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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

LOUIS D. BRANDEIS CENTER FOR
HUMAN RIGHTS UNDER LAW, a nonprofit
organization; and SOUTHERN
CALIFORNIANS FOR UNBIASED
EDUCATION, a membership organization of
the Louis D. Brandeis Center for Human Rights
Under Law,

Petitioners and Plaintiffs,

v.

SANTA ANA UNIFIED SCHOOL DISTRICT
BOARD OF EDUCATION; SANTA ANA
UNIFIED SCHOOL DISTRICT; and DOES
1-50, inclusive,

Respondents and Defendants.

Case No.: 30-2023-01349344-CU-JR-CJC

Honorable Erick L. Larsh – Dept. C20

**NOTICE OF MOTION AND MOTION
FOR ISSUANCE OF WRIT OF
MANDATE, INJUNCTION, AND/OR
DECLARATORY RELIEF;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Petition and Complaint Filed: September 8,
2023

First Amended Petition and Complaint Filed:
October 24, 2023

Hearing Date: September 19, 2024
Time: 1:30 pm

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on September 19, 2024, at 1:30 pm, or as soon thereafter as
3 the matter may be heard, in Department C20 of the Orange County Superior Court, located at 700 W.
4 Civic Center Drive, Santa Ana, CA 92701, Petitioners and Plaintiffs Louis D. Brandeis Center for
5 Human Rights Under Law and Southern Californians for Unbiased Education (“Petitioners”) will,
6 and hereby do, move for a writ of mandate, injunction, and/or declaratory relief against Respondents
7 and Defendants Santa Ana Unified School District Board of Education and Santa Ana Unified School
8 District (“Respondents”). Petitioners’ motion is made on the grounds that Respondents violated the
9 Ralph M. Brown Act, Cal. Gov’t Code § 54950 *et seq.*, when implementing their ethnic studies
10 graduation requirement through a standing committee closed to the public, which caused Petitioners
11 to incur injuries, and Petitioners therefore are entitled to the equitable relief they seek.

12 Petitioners’ motion will be based upon this Notice, the Memorandum of Points and
13 Authorities, Declarations and Exhibits, and Proposed Order filed in support of the motion, the entire
14 file in this action, and such evidence and argument as may be presented at the hearing of this motion.
15

16 Dated: August 23, 2024

COVINGTON & BURLING, LLP

17 By: 

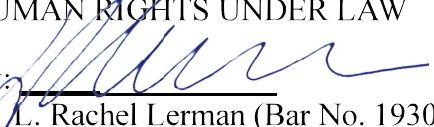
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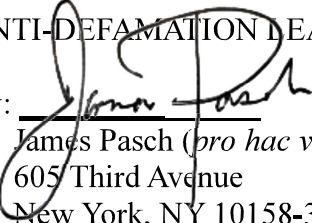
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I. INTRODUCTION

For four years and counting, the Santa Ana Unified School District (“SAUSD”) has unlawfully worked behind closed doors to create a mandatory ethnic studies program for its students, and has done so with the deliberate goal of avoiding public scrutiny of its work. In June 2020, the SAUSD Board of Education (the “Board”) created an Ethnic Studies Steering Committee (the “Steering Committee” or “Committee”) consisting of two Board members and several SAUSD staff members. The Board created the Steering Committee—a legislative body under California’s open meeting law, the Brown Act—to develop ethnic studies courses it mandated for students. Typical of a legislative body, the Steering Committee has operated continuously, with no end date. It has broad jurisdiction over a particular subject matter: the ethnic studies program at SAUSD. The Steering Committee holds regular meetings. It has agendas. It maintains minutes. It considers motions and takes votes. It retained external consultants. It created its own sub-committees. It makes policy.

In short, it does all of the things that legislative bodies do. *See* Cal. Gov. Code § 54952(b) (defining a “legislative body” to include “standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction.”). But it did all of this in secret—or “*under the radar*,” as one staff member described it—in direct violation of the Brown Act’s requirements that legislative bodies provide the public notice of and access to their meetings. And it has been dominated by two Board members—along with their personal friend, an ideologue paranoid of dissenting views—who have run it “*like a dictator*” to push forward their specific vision. As such, the Board rubber-stamped the courses created by the Committee in violation of the Act. With this Motion, Petitioners ask the Court to put a stop to SAUSD’s Brown Act violations and to unwind the actions SAUSD took based on its prior violations.

Discovery in this case has revealed not only *how* SAUSD failed to comply with the Brown Act, but also *why* SAUSD kept the creation of the ethnic studies curricula behind closed doors. SAUSD did not want members of the Jewish community or the public generally to know what was going on. The Steering Committee sought to exclude any voices—especially Jewish ones—that might stray from so-called “liberated” ethnic studies orthodoxy, which classifies Jewish people as “White—regardless of their actual skin color or historical perceptions of Jews as non-white—and the

1 Jewish people as oppressors, even though this term is wholly inappropriate when applied
2 categorically to groups or individuals based solely on the color of their skin, and is especially inapt
3 when applied to Jews of any color, given their centuries-long experience of oppression and
4 persecution, which persists into the present.

5 The California State Legislature expressly rejected this reductive philosophy when it
6 developed a state-wide ethnic studies model curriculum, in part because of bias against the Jewish
7 people. But SAUSD was determined to push forward content rejected by the Legislature at SAUSD.

8 Petitioners have uncovered deeply troubling evidence of extreme bias and antisemitism within
9 the Steering Committee. For example:

- 10 • In text messages, two senior SAUSD officials discussed scheduling ethnic studies course
11 approvals by the full Board on a Jewish holiday so Jews could not attend and comment on the
12 course content. One stated: “on a good note...no public comment on ethnic studies. *We may*
13 *need to use Passover to get all new courses approved.*” The other official responded: “that’s
14 actually a good strategy.” Declaration of Zachary Glasser (“Glasser Decl.”), Ex. 1 at 3.¹
- 15 • In discussing the removal of the only Jewish member from the Steering Committee, a
16 Committee leader referred to him in a text message as a “*colonized Jewish mind*” and a
17 “f---ing baby” for expressing concerns over antisemitism on the Steering Committee. Ex. 2.
- 18 • Jewish staff members at SAUSD privately expressed concern about the “*thinly veiled*
19 *antisemitism*” by Steering Committee members, which created a hostile work environment.
20 Ex. 3; Ex. 4 at 3.
- 21 • In discussing a potential meeting with the Jewish Federation of Orange County, a Committee
22 leader (and SAUSD curriculum specialist) said “someone has to guide [Committee members]
23 or they will cave in to . . . *the racist Zionists.*” Ex. 5. Despite using such language to
24 describe Jews who support the State of Israel, this same Committee member refused to call
25 Hamas a terrorist organization even after it perpetrated the horrific terrorist attack of October
26

27 ¹ All exhibits cited herein are to the Glasser Declaration. Exhibits 1, 2, 3, etc. are to documentary
28 evidence, and Exhibits A, B, C, etc. are to deposition testimony transcripts.

1 7, 2023, arguing that it would be “dehumaniz[ing]” to call Hamas fighters “terrorists.” Ex. 6;
2 Ex. A at 255:12–15.

- 3 • Senior members of the Steering Committee reportedly stated, among other things, that “Jews
4 are not a disadvantaged ethnic group in the U.S. because they were never slaves,” that “Jews
5 greatly benefit from white privilege, so they have it better,” and that “we don’t need to give
6 both sides. We only support the oppressed, and *Jews are the oppressors.*” Ex. 7.
- 7 • When made aware of Jewish community concerns, Committee members wrote in an official
8 agenda of a (private) subcommittee meeting how to “*address the Jewish question.*”² Ex. 8.
- 9 • Without conducting any due diligence or a competitive bidding process, the Steering
10 Committee retained an external consultant to train SAUSD teachers on ethnic studies.
11 SAUSD hired this consultant despite a serious prior domestic violence charge and unhinged
12 social media rantings in which he used antisemitic tropes about “Zionist control,” claimed that
13 “the Zionist Jewish Caucus hijacked Ethnic Studies,” and asked “how TF can anyone support
14 the settler colonial state of Israel?” Ex. 9; Ex. 10; Ex. 11.

