a public health directive that all schools are required to follow, similar to other public health orders, including orders that have been implemented both before and throughout this pandemic.”

18. “If you are considering an approach that does not adhere to the universal mask requirement, we encourage you to consult with those experts to help assess and verify the risks identified above. If, like the vast majority of school leaders across California, you are implementing the universal mask requirement, we are grateful to you for taking the necessary measures to protect the children in your care.”

The complaint challenges not only the legality of the mask policy, but also various measures taken in response to G.W.’s steadfast refusal to comply with the policy.

Plaintiffs G.W. and Nicole Ward seek compensatory damages, punitive damages, statutory damages, attorney’s fees, penalties and declaratory relief, alleging

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the following four causes of action within their complaint:

- Violation of Civil Rights: 42 USC §1983, U.S. Const., amends I, XIV; Cal.Const., art. I, §2(a); Educ. Code §48907(a);
- Violation of Civil Rights: Civil Code §52;
- Negligence;
- Intentional Infliction of Emotional Distress;

Following a period of COVID shutdown of its physical facilities with consequent reliance upon remote instruction, Coronado High School started with a phased reopening plan to return to full in-person learning for the 2021-2022 school year. Coronado High School policies in reopening were developed in accordance with the state and CDPH guidance directives, which included the wearing of face masks indoors while at school. For the 2021-2022 school year, students were provided with two non-masking options, *i.e.*, (1) attending 100% virtually via Zoom (BRIDGE) or (2) enrolling in an independent study program remotely through iAcademy. However, they were required to comply with the school's universal masking policy if they instead chose to attend classes in-person. For the Fall term of 2021, the masked G.W. actually attended classes in-person in compliance with the school's mask policy. However, commencing in January of 2022, the Spring term of the 2021-2022 school year, G.W. began coming to school unmasked, in clear violation of the school's policy, refusing to comply with repeated requests to honor the mask policy. G.W. and her mother insisted that G.W. had a right to attend classes in-person maskless.

Plaintiffs' contend that G.W.'s conduct in repeatedly coming to school maskless constituted protected political protest and that the school's refusal to permit G.W. to attend class unmasked, which ultimately led to G.W.'s suspension and voluntary decision to disenroll in March of 2022, was wrongful. Ironically, the policy of mandatory masking was replaced with optional masking at about the same time.

Although plaintiffs claim that the school's mask policy is unlawful, plaintiffs fail to cite a single legal authority that has found such a mask policy unlawful. In contrast, cases throughout the country have uniformly upheld a school's mandatory mask policy. *See* cases cited in footnote 1 at p. 2 of defendants' memoranda of points & authorities.

Plaintiffs contend that the anti-SLAPP statute does not apply because enforcement of the mask policy was illegal. It should be noted that the exception to the anti-SLAPP statute for illegal activity is very narrow and applies only in undisputed cases of illegality or where the illegality is conclusively shown by the evidence. *Finton Construction, Inc. v. Bidna & Keys, APLC* (2015) 238 Cal.App.4th 200, 210. Moreover, the conduct must be criminal; conduct is not considered illegal simply because it violates a statute or common law. CJER, California Judges Benchbook – Civil Proceedings Before Trial, §12.131, pp. 1400-1401 (2022).

Whether the state and CDHP directives constituted (1) legal mandates (they clearly did) or (2) merely strong and forceful recommendation is actually of little concern to this court in deciding these anti-SLAPP motions. Even if the universal mask policy was only strongly recommended by the state and CDHP, it

cannot be said that the Coronado School District, in following such strong recommendation, created an unlawful policy as argued by plaintiffs. This court finds as a matter of law that the subject masking policy of Coronado High School was legal and, as such, the school and its agents were entitled to undertake all reasonable efforts to enforce such policy. Education Code §48907, which recognizes that students have certain rights to exercise freedom of speech and the press, is of no assistance to plaintiffs as it prohibits activities that violate lawful school regulations, or create substantial disruption of the orderly operation of the school. As noted above, the school's universal masking policy was lawful. Moreover, G.W.'s conduct was clearly disruptive of the orderly operation of the school, *e.g.*, it lead to moving 50 students to a different classroom or outside, "which really upset kids and parents." See Declaration of G.W., ¶12. Educ. Code §48900(k)(1) provides for suspension or expulsion of a student who has "[d]isrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties."

The evidence points to a number of measures that the school district undertook before suspending G.W. to enforce the policy (and accommodate G.W.), including moving the other students to different classrooms, moving classes outside, providing a special place for G.W. to go to in the event of a lockdown (bathroom), offering G.W. a mask, making space available for G.W. to attend classes seated in a remote location within an unused administrative office, offering G.W. to request

an exemption from the masking policy, *etc.* Frankly, none of these reasonable measures can give rise to any tort liability. The measures undertaken by the teachers were not beyond a school's customary supervisory disciplinary duties. This is not a case where, *e.g.*, G.W. was paddled for her disobedience. Coronado High School would have been justified in simply prohibiting her from coming into the school unmasked in light of the unambiguous policy. That Coronado High School undertook multiple measures to accommodate G.W.'s willful disobedience of its legal mask policy, for which Coronado is now being sued, underscores the saying, "No good deed goes unpunished." Furthermore, that G.W. chose to remain outside the school in cold weather rather than simply wear the required mask, as she had during Fall semester, and thereafter enter the warm confines of the classroom was a choice made by G.W. Coronado High School had the right to enforce its rules and, quite frankly, would have been subject to battery liability had it physically moved G.W. into the school. Defendants are no more liable to plaintiffs for any harms occasioned by G.W.'s voluntary decision to remain outside in the cold than would defendants be for any harms occasioned by G.W.'s voluntary decision to go on a hunger strike.

While G.W. characterizes her behavior as a legally permissible political protest, this is not a case where a student stands outside of campus with a protest sign regarding the mask policy. This is a case where a student purports to protest by violating a safety measure placing other students, teachers, and their families at risk. While a student can protest restrictions on Second Amendment rights, that does not mean that the

student can come to school with a gun as a protest measure. This case is unlike *Tinker v. Des Moines School District* (1969) 393 U.S. 503 (students right to attend class wearing a black armbands in protest of the Viet Nam War) because here G.W.'s purported protest of the mask policy did not simply create a risk of arousing the ire of pro-mask students or divert attention from regular activities, it placed teachers, at least one of whom was older with an immunocompromised family member, and other students at an increased risk of disability and death. G.W.'s protest did not consist of wearing a shirt that said, "Down with masks" or some other anti-masking slogan; G.W.'s purported "protest" activities, themselves, created health risks to teachers and other students whom the Coronado School District had a duty to protect.

The fundamental flaw in plaintiffs' case is the assumption that a student can violate any school rule so long as it is done for protest reasons. This logic would allow a student to attend school totally nude so long as the student's nudity was to protest the sexually-repressive Puritan norms of our society being advanced by the school.

Plaintiffs' argument that G.W. was "healthy" and, therefore, should not have been sent home is naïve and ignores the obvious, scientifically-established fact that potentially deadly COVID can be transmitted from a healthy-appearing, asymptomatic individual, a fact of which this court takes judicial notice under Evid. Code §§451(f) and 452(g), (h). Thus, to assume one can safely dispense with mask-wearing so long as that person appears healthy employs faulty logic. Mask-wearing not only provides some protection

to the mask-wearer from others who may have transmissible COVID, but also protects others from the mask-wearer who may have transmissible COVID.

How best to return to in-person learning, as well as the promulgation and enforcement of mask policies were clearly public issues of great public interest, garnering significant national and local attention. Part of the discourse in returning to in-person learning related to promoting a safe workplace for teachers and other school employees, as well as other students. *See, e.g., Mendoza v. ADP Screening & Selective Services, Inc.*, (2010) 182 Cal.App.4th 1644, 1653 (statements made and conduct undertaken which promotes the public interest in safe workplaces qualifies for anti-SLAPP protection).

The comments and actions of the Coronado School District, as well as its Board members, Administrators, and Teachers, clearly come within CCP §425.16(b). They directly arise out of the District's position in formulating and thereafter enforcing a COVID policy in compliance with state and CDPH guidance regarding the use of masks and the prevention of COVID transmission. Undeniably, this is an issue of public interest.

Moreover, the actual casting of votes in favor of the mask policy and the surrounding discussion and statements regarding are clearly protected under CCP §425.16(e)(2). *See City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 422-423. ("Here, the councilmembers' votes, as well as statements made in the course of their deliberations at the city council meeting where the votes were taken, qualify as 'any written or oral statement or writing made before a legislative ...

proceeding.’ §425.16, subd. (e)(1).) Anything they or City Administrator Torres said or wrote in negotiating the contract qualifies as ‘any written or oral statement or writing made in connection with an issue under consideration or review by a legislative ... body ...’” (§425.16, subd. (e)(2).)”

As noted above, this court finds that the Coronado High School mask policy was lawful and that the measures undertaken to enforce the policy were reasonable. The court further finds that defendants have satisfied their Prong 1 burden, thereby shifting the burden to plaintiff to establish their burden of probability of prevailing, which plaintiffs have failed to carry.

Education Code §44805 (“Every teacher in the public schools shall enforce the course of study, the use of legally authorized textbooks, *and the rules and regulations prescribed for schools.*” [Italics added.]) requires school authorities to enforce school District rules and regulations of pupils on school grounds. *Brown v. City of Oakland* (1942) 51 Cal.App.2d 150, 152. Furthermore, the allegations against these public employees fall squarely with the immunity of Gov. Code §820.4 (“A public employee is not liable for his act or omission, exercising due care, in the execution or enforcement of any law. Nothing in this section exonerates a public employee from liability for false arrest or false imprisonment.”).

Moreover, it should be noted that teachers and other persons hired by the District do not relinquish their free speech rights on issues of public importance guaranteed by the First Amendment simply by virtue of their employment within the school district.

Pickering v. Board of Ed. of Tp High School Dist. 205 (1968) 391 U.S. 563, 574.

Decisions by the school district's governing board qualify as discretionary acts within the meaning of Government Code §820.2. They also are protected as a publication made "[i]n the proper discharge of an official duty" under Civil Code §47(a). *Morrow v. Los Angeles Unified School District* (2007) 149 Cal.App. 4th 1424, 1440 (anti-SLAPP motion by defendants school district and school superintendents to defamation action granted under Civil Code §47(a)). Moreover, to the extent plaintiffs seek to hold defendants liable for enacting and enforcing the universal masking policy, such is barred by Gov. Code §818.2 ("A public entity is not liable for any injury caused by adopting or failing to adopt an enactment or by failing to enforce any law.").

Plaintiffs' action is also barred by the discretionary immunity under Gov. Code §820.2. *Nicole M. v. Martinez Unified School District* (ND Cal. 1997) 964 F.Supp. 1369, 1389 (decisions by school district, school principal, and superintendent to discipline students and investigate complaints necessarily require the exercise of judgment of choice and are thus discretionary rather than ministerial); *Caldwell v. Montoya* (1985) 10 Cal.4th 972 (Gov. Code §820.2 discretionary immunity applies to school board members).

Defendants are further immunized by operation of Gov. Code §855.4:

(a) Neither a public entity nor a public employee is liable for an injury resulting from the decision to perform any act to promote the public health of the

community by preventing disease or controlling the communication of disease within the community if the decision whether the act was or was not to be performed was the result of the exercise of discretion vested in the public entity or the public employee, whether or not such discretion be abused.

(b) Neither a public entity nor a public employee is liable for an injury caused by an act or omission in carrying out with due care a decision described in subdivision (a).

Moreover, a cause of action under 42 USC §1983 may not be asserted against a California public school district because it is an “arm of the state” pursuant to the Eleventh Amendment and not subject to liability under federal civil rights statutes in any forum. *Kirchmann v. Lake Elsinore Unified School District* (2000) 83 Cal.App.4th 1098.

