Case No. S266254

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRENNON B.,

Petitioner,

v.

SUPERIOR COURT, CONTRA COSTA,

Respondent,

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, et al.

Real Parties in Interest.

First Appellate District, Division One, Case No. A157026
On Review of an Order Sustaining a Demurrer
The Honorable Charles Treat, Judge
Contra Costa Superior Court, Case No. MSC16-01005

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF
and
[PROPOSED] BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONER BRENNON B.

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CERTIFICATE OF INTERESTED PARTIES

Pursuant to Rules 8.208(e) and 8.488 of the California Rules of Court, Amici certify that they know of no other person or entity that has a financial or other interest in this case.

Dated: September 15, 2021

By: */s/ Ana Mendoza*
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APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF PETITIONER BRENNON B.

Pursuant to California Rules of Court, Rule 8.200(c), proposed amici curiae American Civil Liberties Union ("ACLU") of Southern California, ACLU of Northern California, ACLU of San Diego and Imperial Counties (collectively "ACLU of California Affiliates"), Alliance for Children's Rights, California Rural Legal Assistance, Collective for Liberatory Lawyering, East Bay Community Law Center, Equal Justice Society, Law Foundation of Silicon Valley, Lawyers' Committee for Civil Rights of the San Francisco Bay Area, Learning Rights Law Center, National Center for Youth Law, Neighborhood Legal Services of Los Angeles County, Public Advocates, Public Counsel, and Youth Justice Education Clinic—Loyola Law School (collectively "Education Equity Amici") respectfully request leave to file the accompanying [Proposed] Amicus Curiae Brief in Support of Plaintiff and Appellant Brennon B.

The **ACLU of California Affiliates** are regional affiliates of the ACLU, a national nonprofit, nonpartisan organization dedicated to furthering the principles of liberty and equality embodied in the United States Constitution and this Nation's civil rights laws. The ACLU works to advance the civil rights and civil liberties of Californians in the courts, in legislative and policy arenas, and in the community. The ACLU has participated in numerous prior cases, both as direct counsel and as amicus, that involve enforcing the state and federal constitutions' guarantees of equal protection and due process, as well as statutory substantive civil rights protections and procedural safeguards, including the California Unruh Act. The ACLU of California Affiliates recognize that the educational system in the U.S. was built on a foundation of white supremacy, attempted cultural genocide, and racial capitalism. The

organizations seek to reimagine, redesign, and reinvest in a substantially different education system where Black, Indigenous, and other students of color are authentically supported; their experiences, culture and history are reflected; and their needs are prioritized. Accordingly, the ACLU of California Affiliates have spent decades advocating for education equity, including ensuring the equal treatment of students in California's education system based on protected characteristics, such as race, wealth, sexual orientation, gender identity, immigration status, and others.

The **Alliance for Children's Rights** ("Alliance") is a nonprofit legal services organization dedicated to protecting the rights of impoverished, abused, and neglected children and youth by providing free legal and social services and promoting systemic solutions. The Alliance provides a continuum of legal services, training, and support for children, youth, young adults, and families involved in the foster care system. Children and teens impacted by foster care experience the poorest education outcomes of any student population. By advocating for thorough assessments and appropriate educational services, the Alliance meets the specialized needs of our young clients, so that they can thrive in their school settings. Alliance attorneys have helped over 3,000 children receive education services to overcome trauma, instability, and developmental delays. The Alliance provides direct education advocacy for youth, and empowers caregivers and other service providers to advocate for the children they serve. We work to promote paths to learning and ensure that children and young adults impacted by foster care can access an equitable education.

California Rural Legal Assistance ("CRLA") is a non-profit legal services organization funded, in part, by the Legal Services Corporation and California's IOLTA trust fund program administered by the California State Bar Association. CRLA has 16 field offices, located in rural

California, that provide outreach, education and direct legal representation to low-income communities in over 25 counties. Education is a program priority for CRLA, which has a long history of education advocacy on behalf of vulnerable student groups including low-income students, English Learners, immigrant, migrant, indigenous, and LGBTQ+ students, and students with disabilities. CRLA provides legal assistance to students and parents in a variety of education matters including issues involving language access, discriminatory discipline and harassment. CRLA has provided direct representation to students who suffered discrimination at school based on primary language, immigration status, national origin, race, sex and sexual preference. The Unruh Civil Rights Act has provided victims of such discrimination with a cause of action, as well as minimum damages, penalties and the right to attorney's fees. Civil rights enforcement will be seriously impeded if the lower Court's decision is upheld.

