

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Aurora Regino v. Kelly Staley, et al.

Regino v. Staley · No. 2:23-cv-00032-JAM-DMC · Decided March 9, 2023

SUMMARY

The United States District Court for the Eastern District of California denied Aurora Regino’s motion for a preliminary injunction challenging Chico Unified School District Administrative Regulation 5145.3. The court concluded that Regino had not shown a likelihood of success on her facial substantive or procedural due process claims, and that her as-applied challenges were premature. Although the court found that the case raised serious questions concerning parental rights and a child’s gender identity and expression at school, it determined that the remaining preliminary-injunction factors did not favor relief.

OPINION

Regino v. Staley

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10

11 AURORA REGINO, No. 2:23-cv-00032-JAM-DMC

12 Plaintiff,

13 v. ORDER DENYING PLAINTIFF’S MOTION

FOR PRELIMINARY INJUNCTION

14 KELLY STALEY, ET AL.,

15 Defendants. 16

17 Aurora Regino (“Plaintiff”) seeks a preliminary injunction 18 against Chico Unified School District Superintendent Kelly Staley 19 and school board members Caitlin Dalby, Rebecca Konkin, Tom 20 Lando, Eileen Robinson, and Matt Tennis (“Defendants”) in their 21 official capacities. Plaintiff asks this Court to enjoin 22 enforcement of school district regulation AR 5145.3, which 23 broadly covers nondiscrimination and harassment as it applies to 24 the school district’s transgender students. See Mot. for 25 Preliminary Injunction (“MPI”), ECF No. 18. Defendants oppose 26 the motion. See Opp’n, ECF No. 21. Plaintiff replied. See 27 Reply, ECF No. 27. 28 For the reasons set forth below, the Court DENIES 1 Plaintiff’s motion.

2 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

3 Plaintiff contends that the Chico United School District, in 4 which both of her children, A.S. and C.S., are students, operates 5 a policy, AR 5145.3 (the “Regulation”), that (1) permits school 6 personnel to socially transition students expressing a 7 transgender identity and (2) prohibits school personnel from 8 informing a student’s parents of this change unless the student 9 expressly authorizes them to do so. MPI at 5-6. During the 10 2021-22 school year, Plaintiff’s child, A.S., then a student at 11 Sierra View Elementary School, expressed feelings of gender 12 dysphoria to her school counselor, Mandi Robinson, specifically 13 that she identified as a boy. Id. at 6. After a couple of 14 subsequent counseling sessions, Plaintiff alleges that A.S.’s 15 counselor began socially transitioning A.S. by informing her 16 teachers that she was to be called by her new name and referred 17 to by male pronouns. Id. at 7. School personnel did not 18 disclose these developments to Plaintiff; Plaintiff further 19 alleges that Robinson actively discouraged A.S. from informing 20 Plaintiff and instead advised her to disclose her new identity to 21 other family members first. Id. Robinson also did not suggest 22 that A.S. discuss her gender dysphoria with a medical 23 professional. Id. On April 8, 2022, A.S. informed her 24 grandmother of her new gender identity, who then informed 25 Plaintiff the same day. Id. Plaintiff then spent the following 26 months in contact with school district personnel to express her 27 concerns about the Regulation and advocated for the school 28 district to change it. Id. at 8. Plaintiff alleges that 1 district personnel, including Defendants, dismissed her concerns 2 and stated that state law mandated the Regulation. Id. at 8. 3 A.S. currently does not express feelings of gender dysphoria and 4 now identifies as a girl again and is currently in counseling for 5 depression and anxiety. Id. 6 On January 6, 2023, Plaintiff filed her complaint against 7 Defendants alleging four causes of action under 42 U.S.C. § 1983: 8 two facial challenges to the Regulation under substantive and 9 procedural due process; and two as-applied challenges to the 10 Regulation under substantive and procedural due process. See 11 Compl. A couple of weeks later, Plaintiff filed the operative 12 motion for preliminary injunction seeking to enjoin Defendants 13 and all district employees from: (1) socially transitioning 14 current students without obtaining informed consent from the 15 students’ parents or guardians; (2) not obtaining informed 16 consent from the parents or guardians of all current students who 17 have previously been socially transitioned or are currently being 18 socially transitioned; (3) socially transitioning Plaintiff’s 19 children without her informed consent; and (4) not obtaining 20 Plaintiff’s informed consent if her daughters have been socially 21 transitioned in the past or are still being socially 22 transitioned. See MPI.