With regard to the claim for intentional infliction of emotional distress, it cannot be said that the conduct of defendants was “so extreme as to exceed all bounds of that usually tolerated in a civilized community,” sufficient to prevail on any claim for intentional infliction of emotional distress. *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1001. Frankly, defendants’ conduct was quite appropriate as a matter of law. “[M]ere insults, indignities, threats, annoyances, petty oppressions, or other trivialities” do not constitute extreme and outrageous conduct. *Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 496.

Plaintiffs’ alleged Bane Act (Civil Code §52.1) claim also fails. G.W. did not have a constitutional right to enter a school unmasked in clear violation of that school’s safety policy, a policy based upon adherence

to state and CDPH guidance to protect students and teachers. The measures undertaken by the school district, as a matter of law, were reasonable and permissible to enforce such law, even if G.W. and her mother may have been offended by those measures. *You can't blame the messenger for the message.* While there is a fundamental right or interest to an education, courts routinely have permitted exclusion of students who refuse to comply with public health and safety measures designed to prevent the spread of communicable diseases by measures more invasive than a mask mandate. *See, e.g., Love v. State Department of Education* (2018) 29 Cal.App.5th 980, 990 (“It is well established that laws mandating vaccination of school-aged children promote a compelling governmental interest of ensuring health and safety by preventing the spread of contagious diseases.”); Health & Safety Code §120335 (mandatory school vaccines include coverage for Poliomyelitis, Diphtheria, Tetanus, Pertussis, Hepatitis B, Haemophilus influenzae type B, Measles, Mumps, Rubella, and Varicella).

IV.

CONCLUSION

Defendants’ anti-SLAPP motions are granted as to all defendants.

The court finds that defendants have successfully satisfied their Prong I burden, *i.e.*, the acts for which liability is sought against them arise out of or were in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest under CCP §425.16(b), and (e) (1), (2), (3),

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and/or (4). The court further finds that plaintiffs have failed to satisfy their Prong II burden of establishing a probability of prevailing.

Plaintiffs' request for an award of costs and reasonable attorneys' fees is denied. However, by virtue of this court's granting defendants' anti-SLAPP motions, defendants are entitled to an award of prevailing attorneys' fees and costs pursuant to CCP §425.16(c)(1) if the appropriate motion timely requesting same is filed.

/s/ Gregory W Pollack
Judge Gregory W Pollack

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Appendix F

Record Excerpt
(Statement of Case Excerpts)

II. STATEMENT OF THE CASE

G.W. sued the Coronado Unified School District (“CUSD”) and its agents on numerous bases. First, G.W. challenged whether the implementation of CUSD’s masking policy, under which G.W. was required to wear a face mask as a precondition of attending school (the “Policy”), violated her right, as a student, to peacefully express her dissenting viewpoint by refusing to wear a mask in protest—free from harassment and discrimination. Consistent with the requirements set forth by *Tinker v. Des Moines Independent School District* (1968) 393 U.S. 503, in her Complaint, G.W. alleged (which both the trial court and the Court of Appeal were required to accept as true, but did not) that her protest neither disrupted the learning environment (AOB p. 22) nor violated the rights of others because, at all relevant times, G.W. was perfectly healthy and did not have COVID-19. (AOB p. 30). Second, G.W. challenged whether the actions taken by school officials to coerce her into compliance with the Policy violated the Bane Act (Civ. Code. § 52.1) and whether these actions constituted negligence and intentional infliction of emotional distress (IIED).

In 2022, G.W. was a sixteen-year-old who attended a special school for singing, dance, and acting, only a few of which existed in her county. 3CT 0727. The classes were of the type that required in-person

participation based on the subject matter. 1 CT 0059 (Appx C, Part 1). On January 31, 2022, she decided that she was done wearing the suffocating masks because she believed they were ineffective and pointless, and she decided to protest wearing them in school. 1 CT 0060. In response, the educators at Coronado High School (“CHS”), pursuant to the directives of CUSD’s administrators and board of trustees, forced G.W. to sit outside in the bitter cold and sweltering heat. 1 CT 0054. Occasionally, G.W. was permitted to sit outside the doorway of her classrooms, where she could neither see nor hear. 1 CT 0033. She was treated like a “leper” by her physics teacher, Defendant Lemei. 1 CT 0031. Defendant Salamanca attempted to force her into independent study in violation of Cal. Ed. Code § 51747(g)(8), called the police on her claiming that she was “trespassing” (despite her having every right to be on campus) and threatened to pull G.W.’s interdistrict transfer. 1 CT 0032; Compl. ¶¶ 57, 210, 276. The Defendants repeatedly marked her as “unexcused,” threatening truancy charges against her mother. 1 CT 0032. When there was an emergency lock-down drill, G.W. was sent to a room without a lock, which made her feel like a fish in a barrel, waiting to be shot. 1 CT 0033. In classes such as acting and singing, which required in-person learning, G.W. was forced to “direct” herself and do a duet without a partner. 1 CT 0035.

G.W. was made to feel anxious, humiliated, alienated, and harassed by the Defendants’ collective actions. 1 CT 0035. Meanwhile, her classmates were allowed to play their wind-instruments **without masks**. 1 CT 0035 (bolding added). She lost sleep, and her grades suffered. 1 CT 0038. Instead of letting this

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healthy child simply learn like children across the United States (outside of California) did on a daily basis (without masks), she was issued an in-school suspension for no valid reason. 1 CT 0040. She was threatened with police for trying to go to class and reported for “trespassing”—when she had every right to be on campus (given that she was issued an “in-school” suspension). 1 CT 0045. In all, she missed nearly one-third of her academic year and was forced to make it up. Her parents finally just disenrolled her from school, even though, at the time, the rest

Appendix G

Complaint Excerpts
(Selected Pages)

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118. Instead of learning with her classmates, G. W. was again forced to sit outside all day in the cold.

119. Again, G. W. was marked with an unexcused absence for periods two, three, and four.

120. On **February 15, 2022**, G. W. was again “excluded” by Defendants Dean, Walker, Lemei, Wolf and Gersonde from accessing an in-person education despite being on campus all day.

121. She was marked as unexcused absences for periods one, two, three, four, five, and D.

122. On **February 16, 2022**, G. W. attempted to acquire her in-person education, as she was entitled by law.

123. Feeling determined, G. W. went to her first-period class taught by Defendant Dean in contravention of CUSD’s mask mandate.

124. This day, G. W. respectfully protested CUSD’s mask requirement by declining to mask inside of her first-period class, taught by Defendant Dean.

125. Defendant Dean ordered G. W. to leave the room, and she politely declined. Accordingly, Defendant Dean sought the assistance of Defendant Bavis.

126. Inside and maskless, G. W. was confronted by Defendant Bavis, who asked G. W. to put on a mask.

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127. G. W. responded: “No thank you.”

128. When asked by Defendant Bavis to leave, G. W. politely declined.

129. At that time, Defendant Bavis ordered the class to move to another room.

130. By moving the class, Defendant Bavis disrupted G. W.’s learning and that of her classmates by choosing to punish G. W. for her lawful protest.

131. G. W. followed her classmates into the other room, determined to attain an in-person education.

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144. Irrespective of the “suspension,” G. W. politely refused to leave campus.

145. To avoid further harassment and bullying at the hands of CHS employees, however, G. W. did not enter her third period class with Mr. Lemei and instead sat outside to attend online (via Zoom).

146. Around 11:30 a.m., G. W.’s capacity to access her class via Zoom was terminated by Defendant Lemei.

147. Defendant Bavis later prevented G.W. from accessing her CoSA classes with Defendants McBean, Wolf, and Zeffiro. Outside, Defendant Bavis cornered G. W. and told her about the availability of school counselors with whom she could discuss her issues with masking.

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148. G.W. politely declined the services, as she believed the offer was a guise to further harass her into compliance.

149. Around 3:30 p.m., G. W.'s Parents, Mr. R. W. and Mrs. NICOLE WARD, visited Coronado High School to ascertain the details of G. W.'s purported suspension.

150. The parents were informed that the alleged suspension was scheduled for the following day.

151. Prior to their arrival at 3:30 p.m., neither G. W. nor her Parents were provided written notice explaining the terms of the suspension.

152. A copy of the suspension documentation was provided to the parents only upon demand.

153. Despite being on campus all day, G. W. was marked as an unexcused absence from periods two and four.

154. G. W. left campus in tears.

155. On **February 17, 2022**, upon arriving at CHS, G. W. and Mrs. NICOLE WARD were greeted by Defendants Mellina and Foley.

156. Defendants Mellina and Foley explained that G. W. was not permitted to enter any classrooms as she was "excluded" pursuant to CUSD policy.

[End of Page 19]

[Page 29]

253. This day, G. W. was, again, "excluded" and forced by Defendants Dean, Walker, Lemei, Wolf,

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Strassburger, and Sapper to sit outside and attend Zoom classes.

254. Despite her presence on campus and her attendance via Zoom, G. W. was marked with unexcused absences for periods one, two, three and five.

255. On **March 11, 2022**, despite her presence on campus and her attendance via Zoom, G. W. was “excluded” by Defendants Dean, Walker, Lemei, Sapper, Gersonde, and McBean and marked with unexcused absences for periods one, two, three, four, five and D.

256. At the end of the day on **March 11, 2022**, Mr. R. W. and Mrs. NICOLE WARD begrudgingly disenrolled G. W. from CHS.

257. **On all dates and at all times listed above**, G. W. was lawfully on campus and entitled, by law, to access an in-person education free of harassment and discrimination. G.W. was not ill at any time.

258. As of March 11, 2022, G. W. was effectively forced to miss nearly six weeks (a total of twenty-seven days) of in-person instruction because of Defendants’ joint unlawful actions.

259. As a result of being forced to sit outside and in order to keep warm, G. W. wore a battery-operated-heated jacket to school on all but a few days during the period of her protest.

260. As a result of forced exposure to cold temperatures, G. W. repeatedly experienced red, irritated and chapped skin on her hands and face.

261. On multiple occasions during the protest period, G. W. was sun-burnt as a result of forced exposure to the elements.

262. G. W. did not learn anything from any of her classes during the subject period—as she was not allowed to effectively participate in the learning experience.

[End of Page 29]

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community. Defendants, each of them, who were in positions of power as school authorities put G.W. outside in the fridged cold, in the scorching heat, in a bathroom without a lock during a lockdown drill, harassed, bullied, intimidated and coerced her into wearing a mask she did not want or need to wear—all to intentionally intimidate, pressure and coerce her into wearing a mask, get tested for COVID, and make her so miserable so that she would beg her parents to get her “Vaccinated.”

310. The Defendant’s agents, each of them, intended to cause, and/or recklessly disregarded the possibility of such actions causing G.W. and NICOLE WARD emotional distress.

311. Plaintiffs have suffered humiliation, great stress, mental anguish, substantial annoyance, emotional trauma, severe and extreme emotional and physical distress and, thereby, have been directly and proximately injured in mind and body.

312. Defendants conduct, each of them as herein alleged, was a substantial factor in causing Plaintiffs' severe emotional distress, resulting in suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation and shame, more than an ordinary reasonable person would be able to cope with, and with physical manifestations therein.

313. As a further proximate result of the acts alleged above, Plaintiffs were required to and did employ professional counselors to examine, treat, and care for Plaintiffs, and incurred additional incidental expenses related to this counseling. Plaintiffs are informed and believes and thereon alleges that Plaintiffs will incur additional expenses for necessary counseling and therapy to cope with the trauma caused by Defendants' joint conduct, the exact amount of these expenses is unknown.

314. By reason of the acts alleged above, G. W. was prevented from attending CoSA as a student and thereby suffered great learning loss and extra-curricular activity loss and suffered the cost of attending a private alternative program to supplement said losses.

Appendix H

Reporter's Transcript Excerpts
(May 12, 2023 Hearing)

[Page 10]

America healthy. We don't know if they're sick or not.

THE COURT: Guns kill and so does COVID.

MS. HENDERSON: That's irrelevant. I respect that position, your Honor, but it's irrelevant.

Your ruling based on that part of it, your Honor, requires medical testimony, and there's no medical testimony before this Court that says that there's an asymptomatic carrier situation.

THE COURT: I'll take judicial notice of it.

MS. HENDERSON: Of a medical expert's testimony?