The **Collective for Liberatory Lawyering** provides movement lawyering support to base-building organizations fighting to end the school to prison pipeline. We work alongside parents and students affected by school push-out and criminalization, and know there is a critical need for more extensive remedies to address discrimination in schools, not less. Parents, students and families deserve to be treated with dignity and respect and have access to their education--and to have adequate redress under protection like the Unruh Act when public schools deny those rights and dignity.

The **East Bay Community Law Center** ("EBCLC") is the largest nonprofit provider of free legal services in Alameda County, serving more than 5,000 clients each year. EBCLC's advocacy is client-centered and community-driven and its services are culturally-responsive. EBCLC also

engages in legislative and policy advocacy to combat the systemic oppression that impacts its clients. EBCLC's Education Defense & Justice for Youth ("EDJY") program represents young people caught at the intersection of the juvenile justice and education systems. The EDJY program daily witnesses the myriad harms its clients experience in public schools as a result of discrimination on the bases of race and disability status, among others. Thus, EBCLC wholeheartedly agrees with amici that California's six million public school students must continue to be protected from discrimination in school by the Unruh Act.

The **Equal Justice Society** ("EJS") is a national civil rights non-profit organization whose mission is to transform the nation's consciousness on race through law, social science, and the arts. Through litigation in the federal and California courts, policy advocacy, and training, EJS combats race, disability, and other forms of discrimination in schools and other societal institutions. Litigating cases that challenge school district practices that discriminate against Black and Latinx students and deprive these students of their right to a quality public education is at the core of EJS's work. Ensuring that students harmed by discrimination are protected by the Unruh Act and other critical anti-discrimination laws is of vital interest to EJS.

The **Law Foundation of Silicon Valley**, a nonprofit, nonpartisan legal services and social justice organization, was founded over 40 years ago and is based in Santa Clara County dedicated to advancing the rights of historically excluded and marginalized individuals and families across Santa Clara County and beyond through legal services, strategic advocacy, and educational outreach. The Law Foundation's Health program has an abiding interest in ensuring fair and due process and the promotion of the guaranteed rights of residents of Santa Clara County and California. The

Health and Children and Youth Programs incorporate community and movement lawyering along with grassroots advocacy to help our clients based on our direct legal services work. LFSV's direct services and impact advocacy and litigation in education and civil liberties includes representation on matters regarding IDEA and 504, OCR complaints, mental health consumer patients' rights, jail conditions, school discipline and school suspensions and expulsions.

As one of the oldest civil rights institutions on the West Coast, the **Lawyers' Committee for Civil Rights of the San Francisco Bay Area** (LCCRSF) works to dismantle systems of oppression and racism, and to build an equitable and just society. Formed in 1968 to bridge the legal community and the Civil Rights Movement, LCCRSF advances the rights of people of color, immigrants, refugees and low-income individuals. LCCRSF is grounded in community and its legal services help identify the most pressing civil rights issues and informs its broader impact litigation and policy advocacy. LCCRSF's anti-discrimination work spans decades, including a landmark discrimination case for Black firefighters and winning protections for minority contractors. Its education work includes fighting discriminatory school discipline, enforcing education access for immigrant students and education equity for English Learner students, and preventing discriminatory school closures.

The **Learning Rights Law Center** ("LRLC") is a non-profit legal aid organization in Southern California founded in 2005 to provide free and low-cost legal representation, advice, advocacy and training to families and communities whose children, as a consequence of disability or discrimination, have been denied equal access to a public education. LRLC provides hands-on self-advocacy training to parents in economically-marginalized communities to educate and empower them to better access

the special education system through the Training Individuals for Grassroots Education Reform ("TIGER") program. This community work allows LRLC to bring to the Court our direct observations of the broader systemic issues facing socio-cultural and economically diverse students. LRLC also offers a legal clinic to students and families experiencing educationally-related issues and develops individualized legal action plans for families to be able to self-advocate and resolve rights-based conflicts in the school setting through the Education Rights Clinic ("ERC"), and provides direct representation to students who have been wrongfully denied education-rights or who have experienced unlawful discrimination and exclusion in the public-school setting. Through LRLC's extensive work helping families address any type of educational exclusion—be they based on racial, language, socio-economic, disability, or other status—LRLC is fully aware of the ways in which the Unruh Act has served as a critical protection for students vulnerable to educational harm, and of the negative impact the underlying decision has had on students' abilities to work with their public-schools to resolve educational exclusion and harms.