15 It is against this backdrop that Petitioners ask the Court to find that SAUSD violated the
16 Brown Act and did so intentionally. Based on the evidence set forth below, Petitioners ask the Court
17 to grant the following, narrowly tailored relief: (1) declare that the proceedings of the Steering
18 Committee to date have been in violation of the Brown Act; (2) order SAUSD and the Steering
19 Committee to abide by the Brown Act in all future meetings; (3) declare that all acts taken by the
20 Board to date based on the recommendations of the Steering Committee are invalid, including
21 approval of the Ethnic Studies World Geography, World Histories, Honors: Perspectives, Identities,
22 and Social Justice courses, and any other courses developed by the Steering Committee in violation
23 of the Brown Act; and (4) order that any ethnic studies courses created by the Steering Committee be
24 resubmitted to the Board for approval only after going through properly noticed open meetings of the
25 Steering Committee that allow for public comment.

26 ² The Steering Committee’s unfortunate use of the phrase “the Jewish question” recalls the period
27 before World War II in Europe when “a central goal of the Nazi Party from its beginnings was to
28 solve ‘the Jewish Question’ in Germany. See <https://encyclopedia.ushmm.org/content/en/article/the-jewish-question>.

II. STATEMENT OF FACTS

A. California Developed a Model Curriculum and Imposed Guardrails on Curricula Developed Locally in Lieu of the Model Curriculum

Before SAUSD implemented its ethnic studies program, officials at the state level contended with many of the issues presented here in developing a state-wide model ethnic studies curriculum. In 2016, Governor Jerry Brown signed AB 2016, which required California’s Instructional Quality Commission (IQC) to develop a model curriculum for ethnic studies courses. Cal. Educ. Code § 51226.7. The State Board of Education (“SBE”) appointed an advisory committee in January 2019 to develop the curriculum. The advisory committee produced a draft curriculum in May 2019.³ But in August of that year, in light of public input and criticism, the SBE rejected the advisory committee’s draft curriculum for “fall[ing] short” of a model that is “accurate, free of bias, [and] appropriate for all learners.”⁴ The IQC then substantially revised the curriculum several times, creating a new version in March 2021 (“2021 ESMC”), which the Legislature approved.

But members of the original advisory committee continued to push forward their rejected version of ethnic studies. Two advisory committee members, for example, founded the Liberated Ethnic Studies Model Curriculum Consortium (“LESMCC”), a group committed to promoting the content in the rejected 2019 draft. Ex. A at 134:14–22, 135:15–140:3. The LESMCC created the “Liberated Ethnic Studies Model Curriculum” (“LESMC”) to serve as an alternative to the 2021 ESMC, based on the original 2019 draft. See Ex. A at 134:19-22 (“[The LESMC] is based off of the original Ethnic Studies Model Curriculum.”). Original committee members characterized the 2021 ESMC in a public letter as a “compromised [curriculum] due to political and media pressure.”⁵

On October 8, 2021, Governor Gavin Newsom signed into law AB 101, which established California’s ethnic studies high school graduation requirement. The previous year, Governor

³ Ethnic Studies Model Curriculum Events, Cal. Dep’t of Educ., <https://www.cde.ca.gov/ci/cr/cf/ethnicsmilestoneevents.asp>.

⁴ State Board of Education President Darling-Hammond, Vice President Straus and Member Ortiz-Licon Issue Joint Statement on Draft Ethnic Studies Model Curriculum, Cal. State Bd. of Educ. (Aug. 12, 2019), <https://www.cde.ca.gov/be/pn/nr/yr19sberel01.asp>.

⁵ Letter from Ethnic Studies Model Curriculum Advisory Committee Members of 2019 to State Board of Education to “Remove Names from Ethnic Studies Model Curriculum” (Feb. 3, 2021), <https://savearabamericanstudies.org/wp-content/uploads/2021/03/Letter-to-CDE-2.3.2021.pdf>.

1 Newsom vetoed a similar bill, citing “uncertainty” surrounding the Model Curriculum and noting that
2 the “latest draft”—even after over a year of changes to the original advisory committee’s
3 “insufficiently balanced and inclusive” draft—“still need[ed] revision.”⁶ The 2021 ESMC addressed
4 these concerns. For example, the 2021 ESMC broadened the earlier draft’s narrow focus to include
5 lessons about numerous ethnic groups that have shaped California, including Jewish Americans, Arab
6 Americans, and Armenian Americans.⁷ In signing AB 101, Governor Newsom endorsed “guardrails
7 to ensure that courses will be free from bias or bigotry and appropriate for all students.”⁸ Chief
8 among these “guardrails” is AB 101’s “express[ion of] the Legislature’s intent that courses should
9 not include portions of the initial draft curriculum that had been rejected by the [IQC] due to concerns
10 related to bias, bigotry, and discrimination.” *Id.*; *see also* Cal. Educ. Code § 51225.3(a)(1)(G)(vi).

11 **B. The SAUSD Board Created an Ethnic Studies Steering Committee**

12 On June 9, 2020, following the rejection of the SBE advisory committee’s initial model
13 curriculum, the SAUSD Board unanimously adopted a resolution (the “ES Resolution”) that enacted
14 a new ethnic studies graduation requirement for all students, set to begin with ninth grade students in
15 the 2022-2023 academic year, ahead of the state-wide ethnic studies requirement, which takes effect
16 with the graduating class of 2030. Ex. 12; Cal. Educ. Code § 51225.3(a)(1)(G). The ES Resolution
17 directed the Superintendent to form a “task force” “consisting of Board members, administrators,
18 teachers, staff, parents, and students” to “recommend the best way to implement the ethnic studies
19 requirement.” Ex. 12. Nowhere did the resolution speak of an expected end date or timeframe for
20 the work to be completed. *Id.* Within a few months, the task force became known as the Ethnic
21 Studies Steering Committee (“Steering Committee” or “Committee”). Ex. 13 at 1–2; Ex. B at 66:10–
22 15; Ex. C at 22:3–6; Ex. D at 25:3–5; Ex. E at 35:13–36:14. Notwithstanding the name change, the
23 Steering Committee derived its authority from the ES Resolution. Ex. B at 66:13–15; Ex. 24.

24 ⁶ Governor’s veto message to Assem. on Assem. Bill No. 331 (Sep. 30, 2020) Recess J. No. 25 (2019-
25 2020 Reg. Sess.) p. 5566, <https://www.gov.ca.gov/wp-content/uploads/2020/09/AB-331.pdf>.

26 ⁷ Cal. Dep’t of Educ., *Ethnic Studies Model Curriculum* (2022),
<https://www.cde.ca.gov/ci/cr/cf/documents/ethnicstudiescurriculum.pdf>.

27 ⁸ Governor’s signing message to Assem. on Assem. Bill No. 101 (Oct. 8, 2021) Recess J. No. 12
28 (2021-2022 Reg. Sess.) p. 3248; <https://www.gov.ca.gov/wp-content/uploads/2021/10/AB-101-Signing-Message-PDF.pdf>.

1 The Committee’s work focused solely on a specific subject matter: developing the Ethnic
2 Studies program at SAUSD, including overseeing the drafting of course curricula and teacher
3 trainings on the subject. Ex. B at 67:2–12; *id.* at 86:22–25; Ex. A at 197:7–18, 202:5–10. The
4 Steering Committee was a standing committee that met continuously and at no point required Board
5 authorization to continue or renew its work. Ex. E at 60:23–61:25; Ex. B at 135:4–10. It held regular
6 monthly meetings. Ex. E at 57:15–16. And the Committee has continued its meetings over the last
7 four years through to the present, with meetings scheduled throughout this year. *See, e.g.*, Ex. 14
8 (meeting invite for May 9, 2024 meeting). No SAUSD witness even speculated about a potential end
9 date for the Steering Committee’s work. *E.g.*, Ex. E at 60:23–61:25; Ex. B at 70:3–6; Ex. A at
10 105:22–106:4; Ex. D at 25:16–26:3. In short, the Steering Committee is not limited to a specific
11 term, nor required to accomplish a defined task within a defined period.