THE COURT: I will take judicial notice that COVID can be transmitted by an asymptomatic carrier. I'll take judicial notice of it.

MS. HENDERSON: Your Honor, I rather we set this for an evidentiary hearing and we'll put experts on so that the Court can make a ruling.

THE COURT: No, I'll take judicial notice of it.

MS. HENDERSON: Well, just for the record, your Honor, plaintiff objects.

THE COURT: Okay. All right. Just for the record, your objection is overruled.

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MS. HENDERSON: Again, your Honor, it's not about the mask policy. It's about how they hurt this child.

THE COURT: No, no, because once you have -- once you start out with a premise that's lawful and they had a right to enforce it, then you look at what the measures were taken to enforce it.

[End of Page 10]

[Page 17]

the teacher's choice, it's the administration's choice to take her out of the classroom, to move an entire class outside --

THE COURT: It was her choice --

MS. HENDERSON: -- to call the police on her, to illegally suspend her.

THE COURT: If she was cold outside, all she had to do is put a mask on and come into the warm confines of the school. That's all she had to do.

MS. HENDERSON: Put a mask on, your Honor, that is exactly what the threats and the coercion, the intimidation and the bullying were aimed to do, to coerce her into putting her mask back on, giving up her First Amendment, fundamental rights, to in-person instruction.

Education Code 201 says she has a right to be in school, free from harassment and discrimination. And if she had done that, would that be a better case, your Honor?

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THE COURT: What if she brought a gun in?

MS. HENDERSON: We're not talking about a gun.

THE COURT: No, no, no. Let's talk about guns.

Could she have brought a gun in in protest of the Second Amendment?

MS. HENDERSON: I don't understand your analogy, your Honor.

THE COURT: Oh, it's right on point, because guns kill, COVID kills.

MS. HENDERSON: Your analogy is saying that

[End of Page 17]

[Page 21]

THE COURT: Well, you know, disruption's only part of it. What we have here is we've got her behavior putting other people's health at risk. That's the - that's the big difference.

MS. HENDERSON: There's no evidence of that, your Honor, none.

THE COURT: well, maybe if I take judicial notice for the 15th time today, you'll understand where I'm coming from.

I believe, and I think that it's well supported in the scientific literature -- in fact, it's common knowledge -- that you can have asymptomatic

transmission of COVID. A transmitter can be not symptomatic but still transmit it to other people. And as a result of that, when the school has a mask policy, they can't create an exception for those people -- or they're not required to create an exception for those people who appear to be asymptomatic.

I know people who got COVID through asymptomatic transmission

MS. HENDERSON: Respectfully, your Honor -

-

THE COURT: I'm not considering that.

MS. HENDERSON: -- there's no evidence she was asymptomatic.

THE COURT: I'm not considering that. My own experience, I'm not considering that in my ruling here. But I am taking a judicial notice of a fact that is truly scientifically established and settled.

[End of Page 21]

[Page 25]

THE COURT: Your position is this young lady has been so harmed by this -- by this mask exclusion, that she is now set up for a lifetime of long-term counseling to remedy it.

MS. HENDERSON: I don't recall those exact words in the Complaint, your Honor, but I'd have to do a scan. It's a very long Complaint.

THE COURT: It's pretty significant what you've alleged. And I'm sitting here thinking, why

would a parent, if the parents were behind this, or why would a lawyer, if the lawyer's behind it, use this 16-year-old girl as a political pawn to make a point to oppose the mask policy?

Couldn't a law -- couldn't a lawsuit have been filed by someone who did not -- did not have to go through this period of waiting outside?

MS. HENDERSON: Your Honor, I don't even know what to say to that. It's absolutely false. I respectfully --

THE COURT: Okay. So if she came to school and she was unmasked and they said you have to have a mask, and then she said, okay. Well, I'm protesting. And came in and put the mask on and sat through it or went home and never came back, you'd have -- you'd have standing to bring your lawsuit; right?

I'm not sure why she kept going to school, waiting outside when it was cotd. I mean, at one point there was an allegation in the Complaint that mom was

[End of Page 25]

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THE COURT: I think they heard it here. Yes, I think this is a frivolous lawsuit and I feel bad that G.W. was used as a pawn here, if she was used as a pawn.

Maybe she has this deep-seeded hatred of masks and mother couldn't convince her otherwise.

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But she was -- she went through a process that I don't think the parents should have promoted.

MS. HENDERSON: It happened all over the state, Judge.

THE COURT: Unfortunately, you may be right.

MS. HENDERSON: She just decided to file suit for her harms. It happened all over the state.

THE COURT: She or her mom?

MS. HENDERSON: I'm sorry?

THE COURT: She or her mom?

MS. HENDERSON: I think this young lady is making her own informed decisions, Judge. She lived through the humiliation and the intimidation and the threats.

I mean, one of her administrators said, "If you touch me, I'm going to file charges for assault."

What kind of administrator runs a school like that?

THE COURT: An administrator who thought she was going to be touched.

MS. HENDERSON: She was trying to walk into the classroom, which happens every day.

THE COURT: The administrator said -- you have

[End of Page 28]

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Appendix I

[Notice of Ruling Awarding Appellate Fees]

RANDALL L. WINET (State Bar No. 116384)
WINET PATRICK GAYER CREIGHTON & HANES
1215 WEST VISTA WAY
VISTA, CALIFORNIA 92083-6227

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Attorneys for Defendants Coronado Unified School
District, et al

SUPERIOR COURT
OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO - CENTRAL DIVISION

G.W., a minor, by her
Parent Nicole Ward, and
Nicole Ward, an individ-
ual,

Plaintiffs,

vs.

CORONADO UNIFIED
SCHOOL DISTRICT, a
school district, Esther
Valdes-Clayton as an in-
dividual and in her offi-
cial capacity as a board
of trustees member of
Coronado Unified School

CASE NO. 37-2022-
00034756-CU-NP-CTL

ACTION DATE:
08/25/2022

I/C JUDGE:
Hon. Gregory W.
Pollack;
Dept C-71

**NOTICE OF RULING
GRANTING DEFEND-
ANT CORONADO
UNIFIED SCHOOL
DISTRICT'S MOTION**

District, Helen Anderson-Cruz as an individual and in her official capacity as a board of trustees member of Coronado Unified School District, Whitney Antrim as an individual and in her official capacity as a board of trustees member of Coronado Unified School District, Lee Pontes as an individual and in her official capacity as a board of trustees member of Coronado Unified School District, Bruce Sheperd as an individual and in his official capacity as a board of trustees member of Coronado Unified School District, Karl Meuller in his official capacity as superintendent of Coronado Unified School District, Donnie Salamanca, in his official capacity as assistant superintendent for Coronado Unified School District, Niamh Foley in her official capacity of Director of Student Services at

**FOR APPELLATE
ATTORNEYS' FEES**

Date: May 16, 2025

Time: 9:30 a.m.

Dept.: C-71

[Defendant Coronado Unified School District and its employees/agents are exempt from filing fees pursuant to Government Code§ 6103]

[IMAGED FILE]

Coronado Unified School District, Karen Mellina as her official capacity of principal of Coronado High School, Shane Bavis in his official capacity as teacher at Coronado High School, Joshua Dean in his official as teacher at Coronado High School,

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Appendix J

[Filed: Jan. 23, 2026]

[Ex Parte Application to Stay Enforcement]

Tracy L. Henderson, Esq
Law Offices of Tracy L. Henderson, Esq
P. O. Box 221562
Carmel CA 93922
T: 831.917.1583
tlhlaw@protonmail.com
Attorneys for Plaintiff

SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
UNLIMITED CIVIL CASE

G.W., a minor,	)	Case No.: 37-2022-00034756-
Plaintiff,	)	CU-NP-CTL
vs.	)	
CORONADO	)	PLAINTIFF'S <u>EX PARTE</u>
UNIFIED	)	APPLICATION FOR TEM-
SCHOOL DIS-	)	PORARY STAY OF (1) EN-
TRICT, a school	)	FORCEMENT OF ATTOR-
district, et al,	)	NEYS' FEES AWARDS
Defendants.	)	AND (2) ANY TRIAL-
	)	COURT ENFORCEMENT
	)	AND/OR IMPLEMENTA-
	)	TION OF PROCEEDINGS
	)	RELATING TO THE
	)	COURT OF APPEAL'S
	)	SANCTIONS ORDER
	)	AGAINST ATTORNEY

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**TRACY L. HENDERSON;
AND FOR ORDER
SHORTENING TIME (NO
BOND REQUESTED)**

**DECLARATION OF
TRACY L. HENDERSON,
ESQ RE: EX-PARTE NO-
TICE**

Date: January 26, 2026

Time: 8:45 a.m.

Dept: C-71

Judge:

Hon. Gregory W. Pollack

Plaintiffs G.W., Nicole Ward and counsel for Plaintiffs Tracy L. Henderson, Esq apply for an emergency order staying enforcement of this Court's attorney's fees awards and the First District Court of Appeal's sanctions order against Plaintiff's counsel. This application is made on the grounds pursuant to Code Civ. Proc., § 918, subd. (a).

This application is based on the Declaration of Tracy L. Henderson, Esq, Re: Notice and the Memorandum of Points and Authorities in Support of this Application and its supporting exhibits.

Respectfully submitted:

Dated: January 23, 2026

/s/ Tracy L. Henderson
Tracy L. Henderson, Esq.
Attorney for Plaintiffs

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Appendix K

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 01/26/2026 TIME: 8:45 AM DEPT:C-71

JUDICIAL OFFICER:
GREGORY W. POLLACK
CLERK: Valeria Contreras
REPORTER/ERM:
BAILIFF/COURT ATTENDANT: D. DiValerio

CASE NO: **37-2022-00034756-CU-NP-CTL**
CASE INIT.DATE: 08/25/2022
CASE TITLE: **G W vs Coronado Unified School
District [IMAGED]**
CASE CATEGORY: Civil
CASE TYPE: (U)Other Non-PI/PDMD Tort

HEARING TYPE: Ex Parte Hearing
MOVING PARTY:

APPEARANCES

Tracy L Henderson, Attorney for Plaintiff(s) and Appellant(s), present via remote video appearance.
Erin Taylor, Attorney for Defendant(s) and Respondent on Appeal(s), present via remote video appearance

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Ex Parte Application for Temporary Stay of (1) Enforcement of Attorneys' Fees Awards and (2) Any Trial-Court Enforcement and/or Implementation of Proceedings Relating to the Court of Appeal's Sanctions Order Against Attorney Tracy L. Henderson requested by Plaintiff.

Court denies request for stay, good cause not having been shown.

Gregory W. Pollack
Judge Gregory W. Pollack

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Appendix L

[Filed: Mar. 10, 2026]

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

B.B., a minor by and through
her mother, Chelsea Boyle,
Plaintiff - Appellant,

v.

CAPISTRANO UNIFIED
SCHOOL DISTRICT; JESUS
BECERRA, an individual in his
individual and official capaci-
ties; CLEO VICTA, an individ-
ual in her individual and
official capacities,
Defendants - Appellees.

No. 24-1770

D.C. No.
8:23-cv-00306-
DOC-ADS

OPINION

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Argued and Submitted April 9, 2025
Pasadena, California

Filed March 10, 2026

Before: Consuelo M. Callahan, Roopali H. Desai, and
Ana de Alba, Circuit Judges.

Per Curiam Opinion

SUMMARY*

First Amendment

The panel vacated the district court’s grant of summary judgment for Jesus Becerra, the school principal at Viejo Elementary School in the Capistrano Unified School District, and remanded, in a 42 U.S.C. § 1983 action brought by first-grade student B.B., alleging her First Amendment rights were violated when she was punished after she drew a picture that included the words “Black Lives Mater [sic] any life” and gave it to M.C., an African American classmate.

Under *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), student speech is protected until it collides with the school’s interest in (1) preventing disruption and (2) protecting other students. When this occurs, schools must achieve a balance between protecting the safety and well-being of their students and respecting those same students’ constitutional rights.