The **National Center for Youth Law** ("NCYL") is a private, non-profit law firm that uses the law to help children achieve their potential by transforming the public agencies that serve them. In California and throughout the United States, NCYL has worked for 50 years to protect the rights of low-income children and to ensure that they have the resources, support, and opportunities they need to become self-sufficient adults. One of NCYL's highest priorities is to ensure that youth of color and youth with disabilities have access to equitable education opportunities. NCYL provides representation to children and young people in cases that have broad impact, and has represented many students in individual and class litigation and administrative complaints to ensure their access to education

is adequate, appropriate, and non-discriminatory. NCYL currently represents, and has represented, students in challenging the violation of their state and federal rights to education.

Neighborhood Legal Services of Los Angeles County ("NLSLA") is a nonprofit legal aid agency that serves low-income residents of Los Angeles County in the legal practice areas of housing, public benefits, healthcare, reentry, immigration, family law, employment law, and education law. NLSLA's Education Rights Project services students in the areas of school discipline, special education, harassment and discrimination, and incidents involving school police and security officers. While this project serves students throughout NLSLA's service area, its primary focus is in the Antelope Valley, a large, mostly rural, desert region 70 miles north of the city of Los Angeles. Black students and students with disabilities in Antelope Valley schools experience considerably disproportionate rates of school discipline and policing. Consequently, this project has a particular mission to work alongside parents, students, and community organizations and leaders to eradicate racial and disability disparities and the criminalization of students of color in Antelope Valley schools. Given the environment of pervasive racism in Antelope Valley schools, NLSLA student and parent clients have a strong interest in ensuring that they can utilize the Unruh Act to challenge the harassment and discrimination they face at school.

Public Advocates Inc. is a non-profit, public interest law firm and one of the oldest public interest law firms in the nation. The firm's mission has always been to challenge the systemic causes of poverty and discrimination by strengthening community voices in public policy and achieving tangible legal victories advancing education, housing and transit equity, and climate justice. Since 1971, Public Advocates has focused on

"making rights real" across California by collaborating with grassroots groups representing people of color, immigrants, and low-income individuals to achieve strategic policy reform, enforce civil rights, and support movement-building. Public Advocates frequently brings class action and institutional reform civil rights lawsuits to carry out its mission, including cases that challenge discrimination. (See, e.g., *Larry P. v. Riles* (N.D. Cal. 1979) 495 F.Supp. 926, *aff'd in part, rev'd in part sub nom. Larry P. By Lucille P. v. Riles* (9th Cir. 1984) 793 F.2d 969 amended (9th Cir. 1986) [judgment halting California's use of discriminatory IQ tests with certain African-American special education students]; *Officers for Justice v. Civil Service Com'n of City and County of San Francisco* (9th Cir. 1992) 979 F.2d 721 [consent decree and various court orders ending race and sex discrimination in testing and selection procedures for hiring and promotion in SFPD]; *Association of Mexican-American Educators v. State of California* (9th Cir. 2000) 231 F.3d 572 (en banc) [establishing new precedent that state teacher tests are subject to non-discrimination and job-relatedness testing standards of Title VII].) As such, Public Advocates has a strong interest in maintaining Unruh Act protections against discrimination in the public school context, particularly given the unique opportunity for statutory damages and attorneys' fees.

Public Counsel is the nation's largest pro bono public interest law firm. The firm employs lawyers, social workers, and community organizers to advocate on behalf of disadvantaged communities to redress societal inequities created and perpetuated by government and private entities that impair opportunities for full political participation and social mobility. This is especially true as relates to assuring that all children not be denied by school districts equal educational opportunities, the foundation for realizing full personhood. Public Counsel has historically

relied on the Unruh Civil Rights Act as a bulwark of this protection in litigation to secure rights essential to affording these opportunities.

The **Youth Justice Education Clinic** ("YJEC") at Loyola Law School's Center for Juvenile Law and Policy represents system-involved young people with disabilities in special education and school discipline proceedings in Los Angeles County. Many of YJEC's clients face discrimination or harassment in schools, even by schools themselves. YJEC has a strong interest in ensuring that families can obtain legal recourse for discrimination and harassment in schools under every applicable statute including the Unruh Act, so that every student regardless of their disability, race, or sex can learn safely in school.