23 II. EVIDENTIARY ISSUES

24 A. Judicial Notice 25 Defendants request the Court take judicial notice of three 26 exhibits. See Request for Judicial Notice, ECF No. 21. Exhibit 27 A is a publication by the California Department of Education 28 outlining the frequently asked questions regarding California’s 1 School Success and Opportunity Act (AB 1266), Exhibit B is a 2 publication by the California School Boards Association detailing 3 a sample anti-harassment regulation, and Exhibit C is Chico 4 Unified School District’s Administrative Regulation 5145.3 on 5 antidiscrimination and

harassment. *Id.* at 2. All three exhibits 6 constitute government records and are, therefore, proper subjects 7 for judicial notice. *Anderson v. Holder*, 673 F.3d 1089, 1094 8 n. 1 (9th Cir. 2012); *Daniels-Hall v. National Educ. Ass’n*, 629 9 F.3d 992, 998 (9th Cir. 2010). 10 B. Expert Affidavit 11 Defendants object to Plaintiff’s submission of Dr. Stephen 12 B. Levine’s affidavit in consideration of her motion for 13 preliminary injunction. See Defendants’ Objections to Expert 14 Affidavit, ECF No. 21. Plaintiff responds that Dr. Levin’s 15 affidavit qualifies as an expert affidavit under Federal Rule of 16 Evidence (FRE) 702 and that Defendants’ objection is premature. 17 See Plaintiff’s Response to Defendants’ Objections to Expert 18 Affidavit, ECF No. 27. The Court agrees that the affidavit is 19 admissible under FRE 702. 20

21 III. OPINION

22 A. Legal Standard 23 A preliminary injunction is an “extraordinary remedy” that a 24 court may award only “upon a clear showing that the petitioner is 25 entitled to such relief.” *Winter v. Natural Resources Defense 26 Counsel, Inc.*, 555 U.S. 7, 22 (2008). To obtain a preliminary 27 injunction, a petitioner must demonstrate that: (1) they will 28 likely succeed on the merits, (2) they will suffer irreparable 1 harm in the absence of preliminary relief, (3) the balance of 2 equities tips in their favor, and (4) an injunction is in the 3 public interest. *Boardman v. Pacific Seafood Group*, 822 F.3d 4 1011, 1020 (9th Cir. 2016) (quoting *Winter*, 555 U.S. at 20). 5 Post-*Winter*, the Ninth Circuit kept a “sliding scale 6 approach” to preliminary injunctions known as the “serious 7 questions test.” *Alliance for the Wild Rockies v. Cottrell*, 632 8 F.3d 1127, 1131 (9th Cir. 2011). Under this approach, a 9 “likelihood” of success is not an absolute requirement. *Id.* at 10 1132. “Rather, serious questions going to the merits and a 11 hardship balance that tips sharply toward the [petitioner] can 12 support issuance of an injunction, assuming the other two 13 elements of the *Winter* test are also met.” *Drakes Bay Oyster Co. 14 v. Jewell*, 747 F.3d 1073, 1085 (9th Cir. 2014). 15 B. Analysis 16 1. Motion for Preliminary Injunction 17 a. Factor One: Success on the Merits 18 Plaintiff argues that she is highly likely to succeed on the 19 merits of her claims because AR 5145.3 violates her substantive 20 due process rights as a parent to A.S. as well as her procedural 21 due process rights. Plaintiff claims that she has a 22 constitutional right to direct the upbringing and education of 23 her children, citing the Supreme Court findings in *Parham v. 24 J.R.*, 442 U.S. 584, 602 (1979) that “parents possess what a child 25 lacks in maturity, experience and capacity for judgement” and the 26 “natural bonds of affection lead parents to act in the best 27 interests of their children.” MPI at 9. Plaintiff claims that 28 parental authority extends to decisions regarding the health, 1 well-being, and medical treatment of their children; while some 2 parents do not act in the best interest of their children in 3 these areas, Plaintiff argues that it would be unfair for 4 Defendants to completely supersede all parents’ authority with 5 respect to handling gender dysphoria and expression in their 6 children. *Id.* at 10. Plaintiff acknowledges that parents do not 7 have a right to dictate the curriculum that is taught to their 8 children in schools but argues that general school policies are 9 subject to judicial review and cannot supersede parental rights.