12 The Steering Committee has had meeting agendas, maintained minutes, considered motions,
13 and held votes. *See, e.g.*, Ex. 15; Ex. 16; Ex. 17; Ex. B at 71:5–7; Ex. D at 32:1–4. It has also
14 created and overseen various subcommittees, whose members often undertook further work of
15 drafting ethnic studies courses. Ex. B at 69:13–70:2; *id.* at 86:22–25; Ex. D at 32:1–19. But all
16 courses were ultimately taken to the Steering Committee, which decided “whether the course is ready
17 or not ready” to be sent to the full School Board for approval. Ex. E at 71:17–73:12; *see also* Ex. B
18 at 69:18–70:2 (“[The subcommittees] would come back and present, and then we would work it
19 through the steering committee as a whole”).

20 **C. The Steering Committee’s Work Is Driven by Board Members to Advance Their**
21 **Ideological Vision—While Silencing Diverging Perspectives**

22 From its inception, SAUSD staff understood that the ethnic studies program was a “passion
23 project” of two Board members: Rigo Rodriguez and Carolyn Torres. Ex. 18 at 3. The Board
24 appointed Rodriguez and Torres to the Steering Committee at the time it was formed. *See* Ex. 19.
25 Rodriguez personally advocated that he and Torres be part of the Committee, over the objections of
26 other Board members. Ex. 20; Ex. B at 51:10–14, 54:9–11. The inclusion of two Board members on
27
28

1 a Board-created committee like this is uncommon. Ex. C at 147:4–149:2; Ex. B at 56:7–9.⁹ Indeed,
2 Rodriguez and Torres were not merely honorary members of the Committee. Their involvement was
3 so “in the weeds” that an administrator with decades of experience described them as both acting
4 **“like a dictator.”** Ex. D at 28:2, 29:20–21. Those involved understood that the Steering
5 Committee’s purpose was to **“serve the board.”** Ex. 21 at 4; *see also* Ex. 22 (Torres expressing
6 concerns “about the ethnic studies curriculum development” and calling a meeting with an Assistant
7 Superintendent); Ex. 23 (Rodriguez telling the Superintendent that he is “frustrated with the poor
8 communication and planning regarding ethnic studies” and demanding, “When am I going to start
9 seeing better planning, instead of good apologies?”); Ex. D at 53:13–15 (“I’ve never been on a
10 committee where a board member has taken an active role except ethnic studies.”).

11 Other than Rodriguez and Torres, the other members of the Committee consisted of a narrow
12 and insular group of individuals who were “close to the board members” and were **“handpicked”** to
13 promote and implement a particular, “very pro-ethnic studies” vision, **without any “naysayers.”**
14 Ex. D at 23:19–20, 26:11–13; Ex. E at 44:3–13; Ex. 24. Despite the ES Resolution’s clear mandate,
15 it did not include any parents or students. Ex. F at 154:2–6. Torres’s and Rodriguez’s involvement
16 created a culture of censorship that silenced the viewpoints of anyone who was not deemed an ethnic
17 studies “expert” or purist; no one else was “allowed to have opinions.” Ex. D at 28:19–21, 55:15–16,
18 66:3–5, 122:20–123:4, 135:2–4.

19 Torres made it clear that she “had a vision”—namely to prevent adoption of a **“watered-down**
20 **ethnic studies course.”** *Id.* at 42:15–16. In one early meeting in March 2021, Torres “reiterated and
21 clarified, when pulling people in, [the Steering Committee] would need to be aware of who will be
22 associating in Ethnic Studies work,” lest anyone who was not deemed an “expert” be associated with
23 the work. Ex. 25 at 2; Ex. D at 41:21–42:7. When one Committee member suggested opening up
24 certain subcommittees to have representatives with other credentials, her **“head was cut off” by**
25 **Torres.** *Id.* at 28:13–18. This attitude reached a low point when that Committee member—who was
26 present by virtue of her title and seniority, notwithstanding the efforts to “handpick” members —was

27 _____
28 ⁹ The choice to have less than a quorum of three Board members was intentional, to avoid having to
comply with the Brown Act. Ex. F at 78:1–5; Ex. B at 48:2–7.

1 told by her boss, an Assistant Superintendent, that she was ***“too White”*** and ***“not Brown enough”*** to
2 be involved in the substance of the ethnic studies work. *Id.* at 28:19–20, 133:11–16, 134:15–20,
3 164:14–18. Instead, her boss told her that she should work “from behind”—even though she had
4 seniority over many other members of the Committee. *Id.* at 28:19–20.

5 Much of this culture was also driven by Employee 1,¹⁰ a ***“domineering”*** Steering Committee
6 member and personal friend of Rodriguez and Torres. *Id.* at 35:12–13; Ex. B at 89:14–24; Ex. F
7 at 96:15–97:1; Ex. A at 28:23–29:8. Tellingly, Employee 1 served on the state-level advisory
8 committee that created the rejected 2019 draft of the Ethnic Studies Model Curriculum. She
9 considered it “horrific” that so-called “non-experts of ethnic studies” “watered . . . down” “tru[e]”
10 ethnic studies—*i.e.*, the original 2019 draft—into “a multicultural . . . let’s all just get along
11 program.” Ex. A at 47:4–49:4. Employee 1 thus did not want SAUSD’s ethnic studies curriculum to
12 be “watered-down” as the state’s revised Ethnic Studies Model Curriculum supposedly had been.
13 Ex. A at 48:3–50:2, 109:24–111:14. She responded with hostility toward anyone who did not share
14 her views on this, and made her hostility known to Rodriguez and Torres. In text messages to them,
15 Employee 1 explained that she was “really concerned about who is going to be creating the Ethnic
16 Studies core courses” because she was “feeling like ***there’s a welling up of white resentment*** and
17 conservative [people of color] ***within my ranks.***” Ex. 26; Ex. A at 153:10–156:4. She also reported
18 that ***“we have anti [ethnic studies] snakes in the grass,”*** to which Rodriguez replied, “Thanks for
19 sharing this information . . . Some individuals will help and others obstruct, so it’s good to start
20 identifying them based on their actions.” Ex. 27. On another occasion, Employee 1 wrote that ***“we***
21 ***have a strong wave of white fragility coming toward us and we need to deal with it.***” Ex. 28 at 3.
22 Her race-based paranoia was so explicit that she told Rodriguez that she felt “like I’m in a haunted
23 house lol looking around each corner. Afraid of my own shadow.” Rodriguez’s response?
24 ***“Evidence supports your claim.”*** *Id.*

25 Leveraging her relationship with Rodriguez and Torres, Employee 1 reported her concerns
26 about the Steering Committee’s work directly to them, although she was many levels below them in

27 ¹⁰ To protect their privacy, the identities of SAUSD employees, other than elected Board members,
28 have been anonymized.

1 the District’s hierarchy. Ex. D at 50:18–51:4, 51:24–52:3, 163:24–164:18. The Board members then
2 communicated these concerns to a more senior employee, and the concerns eventually “trickle[d]
3 down” to the Steering Committee. *Id.* Accordingly, even when Rodriguez and Torres tried to give
4 the impression that they had taken a less active role in the Committee, they were still pulling strings
5 behind the scenes. They ceded authority to Employee 1, who picked up the “dictator” mantle and
6 exerted overbearing control as the “driver” of the Committee’s work. Ex. D at 35:12; *see also* Ex. 29
7 at 2 (“I’m just going to do my work and only speak when spoken to [] since [Employee 1] . . . is *a*
8 *control freak.*”); Ex. D at 95:14–15 (“[A]nything I said to [Employee 1] would be twisted and get
9 back to a board member.”); Ex. 30 at 2 (text message from another SAUSD employee describing
10 Employee 1 as being “*out of control*”).

11 The Steering Committee also retained two outside consultant groups—university professors
12 Gilda and Enrique Ochoa, and the Xicanx Institute for Teaching and Organizing (“XITO”)—to assist
13 with curriculum development and teacher training, respectively. Ex. 31 at 1–2; *see also* Ex. D at
14 94:6–10 (“[Torres] was adamant that teachers could not teach ethnic studies unless they went through
15 some type of extensive training . . . so that’s why XITO was hired.”). But these groups did not bring
16 in a diverse perspective; to the contrary, Employee 1 hand-selected them for their ideological
17 alignment with the Board members and Employee 1, without any open or competitive bidding
18 process. Ex. E at 178:20–179:25; Ex. D at 70:5–7; Ex. A at 201:7–8. And as discussed further
19 below, these consultants brought more biased views into the Steering Committee’s work.