Disagreeing with the district court’s determination that the drawing was not protected by the First Amendment, the panel held that elementary students’ speech is protected by the First Amendment, *Tinker* applies in the elementary student speech context, and elementary students’ young age is a relevant, but non-dispositive, factor. The panel also reaffirmed that

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

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under the *Tinker* balancing test school officials have the burden of showing that their actions were reasonably undertaken to protect the safety and well-being of their students.

Here, because there was no suggestion that B.B.'s drawing created a reasonable likelihood of material disruption of classwork or substantial disorder at her school, the panel focused on the second prong of *Tinker*: whether B.B.'s drawing interfered with M.C.'s right to be secure and let alone. Applying *Tinker*, the panel held that B.B. raised genuine disputes of material fact and Becerra was not entitled to summary judgment because there was conflicting evidence about whether Becerra could reasonably conclude that the drawing interfered with M.C.'s rights and whether the actions taken were reasonably necessary. The panel explained that while age is a relevant factor under *Tinker*, it does not negate the existence of a genuine dispute of material fact and the district court erred to the extent that it relied on the students' ages as the dispositive factor. The students' very young ages gave the school broader discretion, but did not relieve the school and Becerra from meeting their burden of showing that their actions were reasonably undertaken to protect the safety and well-being of the school's students.

The panel also vacated the grant of summary judgment for Becerra on B.B.'s First Amendment retaliation claim because the district court's grant of summary judgment on that claim was based on its determination that the drawing was not protected by the First Amendment.

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COUNSEL

Caleb R. Trotter (argued), Pacific Legal Foundation, Sacramento, California; Wilson Freeman, Pacific Legal Foundation, Phoenix, Arizona; Plaintiff-Appellant.

Courtney L. Hylton (argued) and Brendan M. Gardiner, Hylton & Associates, Irvine, California, for Defendants-Appellees.

Ilya Shapiro and Tim Rosenberger, Manhattan Institute, New York, New York; Alan Gura, Institute for Free Speech, Washington, D.C.; Madison Hahn, Young America's Foundation, Reston, Virginia; Timothy D. Keller, Center for the Rights of Abused Children, Phoenix, Arizona; Cynthia F. Crawford and Casey Mattox, Americans for Prosperity Foundation, Arlington, Virginia; for Amici Curiae Manhattan Institute, Institute for Free Speech, Young America's Foundation, Center for the Rights of Abused Children, and Americans for Prosperity Foundation.

J. Michael Connolly and Thomas S. Vaseliou, Consovoy McCarthy Park PLLC, Arlington, Virginia, for Amicus Curiae Parents Defending Education.

Jordan R. Miller and Celia H. O'Leary, Southeastern Legal Foundation Inc., Roswell, Georgia, for Amicus Curiae Southeastern Legal Foundation.

D. Gill Sperlein, The Law Office of D. Gill Sperlein, San Francisco, California; Harmeet K. Dhillon, Mark Trammell, Josh W. Dixon, and Eric A. Sell, Center for

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American Liberty, Mount Airy, Maryland; for Amicus Curiae Center for American Liberty.

Julie A. Hamill, Hamill Law & Consulting, Rolling Hills Estates, California, for Amici Curiae California Policy Center and Californians for Equal Rights Foundation.

Mathew W. Hoffmann and Tyson C. Langhofer, Alliance Defending Freedom, Lansdowne, Virginia; John J. Bursch, Bursch Law PLLC, Caledonia, Michigan; for Amicus Curiae Douglass Leadership Institute.

Dean McGee and James McQuaid, Liberty Justice Center, Austin, Texas, for Amicus Curiae Liberty Justice Center.

OPINION

PER CURIAM:

In March 2021, B.B., a first-grade student, drew a picture which included the words “Black Lives Mater [sic] any life” and gave it to M.C., an African American classmate. When M.C.’s mother raised concerns, the school principal, Jesus Becerra, spoke to B.B. and allegedly told her that the picture was inappropriate and racist, and that she was not allowed to give her drawings to classmates. B.B., through her mother, sued the school district and Becerra under 42 U.S.C. § 1983, alleging that Becerra’s actions punished B.B. and violated her First Amendment rights. The district court granted summary judgment for the defendants,

stating that the drawing was not protected by the First Amendment. B.B. filed a timely appeal. This case presents an important issue: to what extent is elementary students' speech protected by the First Amendment? Applying the criteria set forth in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), we hold that elementary students' speech is protected by the First Amendment, the age of the students is a relevant factor under *Tinker*, and schools may restrict students' speech only when the restriction is reasonably necessary to protect the safety and well-being of its students. Because the *Tinker* analysis raises genuine issues of material fact, we vacate the grant of summary judgment and remand.

I. The Controversy

In March 2021, when B.B. was a first-grade student at Viejo Elementary School in the Capistrano Unified School District, her teacher read the class a story about Dr. Martin Luther King, Jr. After the story, B.B. “felt bad” because “black people . . . were put in a worse position” and made a drawing showing “all her friends holding hands.” B.B. gave the drawing to her classmate, M.C., who is African American. M.C. thanked B.B. Here is the drawing:



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B.B. did not know that “Black Lives Matter” had any particular meaning but included the phrase because it was at the end of the book her teacher read to the class.¹ She stated that she included the phrase “any life” in her drawing because “all lives matter.”

M.C. took the drawing home, where her mother found it in her backpack. M.C. asked her mother what the drawing meant, and her mother told her not to worry about it as it was not part of the curriculum. However, M.C.’s mother was concerned that M.C. was the only black child in her grade to receive such a drawing. She emailed the school’s principal, Becerra, stating, in part:

While we can appreciate the sentiment of Black Lives Matter, my husband and I do not trust the place where the “any life” is coming from. We do not want this to become a larger issue. My husband and I will not tolerate any more messages given to our daughter because of her skin color. We do not send [M.C.] to school with flyers or propaganda. We only send her to school to learn the curriculum and that is it. As the administrator we trust you know the actions that need to be taken to address this issue. If you want to further discuss, my husband and I will be happy to meet you in person.

¹ When later deposed, B.B. further stated that at the school, in the room where colored papers are kept, there was a picture of a man with a fist raised which read at the top “Black lives” and at the bottom “matters.”

The next day at school, Becerra took B.B. aside and told her that the drawing was “not appropriate,” she was not to give drawings to other students, and she should apologize to M.C. B.B. thought that Becerra used the word “racist” to describe the drawing but could not remember for sure.² B.B. did not understand why the drawing was inappropriate or racist, but twice apologized to M.C. In addition, B.B. testified that she was barred from recess for two weeks.

B.B. did not tell her parents about the drawing or her conversation with Becerra. Over eleven months later, B.B.’s mother learned of the incident from another parent. She subsequently filed a complaint with the school district. The complaint proceeded through several administrative levels, but ultimately, the school district found the “weight of the evidence” did not substantiate the allegation that B.B. “was punished or disciplined” for her drawing.

On February 21, 2023, B.B., through her mother, filed a complaint in the United States District Court for the Central District of California pursuant to 42 U.S.C. § 1983 alleging (among other claims) that Becerra violated B.B.’s First Amendment rights by punishing B.B. and retaliating against her for the drawing. Following discovery and multiple motions to dismiss, the defendants moved for summary judgment

² Becerra denies calling the drawing inappropriate or racist. However, because this is an appeal from a grant of summary judgment, we construe the facts in favor of the nonmoving party, B.B. See *Animal Legal Def. Fund v. U.S. Food & Drug Admin.*, 836 F.3d 987, 989 (9th Cir. 2016) (en banc).

on the remaining cause of action, B.B.’s First Amendment claims.³

Applying *Tinker*, 393 U.S. 503, and its progeny, the District Court extracted three applicable principles: (1) “where speech is directed at a ‘particular vulnerable’ student based on a ‘core identifying characteristic,’ such as race, sex, religion, or sexual orientation, educators have great leeway to regulate it”; (2) “the mere fact that speech touches upon a politically controversial topic is not sufficient to bring it under the First Amendment’s protective umbrella”; and (3) “age is an important factor when deciding whether speech is protected.” The District Court concluded that “the Drawing is not protected by the First Amendment.” It recognized that the drawing interfered with M.C.’s right to be let alone, but it noted that B.B.’s intentions were undoubtedly innocent, and that teachers “are far better equipped than federal courts at identifying when speech crosses the line from harmless schoolyard banter to impermissible harassment.” The District Court concluded that Becerra’s action, whether right or wrong, “does not warrant federal court intervention.” On this ground, the district court granted Becerra

³ B.B. and B.B.’s mother brought various other federal and state claims against Becerra, the school district, and a counselor at B.B.’s school. The district court dismissed B.B.’s mother’s claims and the federal claims against the school district. The district court later granted summary judgment to Becerra and the counselor on B.B.’s First Amendment claims. After resolving all the federal claims in the defendants’ favor, the district court declined to exercise supplemental jurisdiction over B.B.’s state-law claims. B.B. appeals only the summary judgment on her First Amendment claims against Becerra.

summary judgment on B.B.'s First Amendment claims. B.B. timely appealed.

II. Standards of Review

We review a grant of summary judgment *de novo*. *Animal Legal Def. Fund*, 836 F.3d at 988. “Summary judgment is appropriate if, viewing the evidence in the light most favorable to the nonmoving party, (a) ‘the district court correctly applied the relevant substantive law’ and (b) there are no genuine issues of material fact.” *LaVine v. Blaine Sch. Dist.*, 257 F.3d 981, 987 (9th Cir. 2001) (quoting *Balint v. Carson City*, 180 F.3d 1047, 1050 (9th Cir. 1999) (en banc)).

III. Discussion

As established in *Tinker*, 393 U.S. at 506, students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” But *Tinker* also “emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.” *Id.* at 507. Here, as in *Tinker*, “[o]ur problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities.” *Id.*

The Supreme Court has recognized “three specific categories of student speech that schools may regulate in certain circumstances: (1) indecent, lewd, or vulgar speech uttered during a school assembly on school grounds; (2) speech, uttered during a class trip, that promotes illegal drug use; and (3) speech that others may reasonably perceive as bearing the imprimatur of the school, such as that appearing in a school-

sponsored newspaper.” *Mahanoy Area Sch. Dist. v B.L. ex rel. Levy*, 594 U.S. 180, 187–88 (2021) (cleaned up).

Speech that does not fall into one of these categories is nonetheless subject to the balancing test in *Tinker*. In *Mahanoy*, the court noted that under *Tinker*, “schools have a special interest in regulating speech that ‘materially disrupts classwork or involves substantial disorder or invasion of the rights of others’” and “[t]hese special characteristics call for special leeway when schools regulate speech that occurs under its supervision.” *Id.* at 188 (quoting *Tinker*, 393 U.S. at 513). Thus, a student always has rights under the First Amendment, but the degree to which a school may restrict those rights varies according to a number of factors. As the Supreme Court noted in *Hazelwood School District v. Kuhlmeier*, “the First Amendment rights of students in the public schools ‘are not automatically coextensive with the rights of adults in other settings,’ and must be ‘applied in light of the special characteristics of the school environment.’” 484 U.S. 260, 266 (1988) (quoting *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 682 (1986) and *Tinker*, 393 U.S. at 506).

Tinker stressed that a school’s prescription and control of speech must be “consistent with fundamental constitutional safeguards.” 393 U.S. at 507. The Court held that, “[i]n order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that

always accompany an unpopular viewpoint.”⁴ *Id.* at 509. Rather, schools may regulate speech only when the speech (1) “materially disrupts classwork or involves substantial disorder,” or (2) creates an “invasion of the rights of others.” *Id.* at 513. “In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.” *Id.* at 511. Put simply, *Tinker* protects student speech under the First Amendment until it collides with the school’s interest in preventing disruption and protecting other students. *Id.* at 507–09. When this occurs, the school’s actions are reviewed under the *Tinker* balancing test.

We have followed *Tinker*. For example, in *C.R. v. Eugene School District 4J*, we reiterated that “[s]chools must achieve a balance between protecting the safety and well-being of their students and respecting those same students’ constitutional rights.” 835 F.3d 1142, 1148 (9th Cir. 2016) (citing *LaVine*,

⁴ The Court explained:

Students in school as well as out of school are ‘persons’ under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.