Education Equity Amici are nonprofit legal organizations with an interest in ensuring equal opportunity for students to access public education institutions free from discrimination. Education Equity Amici present this brief to provide history, context, and analysis regarding the Unruh Civil Rights Act's applicability to public schools. Education Equity Amici believe this brief will assist the Court in considering this matter in the context of historical and current discrimination that students continue to suffer on the basis of a protected characteristic in schools, underscoring the important role that legal remedies, including the Unruh Act, have in achieving educational equity for marginalized students.

This application is timely under Rule 8.200(c)(1) of the California Rules of Court.

In accordance with California Rules of Court, Rule 8.200(c)(3), no party or counsel for any party in the pending appeal authored this brief in whole or in part, and no party or counsel for any party in the pending appeal made a monetary contribution intended to fund the brief's preparation or submission. No person or entity other than counsel for the

proposed Education Equity Amici made a monetary contribution intended to fund the preparation or submission of this brief.

Pursuant to Rules 8.360(f) and 8.200(c) of the California Rules of Court, Education Equity Amici respectfully request that they be granted leave to file the accompanying amicus curiae brief.

Dated: September 15, 2021

ACLU Foundation of Southern California

ACLU Foundation of Northern California

ACLU Foundation of San Diego and Imperial Counties

By: */s/ Ana Mendoza*
Ana Mendoza

Attorney for Amici Curiae

BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONER BRENNON B.

INTRODUCTION

Petitioner challenges the California Court of Appeal's incorrect and harmful holding that California's landmark civil rights statute, the Unruh Civil Rights Act (Civ. Code, § 51.) ("Unruh Act" or "Act"), does not apply to public schools. Amici firmly agree with Petitioner that *Brennon B. v. Superior Court of Contra Costa County* (2020) 57 Cal.App.5th 367 ("*Brennon B.*") was wrongly decided—precedent demands, and the California Legislature confirms, that a public school constitutes a "business establishment" within the meaning of the Unruh Act. Amici write separately to underscore the critical importance of maintaining the Unruh Act's longstanding protection of California's six million public school students.

Schoolchildren and their parents have relied on the Unruh Act as a crucial tool for combatting discrimination and harassment in California schools for decades. While the California Constitution promises that students have an equal opportunity to education and that K-12 public schools are safe, welcoming, and supportive, students have nonetheless faced enduring and severe discrimination in public schools. Even long after the U.S. Supreme Court held that segregation is unconstitutional in public schools in *Brown v. Board of Education of Topeka* (1954) 347 U.S. 483 ("*Brown*"), California's schoolchildren continue to experience discrimination in ways that infringe on their state constitutional right to equal educational opportunity. The Unruh Act has served as an effective tool to combat these harms.

The Court must overturn the Court of Appeal's decision in *Brennon B.* because it is incorrect as a matter of law and statutory interpretation.

Further, the decision cannot stand because it fails to consider properly the Unruh Act's function as California's broadest protection against unlawful discrimination and harassment and severely misjudges the critical need for these protections in public schools. Excising public schools from the domain of the Unruh Act would strip civil rights enforcement options from children across the state and undermine California's promise of ensuring equal access to safe and welcoming schools. Critically, the Court of Appeal's decision ignored that the California Legislature declared as recently as 2015 that public schools are "business establishments" for purposes of the Unruh Act. Amici therefore respectfully request that this Court overturn the decision and confirm that a public school is a "business establishment" within the meaning of the Unruh Act.

ARGUMENT

I. THE *BRENNON B.* DECISION UPENDS DECADES OF SETTLED—AND CORRECT—CONSTRUCTION THAT THE UNRUH ACT APPLIES TO PUBLIC SCHOOLS

For decades, the Unruh Act has been widely and correctly constructed to apply to public schools by the courts, the California Legislature, public agencies, and public schools themselves. The Court of Appeal's decision in *Brennon B.* contravenes this Court's guidance and is an incorrect interpretation as a matter of law. (See *Isbister v. Boys' Club of Santa Cruz, Inc.* (1985) 40 Cal.3d 72, 75, *as modified on denial of reh'g* (Dec. 19, 1985) ("*Isbister*") [declaring that Unruh Act is "this state's bulwark against arbitrary discrimination in places of public accommodation"].)