20 **D. The Steering Committee Operates in Secret, Despite Knowledge of Keen**
21 **Community Interest**

22 Given how closed off the Steering Committee was to differing perspectives even from within
23 SAUSD, it is no surprise that the Steering Committee did nothing to solicit or listen to voices from
24 the broader community, let alone from groups that the proposed curriculum planned to disparage.
25 Steering Committee members, including Rodriguez and Torres, knew that the ethnic studies program
26 implicated issues of interest to the Santa Ana community generally—and to the Jewish community in
27 particular. But they did nothing to allow for community input, as the Brown Act required them to do.
28 The Committee did not post agendas or issue any public notice of their meetings. Ex. E at 65:13–24;

1 Ex. D at 33:11–13. The meetings were not open to public participation in any way, shape, or form.
2 Ex. E at 62:1–3; Ex. D at 48:20–22. This was a deliberate choice by members of the Steering
3 Committee. They knew that ethnic studies could be a contentious issue about which many
4 constituencies feel passionate. Ex. F at 42:17–19. They also knew that when a similar curriculum
5 had been proposed at a state level, it had drawn widespread criticism and condemnation. Ex. B at
6 88:11–21. Accordingly, the Steering Committee wanted to avoid public scrutiny and, ultimately,
7 public interference. SAUSD personnel mused about a lack of “opponents” to their ethnic studies
8 because “course writing ha[d] been pretty ‘*under the radar.*’” Ex. 32 at 2–3. In fact, some members
9 of the Committee privately discussed the need to have more community engagement, but they knew
10 the Board members would not agree. Ex. 21 at 4 (“It really does not need to be this difficult. You
11 cannot have a healthy ethnic studies without active engagement from our community . . .” “We so
12 agree but as we know we serve the [B]oard”).

13 From the very beginning, the Steering Committee was on notice about Jewish community
14 interest in particular. Back in 2020, the *day after* the SAUSD Board passed the ES Resolution, a
15 student at a Santa Ana-based charter high school wrote to the Superintendent expressing her concerns
16 about antisemitism in the first draft of the state’s Model Curriculum and her desire to serve on the
17 Steering Committee. Ex. 33 (“I am happy that SAUSD has passed the Ethnic Studies
18 requirement . . . at a time so critical in this nation’s history for fighting racism. However, the current
19 ESMC draft . . . was widely critiqued for fueling hatred and discrimination [and] having anti-Semitic
20 bias.”). Nobody responded to the student. *Id.* SAUSD personnel all the way up to the Board were
21 also familiar with the state-level battles over the first, biased version of the Model Curriculum. Ex. B
22 at 88:11–21; Ex. A at 48:3–11. On one occasion in July 2020, Employee 1 texted Rodriguez and
23 Torres to lament how State Superintendent of Education Tony Thurmond “gave into [the] Jewish
24 Caucus faster than a falling napkin hits the floor.” Ex. 34 at 2. Rodriguez’s response? “Got it.” *Id.*;
25 *see also* Ex. B at 214:14–17 (“Q: You were aware [in July 2021], then, that Jewish groups had
26 concerns about ethnic studies and the potential for antisemitism? A: In a broad sense, yes.”).

27 Over the next two years, Jewish community groups repeatedly reached out to SAUSD to
28 express their interest in ethnic studies, well in advance of the Board’s adoption of the biased

1 curricula. In May 2021, the Jewish Federation of Orange County and the Anti-Defamation League
2 (“ADL”) wrote to the Superintendent and Rodriguez to encourage the use of the revised state Model
3 Curriculum and offered to collaborate. Ex. 35. Torres wrote to the Superintendent and Rodriguez,
4 “We need to have a discussion about this. There are atrocities going on in Palestine right now.” *Id.*
5 Thus, not surprisingly, SAUSD ignored this outreach. In July 2021, a staff member of StandWithUs,
6 another Jewish community group, wrote to Rodriguez expressing her “robust” support for ethnic
7 studies but noting her concerns with “lesson plans or language within the field [that] perpetuate
8 antisemitism.” Ex. 36. Again, Rodriguez did not respond. *Id.* In December 2022, another Jewish
9 advocacy group, the Deborah Project, reached out to warn of problems with the Liberated Ethnic
10 Studies Model Curriculum. Ex. 37. Once again, nobody from SAUSD responded. *Id.*

11 To the Steering Committee and its key members, the Jewish community was seen simply as a
12 roadblock to their vision rather than a stakeholder and constituency that deserved to be heard. This
13 was best evidenced by an October 2022 Course and Curriculum subcommittee meeting where the
14 minutes noted a discussion on how to ***“Address the Jewish question – do we have to create a***
15 ***response.”*** Ex. 8. Utilizing an ugly term that recalls a long, dark history of antisemitism—the
16 “Jewish question”—the Committee members apparently discussed how Jews were a problem that
17 needed to be dealt with, without actually engaging with the community and addressing its concerns.
18 And when it came time for the full Board to approve certain ethnic studies courses, one senior official
19 texted to another, “on a good note . . . no public comment on ethnic studies,” and then, ***“We may***
20 ***need to use Passover to get all new courses approved.”*** The other official responded, “That’s
21 actually a good strategy.” Ex. 1 at 3.

22 E. The Steering Committee Is Infected by Antisemitism

23 The exclusion of the Jewish community was inevitable given the negative biases
24 demonstrated by some members of the Steering Committee towards Jewish people. Rodriguez freely
25 shared in his deposition his reductive belief that Jewish Americans are ***“racialized as under the***
26 ***White category”***—whatever that means—which is why they do not belong in the ethnic studies
27
28

1 curriculum.¹¹ Ex. B at 201:16–202:10; *id.* at 197:8–14.¹² This worldview guided the Steering
2 Committee’s work from its inception. In November 2020, Employee 1 wrote how Jews should not be
3 included in ethnic studies because “American Jews . . . have been able to enjoy the melting pot
4 experience after generations of being in this country” and therefore do not suffer at the hands of white
5 supremacy—demonstrably untrue statements.¹³ Ex. 39.

6 In more informal settings, the anti-Jewish language was sharper, and at times even directed at
7 individual Jewish employees at SAUSD. In texts with another SAUSD employee, Employee 1
8 referred to the Jewish Federation of Orange County as “*racist [Z]ionists*” to whom the District
9 should not “cave.” Ex. 5 at 2. She doubled-down in her deposition on her view that the Jewish
10 Federation are “racist Zionists.” Ex. A at 241:2–8. In another exchange, Employee 1 referred to the
11 lone Jewish member of the Steering Committee as a “*colonized Jewish mind*,” as well as a
12 “pretender,” a “fucking baby,” and as “stupid” because of his reservations about some of the
13 Committee’s work. Ex. 2. The other SAUSD employee “laughed” at the “colonized Jewish mind”
14 text. *Id.* Employee 1 and a different Committee member also reportedly said—in a Committee
15 meeting—that “*[Jews] have it better*” and that it wasn’t necessary to provide “both sides” because
16 “we only support the oppressed, and *Jews are the oppressors.*” Ex. 7 at 2. Employee 1 even refused
17 to label Hamas—the militant group that raped, murdered, and kidnapped Israeli Jews on October 7,
18 2023—as terrorists because that would “dehumanize” them. Ex. 6; Ex. A at 255:12–15.

19 The antisemitism was palpable to Jewish staff members at SAUSD. The lone Jewish
20 Committee member texted that he was “*sick of [Employee 1]’s thinly veiled antisemitism.*” Ex. 3 at

21 _____
22 ¹¹ Rodriguez also suggested that Arab Americans would *not* be “racially categorized” as “White,” but
23 struggled to explain why this would be different from, say Latino or Iranian Jews. And while, per
24 Rodriguez’s philosophy, Jewish Americans are not included in SAUSD’s ethnic studies curriculum
because they are “White,” Arab Americans are included. Ex. B at 205:18–208:22; *id.* at 203:8–
205:13; Ex. 38 at 4.

25 ¹² Despite his apparently deep knowledge about Jews’ “racial category,” Rodriguez testified to
26 knowing *nothing* about what Zionism is other than people “*associate . . . a negative meaning to*
Zionism.” Ex. B at 269:20–25. Of course, to Jews who feel a deep personal, cultural, spiritual, and
religious connection to the land of Israel, Zionism does not have a negative meaning.