10 Id. at 10-11.

11 Plaintiff identifies four ways in which the Regulation 12 violates her substantive parental rights: (1) it interferes with 13 her right to control the important decisions in her children's 14 lives; (2) it interferes with her right to control the health, 15 well-being, and medical treatment of her children; (3) it 16 facilitates students being provided substandard and unethical 17 medical care; and (4) it goes against the presumptions of 18 parental fitness and affection. Id. at 11-15. Plaintiff further 19 claims that the Regulation does not satisfy strict scrutiny 20 because Defendants cannot demonstrate that student privacy or 21 anti-transgender discrimination are compelling government 22 interests; additionally, the Regulation does not require school 23 personnel to have evidence of parental abuse against a student's 24 transgender identity, so parents are denied information based 25 solely on a student's opinion and not on whether disclosure 26 actually poses a risk to the student's safety. Id. at 15-16. 27 The Regulation also lacks a lower age limit, so children as young 28 as five years old could be subjected to social transitioning 1 without parental knowledge or consent, which Plaintiff argues 2 does not conform with narrow tailoring under strict scrutiny.

3 Id. at 17.

4 Plaintiff also argues that the Policy is procedurally 5 defective because it interferes with parental rights without 6 requiring the state to conduct a thorough investigation, provide 7 notice to parents, or give parents the opportunity to be heard. 8 Id. 9 As for Plaintiff's substantive due process claims, 10 Defendants argue that students have a privacy right concerning 11 their personal sexual information and that Plaintiff has no 12 legally cognizable right that has been violated; Plaintiff is 13 simply attempting to dictate whether her child and other children 14 are allowed to express their preferred gender identities at 15 school. Opp'n at 14, 19. Defendants refer to a recent district 16 court decision out of Maryland that found that minor students 17 have a privacy right to maintain their gender identity a secret 18 from their parents. Id. at 14-15 (citing *John & Jane Parents 1 19 v. Montgomery Cnty. Bd. of Educ.*, 2022 U.S. Dist. LEXIS 149021 20 (D. Md. Aug. 18, 2022)). Defendants distinguish the cases cited 21 by Plaintiff, stating that they mainly cover abortion, 22 involuntary separations, or government institutions forcing 23 medically invasive procedures onto minors without parental 24 consent; Defendants argue that none of them are applicable to the 25 circumstances of the instant case. Id. at 15-17. Defendants 26 then contend that the instant case is analogous to cases 27 concerning the lack of parental rights regarding the direction of 28 a child's curriculum at school, arguing that Plaintiff cannot 1 contest the Regulation because she decided to send her children 2 to schools in the district, so she is subject to the district's 3 regulations. Id. 18-19. Defendants also argue that Plaintiff 4 cannot establish that Defendants have committed any conduct that 5 "shocks the conscience" of the Court because the Regulation 6 complies with state law. Id. at 19. 7 As for Plaintiff's procedural due process claims, Defendants 8 again argue that Plaintiff has no cognizable right that has been 9 violated by Defendants. Id. at 19-20. Therefore, these claims 10 must fail as well. Id. 11 The Court

finds that Plaintiff has failed to demonstrate a 12 likelihood of success on the merits for her claims. The Court 13 first finds that a determination on Plaintiff's as-applied 14 challenges to the Regulation are premature absent more concrete 15 factual allegations and, thus, cannot satisfy the first Winter 16 factor. As for Plaintiff's facial challenges, to establish a 17 substantive due process claim under § 1983, a plaintiff must 18 allege that (1) a federal constitutional right was violated and 19 (2) the alleged violation was committed by a person acting under 20 the color of state law. *Long v. Cnty. of Los Angeles*, 442 F.3d 21 1178, 1185 (9th Cir. 2006). To establish a procedural due 22 process claim, a plaintiff must allege that (1) they were 23 deprived of a federal constitutional right and (2) they were 24 denied adequate procedural protections. *Brewster v. Bd. of Educ. 25 of Lynwood Unified Sch. Dist.*, 149 F.3d 971, 982 (9th Cir. 1998). 26 The Supreme Court requires a "careful description of the asserted 27 liberty interest" that has been violated. *Washington v. 28 Glucksberg*, 521 U.S. 702, 720, 117 S. Ct. 2258, 2268, 138 L. Ed. 1 2d 772 (1997). In the instant case, Plaintiff has failed to 2 provide any controlling authority to suggest that the established 3 right of parents to direct the upbringing of their children 4 extends to the circumstances of this case. While the cases cited 5 by Plaintiff refer to the generally held presumptions that 6 parents act in the best interest of children and help compensate 7 for their children's lack of maturity and experience when dealing 8 with intimate and health related decisions, as noted above, 9 Plaintiff's cases are restricted to abortion, commitments to 10 mental institutions, involuntary separation by the state, and 11 forced, physically invasive testing by the state on children 12 without parental consent. None of the cases cited by Plaintiff 13 opine on whether the state has an affirmative duty to inform 14 parents of their child's transgender identity nor whether the 15 state must obtain parental consent before socially transitioning 16 a transgender child. In the absence of the requisite legal and 17 statutory support for Plaintiff's contention that she has a 18 constitutional right that was violated, Plaintiff cannot 19 establish a likelihood of success on the merits for her facial 20 substantive or procedural due process claims. 21 However, the Court notes the novel nature of Plaintiff's 22 claims and finds that Plaintiff has raised serious questions that 23 go to the merits of her case, namely what the bounds of the 24 parental right are to direct the upbringing of one's children as 25 they pertain to a child's gender identity and expression in 26 school. In fact, Plaintiff's argument in this case has 27 implications beyond gender identity and expression and can be 28 applied to any personal aspect of a child's expression in school 1 that a parent deems relevant to their health and well-being; 2 thus, sexual orientation, the expression of one's racial, ethnic, 3 or cultural identity, and other topics subject to school policies 4 could be subject to legal scrutiny under Plaintiff's theory. In 5 light of these serious questions, the Court will continue its 6 analysis of the remaining Winter factors with particular 7 consideration of whether the balance of equities tips sharply in 8 favor of Plaintiff, pursuant to *Drakes Bay*. 747 F.3d at 1085. 9 b. Factor Two: Irreparable Harm 10 Plaintiff argues that she has made a strong showing that 11 the Regulation violates her fundamental constitutional rights, 12 which is sufficient to establish irreparable injury. MPI at 19; 13 *Melendres v. Arpaio*,