A. The Court of Appeal's *Brennon B.* Decision Is Premised on Erroneous Legislative Interpretation

The *Brennon B.* decision largely rests on an incorrect interpretation of the 1959 bill that enacted the Unruh Act and its failed amendments. Indeed, the amendments cited by the lower court support the opposite interpretation—that the Unruh Act applies broadly and includes public school districts. When introduced, the 1959 legislative bill expressly stated that the Unruh Act would apply to public schools. (*Brennon B.*, *supra*, 57 Cal.App.5th at p. 374.) A series of revisions followed, potentially narrowing the Act's application to an increasingly limited set of schools, with the final proposed amendments stating that the Act would apply to "schools which primarily offer business or vocational training." (*Id*. at pp. 376-377.) Ultimately, the Legislature rejected all of the proposed changes, including those constraining the Act to apply to only a subset of schools, and passed an act with the most sweeping language possible. Specifically, the Legislature confirmed that the Act would apply to "all business establishments of every kind whatsoever" and omitted any references limiting its applicability to schools. (*Id.* at p. 377; see also *Osborne v. Yasmeh* (2016) 1 Cal.App.5th 1118, 1130 [recognizing that the Legislature amended the Unruh Act to apply broadly to push back on a string of cases in the 1950s constraining the applicability of Act to certain establishments].)

The Court of Appeal's interpretation of the rejected bill amendments is contrary to what this Court concluded from the same amendments. In *Isbister*, *supra*, 40 Cal.3d at p. 79, this Court explained that:

> The original version of the bill which became the Unruh Act extended its antidiscriminatory provisions to "all public or private groups,

> organizations, associations, business establishments, schools, and public facilities; ...” (See Assem. Bill No. 594, as introduced Jan. 21, 1959.) Later versions dropped all the specific enumerations except “business establishments” but added to the latter phrase the modifying words “of every kind whatsoever.”
>
> “The broadened scope of business establishments in the final version of the bill, in our view, is indicative of an intent by the Legislature to include therein *all private and public groups or organizations* [specified in the original bill] that may reasonably be found to constitute ‘business establishments of every type [sic] whatsoever.’” (*O'Connor v. Village Green Owners Assn.* (1983) 33 Cal.3d 790, 795–796, 191 Cal.Rptr. 320, 662 P.2d 427, italics added.)

(Emphasis and citations original.) Because this Court’s view is that the “broadened scope of business establishments in the final version of the bill” (*Ibid.*) includes the groups and organizations in the original bill, then private and public schools, as referenced in the original 1959 bill, are subject to the Unruh Act. Accordingly, the specious conclusion the lower *Brennon B.* court drew from the 1959 bill amendments directly conflicts with the legislative history and this Court’s guidance in *Isbister*, which confirms that the Act applies broadly, including to public schools.

B. Courts Have Widely and Consistently Held that the Unruh Act Applies to Public Schools

California case law requires an expansive interpretation of the term "business establishment" and the approach taken by the Court of Appeal in *Brennon B.* is flawed and must be overturned. California Courts have long interpreted the Unruh Act broadly, recognizing it is one of the key vehicles for litigants to challenge exclusion and discrimination. In *Isbister*, *supra*, 40 Cal.3d, this Court reviewed the extensive legislative history of the Unruh Act. This analysis led the Court to unequivocally conclude that to meet "[t]he Legislature's desire to banish [discrimination] from California's community life" the Court must "*interpret the Act's coverage 'in the broadest sense reasonably possible*.'" (*Id.* at pp. 75-76 [*citing Burks v. Poppy Construction Co.* (1962) 57 Cal.2d 463, 468[[italics added].) More recently, this Court has affirmed this interpretation by declaring that the Unruh Act "must be construed liberally in order to carry out its purpose" to "create and preserve a nondiscriminatory environment in California business establishments by 'banishing' or 'eradicating' arbitrary, invidious discrimination by such establishments." (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 167); see also *Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 468 ["The Legislature used the words 'all' and 'of every kind whatsoever' in referring to business establishments covered by the Unruh Act (Civ. Code, § 51.) and the inclusion of these words, without any exception and without specification of particular kinds of enterprises, leaves no doubt that the term 'business establishments' was used in the broadest sense reasonably possible."].)