27 ¹³ White supremacists infamously shouted “Jews will not replace us” in their torchlit march on
28 Charlottesville in 2017, and an avowed white supremacist murdered 11 Jews at the Tree of Life
synagogue in Pittsburgh in 2018.

2. He also expressed dismay when, just days after the October 7 attack, Committee members “ma[de] it sound like Jews never lived in Israel or had any history in the region. Just random Jewish [Z]ionists suddenly deciding to take over Palestine.” Ex. 40. He reported how Committee members spread an antisemitic myth about a former Israeli prime minister commenting on eating Palestinian children. *Id.* And when he told his colleagues that their comments were “personally offensive and racist,” he was told to “‘check [his] tone’ so as not to ‘ruin the spirit and mood of the room.’” Ex. 7 at 2. A *different* Jewish employee wrote that she was **“hurt about some of the things [Employee 1] and [another Committee member] said about Jews. They should know better.”** Ex. 4 at 3.

Vitriolic antisemitic views were also expressed *publicly* by Sean Arce, the head of XITO, the consultant group SAUSD hired to help train teachers on ethnic studies. Arce’s prolific social media feed consisted and still consists largely of an extended anti-Israel and extremist screed that frequently devolves into antisemitic tropes.¹⁴ He espoused on Facebook and Instagram the antisemitic trope that the state model curriculum had been “control[led]” by the Jewish Legislative Caucus and by “Zionists,” which he described as a “small white minority” whom ethnic studies was “not about.” Ex. 41; Ex. 42. He also wrote, “[h]ow TF can anyone support the settler colonial state of Israel?” and publicly endorsed the view that **“Israel is nothing more than European settler colonialism draped in religion** defended by white guilt and capitalism.” Ex. 11; Ex. 43. Just days after October 7, he posted about how the “decision by the racist democrats to send military forces to support a racist colonial occupation says everything about the nature of the settler U.S. nation.” Ex. 44. When confronted with these statements, Rodriguez and Torres refused to disavow them. Nor did they consider it problematic that someone espousing such views would be responsible for training SAUSD teachers. Ex. B at 230:10–25; Ex. F at 186:24–187:21. Employee 1 went so far as to say she would have “like[d]” at least one of these posts, had she seen them. Ex. A at 212:10–20.¹⁵

¹⁴ See <https://www.facebook.com/sean.arce/>; <https://www.instagram.com/temachtiani13/>.

¹⁵ Rodriguez, Torres, and Employee 1 also stood by Arce even when confronted with his alleged *criminal history of domestic violence*. Ex. B at 181:3–182:15; Ex. F at 181:25–182:15; Ex. A at 217:6–220:24. All that mattered to them, clearly, was ideological alignment—decency and temperament were beside the point.

1 **F. The Steering Committee Created Course Content that Violates AB 101 and**
2 **SAUSD’s Own Policies**

3 Unsurprisingly, certain Steering Committee members’ anti-Jewish biases seeped into the
4 ethnic studies curricula that it created for the full Board’s approval. In particular, two courses that
5 emerged in 2023—Ethnic Studies World Histories and Ethnic Studies World Geography—contain
6 false and damaging narratives about Israel¹⁶ and the Jewish people. For example, the World
7 Histories course includes a “teacher resource” Michael Mann’s *The Dark Side of Democracy:*
8 *Explaining Ethnic Cleansing*, a book that contains numerous biased falsehoods about Jews and Israel.
9 It says, among other things, that “Israel is the main contemporary example of settler-conquerors,” and
10 that “the Palestinian cause is decidedly proletarian in its tone, seeing its oppressor as an exploiting
11 and colonial Israel – backed up by American imperialism.”¹⁷ The World Geography curriculum, for
12 its part, promises in its course outline that “the plan by the United Nations” that created the State of
13 Israel “will be critiqued” and that “[s]tate sanctioned violence against Palestinians . . . will be placed
14 in [its] proper context as [a] consequence[] of European imperial nation-making.” Ex. 46 at 13. One
15 of SAUSD’s outside consultants who was hired for expertise on ethnic studies course curriculum
16 confirmed that Israel is only mentioned in SAUSD’s ethnic studies courses “within a broader analysis
17 of empire and settler colonialism of nation states throughout the Global South.” Ex. 47 at 2.

18 All of this suggests that the State of Israel is illegitimate and is the product of “European
19 imperialism,” which is patently false. The narrative denies Jewish people their historic, millennia-old
20 connection to the land of Israel, as well as their present-day right to self-determination in the place
21 where millions of them currently live, which is dehumanizing.¹⁸ It goes far beyond a balanced

22 _____
23 ¹⁶ While criticism of certain actions the Israeli government takes is not *necessarily* antisemitic or
24 problematic, when Israel—the world’s only Jewish state—is singled out or treated differently than
25 other nations, is demonized with *ad hominem* attacks, is the subject of maliciously false or misleading
26 accusations, or is denied its right to exist, then that “criticism” is antisemitic. See
27 <https://www.state.gov/defining-antisemitism/>.

28 ¹⁷ Michael Mann, *The Dark Side of Democracy: Explaining Ethnic Cleansing* (2005) 5, 519; see also
Ex. 45.

¹⁸ Ironically, this narrative is supposedly in furtherance of giving voice to “marginalize[d] minority
groups” and indigenous peoples, see Ex. 46 at 13, but ignores the fact that Jews are a marginalized
minority and are indigenous to the Israel/Palestine region.

critique of a foreign government’s foreign or domestic policies. *See* Amended Petition ¶¶ 7, 20–22.

Notably, the content in SAUSD’s courses drew inspiration from the original, 2019 draft of the Model Curriculum that the Legislature rejected for bias. SAUSD’s “Six Guiding Pillars for Ethnic Studies”—a document meant to guide the entire ethnic studies program—is replete with citations to the Liberated Ethnic Studies Model Curriculum, which “is based off of the original [2019] Ethnic Studies Model Curriculum.” Ex. 48; Ex. A at 134:19–22. Employee 1 herself identifies as a “proud member” of the LESMCC, which promotes the Liberated Curriculum. *Id.* at 137:4–15. She and other Steering Committee curriculum writers looked to the co-founders of the LESMCC, LESMCC member Sean Arce, and other members of the original, rejected, advisory committee for guidance with curriculum development. *See* Ex. 49 (Employee 1 wrote to LESMCC co-founders “to support and help guide our teachers to create [History Social Science Ethnic Studies curriculum maps]”).¹⁹ Employee 1 attributed her decision to remove her name from the original Model Curriculum to the “erasure of . . . the perspective that Israel is oppressing Palestinians.” Ex. A at 67:22–68:10. But no matter, because she could include this perspective in SAUSD’s courses.

AB 101 states that “it is the intent of the Legislature that local educational agencies not use the portions of the draft model curriculum that were not adopted by the Instructional Quality Commission due to concerns related to bias, bigotry, and discrimination.” Cal. Educ. Code § 51225.3(a)(1)(G)(vi). But that is exactly what SAUSD did. It created a curriculum animated by the rejected draft of the Model Curriculum, including portions that were removed due to bias. The courses also violate SAUSD’s own internal policies. SAUSD Board Policy 6144 is titled “Controversial Issues,” and states that the Board “expects teachers to ensure that all sides of a controversial issue are impartially presented, with adequate and appropriate factual information,” and that “[w]ithout promoting any partisan point of view, the teacher should help students separate fact from opinion and warn them against drawing conclusions from insufficient data.” Ex. 50. But the World Histories and World Geography courses direct teachers to do the opposite—they present one, partisan side of a controversial issue without adequate context and factual information to allow

¹⁹ *See* <https://www.liberatedethnicstudies.org/who-we-are.html>.

1 students to separate fact from opinion and to draw their own conclusions from a full set of facts.