Id. at 511.

257 F.3d at 987). We also stated that (1) the targeted student’s age was relevant, (2) “grade schools may exercise a greater degree of control over student speech than colleges,” and (3) “[b]ecause C.R.’s speech interfered with the younger students’ rights to be secure and let alone, . . . his suspension was permissible under *Tinker*.” *Id.* at 1153 (footnote omitted). Moreover, we have recognized that “[p]ublic school students who may be injured by verbal assaults on the basis of a core identifying characteristic such as race, religion, or sexual orientation, have a right to be free from such attacks while on school campuses.” *Harper v. Poway Unified Sch. Dist.*, 445 F.3d 1166, 1178 (9th Cir. 2006), *judgment vacated sub nom., Harper ex rel. Harper v. Poway Unified Sch. Dist.*, 549 U.S. 1262 (2007).

The parties agree that B.B.’s drawing qualifies as speech under the First Amendment. They also agree that first graders enjoy some First Amendment protection for their speech at school. And they agree that we must evaluate whether Becerra permissibly regulated B.B.’s speech under *Tinker*. But the fact that the *Tinker* balancing test is invoked does not resolve our case. We do not agree with the District Court’s determination that the “Drawing is not protected by the First Amendment.”⁵ It overlooks that even when some administrative action is appropriate under *Tinker*, the school has the burden of showing that its

⁵ The statement is ambiguous. It is not clear whether the District Court was asserting that a first grader has no First Amendment rights—a position that is contrary to *Tinker* and our precedent—or indicating that in this instance the school’s obligation to provide a safe environment outweighed any restriction on B.B.’s rights under the First Amendment.

interference with a student’s First Amendment right was reasonably necessary to protect “the safety and well-being” of its students, *C.R.*, 835 F.3d at 1148, including their rights “to be secure and to be let alone.” *Tinker*, 393 U.S. at 508.

The parties dispute (1) how *Tinker* should apply here, given the young age of the students involved, (2) the scope of *Tinker*’s second prong, and (3) whether there are any genuine disputes of fact material to the application of *Tinker*. We first outline the bounds of elementary schools’ authority and students’ First Amendment rights under *Tinker*. Next, turning to this case, we hold that there are genuine disputes of material fact relevant to the *Tinker* analysis. We vacate and remand.

A. The age of the students is a relevant but non-dispositive factor in the *Tinker* balancing test.

As noted by the Fifth Circuit in *Morgan v. Swanson*, 659 F.3d 359, 377 (5th Cir. 2011) (en banc), *Tinker* “did not, by its own terms, address the rights of elementary students” However, elementary students’ First Amendment rights have been recognized since *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943). Four of our sister circuits have concluded that *Tinker* applies to elementary student speech. See *C.S. v. McCrumb*, 135 F.4th 1056, 1066 (6th Cir. 2025) (applying *Tinker* to an elementary student’s First Amendment claim and noting that “elementary students enjoy at least some free speech protections”); *N.J. by Jacob v. Sonnabend*, 37 F.4th 412, 425 (7th Cir. 2022) (holding that “*Tinker* is the controlling authority” in the elementary school setting); *K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist.*, 710 F.3d 99,

110–11 (3d Cir. 2013) (concluding that “*Tinker* applies to elementary school student speech”); *Morgan*, 659 F.3d at 407–09 (applying *Tinker* to elementary student speech).

Although we have not had occasion to apply the *Tinker* balancing test to elementary students, our prior opinions have recognized both that students have First Amendment rights and that the students’ ages are relevant to evaluating whether a school’s actions were reasonably designed to protect the safety and well-being of its students.

In *Harper*, we upheld the ban on a high school sophomore wearing a T-shirt with an anti-homosexual message because doing so collided “with the rights of other students’ in the most fundamental way.” 445 F.3d at 1178 (quoting *Tinker*, 393 U.S. at 508). We recognized that “name-calling is ordinarily protected outside the school context,” but held that “[s]tudents cannot hide behind the First Amendment to protect their ‘right’ to abuse and intimidate other students at school.” *Id.* (quoting *Sypniewski v. Warren Hills Reg’l Bd. of Educ.*, 307 F.3d 243, 264 (3d Cir. 2002)). We noted that, “[a]s young students acquire more strength and maturity, and specifically as they reach college age, they become adequately equipped emotionally and intellectually to deal with the type of verbal assaults that may be prohibited during their earlier years.” *Id.* at 1183.

In *C.R.*, we determined that the two-day suspension was a reasonable punishment for a twelve-year-old

who had sexually harassed two younger students.⁶ 835 F.3d at 1152–53. We recognized that sexual harassment “implicates the rights of students to be secure” and that schools “must have the authority to discipline students for engaging in sexually inappropriate and harassing speech.” *Id.* at 1152. Importantly, we further held that the “targeted students’ age is also relevant” and that C.R.’s “speech interfered with the younger students’ rights to be secure.” *Id.* at 1153.

Consistent with our sister circuits, we hold that the age of the students is a relevant factor in evaluating the school’s restriction on a student’s speech. But age is not dispositive. This is consistent with our general approach in student speech cases in which we “treat the *Tinker* rule as a flexible one dependent upon the totality of relevant facts in each case.” *Karp v. Becken*, 477 F.2d 171, 174 (9th Cir. 1973).⁷

⁶ We noted that the student’s harassment could cause the victim to:

feel less secure in school, affecting her ability to perform as a student and engage appropriately with her peers. Moreover, the harassment had already begun to escalate from the repetition of curse words to sexual comments directed at the victims. The school could reasonably expect the harassment to escalate further if allowed to continue unchecked. Without intervening administrative action, the younger students would be deprived of their right to be secure at school.

C.R., 835 F.3d at 1152–53.

⁷ This approach is also consistent with our sister circuits. See *McCrumb*, 135 F.4th at 1062 (“*Tinker* applies the First Amendment to student speech in light of the special characteristics of the school environment, which may include such factors as the age and emotional maturity level of schoolchildren viewing the

In sum, elementary students’ speech is protected by the First Amendment, *Tinker* applies in the elementary student speech context, and elementary students’ young age is a relevant factor.

B. Under the *Tinker* balancing test school officials have the burden of showing that their actions were reasonably undertaken to protect the safety and well-being of their students.

As there is no suggestion that B.B.’s drawing created a reasonable likelihood of material disruption of classwork or substantial disorder at her school, we focus on the second prong of *Tinker*: whether B.B.’s drawing interfered with M.C.’s right to be secure and let alone.

“The precise scope of *Tinker*’s interference with the rights of others['] language is unclear” because we have rarely applied it. *C.R.*, 835 F.3d at 1152 (quoting *Wynar v. Douglas Cnty. Sch. Dist.*, 728 F.3d 1062, 1072 (9th Cir. 2013)). But a few principles are clear. On the one hand, “speech that is merely offensive to some listener” is not sufficient and does not fall within *Tinker*’s scope. *Id.* To regulate student speech under

speech, particularly with respect to sensitive topics.”) (citation modified); *L.M. v. Town of Middleborough*, 103 F.4th 854, 881 (1st Cir. 2024) (noting the relevance of the “middle-school setting, with some kids as young as ten,” to the *Tinker* analysis); *Sonnabend*, 37 F.4th at 426 (“The application of *Tinker* must account for such factors as the age and grade level of the students to whom the speech is directed.”); *Ayers*, 710 F.3d at 109 (“[T]he *Tinker* test has the requisite flexibility to accommodate the age-related developmental, educational, and disciplinary concerns of elementary school students.”).

this prong of *Tinker*, a school “must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.” *Tinker*, 393 U.S. at 509.

On the other hand, targeted speech that threatens, harasses, or bullies a specific student interferes with the right to be secure and let alone, and may be regulated by schools under *Tinker*. See *Mahanoy*, 594 U.S. at 188 (describing how schools may regulate “severe bullying or harassment targeting particular individuals” and “threats aimed at teachers or other students”); *Wynar*, 728 F.3d at 1072 (holding that the school could regulate speech that threatened to commit a school shooting and “targeted specific students by name”); *C.R.*, 835 F.3d at 1152 (holding that the school could punish speech that constituted sexual harassment of two other students); see also *Doe v. Hopkinton Pub. Schs.*, 19 F.4th 493, 509 (1st Cir. 2021) (“Speech or conduct that actively and pervasively encourages bullying by others or fosters an environment in which bullying is acceptable and actually occurs . . . is not protected under the First Amendment.”).

But what of student speech that does not bully, threaten, or harass a specific student but has potential consequences beyond avoiding discomfort and unpleasantness? We tackled this gray area in *Harper*, 445 F.3d 1166. There, a high school student wore a shirt to school that “displayed derogatory remarks about homosexuals.” *Id.* at 1171. He wore the shirt on the day that the school’s Gay-Straight Alliance held an event, but his speech did not target any particular student. *Id.*

We held that the school could lawfully regulate the student's speech because "verbal assaults on the basis of a core identifying characteristic such as race, religion, or sexual orientation" interfere with other students' "right to be free from such attacks while on school campuses." *Id.* at 1178. We reasoned that "such attacks on young minority students can be harmful to their self-esteem and to their ability to learn," and thus fall under *Tinker*'s second prong. *Id.* at 1180. Although the student's right to wear the t-shirt is protected outside of school, we held that *Tinker* allowed the school to regulate or prohibit this speech given its "special need to maintain a safe, secure and effective learning environment." *Id.* at 1176.

Harper thus clarified that, under *Tinker*'s "rights of others" prong, schools may regulate not only speech that bullies or harasses particular students, but also speech that generally denigrates other students on the basis of a core identifying characteristic. Although "political speech, even when it is offensive to others, is an important right of all Americans and learning the value of such freedoms is an essential part of a public school education," the school may restrict "instances of derogatory and injurious remarks directed at students' minority status such as race, religion, and sexual orientation." *Id.* at 1183. We focused on "the type and degree of injury the speech involved cause[d] to impressionable young people" in high schools and elementary schools. *Id.*

Although *Harper* was vacated as moot,⁸ we find its reasoning sound: schools may regulate student speech under *Tinker*’s second prong when it involves “derogatory and injurious remarks directed at students’ minority status such as race, religion, and sexual orientation.” 445 F.3d at 1183.⁹ Indeed, the First Circuit recently adopted a similar rule. See *L.M. v. Town of Middleborough*, 103 F.4th 854, 872–74 (1st Cir. 2024) (allowing schools to regulate speech under *Tinker* if it demeans other students’ personal identities and will have a “serious negative psychological impact on” those students and “poison[s] the educational atmosphere”). Several other circuits have similarly recognized that derogatory comments about other students’ personal identity, when sufficiently severe, may be regulated under *Tinker*. See *Nuxoll ex rel. Nuxoll v. Indian Prairie Sch. Dist. #204*, 523 F.3d 668, 672, 675–76 (7th Cir. 2008) (upholding a school rule forbidding derogatory comments about personal identity, but determining that a specific phrase could not be prohibited because it was “only tepidly negative,” and not “derogatory” or “demeaning”); *Sypniewski*, 307 F.3d at 263–66 (upholding a school policy prohibiting racial harassment and intimidation “by name calling,

⁸ See *Harper ex rel. Harper v. Poway Unified Sch. Dist.*, 549 U.S. 1262 (2007).

⁹ B.B. notes that at least one circuit previously limited the second prong of *Tinker* to school regulation of speech that would render the school liable for torts. See *Kuhlmeier v. Hazelwood Sch. Dist.*, 795 F.2d 1368, 1376 (8th Cir. 1986), *rev’d on other grounds*, 484 U.S. 260 (1988). We reject such a limited reading of *Tinker*, which has not been endorsed by the Supreme Court. See *Kuhlmeier*, 484 U.S. at 273 n.5.

using racial or derogatory slurs, wearing or possession of items depicting or implying racial hatred or prejudice . . . [or] that is racially divisive or creates . . . hatred” under *Tinker*).