The lower court's *Brennon B.* decision ignores the directive to interpret the Act broadly and instead relies on a narrow interpretation of "business establishment." This Court has explained that "the reach of

[Civil Code] section 51 cannot be determined invariably by reference to the apparent 'plain meaning' of the term 'business establishment.'" (*Warfield v. Peninsula Golf & Country Club* (1995) 10 Cal.4th 594, 616.) Rather, this Court requires a holistic analysis of what constitutes a business establishment: one that harmonizes with the Act's goal of ensuring discrimination-free *public accommodations*. (See *Isbister, supra, 40 Cal.3d* at p. 83 [finding nonprofit Boys' Club of Santa Cruz to be a business establishment under the Act, stating "we need not rely exclusively on the Club's functional similarity to a commercial business. As we have seen, the Unruh Act replaced a statute governing all 'places of public accommodation or amusement' and was intended at minimum to continue the coverage of 'public accommodations.'"].) This Court reiterated that the Unruh Act must be broadly interpreted a few years later in *Curran v. Mount Diablo Council of the Boy Scouts* (1998)17 Cal.4th 670, stating,

> the very broad 'business establishments' language of the Act reasonably must be interpreted to apply. . . if the entity's attributes and activities demonstrate that it is the functional equivalent of a classic 'place of public accommodation or amusement.'

Ibid. at p. 697.

Relying on the guidance of California courts, federal courts have consistently held that public schools fall within the Act's purview, alongside other basic places of public accommodation. In fact, federal courts have explicitly held that public schools are subject to the Unruh Act for more than 30 years.[1] As explained in a recent Northern District of

[1] See, e.g., *Sullivan By and Through Sullivan v. Vallejo City Unified School. Dist*. (E.D. Cal. 1990) 731 F.Supp. 947, 952-953; *Doe By &*

California decision, "like the [Americans with Disabilities Act], the Act is concerned with equal access to places of public accommodation." (*Roe by and through Slagle v. Grossmont Union High School District* (S.D. Cal. 2020) 443 F.Supp.3d 1162, 1170.) In analyzing the Unruh Act's application to public schools as a public accommodation, another court explained,

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Through Doe v. Petaluma City School Dist. (N.D. Cal. 1993) 830 F.Supp. 1560, 1581-1582 ; *Nicole M. By & Through Jacqueline M. v. Martinez Unified School Dist*. (N.D. Cal. 1997) 964 F.Supp. 1369, 1388; *Clark v. West Contra Costa Unified School Dist*. (N.D. Cal., Mar. 15, 2000, No. 4884-CRB) 2000 WL 336382, at *11; *Sutta ex rel. Sutta v. Acalanes Union High School Dist.* (N.D. Cal., Oct. 3, 2001, No. C01-1519 BZ) 2001 WL 1720616, at *4; *Michelle M. v. Dunsmuir Joint Union School Dist*. (E.D. Cal., Apr. 12, 2005, No. CIVS042411MCEPAN) 2005 WL 8176750, at *6; *Annamaria M v. Napa Valley Unified School Dist*. (N.D. Cal., May 30, 2006, No. C 03-0101 VRW) 2006 WL 1525733, at *12; *D.K. ex rel. G.M. v. Solano County Office of Educ*. (E.D. Cal., Dec. 2, 2008, No. 2:08CV00534MCEDAD) 2008 WL 5114965, at *6; *Walsh v. Tehachapi Unified School Dist*., (E.D. Cal. 2011) 827 F.Supp.2d 1107, 1123; *J.F. by Abel-Irby v. New Haven Unified School Dist*. (N.D. Cal., Jan. 22, 2014, No. C 13-03808 SI) 2014 WL 250431, at *6; *E.F. v. Delano Joint Union High School Dist*. (E.D. Cal., Oct. 6, 2016, No. 116CV01166LJOJLT) 2016 WL 5846998, at *9; *K.T. v. Pittsburg Unified School Dist*. (N.D. Cal. 2016) 219 F.Supp.3d 970, 983; *Z. T. by and through Hunter v. Santa Rosa City Schools* (N.D. Cal., Oct. 5, 2017, No. C 17-01452 WHA) 2017 WL 4418864, at *7; *Yates v. East Side Union High School District* (N.D. Cal., Feb. 20, 2019, No. 18-CV-02966-JD) 2019 WL 721313, at *3*; Whooley v. Tamalpais Union High School Dist.* (N.D. Cal. 2019) 399 F.Supp.3d 986, 998; *M.M. v. San Juan Unified School Dist*. (E.D. Cal., Sept. 24, 2020, No. 219CV00398TLNEFB) 2020 WL 5702265, at *16; *R.N. by and through Neff v. Travis Unified School Dist.* (E.D. Cal., Dec. 8, 2020, No. 220CV00562KJMJDP) 2020 WL 7227561, at *10; *Roe by and through Slagle v. Grossmont Union High School Dist*. (S.D. Cal. 2020) 443 F.Supp.3d 1162, 1170; see also *Guerra v. West Los Angeles Coll*ege, (C.D. Cal., June 14, 2017, No. CV 16-6796-MWF (KSX)) 2017 WL 10562682, at *14 (finding that a California community college is a business establishment under Unruh).