2 Multiple SAUSD witnesses insisted that the curricula containing this material were simply
3 “course outlines,” and that it would be up to teachers and curriculum specialists to fill in the gaps
4 with full lessons that they assured would present the full picture. *See* Ex. B at 264:12–19; Ex. E at
5 163:23–164:22; Ex. F at 165:18–166:2. But the curriculum specialists at SAUSD include people like
6 Employee 1, and the teachers at SAUSD would be trained on ethnic studies courses by Sean Arce and
7 his organization.²⁰ SAUSD could hardly be trusted to turn a slanted outline into a balanced lesson,
8 when the people who were delegated to fill in the gaps were imbued with their own prejudices.²¹

9 **G. The Board Approved the Steering Committee’s Courses, Leading to Predictable**
10 **Public Backlash—Which the Board Ignored**

11 In the Spring of 2023, the World Geography and World Histories ethnic studies courses came
12 out of the Steering Committee and to the full Board for approval. By this time, state law required
13 school boards to present locally developed ethnic studies courses at two separate public meetings—
14 first for informational purposes only, then for a vote. Cal. Educ. Code § 51225.3(a)(1)(G)(ii)(IV).
15 The purpose of this requirement is to provide for ample public discussion on an issue that was widely
16 understood to be of significant public interest. At a meeting on March 28, 2023, the Board presented
17 the World Geography and World Histories courses for “information.” Ex. 53 at 3–4. It did so by
18 merely reading the titles of the courses.²² The entire “presentation” was over in *less than thirty*
19 *seconds*. No other words were said about the courses, and Torres made clear that the only reason she
20 was reading their titles was to satisfy the state’s requirement.²³ No public comments were made, and
21 no members of the Steering Committee presented about the courses. *See id.* The presentation utterly

22 ²⁰ The training sessions provided by Arce’s organization, “XITO,” were no small affair. They were
23 provided on a monthly basis, and one report noted that XITO instructed 168 teachers in a three-day
24 long workshop. Ex. 51; Ex. 52 at 2.

25 ²¹ Moreover, Torres went so far as to say there is nothing she could do as a Board member to prevent
26 prejudice in the classroom, even claiming that she would be powerless to do anything about *a teacher*
27 *hanging a confederate flag in the classroom*. Ex. F at 255:23–256:25.

28 ²² March 28, 2023 SAUSD Board Meeting Video
(https://www.sausd.live/media/Regular+Board+Meeting+March+28%2C+2023/1_13x29cyq/344632102) at 1:31:54–1:32:19.

²³ *Id.* at 1:32:20–1:33:03.

1 failed to comply with the spirit of the state’s two-meeting requirement.²⁴

2 At its next meeting on April 25, 2023, the Board voted to approve the World Geography and
3 World Histories courses as part of its ethnic studies program. Ex. 54 at 4–5. Once again, SAUSD
4 gave no presentation about the substance of the courses. Just one member of the Jewish community
5 heard about the courses and could attend the meeting in time to make a public comment. She
6 delivered a forceful message calling out the courses’ biased content and their violations of AB 101
7 and the Controversial Issues Policy, and urged the Board not to approve them.²⁵ This comment
8 prompted Rodriguez to suggest postponing the vote on the World Geography course, but Torres shut
9 him down, saying that she saw no issues with the course in her “personal opinion.” The Board voted
10 to approve both courses with no further discussion.²⁶

11 By the time the Jewish community was able to digest the curriculum’s content, the Board had
12 already approved the courses. *See* Declaration of Ilana Meirovitch (“Meirovitch Decl.”) ¶¶ 11–13.
13 Members of the Jewish community then sent dozens of emails to the SAUSD Board and
14 Superintendent expressing their concern that the courses contained antisemitic bias. Ex. C at 99:8–
15 19. But these efforts came too late. Torres explained that the Board would “traditionally [] just pass
16 the courses and trust the staff,” and that “public comments raising an issue” were simply not enough
17 to “undermine the staff work.” Ex. F at 228:8–20. Rodriguez similarly explained that once the
18 Board approved the courses, the curriculum would not change absent another Board resolution—
19 something he “just didn’t see a pathway back to”—and so he *“compartmentaliz[ed]” the public*
20 *feedback*. Ex. B at 245:18–247:9. The Superintendent sent a form reply to many of the emails,
21 which did not offer any concrete steps that SAUSD intended to take. Ex. C at 99:8–100:21.²⁷

22 _____
23 ²⁴ Moreover, SAUSD has failed to provide any substantiation that it posted the agenda for the Board
24 meeting, with the requisite level of detail about the ethnic studies courses, 72 hours in advance as
25 required by the Brown Act. *See* Cal. Gov’t Code § 54954.2(a)(1); *infra* Part IV.A.

26 ²⁵ April 25, 2023 SAUSD Board Meeting Video
27 ([https://www.sausd.live/media/Regular+Board+Meeting+April+25%2C+2023/1_z5g6kx5y/3446321](https://www.sausd.live/media/Regular+Board+Meeting+April+25%2C+2023/1_z5g6kx5y/344632102)
28 [02](https://www.sausd.live/media/Regular+Board+Meeting+April+25%2C+2023/1_z5g6kx5y/344632102)) at 25:33–28:37.

²⁶ *Id.* at 1:27:29–1:29:11.

²⁷ Members of the Jewish community also attended subsequent Board meetings to voice their
concerns and urge the Board to reverse the approval of the courses, but faced hostility. In one
(continued...)

1 From May through August 2023, after public outcry reached a fever pitch, SAUSD’s
2 Superintendent met on a few occasions with the Jewish Federation of Orange County to provide lip
3 service to the notion that SAUSD would approach the curriculum “in a balanced manner” and to
4 “reduce the number of speakers and hostile comments happening at the board meetings.” Ex. 55; Ex.
5 C at 117:15–119:7, 118:14–19. But SAUSD took no steps to actually change any course materials,
6 citing the finality of the Board approval of the courses. Ex. B at 246:17–247:7; Ex. D at 163:7–20.
7 The Superintendent publicly assured other community organizations that “nothing is going to
8 change” with respect to the approved courses unless the Board took action to do so. Ex. C at 132:14–
9 133:16. As of today, while the rollout of the World Geography course has been paused due to this
10 litigation, other courses created by the Steering Committee, including the World Histories course, are
11 currently offered for SAUSD students. Ex. D at 108:16–109:4; SAUSD Ethnic Studies Overview
12 (<https://www.sausd.us/Page/50204>) (listing course offerings). And the Steering Committee continues
13 to churn out more courses with the same problems.

14 **H. Even After Public Backlash—And the Filing of this Lawsuit—SAUSD Continues** 15 **to Approve Biased Courses**

16 After it became apparent that SAUSD would not reverse the approvals of the World
17 Geography and World Histories courses, Petitioners sent SAUSD a demand letter²⁸ and, ultimately,
18 filed this lawsuit. Glasser Decl. ¶ 2. As discussed, SAUSD was well aware of Jewish community
19 interest in ethnic studies before the passage of the World Geography and World Histories courses.
20 But there is no question that *after* Petitioners’ demand and lawsuit—not to mention the significant
21 public backlash—SAUSD had notice of those concerns. Yet just a few months ago, in May 2024,
22 SAUSD approved additional ethnic studies courses with similar problems—which also violate
23 AB 101 and the Controversial Issues Policy. *See* Ex. 56; Ex. 57. For example, one course—“Ethnic
24 Studies Honors: Perspectives, Identities, and Social Justice”—includes a glossary created by the

25 meeting, on May 23, 2023, many Jewish speakers and audience members were the subject of
26 harassment and intimidation from other members of the audience, including hissing and shouting,
27 “*you’re racists*” and “*you’re killers*.” The Board did little to stop this threatening disruption. *See*
28 Meirovitch Decl. ¶¶ 14–17.

²⁸ Petitioners’ demand letter complied with Government Code § 54960.1(b), but SAUSD did not cure
or correct its Brown Act violations.

1 LESMCC, which was specifically removed from the state’s revised Ethnic Studies Model
2 Curriculum.²⁹ Ex. A at 47:4–11, 62:6–11, 69:2–70:9, 72:10–73:21. The glossary includes a
3 definition of “Boycott, Divestment and Sanctions” that singles out Israel and Israeli companies as
4 worthy of boycotting. *Id.* at 71:13–72:9; Ex. B at 256:9–262:5; Ex. 58. When pressed on why the
5 LESMCC glossary would be included in an SAUSD course, Employee 1 responded, “[b]ecause . . .
6 it’s . . . important – it was excluded from the original [model curriculum].” Ex. A at 70:10–73:21.