Of course, the students’ ages affect what is derogatory or injurious. Certain speech may be merely negative or controversial to high schoolers, but may constitute derogatory and injurious remarks against elementary students given their greater vulnerability. *See C.R.*, 835 F.3d at 1152–53 (holding that “questions about sex acts and whether [students] were dating” are “inappropriate and unsettling questions for students just out of elementary school” and thus interfere with the students’ right to be let alone); *see also L.M.*, 103 F.4th at 881 (concluding that, “while oral argument indicated the Shirt’s message is not at the farthest end of demeaning, neither is it, on its face, only tepidly negative” in part because the shirt was worn in “a middle-school setting” around “kids as young as ten”) (citation modified); *Morgan*, 659 F.3d at 387 (concluding that an analysis of whether student speech infringes on the right to be let alone may “look different in the elementary-school context” given that elementary students are “more susceptible to coercion and peer pressure” than older students) (Benavides, J., separate opinion).

In sum, we reaffirm that although a school’s decision is entitled to deference, the school has the burden of showing that its actions were reasonably designed to protect the safety and well-being of its students. *See LaVine*, 257 F.3d at 989 (stating that “school officials must justify their decision by showing facts which might reasonably have led school authorities to

forecast substantial disruption of or material interference with school activities”) (cleaned up). Age is relevant as younger students are more vulnerable than students who are approaching adulthood. But, as all students, including elementary school students, have First Amendment rights, the school has the burden, under the *Tinker* balancing test, of showing that its actions were reasonably undertaken to protect the safety and well-being of its students. *See Karp*, 477 F.2d at 176 (stating that, “for discipline resulting from the use of pure speech to pass muster under the First Amendment, the school officials have the burden to show justification for their action”).

C. Applying the *Tinker* balancing test, Becerra is not entitled to summary judgment.

We now turn to this case. Has Becerra shown that the restrictions on B.B.’s First Amendment rights were reasonably necessary to protect the safety and well-being of the students?

Becerra presents some evidence suggesting that the school could reasonably believe the drawing invaded M.C.’s right to “be secure and let alone” at school. *See Harper*, 445 F.3d at 1178. M.C.’s mother emailed Becerra that she would “not tolerate any more messages given to [M.C.] at school because of her skin color.” She also testified that M.C. “was the only black child” to get such a message and that she “does not go to school to be judged because she’s a black girl.” M.C.’s mother further stated that, although she knew that B.B. did not intend to hurt M.C. by including the phrase “any life” in the drawing, “those kind[s] of things hurt.” Additionally, her statement that she “did not want this to become a larger issue” could be

interpreted as threatening additional action if Becerra did not act. Accordingly, Becerra may have believed that B.B.'s drawing interfered with M.C.'s right to be "let alone" because it targeted her based on her race, a core identifying characteristic. *See id.* At a minimum, M.C.'s mother's email required Becerra to investigate the situation to determine whether some action was necessary to protect M.C.'s right to be "let alone." *See LaVine*, 257 F.3d at 989 ("*Tinker* does not require school officials to wait until disruption actually occurs before they may act."); *see also Karp*, 477 F.2d at 175 ("*Tinker* does not demand a certainty that disruption will occur, but rather the existence of facts which might reasonably lead school officials to forecast substantial disruption.").

But there is also evidence that M.C. was unaffected by the drawing and thus did not experience the kind of expressive attack on the basis of a core identifying characteristic required for a restriction on speech under *Tinker*. M.C.'s mother testified that M.C. did not understand the drawing, and she told M.C. not to worry about it. Nor is there evidence connecting the phrase "any life"—used by B.B. in the drawing—to the somewhat controversial phrase "All Lives Matter" or to show that M.C. made that connection.¹⁰ B.B.

¹⁰ The district court cited a news article that commented that "the phrase 'All Lives Matter' gained popularity in response to the growth of the Black Lives Matter movement ('BLM'), a social movement protesting violence against Black individuals and communities, with a focus on police brutality." The article noted that the phrase is seen by some as an offensive response to BLM because it obscures "the fact that [B]lack people have not yet been included in the idea of 'all lives.'"

argues that Becerra could not reasonably think that the drawing communicated a denigrating message that required a reprimand.

The parties also dispute whether B.B. was punished for the drawing. For instance, Becerra denies telling B.B. that the drawing was “inappropriate” or “racist” and denies that B.B. was prohibited from playing at recess in the weeks following the incident.¹¹ He does not, however, deny that he spoke to B.B. We assume the facts in B.B.’s favor for the purposes of summary judgment. *See LaVine*, 257 F.3d at 987. But if a fact-finder later determines that B.B. was not actually punished for her drawing, her First Amendment claim will fail. *See Walker-Serrano ex rel. Walker v. Leonard*, 325 F.3d 412, 419 (3d Cir. 2003) (“Absent punishment for expression, a significant pattern of concrete suppression, or some other form of clear suppression of the expression of elementary school students, a federal First Amendment action is not an appropriate forum for resolution of disputes over schools’ control of third graders’ conduct.”). Thus, there is conflicting evidence about whether Becerra could reasonably conclude that the drawing interfered with M.C.’s rights and whether the actions taken were reasonably necessary. Applying the *Tinker* balancing test, B.B. has raised genuine disputes of material fact, and Becerra is not entitled to summary judgment.

¹¹ It appears that B.B.’s suspension from recess was not documented. B.B., however, testified that although Becerra did not tell her she had to miss recess, after Becerra talked to her, her teachers told her she wasn’t allowed to have recess. Denying a student recess may constitute punishment. *See Cal. Code Regs. tit. 5, §§ 304, 352.*

The district court emphasized that B.B. and M.C. were in first grade at the time of the incident. But while age is a relevant factor under *Tinker*, it does not negate the existence of a genuine dispute of material fact. The students' very young ages gave the school broader discretion, but it does not relieve the school and Becerra from meeting their burden of showing that their actions were reasonably undertaken to protect the safety and well-being of the school's students. *Tinker* remains a "demanding standard," and schools must prove that they meet it. *Mahanoy*, 594 U.S. at 193. The district court erred to the extent that it relied on the students' ages as the dispositive factor because genuine issues of material fact exist as to the reasons for restricting B.B.'s First Amendment rights and the extent of the restrictions. We vacate the district court's grant of summary judgment on B.B.'s First Amendment claim against Becerra.

D. Summary judgment on B.B.'s retaliation claim is vacated.

We also vacate the grant of summary judgment for Becerra on B.B.'s First Amendment retaliation claim because the district court's grant of summary judgment on that claim was based on its determination that the drawing was not protected by the First Amendment. To establish a retaliation claim in the student speech context, a plaintiff must allege "that (1) [she] was engaged in constitutionally protected activity; (2) the defendant's actions would chill a person of ordinary firmness from continuing to engage in the protected activity; and (3) the protected activity was a substantial motivating factor in the defendant's conduct." *Ariz. Students' Ass'n v. Ariz. Bd. of Regents*, 824

F.3d 858, 867 (9th Cir. 2016) (citation modified). As there may be material issues of fact relevant to these criteria, we decline to reach the merits of B.B.’s retaliation claim.¹²

CONCLUSION

Although schools have comprehensive authority to “prescribe and control conduct” in schools, *see Tinker*, 393 U.S. at 507, when their actions infringe on a student’s First Amendment rights to expression, even for an elementary school student, the school has the burden of showing that its actions were reasonably undertaken to protect the safety and well-being of its students. Because the district court failed to properly apply the *Tinker* balancing standard, the grant of summary judgment is **vacated**, and the case is **remanded** to the district court.¹³

¹² The parties raise other dispositive issues, such as Becerra’s assertion of qualified immunity. We decline to reach those issues in the first instance. *See Singleton v. Wulff*, 428 U.S. 106, 120 (1976) (“It is the general rule, of course, that a federal appellate court does not consider an issue not passed upon below.”).

¹³ The motions for leave to file amici briefs by (1) the California Policy Center and Californians for Equal Rights Foundation, (2) the Center for American Liberty, (3) the Douglas Leadership Institute, (4) the Liberty Justice Center, (5) the Manhattan Institute, Institute for Free Speech, Young America’s Foundation, Center for the Rights of Abused Children, and Americans for Prosperity Foundation, (6) the Parents Defending Education, and (7) the Southeastern Legal Foundation are **granted**.

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Appendix M

SUPPLEMENTAL APPENDIX
to Petition for a Writ of Certiorari

**G.W., et al. v. Coronado Unified School District,
et al.**

No. _____

App.119-143

This supplemental appendix contains the newly filed superior-court motion papers showing respondents' request for additional appellate attorneys' fees and costs, together with respondents' request to seek further fees and costs associated with petitioners' pursuit of review in the Supreme Court of the United States.

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[Filed: Feb. 17, 2026]

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District, et al

SUPERIOR COURT
OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO - CENTRAL DIVISION

G.W., a minor, by her
Parent Nicole Ward, and
Nicole Ward, an individ-
ual,

Plaintiffs,

vs.

CORONADO UNIFIED
SCHOOL DISTRICT, a
school district, Esther
Valdes-Clayton as an in-
dividual and in her offi-
cial capacity as a board

CASE NO. 37-2022-
00034756-CU-NP-CTL
ACTION DATE:
08/25/2022

I/C JUDGE:
Hon. Gregory W.
Pollack;
Dept C-71

**DEFENDANTS' NO-
TICE OF MOTION
AND MOTION FOR
STATUTORY**

of trustees member of Coronado Unified School District, Helen Anderson-Cruz as an individual and in her official capacity as a board of trustees member of Coronado Unified School District, Whitney Antrim as an individual and in her official capacity as a board of trustees member of Coronado Unified School District, Lee Pontes as an individual and in her official capacity as a board of trustees member of Coronado Unified School District, Bruce Sheperd as an individual and in his official capacity as a board of trustees member of Coronado Unified School District, Karl Meuller in his official capacity as superintendent of Coronado Unified School District, Donnie Salamanca, in his official capacity as assistant superintendent for Coronado Unified School District,

ATTORNEYS' FEES AND COSTS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF RANDALL L. WINET; DECLARATION OF ERIN N. TAYLOR; NOTICE OF LODGMENT; REQUEST FOR JUDICIAL NOTICE; [PROPOSED] ORDER

Date: August 21, 2026
Time: 9:30 a.m.
Dept.:C-71

[Defendant Coronado Unified School District and its employees/agents are exempt from filing fees pursuant to Government Code 6103]

[IMAGED FILE]

Niamh Foley in her official capacity of Director of Student Services at Coronado Unified School District, Karen Mellina as her official capacity of principal of Coronado High School, Shane Bavis in his official capacity as teacher at Coronado High School, Joshua Dean in his official capacity as teacher at Coronado High School, Michelle Walker in her official capacity as teacher at Coronado High School, William Lemei in his official capacity as teacher at Coronado High School, Shane Schneichel in his official capacity as teacher at Coronado High School, Barbara Wolf in her official capacity as teacher at Coronado High School, Kimberly Strassburger in her official capacity as teacher at Coronado High School, David McBean in his official capacity as teacher at

Coronado HighSchool, Katie Sapper in her official capacity as teacher at Coronado High School, Donny Gersonde in his official capacity as teacher at Coronado High School, Chelsea Zeffiro in her official capacity as teacher at Coronado High School and DOES 1-50, Defendants.

**TO PLAINTIFFS AND TO PLAINTIFFS'
ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on August 21, 2026 at 9:30 a.m., or as soon thereafter as the matter may be heard in Department C-71 of the above-entitled court, located at 330 W. Broadway, San Diego, CA 92101, Defendants Coronado Unified School District, Helen Anderson-Cruz, Whitney Antrim, Lee Pontes, Bruce Shepherd, Esther Valdes-Clayton, Karl Mueller, Shane Schmeichel, Donnie Salamanca, Karin Mellina, Niamh Foley, Shane Bavis, Joshua Dean, Donny Gersonde, William Lemei, David McBean, Katherine Sapper, Kimberly Strassburger, Michelle Walker, Barbara Wolf, and Chelsea Zeffiro will move the above-entitled Court for an order for statutory attorneys' fees and costs pursuant to Code of Civil Procedure § 425.16 and California Rule of Court 3.1702, in the total amount of \$23,323.08 and an order allowing Defendants to supplement this motion, or in the

alternative, file an additional motion for attorneys' fees and costs, if Plaintiffs' pursuit of United States Supreme Court review is unsuccessful.