> [t]he Act applies to an organization that is "classically 'public' in its operation," namely one that "opens its . . . doors to the entire youthful population" of a city, or a "broad segment of the population," with "no attempt to select or restrict membership or access on the basis of personal, cultural, or religious affinity, as private clubs might do."

(*Whooley v. Tampalpais Union High School Dist.* (N.D. Cal. 2019) 399 F.Supp.3d 986, 997 (citing *Isbister* at pp. 81, 84).) While this Court is, of course, under no obligation to accept federal courts' interpretation of California law, federal courts have only reached such a conclusion by correctly following this Court's guidance on the Unruh Act—public schools are places of public accommodation and the Unruh Act must apply to them.

C. The Legislature Has Reiterated that the Unruh Act Applies to Public Schools

The California Legislature has demonstrated in subsequent, related legislation that the Unruh Act applies to public schools. This subsequent legislation undermines the lower court's incorrect determination of the Unruh Act's legislative intent and makes strikingly clear the Legislature intends for the Unruh Act to apply to public schools. (*Donorovich-Odonnell v. Harris* (2015) 241 Cal.App.4th 1118, 1133 [finding subsequent legislation may offer "an indication of the legislative intent which may be considered together with other factors in arriving at the true intent existing at the time the legislation was enacted"]; see also *People v. Rodriguez* (2016) 1 Cal.5th 676, 686 [courts may consider "the entire legislative

scheme and related statutes in ascertaining the Legislature's intended purpose"].)

In 1997, the Legislature acknowledged the Unruh Act's function as part of an extensive anti-discrimination statutes applicable to educational institutions (including K-12 public schools) in California Education Code section 201. (Stats. 1998, Ch. 914, § 5.) Specifically, Education Code section 201 provides that "[it] is the intent of the Legislature that this chapter [on educational equity] shall be interpreted as consistent with . . . the Unruh Civil Rights Act (Secs. 51 to 53, incl., Civ. C.)." (Ed. Code, § 201, subd. (g).)

In 2015, the California Legislature enacted Assembly Bill 302 ("A.B. 302"), which requires schools to provide lactation accommodations to students. In passing this legislation, the Legislature expressly declared that public schools are within the purview of the Unruh Act: "The Legislature finds and declares all of the following: . . . *[t]he Unruh Civil Rights Act (Section 51 of the Civil Code) prohibits businesses, including public schools,* from discriminating based on sex." (Stats. 2015, Ch. 690, Sec. 222 (emphasis added).)

Today, the Legislature is aware that courts and other government entities have long considered, and continue to consider, public schools to be within the Unruh Act's purview. Nonetheless, the Legislature has not sought to amend or narrow the scope of the Unruh Act. Instead, the Legislature has done the opposite, consistently broadening its scope. This further demonstrates its intent to have the Act govern public schools.

The Court of Appeal's holding in *Brennon B.* is contrary to the Legislature's intent and should be reversed.

D. State Enforcement Agencies Have Applied the Unruh Act to Schools

State enforcement agencies have also recognized the application of the Unruh Act to schools, further demonstrating the widespread acceptance of the prior (and correct) interpretation of the Act. In 2017, the California Legislature passed Assembly Bill 699 (Stats. 2017, Ch. 493, Sec. 5. ("A.B. 699")), which clarified the protections for immigrant students in California schools. Then acting California Attorney General Xavier Becerra released a guidance document for K-12 schools on the implementation of A.B. 699, clarifying that certain discriminatory actions by a "local educational agency," a term including public schools, could violate the Unruh Act as well as federal civil rights law.[2] (See Ed. Code, § 49005.1, subd. (c) ("'Local educational agency' means a school district, county office of education, charter school, the California Schools for the Deaf, and the California School for the Blind.")); 34 C.F.R. § 300.23 (defining Local Educational Agency for the Individuals with Disabilities Education Act).) This indicates that the state's top law enforcement office interpret the Unruh Act to apply to public schools.