7 To date, SAUSD is unrepentant. Its Steering Committee continues to work behind closed
8 doors to churn out courses and materials that are biased against Jews and that violate AB 101, and the
9 Board continues to approve and implement the courses created and recommended by the Committee.
10 Absent judicial intervention—and the opportunity for real public scrutiny and accountability, of the
11 kind that the Board cannot simply “compartmentalize”—it will continue to do so.

12 **III. LEGAL STANDARD**

13 SAUSD’s Brown Act violations entitle Petitioners to seek a writ of mandate, an injunction,
14 and/or declaratory relief. *See* Cal. Gov’t Code § 54960 (“[A]ny interested person may commence an
15 action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing
16 violations or threatened violations of [the Brown Act].”).

17 Petitioners are also entitled to seek a writ of mandate under Code of Civil Procedure section
18 1085(a), which authorizes courts to issue a writ where “the use and enjoyment of a right . . . to which
19 the party is entitled” “is unlawfully precluded by” an “inferior . . . board.” Code of Civil Procedure
20 section 1086 also mandates the issuance of a writ “in all cases where there is not a plain, speedy, and
21 adequate remedy, in the ordinary course of law.” In the context of school boards and their
22 committees acting in their legislative capacities, courts analyze such actions through the lens of
23 ordinary mandamus. Courts consider the board’s compliance with procedures and “notice[s] required

24
25 ²⁹ One difference between the glossary that was removed from the Model Curriculum and the
26 glossary included in SAUSD’s course outline recently approved by SAUSD is that there is now a
27 definition of “antisemitism.” *Compare* Ex. 58 (LESCMCC Glossary from new course) *with* Ex. 59
28 (2019 draft Model Curriculum Glossary). Notably, however, the definition is cited as coming from
noIHRA, which is a Canadian organization that specifically calls for rejecting the authoritative
International Holocaust Remembrance Alliance Working Definition of Antisemitism because it
purportedly conflicts with “the Palestine solidarity movement.” *See* www.noihra.ca.

1 by law.” *Taylor Bus Service v. San Diego Board of Education*, 195 Cal. App. 3d 1331, 1340 (1987).

2 Petitioners may also request injunctive relief under Code of Civil Procedure section 526(a),
3 which permits a court to issue injunctive relief under, *inter alia*, three circumstances: (1) “when it
4 appears . . . that the [petitioners are] entitled to the relief demanded, and the relief, or any part thereof,
5 consists [of] restraining the commission or continuance of the act complained of”; (2) “when it
6 appears . . . that the commission or continuance of some act during the litigation would produce
7 waste, or great or irreparable injury, to a party”; or (3) “when it appears . . . that a party is doing, or
8 threatens, or is about to do . . . some act in violation of the rights of another party to the action”
9 *See Donahue Schriber Realty Group v. Nu Creation Outreach*, 232 Cal. App. 4th 1171, 1177 (2014)
10 (injunction appropriate where plaintiff likely to prevail on merits and harm to plaintiff without
11 injunction outweighs harm to defendant if injunction is granted).

12 Finally, Petitioners’ request for declaratory relief is governed by Code of Civil Procedure
13 section 1060, which permits a court to issue declaratory relief to any party that desires a declaration
14 of its legal rights and duties with respect to others, where there is an actual controversy relating to
15 such rights and duties. The declaration may be sought along with other relief, and the court’s
16 declaration shall have the force of a final judgment. *See Communities for a Better Environment v.*
17 *State Energy Resources Conserv. and Devt. Comm’n*, 19 Cal. App. 5th 725, 733–34 (2017).

18 As discussed below, Petitioners have easily satisfied all of these standards.

19 **IV. ARGUMENT**

20 **A. SAUSD Violated the Brown Act by Way of the Steering Committee**

21 The Brown Act “serves to facilitate public participation in all phases of local government
22 decisionmaking and to curb misuse of the democratic process by secret legislation by public bodies.”
23 *Olson v. Hornbrook Cmty. Servs. Dist.*, 33 Cal. App. 5th 502, 525 (2019). The statute accomplishes
24 this by requiring a “legislative body of a local agency” to hold “open and public” meetings, allow
25 members of the public to attend meetings, post public agendas “[a]t least 72 hours before a regular
26 meeting,” and “provide an opportunity for members of the public to directly address the legislative
27 body on any item of interest to the public.” Cal. Gov’t Code §§ 54953; 54954.2(a)(1); 54954.3(a).

28 SAUSD failed (and continues to fail) to meet any of these requirements with the ethnic

1 studies program. It created and implemented courses in meetings that were closed to the public,
2 without publicly-posted agendas. *See supra* Part II.D. Steering Committee members (including
3 Board members) conducted (and continue to conduct) their work behind closed doors precisely for
4 reasons that the Brown Act seeks to combat—they feared what ordinary members of the public might
5 do to disrupt the development and implementation of biased, not “watered-down,” ethnic studies.

6 To be sure, the Steering Committee is a “legislative body” under the Act. The Brown Act’s
7 definition of “legislative body” includes “committee[s] . . . whether permanent or temporary,
8 decisionmaking or advisory, created by . . . resolution . . . or formal action of a legislative body.”
9 Cal. Gov’t Code § 54952(b). While “advisory committees, comprised *solely* of the members of the
10 legislative body that are less than a quorum . . . are not legislative bodies,” “*standing committees* of a
11 legislative body, *irrespective of their composition*, which have a continuing subject matter
12 jurisdiction . . . are legislative bodies.” *Id.* (emphases added). The Steering Committee is precisely
13 the kind of standing committee this provision is intended to cover.

14 The California Attorney General’s Office (“OAG”) directly addressed the meaning of a
15 “standing committee” under the Brown Act in a 1996 Opinion, concluding that “meetings of a
16 standing committee composed of less than a quorum of [a] legislative body . . . are subject to the
17 notice, agenda, and public participation requirements of the [] Brown Act.” 79 Cal. Op. Att’y Gen.
18 69 (1996). A “standing committee,” the OAG explained, is “a permanent,” *i.e.*, “endur[ing]” or
19 “remain[ing],” committee of a legislative body, and “continuing subject matter jurisdiction” means
20 that the body’s authority to hear a matter presented for consideration “need[s] no renewal.” *Id.* at 3.
21 Reasoning that the specific subcommittee at issue in the Opinion “ha[d] the authority to hear and
22 consider issues relating to budgets, audits, contracts, and personnel matters” with neither a “limited
23 term” nor needing a renewal of its mandate, the OAG reasoned that the subcommittee was a
24 “legislative body” under the Brown Act. *Id.* Notably, the OAG also determined that “it is irrelevant
25 for purposes of section 54952 that the subcommittee is advisory rather than decision making.” *Id.*³⁰

26 _____
27 ³⁰ Likewise, a guidance document by the OAG “illustrates how section 54952(b) operates,” and
28 provides the following directly analogous example: “A city council creates . . . [an a]dvisory
committee comprised of two councilmembers for the purpose of reviewing all issues related to parks
(continued...) ”

1 So too for the Steering Committee. The ES Resolution called for the creation of a committee
2 that would develop and implement SAUSD’s Board-imposed ethnic studies graduation requirement.
3 The Steering Committee that the Board formed still meets to this day. Torres and Rodriguez
4 themselves pointed to the ES Resolution as providing the Steering Committee with continuous
5 authority—*i.e.*, needing no renewal—within the specific subject matter of developing and
6 implementing ethnic studies curricula. *See supra* Part II.B. The Committee meets monthly on an
7 indefinite basis. There is no fixed end date for the Committee’s work, nor could the Committee
8 members identify any future cutoff date. *Id.* In fact, the Superintendent testified that the *only* other
9 SAUSD committee created by the Board, with Board members serving on it, complies with the
10 Brown Act—all but conceding that the Steering Committee should too. Ex. C at 146:12-147:8.³¹

11 **B. SAUSD’s Brown Act Violations Harm Petitioners**

12 The closed nature of the Steering Committee led directly to the approval of a biased
13 curriculum without a meaningful opportunity for the public to provide input. *See supra* Part II.G.
14 The Board tasked the Steering Committee with implementing ethnic studies courses at SAUSD, and
15 the courses that came out of those efforts included all of the same biased content that was removed
16 from the State’s Model Curriculum due to public scrutiny. But because the Steering Committee did
17 not have to contend with that same scrutiny, the biased material was able to sneak through.³²

18 This was all by design. The Steering Committee operated as a *de facto* arm of a subset of the

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20 and recreation in the city on an ongoing basis: This committee is a standing committee which is
21 subject to the Act’s requirements because it has continuing jurisdiction over issues related to parks
22 and recreation in the city.” Cal. Off. of the Att’y Gen., The Brown Act: Open Meetings for Local
23 Legislative Bodies 5–6 (2003), <https://oag.ca.gov/system/files/media/the-brown-act.pdf>.