695 F.3d 990, 1002 (9th Cir. 2012) (citing 14 *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Plaintiff claims in 15 her reply brief that (1) any delay in her filing for her 16 preliminary injunction is negligible, (2) she is currently 17 experiencing emotional distress arising from her concern that the 18 school district will transition her children again without her 19 consent, and (3) she has demonstrated that there is a substantial 20 risk that the school district will apply the Regulation against 21 her children in the future, all of which also constitute 22 irreparable harm. Reply at 7-9. 23 Defendants first argue that Plaintiff cannot establish that 24 there is a need for speedy action to protect her rights because 25 she waited nine months to seek injunctive relief after learning 26 of the Regulation being applied to her daughter A.S. Opp’n at 27 20. Defendants also note that A.S. has returned to identifying 28 as a girl despite the continuance of the Regulation so there can 1 be no clear showing of a likelihood of irreparable harm. *Id.* at 2 20-21. Defendants also contend that Plaintiff has failed to 3 establish an immediate threat; it is not enough that A.S. has 4 been harmed in the past or that Plaintiff’s daughters continue to 5 reside in the school district for Plaintiff to meet her burden of 6 showing that injury is likely and immediate. *Id.* at 21-22. 7 The Court find’s Defendants’ argument persuasive. A party 8 “may not obtain a preliminary injunction unless they can show 9 that irreparable harm is likely to result in the absence of the 10 injunction.” *Cottrell*, 632 F. 3d, 1135. “Indeed, suffering 11 irreparable harm prior to a determination of the merits is 12 perhaps the single most important prerequisite for the issuance 13 of a preliminary injunction.” See *Nutrition Distribution LLC v. 14 Lecheek Nutrition, Inc.*, No. CV 15-1322-MWF (MRWx), 2015 WL 15 12659907 (C.D. Cal. June 5, 2015) (internal citations omitted). 16 A party requesting a preliminary injunction must “generally show 17 reasonable diligence.” *Benisek v. Lamone*, 201 L. Ed. 2d 398, 138 18 S. Ct. 1942, 1944 (2018). A delay in seeking an injunction is 19 weighed against the moving party because an injunction is “sought 20 upon the theory that there is an urgent need for speedy action to 21 protect the [party’s] rights.” *Lydo Enterprises, Inc. v. City of 22 Las Vegas*, 745 F.2d 1211, 1213 (9th Cir. 1984); see also *Oakland 23 Trib., Inc. v. Chron. Pub. Co.*, 762 F.2d 1374, 1377 (9th Cir. 24 1985) (stating that a “long delay before seeking a preliminary 25 injunction implies a lack of urgency and irreparable harm”). The 26 Court notes Plaintiff’s nine-month delay in seeking injunctive 27 relief and finds that Plaintiff has demonstrated a lack of 28 urgency for action by the Court. The Court also finds that 1 Plaintiff is seeking to enjoin the school district to actively 2 seek the informed consent of parents to socially transition their 3 children who express a transgender identity. Thus, Plaintiff 4 seeks a mandatory injunction, which goes beyond a prohibitory 5 injunction’s maintenance of the status quo and instead compels 6 the district to take affirmative action. *Doe v. Snyder*, 28 F.4th 7 103, 111 (9th Cir. 2022). The standard for a mandatory 8 injunction is high; it will not be granted unless extreme or very 9 serious damage will result and is “not issued in doubtful cases 10 or where the injury complained of is capable of compensation in 11 damages.” *Id.* Plaintiff has not established a clear violation 12 of her constitutional rights, so she is not entitled to the 13 Court’s favor under this factor absent a showing that extreme or 14 very serious harm is certain to result absent the