This motion is made on the grounds that Defendants prevailed on Plaintiffs' appeal to the order granting attorney fees and costs following the successful anti-SLAPP ("Strategic Lawsuit Against Public Participation") motions under California Code of Civil Procedure § 425.16(c) as set forth in the Court of Appeal's September 29, 2025 Opinion.

This Motion for Attorneys' Fees and Costs is based upon this Notice of Motion, the Memorandum of Points and Authorities, the Notice of Lodgment and Exhibits attached thereto, the supporting the Declarations of Randall L. Winet, and Erin N. Taylor in support thereof, Request for Judicial Notice, the concurrently filed memorandum of costs prepared in accordance with California Rules of Court, Rules 8.278(c)(1) and 3.1700, and upon further and other evidence as may be presented at the time of hearing, or contained in any supplemental briefing.

PLEASE TAKE FURTHER NOTICE this department may issue tentative rulings for law and motion matters. Counsel may obtain tentative rulings on the Court's website at www.sdcourt.ca.gov after 4:00 p.m. on the day immediately preceding the noticed hearing date. If neither party appears on the date and at the time noticed for the hearing, the tentative ruling shall be adopted as the final ruling of the court. Parties wishing to argue before the court must appear on the date and at the time noticed for the hearing. Oral argument is limited to issues not addressed in the papers submitted. Failure to file a timely motion and/or opposition papers may constitute a waiver of

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the right to orally argue. The Court may, in its discretion, designate NO ORAL ARGUMENT in ruling upon any law and motion matter.

Dated: *02/17/2026*

WINET PATRICK CREIGHTON & HANES

By: /s/ ERIN N. TAYLOR
RANDALL L. WINET
ERIN N. TAYLOR
Attorneys for Defendants
Coronado Unified
School District, et al.

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[Filed: Feb. 17, 2026]

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SUPERIOR COURT
OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO - CENTRAL DIVISION

G.W., a minor, by her
Parent Nicole Ward, and
Nicole Ward, an individ-
ual,

Plaintiffs,

vs.

CORONADO UNIFIED
SCHOOL DISTRICT, a
school district, Esther
Valdes-Clayton as an in-
dividual and in her offi-
cial capacity as a board

CASE NO. 37-2022-
00034756-CU-NP-CTL
ACTION DATE:
08/25/2022

I/C JUDGE:
Hon. Gregory W.
Pollack;
Dept C-71

**DEFENDANTS' MEM-
ORANDUM OF
POINTS AND AU-
THORITIES IN**

of trustees member of Coronado Unified School District, Helen Anderson-Cruz as an individual and in her official capacity as a board of trustees member of Coronado Unified School District, Whitney Antrim as an individual and in her official capacity as a board of trustees member of Coronado Unified School District, Lee Pontes as an individual and in her official capacity as a board of trustees member of Coronado Unified School District, Bruce Sheperd as an individual and in his official capacity as a board of trustees member of Coronado Unified School District, Karl Meuller in his official capacity as superintendent of Coronado Unified School District, Donnie Salamanca, in his official capacity as assistant superintendent for Coronado Unified School District,

**SUPPORT OF THEIR
MOTION FOR MANDATORY STATUTORY ATTORNEYS' FEES AND COSTS PURSUANT TO CODE OF CIVIL PROCEDURE § 425.16(c)**

Date: August 21, 2026
Time: 9:30 a.m.
Dept.:C-71

[Defendant Coronado Unified School District and its employees/agents are exempt from filing fees pursuant to Government Code § 6103]

[IMAGED FILE]

Niamh Foley in her official capacity of Director of Student Services at Coronado Unified School District, Karen Mellina as her official capacity of principal of Coronado High School, Shane Bavis in his official capacity as teacher at Coronado High School, Joshua Dean in his official capacity as teacher at Coronado High School, Michelle Walker in her official capacity as teacher at Coronado High School, William Lemei in his official capacity as teacher at Coronado High School, Shane Schneichel in his official capacity as teacher at Coronado High School, Barbara Wolf in her official capacity as teacher at Coronado High School, Kimberly Strassburger in her official capacity as teacher at Coronado High School, David McBean in his official capacity as teacher at

Coronado High School, Katie Sapper in her official capacity as teacher at Coronado High School, Donny Gersonde in his official capacity as teacher at Coronado High School, Chelsea Zeffiro in her official capacity as teacher at Coronado High School and DOES 1-50, Defendants.
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Defendants Coronado Unified School District, Helen Anderson-Cruz, Whitney Antrim, Lee Pontes, Bruce Shepherd, Esther Valdes-Clayton, Karl Mueller, Shane Schmeichel, Donnie Salamanca, Karin Mellina, Niamh Foley, Shane Bavis, Joshua Dean, Donny Gersonde, William Lemei, David McBean, Katherine Sapper, Kimberly Strassburger, Michelle Walker, Barbara Wolf, and Chelsea Zeffiro (collectively “Defendants”) hereby respectfully submit the following memorandum of points and authorities in support of their Motion for Attorneys’ Fees and Costs after prevailing on Plaintiffs’ appeal as to the original award of attorneys’ fees and costs. This motion is brought pursuant to California Code of Civil Procedure § 425.16(c) and the Appellate Court’s September 29, 2025 order affirming the trial court order granting Defendants’ request for attorneys’ fees and costs and sanctioning counsel for Plaintiff for filing a frivolous appeal.

I.

FACTUAL BACKGROUND

Plaintiffs G.W. and her mother, Nicole Ward, filed a lawsuit against the Coronado Unified School District (“CUSD”) and twenty individuals who were employed or associated with CUSD in the spring of 2022 in various capacities. Between January 31, 2022 and March 11, 2022, Plaintiff G.W. refused to comply with the State of California and the Coronado Unified School District’s 2021-2022 Covid mask policy while she was a student at Coronado High School. The District’s Covid mask policy mirrored the state and public health policies and directives for that time which required all persons to wear a mask in the classroom. Plaintiff G.W.’s refusal to wear a mask ultimately lead to her suspension and subsequent voluntary decision to disenroll from CUSD. Plaintiffs sued Defendants under title 42 United States Code § 1983 alleging violations of G.W.’s rights to freedom of speech and expression under the First and Fourteenth Amendments to the United States Constitution, Article I, Section 2(a) of the California Constitution, and Education Code § 48907, subdivision (a). Plaintiffs also alleged violations of the Bane Act (Civil Code § 52.1) and tort claims for negligence and intentional infliction of emotional distress (IIED). (See Plaintiffs’ Complaint attached to the Notice of Lodgment (NOL) as Exhibit A; see also Request For Judicial Notice (RFJN), No. 1). Plaintiffs have been unsuccessful in pursuing their claims in this Court, the Court of Appeal, and the California Supreme Court.

II.

PROCEDURAL HISTORY

Following the granting by the trial court of the Defendants' anti-SLAPP motions, Defendants brought motions to recover for their underlying attorneys' fees and costs for the preparation of the anti-SLAPP motions. The motion was fully briefed by the parties. The motion for the underlying attorney's fees and costs for the four anti-SLAPP motions was heard by the court on February 9, 2024. This court issued a Minute Order on February 9, 2024 granting Defendants' attorneys' fees and costs in the amount of \$68,238.62. (February 9, 2024 Order, attached to the NOL as Exhibit B; see RFJN, No. 2). In awarding this amount in attorneys' fees and costs, this court pointed out that Defendants' attorney represented 21 clients for which declarations were obtained by each Defendant and that the legal fees and costs amounted to only \$3,249.46 per client. (*Id.*) In response to this court's ruling awarding the attorney fees and costs, Plaintiffs filed a Notice of Appeal on February 29, 2024. (Notice of Appeal, attached to the NOL as Exhibit C; RFJN, No. 3). On January 13, 2025, the Opening Brief was filed by Plaintiffs. (Plaintiffs' Opening Brief, attached to the NOL as Exhibit D; RFJN No. 4). The Opening Brief sought to re-litigate the underlying anti-SLAPP rulings and made no substantive arguments regarding the attorney's fees and costs awarded. (*Id.*) On February 13, 2025, Defendants filed their Respondents' Brief, noting that Plaintiffs had failed to substantively explain why the trial court's award of attorney fees and costs constituted reversible error, and improperly sought a second bite at

the apple on the underlying anti-SLAPP ruling despite having fully exhausted their right to review of this court's order granting the anti-SLAPP motions: (Respondents' Brief attached to the NOL as Exhibit E; RFJN, No. 5). On April 7, 2025, Plaintiffs' Reply Briefing was filed. (Plaintiffs' Reply Brief attached to the NOL as Exhibit F; RFJN, No. 6).

On June 3, 2025, the Court of Appeal issued an order indicating that "[o]n its own motion, the court [was] considering whether to impose monetary sanctions against appellants' counsel Tracy L. Henderson and/or appellant Nicole Ward for prosecuting a frivolous appeal." (June 3, 2025 Order attached to the NOL as Exhibit G; RFJN, No. 7). The Court of Appeal provided Plaintiffs and their counsel 10 days to file briefing opposing the imposition of sanctions. (Id.) The Order noted that oral argument on the merits of the attorney's fees and costs issue had been waived, and that the matter would be set for oral argument on the issue of sanctions only. (Id.)

On June 13, 2025, Plaintiffs filed a brief opposing the imposition of sanctions, however, the briefing continued to largely focus on the underlying anti-SLAPP rulings and the Court of Appeal's decision affirming the anti-SLAPP rulings (hereinafter referred to as *Opinion D*). (Plaintiffs' June 13, 2025 Opposition Brief, attached to the NOL as Exhibit H; RFJN, No. 8). In that briefing, Plaintiffs insisted that their "jurisdictional" argument challenging the underlying anti-SLAPP ruling and *Opinion I* was not only meritorious, but correct. Plaintiffs argued that the Court of Appeal's order regarding possible sanctions demonstrated "a fundamental lack of fair, unbiased review" and that the "prior rulings in this case represents [sic]

an egregious abuse of power by the judiciary.” Plaintiffs went on to claim that the reason that *Opinion I* was unpublished was to cover up this purported abuse of power. Further, Plaintiffs claimed that *Opinion I* had overruled all existing precedent on the interpretation of California’s anti-SLAPP statute and unilaterally expanded the Court of Appeal’s own jurisdiction. (See Exhibit H). However, very little time was spent addressing the standards for imposing sanctions or explaining why the continued pursuit of the appeal of an attorneys’ fees and costs order was not frivolous.

Oral argument was heard on September 12, 2025, and the Court of Appeal’s Opinion was filed on September 29, 2025 (*Opinion II*). (See September 29, 2025 Order from the Court of Appeal (*Opinion I*) attached as Exhibit I to the NOL; RFJN, No. 9). *Opinion II* affirmed the award of attorneys’ fees and costs. In doing so the Court of Appeal stated:

In this appeal from the subsequent fees order, plaintiffs make no genuine challenge to the fees order itself and instead seek to relitigate the validity of the underlying anti-SLAPP ruling and the merits of their prior appeal. We conclude that this appeal is frivolous. Accordingly, we affirm the fees order and impose [\$13,000 in] sanctions against appellants’ counsel Tracy L. Henderson for prosecuting a frivolous appeal. (*Opinion II* pg., 2).

Not only did the Court of Appeal note that there was no difficulty finding the appeal frivolous (*Opinion II* pg., 9), it noted that it had already considered and rejected the arguments being made by Plaintiffs in

Opinion I. The Court of Appeal pointed to the law of the case doctrine which prevents the parties from seeking appellate reconsideration of an already decided issue in the same case. The Court of Appeal highlighted that even if the law of the case doctrine did not apply, Plaintiffs' arguments were still meritless because: (1) the prong one anti-SLAPP arguments in the prior appeal were rejected; (2) the arguments regarding excess jurisdiction and a constitutionally void order were based on the false premise that the prong one anti-SLAPP analysis was wrong; and (3) even if the trial court and Court of Appeal were wrong about the prong one anti-SLAPP analysis, its decision in *Opinion I* would not amount to an act in excess of its jurisdiction (*Opinion II* pgs. 10-11). The Court of Appeal also rejected the due process arguments raised by Plaintiffs, indicating that full briefing and oral argument had occurred and that while Plaintiffs "may be dissatisfied with the outcome, there was no conceivable due process violation" (*Opinion II* pg. 12).