24 ³¹ SAUSD’s counsel effectively *admitted* that the Steering Committee was an official legislative body
25 when they invoked the deliberative process privilege to instruct Rodriguez not to answer questions
26 about the Committee’s deliberations. *See* Ex. B at 146:19–25 (“[Petitioners’ counsel]: And, Counsel,
27 I just want to ask for clarification . . . Are you asserting the deliberative process privilege over
28 deliberations of the ethnic studies [steering] committee? [SAUSD counsel]: Yes.”).

³² Some of the work in drafting course outlines and materials may have been done by subcommittees
or individuals outside of formal Committee meetings, but the Steering Committee’s oversight of this
work meant that, had members of the public been invited to attend those meetings, they would have
learned and been able to speak out about these issues. *See* Ex. E at 73:5–12 (“Q. Does the steering
committee take a vote on approval of a course? A. I think it’s the process of consensus where . . . as a
committee you would discuss it . . . until the committee agrees that it’s ready to go as a course.”).

1 Board to promote their particular vision, resulting in a process that intentionally excluded diverse
2 perspectives—both internally, from other voices at SAUSD, and externally, from the public. *See*
3 *supra* Part II.C–D. Torres, Rodriguez, and Employee 1 sought to avoid a repeat of what happened to
4 the state model curriculum by safeguarding SAUSD’s ethnic studies program from dissention both
5 “within the ranks” and from outside them that could “water down” the curriculum. *See id.*

6 It is apparent that the Jewish community was among those external sources of potential
7 dissent that SAUSD sought to avoid. Employee 1 did not want SAUSD to “fold like a napkin hitting
8 the floor” to Jewish groups the way the State’s process supposedly had. Board members ignored
9 several attempts by Jewish community groups to engage with SAUSD before the courses were
10 approved, while there was still opportunity to have an influence. *See supra* Part II.D. Senior officials
11 went so far as to remark that they should *use Jewish holidays to approve courses* at the Board level
12 (where they could not avoid public comment), so that Jews could not attend. Ex. 1 at 3.

13 Even though community members technically had an opportunity to comment on the finalized
14 courses when they went to the full Board, Torres made clear that by then, it was too little, too late.
15 She explained that “traditionally we just pass the courses and trust the staff,” and that “having a
16 couple of public comments raising an issue is not enough” to sway her vote. Ex. F at 228:8–229:6.
17 In other words, to have any real impact, the public needed to reach the “staff” that Torres did not
18 want to “undermine.” *Id.* But SAUSD made this impossible by keeping the Steering Committee—
19 where the real work was done—closed to public oversight. By failing to keep the public apprised of
20 the Committee’s work, SAUSD foreclosed any real opportunity for public input. Had the community
21 been aware of the Steering Committee’s work, they could have voiced their concerns earlier on in the
22 process, when it could have made a difference. *See* Meirovitch Decl. ¶¶ 6–10.

23 C. The Court Should Grant Writ Relief

24 The appropriate remedy in this case is to issue a writ enjoining SAUSD from implementing
25 all courses containing bias against Jews that were created from the work of the Ethnic Studies
26 Steering Committee,³³ and enjoining the Steering Committee from doing any further work unless and

27 _____
28 ³³ At minimum, those courses include the World Histories, World Geography, and Ethnic Studies
Honors: Perspectives, Identities, and Social Justice courses.

1 until it complies with the Brown Act. Courts have frequently granted and affirmed injunctive relief
2 against legislative actions that stemmed from Brown Act violations, including of the public notice
3 and open-meeting provisions. *See, e.g., Shapiro v. San Diego City Council*, 96 Cal. App. 4th 904
4 (2002) (affirming the grant of a permanent injunction after the San Diego City Council failed to post
5 agendas for closed session meetings with sufficient descriptions of transactions discussed, and
6 exceeded the scope of discussion topics intended to be cabined to those sessions); *Bell v. Vista*
7 *Unified School Dist.*, 82 Cal. App. 4th 672 (2000) (affirming judgment enjoining school district from
8 terminating a football coach after coach's employment status was discussed in a meeting that violated
9 prior written notice and open session provisions of the Brown Act).

10 Writ relief is warranted not only to bring SAUSD into compliance with its legal obligations,
11 but also to prevent Petitioners from incurring any further harm. Petitioners were harmed and
12 prejudiced and have a direct and beneficial interest in the issuance of a writ of mandate. Petitioners
13 were not given proper notice of the actions to be taken at the Steering Committee meetings and
14 therefore were denied the opportunity to prepare and provide meaningful comments. *See Meirovitch*
15 *Decl.* ¶¶ 6–11. Petitioners do not have a plain, speedy and adequate remedy at law. In fact,
16 Petitioners have no other recourse. Petitioners are therefore entitled to the issuance of the writ.³⁴

17 **D. Equitable Factors Favor Granting a Writ or Injunction**

18 The Court should grant Petitioners' writ enjoining the courses from being taught because
19 Petitioners (and the community Petitioners represent) face irreparable harm. The students of Santa
20 Ana will be taught damaging, biased views about Jews and Israelis—views that the State has
21 expressly warned school districts against teaching. Once these biases are imparted onto
22 impressionable youth, they cannot so easily be undone. With the recent dramatic rise in
23 antisemitism, any biased viewpoints that receive the blessing of the public school system would be
24 devastating to the Jewish community. Because of SAUSD's continuing Brown Act violations, the
25 community is shut out of any real opportunity to provide the kind of public accountability that might
26 stave off these biases. Sunlight truly is the best disinfectant, and without it, the Jewish community of

27
28 ³⁴ Petitioners are also entitled to their fees and costs. *See* Cal. Gov't Code § 54960.5.

1 Santa Ana and Orange County will face irreparable harm.

2 The balance of the equities and public interest favor granting a writ. The harm to
3 Petitioners—the proliferation of negative bias against them and their communities—far outweighs the
4 procedural burden to SAUSD in bringing its Ethnic Studies Steering Committee into compliance with
5 the Brown Act. The Steering Committee already has regular meetings at set times with agendas. It is
6 no great burden to notice the meeting times and locations to the public, along with the agendas, and
7 open the doors for community members to make comments at these meetings.

8 Finding in Petitioners’ favor would not unleash a slippery slope that would subject all
9 insignificant, run-of-the mill District business to the public-access requirements of the Brown Act.
10 For one, there are multiple aspects of the Ethnic Studies Steering Committee that set it apart from
11 other basic internal operating teams: it was created by the Board; for an indefinite period of time; to
12 study, rule on, analyze, and implement a graduation requirement that was known to all involved to be
13 a hot-button issue. It contained two Board members that drove its mission. And the only other
14 SAUSD committee like it already complies with the Brown Act. *See* Ex. C at 146:12-147:8, 148:18–
15 149:2. All of these distinctions allow the Court to find the four-plus year-old Steering Committee
16 violative of the Brown Act without sweeping in every ad hoc bake sale meeting.

17 Implementing the ethnic studies requirement is exactly the sort of “people’s business” the
18 Brown Act contemplates. Cal. Gov’t Code § 54950. Public boards must conduct their deliberations
19 “openly” because Californians “do not yield their sovereignty to the agencies which serve them.” *Id.*
20 The Legislature drafted the Brown Act to guard against “public servants [seizing] the right to decide
21 what is good for the people to know and what is not good for them to know.” *Id.* “The people insist
22 on remaining informed so that [we] may retain control.” *Id.*

23 **V. CONCLUSION**

24 In light of the foregoing, the Court should grant Petitioners’ Motion and issue a writ,
25 injunction, and/or judicial declaration ordering SAUSD to reverse the actions of the Ethnic Studies
26 Steering Committee, reverse all Board decisions approving ethnic studies courses that were created
27 and recommended by the Steering Committee, ensure that SAUSD complies with the Brown Act
28 henceforth, and award Petitioners their fees and costs (subject to a subsequent fee motion).

1
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