injunction. 15 Plaintiff has failed to do so in this case. Plaintiff's general 16 claims of emotional distress and fear that the district will 17 apply the Regulation against her children are vague and do not 18 rise to the level of certain "extreme or very serious" harm that 19 is required for the imposition of a mandatory injunction. To the 20 contrary, Plaintiff has not demonstrated that there is any 21 immediate, irreparable harm that requires judicial intervention 22 at this time. 23 c.

Factor Three: Balance of the Equities 24 Plaintiff argues that, in cases involving the deprivation of 25 constitutional rights, the balance of equities favors the 26 plaintiff unless the government can demonstrate that the 27 injunction will seriously hamper significant governmental 28 interests, which Defendants cannot do in this case. MPI at 19. 1 Plaintiff also contends that there is no burden on the school 2 district to comply with her proposed order because schools would 3 still be permitted to socially transition students so long as 4 they obtain parental consent. Id. at 19-20. 5 Defendants respond that the balance of equities favors the 6 school district because an injunction would force the district 7 to abandon enforcement of its established regulation and 8 jeopardize the privacy rights of its students. Opp'n at 22. On 9 the other hand, Plaintiff has no applicable constitutional right 10 that has been violated and any burden that Plaintiff feels about 11 not being aware of her daughter's gender identity is not due to 12 the school district, but due to A.S.'s own decision on whether 13 to disclose it to Plaintiff. Id. 14 In exercising sound discretion, the Court "must balance the 15 competing claims of injury and consider the effect of granting 16 or withholding the requested relief," paying "particular regard 17 for the public consequences in employing the extraordinary 18 remedy of injunction." Winter, 555 U.S. at 24. The Court finds 19 that Defendants have demonstrated that the balance of equities 20 favors them, noting the burden on the school district to disrupt 21 the status quo and change its established regulation as well as 22 the potential burden on students who are currently benefiting 23 from the Regulation's protections. Plaintiff has also failed to 24 make a showing that the balance of equities tips sharply in her 25 favor, as required under the serious questions test under Drakes 26 Bay, considering Plaintiff's failure to establish a likelihood 27 of success on the merits. 747 F.3d at 1085. 28 /// 1 d.

Factor Four: Public Interest 2 Plaintiff argues that it is always in the public interest to 3 prevent the violation of a party's constitutional rights; in this 4 instance, Plaintiff has made a strong showing that the Regulation 5 violates her parental rights, so it is in the public interest to 6 grant her injunctive relief. MPI at 20. Plaintiff also claims 7 that the injunction will benefit all children and parents in the 8 district by protecting the intimate trust of the parent-child 9 relationship and reducing the psychological harm to children who 10 express different gender identities at home and school. Id. 11 Defendants argue that there is no public interest to promote 12 when parents seek to gain unfettered access to information about 13 their child's gender identity, regardless of the wishes of the 14 student, nor is there a public interest in a parent forcing their 15 own beliefs on gender on their child against their will. Opp'n 16 at 23. To the contrary, there is an interest in creating a zone 17 of protection at schools in the rare circumstances where the 18 disclosure of a child's gender expression at school could lead to 19 harm from within their family. Id. 20

Considering the Court's disposition on the other Winter 21 factors, it is not swayed one way or the other regarding the 22 public interest. Both parties raise valid concerns. It is not 23 necessarily a school's duty to act as an impenetrable barrier 24 between student and parent on intimate, complex topics like 25 gender expression and sexuality, particularly when students can 26 be as young as five years old. On the other hand, granting 27 parents unimpeded access to and control over a student's personal 28 life can result in conflict that makes students feel vulnerable

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1 and unsafe both at home and at school, depending on their 2 parents' personal beliefs. There are also practical concerns 3 about the enforceability of anti-harassment policies like the Regulation, particularly in cases where a school could be 5 | prevented from providing institutional support and protection for 6 certain marginalized identities because of parents' personal 7 beliefs. However, these concerns are not dispositive in this 8 case and are better suited for deliberation by the legislature. 9

10 Iv. ORDER

11 For the reasons set forth above, the Court DENIES 12 Plaintiff's motion for preliminary injunction. 13 IT IS SO ORDERED. 14 Dated: March 8, 2023 15 opens

JOHN A. MENDEZ

17 SENIOR UNITED*STATES DISTRICT JUDGE

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