The Court of Appeal further provided its basis for awarding \$13,000 in sanctions against counsel for Plaintiffs, stating that:

A cost analysis undertaken by the clerk's office for the Second District estimated that the cost of processing an appeal resulting in an opinion was approximately \$8,500 in 2008, while another calculation made in 1992 gave a conservative estimate of \$5,900 to \$6,000. (Ibid.) According to the United States Bureau of Labor Statistics inflation calculator, these figures are equivalent to approximately \$13,000 in today's dollars. (CPI Inflation

Calculator, U.S. Bureau of Labor Statistics (2025)

<https://www.bls.gov/data/inflation_calculator.htm> [as of September 18, 2025], archived at <<https://perma.cc/PCB6-MQSZ>>.) We will therefore impose sanctions against appellants' counsel Tracy L. Henderson in the amount of \$13,000, payable to the clerk of this court.

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The Court of Appeal specifically indicated that, “[o]ur award of sanctions against plaintiffs’ appellate counsel does not preclude defendants from seeking to recover additional fees for this appeal under the anti-SLAPP statute by motion in the trial court after issuance of the remittitur. (Cal. Rules of Court, rule 3.1702(c).)” (*Opinion II* pg. 14).

No Petition for Rehearing was filed by Plaintiffs. However, a Petition for Review was filed on November 12, 2025. (See Exhibit J to the NOL; RFJN, No. 10). Defendants filed an Answer to the Petition for Review on December 2, 2025. (See Exhibit K to the NOL; RFJN, No. 11). An *amicus* letter was filed on behalf of Foundation for Individual Rights and Expression (FIRE) which contained numerous misstatements. (See Exhibit L to the NOL; RFJN, No. 12). As a result, Defendants filed a responsive letter (see Exhibit M to the NOL; RFJN, No. 13) and the Petition for Review was summarily denied on December 30, 2025. (See Exhibit N to the NOL; RFJN, No. 14). Remittitur was issued on January 6, 2026, which further provided that “[r]espondents are entitled to recover

their costs on appeal.” (See Exhibit O attached to the NOL; RFJN, No. 15). As a result, Defendants bring this motion to recover the attorneys’ fees and costs incurred by Defendants as a result of Plaintiffs’ ongoing frivolous efforts to reverse this Court’s rulings.

III.

STATUTORY AUTHORITY FOR AN AWARD OF ATTORNEYS’ FEES AND COSTS

Attorneys’ fees and costs must be granted by the Court when required by statute or law. Code of Civil Procedure §§ 1033.5(a)(10)(A)(B)(C) and 425.16(c). Such a request must be brought via a noticed motion pursuant to California Rules of Court, Rule 3.1702(b). Code of Civil Procedure § 425.16 provides that “a prevailing defendant on the special motion to strike shall be entitled to recover his or her attorneys’ fees and costs.” Code of Civil Procedure § 425.16(c). Further, California Rules of Court, Rule 8.278(a)(1) provides that “the party prevailing in the Court of Appeal in a civil case other than a juvenile case is entitled to costs on appeal.”

The trial court’s authority to award fees and costs under Code of Civil Procedure § 425.16(c), includes authority to award fees incurred in responding to an appeal of an order granting a special motion to strike. See Wilkerson v. Sullivan (2002) 99 Cal.App.4th 443, 448; see also California Rules of Court, Rule 8.278(a). “A statute authorizing an attorney fee award at the trial court level includes appellate attorney fees unless the statute specifically provides otherwise.” Evans v. Unkow (1995) 38 Cal.App.4th 1490, 1499. Code of Civil Procedure § 425.16(c) does not preclude recovery of appellate attorney fees; hence attorney

fees recoverable under the statute include appellate fees. Ibid.; see also Dove Audio, Inc. v. Rosenfeld, Meyer & Susman (1996) 47 Cal.App.4th 777, 785.

Pursuant to California Rules of Court, Rule 8.278(c)(1), within 40 days after issuance of the remittitur, a party claiming costs awarded by a reviewing court must serve and file in the superior court a verified memorandum of costs under rule 3.1700. Similarly, California Rules of Court, Rule, 3.1702(c)(1) provides that “[a] notice of motion to claim attorney’s fees on appeal...under a statute or contract requiring the court to determine entitlement to the fees, the amount of the fees, or both, must be served and filed within the time for serving and filing the memorandum of costs under rule 8.278(c)(1) in an unlimited civil case . . .” Remittitur was issued in this case on January 6, 2026 as such, this motion and the concurrently filed memorandum of costs are timely.

IV.

THE ATTORNEYS’ FEES AND COSTS REQUESTED ARE REASONABLE

Courts use the “lodestar” method to determine a reasonable award of attorneys’ fees pursuant to Code of Civil Procedure § 425.16. Ketchum, supra at p. 1136; Cabral v. Martins (2009) 177 Cal.App.4th 471, 491. Under this method, a court assessing attorneys’ fees begins with a touchstone or “lodestar” figure, based on “the careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case.” Ketchum, supra at p. 1131-1132. Serrano v. Priest (1977) 20 Cal.3d 25, 48. The lodestar is “the basic fee

for comparable legal services in the community.” Ketchum, *supra* at p.1132; Serrano, *supra* at p. 48.

Prevailing hourly rates are used as the basis for the lodestar figure, which may be adjusted by the court based on factors including: (1) the novelty and difficulty of the questions involved; (2) the skill displayed in presenting them; (3) the extent to which the nature of the litigation included other employment by attorney; and (4) the contingent nature of the fee award. Ketchum, *supra* at p. 1132; Serrano, *supra* at p. 49. “Absent circumstances rendering the award unjust, an attorney fee award should ordinarily include compensation for all the hours reasonably spent, including those relating solely to the [recovery of the] fee.” Ketchum, *supra* at p. 1133.

Defendants have submitted declarations of counsel in this case that establish that the rates sought are reasonable given the facts, and in relation to similar matters for attorneys with the experience of the attorneys handling this case. (See Declarations of Randall L. Winet and Erin N. Taylor). Defendants are not seeking an enhanced rate under the lodestar method or a higher reasonable rate, despite the fact that an enhanced rate could be requested. Instead, the Defendants are seeking the rates actually charged by its retained attorneys to defend the matter. These rates, agreed to by the Defendants and their counsel, are lower than a reasonable and customary rate for these attorneys. Further, Defendants are seeking the costs which were actually incurred as set forth in the Declaration of Randall L. Winet and presented to this Court through the concurrently filed memorandum of costs pursuant to California Rules of Court, Rules 8.278(c)(1) and 3.1700.

A. Total Fees and Costs Requested

In accordance with the declarations of Randall L. Winet and Erin N. Taylor filed in support of this motion, Defendants respectfully request that this Court award a total of \$23,294.00 in attorney's fees and \$29.08 in costs. These amounts were incurred by Defendant and represent the actual cost to the Defendants to resist Plaintiffs' ongoing efforts to overturn this Court's order.

B. Defendants' Prevailed on Appeal

There can be no question that the Defendants in this case prevailed on appeal in connection with Plaintiffs' efforts to challenge this Court's original award of attorney fees following the grant of Defendants' anti-SLAPP motions. The Court of Appeal affirmed the fee award in its entirety, and Plaintiffs did not substantively address any alleged error in the amounts awarded or the basis for the fees in their appellate briefing, other than passing reference to the anti-SLAPP motions being duplicative (which was inaccurate). Nor did Plaintiffs request oral argument, thereby waiving the opportunity to present any further challenge to the propriety and reasonableness of the fees that this Court awarded. Not only was Plaintiffs' prosecution of the appeal entirely defective, the Court of Appeal sanctioned Plaintiffs' counsel on its own motion for filing and pursuing a frivolous appeal. The Court of Appeal's order specifically indicated that the Defendants are entitled to recover their fees and costs. Subsequently, the California Supreme Court denied Plaintiffs Petition for Review, further affirming that Defendants are the prevailing party.

C. The Court Should Award All Reasonable Attorneys' Fees and Costs Incurred

The amount of attorneys' fees and costs awarded is within the sole discretion of the trial court. A reviewing court can only interfere with decision of trial court as to what constitutes reasonable attorneys' fees and costs where there has been a plain and palpable abuse of discretion. Shannon v. Northern Counties Title Co. (1969) 270 Cal.App.2d 686, 688-689. In determining what is a reasonable award of attorneys' fees, a court may consider a number of factors, including the nature of the litigation and its complexity, the skill and expertise required and employed, the attention given to the matter, the attorneys' experience, age and learning and the conduct of the parties. Community Redevelopment Agency of City of Santa Ana v. Matkin (1990) 220Cal.App.3d 1087, 1098-1099; Nevin v. Salk (1975) 45 Cal.App.3d 331,343. When apprised of all relevant facts, a court may also rely upon its own experience and knowledge in determining the reasonable value of attorney services. Melnyk v. Robledo (1976) 64 Cal.App.3d 618, 623-624. Where success is achieved in the matter, all hours and costs expended should receive full compensation. Here, Plaintiffs' appeal was unsuccessful. Nevertheless, Defendants were required to incur the fees and costs to defend against the appeal and as result, the Defendants should receive full compensation from Plaintiffs for the appellate fees and costs.

D. Defendants Reserve the Right to Supplement this Motion to Include Fees and Costs in Connection with Plaintiffs' Anticipated U.S. Supreme Court Filings

Plaintiffs have filed an emergency request for a stay with the United States Supreme Court and represented that they intend to file a Petition for Writ of Certiorari in the United States Supreme Court. Defendants continue to incur attorneys' fees and costs in connection with defending their successful anti-SLAPP motions and subsequent fees and costs award. Under Code of Civil Procedure section 425.16(c)(1), a prevailing defendant on an anti-SLAPP motion is entitled to recover their attorneys' fees and costs. The award is mandatory. Further, California has repeatedly recognized that this mandatory award of attorney's fees and costs extends to appellate proceedings unless expressly excluded. The United States Supreme Court is part of the appellate proceedings and Defendants will be required to oppose any stay or petition to preserve the judgment and maintain their prevailing-party status. Fees and costs incurred in opposing certiorari are therefore a necessary component of maintaining Defendants' success and will fall squarely within the compensatory purpose of section 425.16(c) if Plaintiff is not successful at the United States Supreme Court level. As such, any fees and costs reasonably incurred to respond to these filings are properly recoverable as part of Defendants' fee and cost entitlement under Code of Civil Procedure section 425.16(c)(1). Because proceedings before the United States Supreme Court are ongoing and additional fees and costs continue to accrue, Defendants further request that this Court retain jurisdiction to award all additional reasonable attorney's fees and costs incurred in connection with those proceedings, if Defendants prevail. Defendants request the Court's order provide leave to file a supplemental declaration

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or further noticed motion to quantify such additional amounts upon the conclusion of the United States Supreme Court proceedings.

V.

CONCLUSION

For the reasons set forth above, and supported by the declarations and evidence submitted concurrently herewith, the attorneys' fees and costs requested are reasonable and should be awarded to Defendants pursuant to California Code of Civil Procedure § 425.16(c). Defendants incurred these fees and costs to defend against Plaintiffs' appeal. Accordingly, Defendants should be awarded their attorneys' fees and costs in the total amount of \$23,323.08. Further, Defendants request an order which provides leave to file a supplemental declaration or further noticed motion to quantify any additional amounts incurred by Defendants upon the conclusion of the United States Supreme Court proceedings.

Dated: *02/17/2026*

WINET PATRICK CREIGHTON & HANES

By: /s/ ERIN N. TAYLOR
RANDALL L. WINET
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