The Fair Employment and Housing Commission (FEHC), which was at the time responsible for enforcing various civil rights laws in California in the early 1990s, also applied the Unruh Act to public schools. (See *In the Matter of the Accusation of the Department of Fair Employment*

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[2] Cal. Office of the Attorney General, Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues (Apr. 2018) n.18, n.24, <https://oag.ca.gov/sites/all/files/agweb/pdfs/bcj/school-guidance-model-k12.pdf> (as of Sept. 14, 2021) (providing, in relevant part, that the Unruh Act requires "'full and equal accommodations, advantages, facilities, privileges, or services' for students irrespective of their immigration status").

& Housing (Nov. 18, 1993) FEHC Dec. No. 93-08, p. 11-14.) The Commission determined that the University of California, Berkeley, a public university, was a "business establishment" under the Unruh Act. (*Id*. at p. 14.) This decision was based on a recognition that the more plausible characterization of the Legislature's intent was "for both public and private schools to be covered by the Unruh Act's anti-discrimination mandate." (*Id.* at p. 12.)

Government enforcement agencies correctly interpret public schools to be "business establishments" within the meaning of the Unruh Act. It would create unnecessary confusion for agencies and regulated agencies, as well as be incorrect, to allow the Court of Appeal decision in *Brennon B.* to stand as decided.

E. School Districts Acknowledge that the Unruh Act Protects Public School Students

The Court of Appeal's ruling is misplaced not only in that it departs from the legislative intent and this Court's guidance, but also in that it would upend the policies of California public school districts.

California public school districts have relied on the Unruh Act, recognizing the Act applies to public schools and incorporating its requirements into school board policies. School districts publish board policies on a wide range of issues to operate programs and activities and to ensure the districts comply with state and federal laws. (Ed. Code, §§ 35010, 35160, 35160.5.) Some board policies provide notice to students and their families about their civil rights in schools and the rules and expectations about the way school staff treat their students. (See Ed. Code, § 234.7 (requiring local educational agencies, including school districts, to adopt policies limiting assistance with immigration enforcement in its schools).) School board policies acknowledge that the Unruh Act protects

public school students.[3] This indicates that the governing boards of school districts correctly interpret the Unruh Act to govern public schools' obligations to protect students from discrimination.

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[3] See Long Beach Unified School District, Board Policy 5146: Married/Pregnant/Parenting Students (last revised October 2, 2017), https://www.lbschools.net/Asset/Files/BOE/Policies/BP-5146.pdf; Fresno Unified School Dist., Board Policy 5146: Married/Pregnant/Parenting Students (last revised May 9, 2018), https://mk0boardpoliciebxpnk.kinstacdn.com/wp-content/uploads/5146-BP-Married-Pregnant-Parenting-Students.pdf?highlight=Unruh; Poway Unified School Dist., Board Policy 5146(a): Married/Pregnant/Parenting Students (adopted May 10, 2018), https://www.powayusd.com/PUSD/media/Board-Images/BoardPolicy/5000/BP-5146-Married-Pregnant-Parenting-Students.pdf; Ravenswood City School Dist., Board Policy 5146: Married/Pregnant/Parenting Students (adopted Nov. 14, 2019), http://www.gamutonline.net/district/ravenswoodcity/DisplayPolicy/679990/ ; Sequoia Union High School Dist., Board Policy 5146: Married/Pregnant/Parenting Students (adopted March 27, 2019), http://www.gamutonline.net/district/sequoiaunionhigh/DisplayPolicy/1130495/; San Bernardino Unified School Dist., Administrative Regulation 4032: Reasonable Accommodation (approved October 16, 2007), http://gamutonline.net/DisplayPolicy/451726/; Sweetwater High School Dist., Board Policy 5146: Married/Pregnant/Parenting Students (adopted November 17, 2008, revised January 28, 2019), http://www.gamutonline.net/district/sweetwater/DisplayPolicy/1114693/; Twin Rivers Unified School Dist., Board Policy 5146: Married/Pregnant/Parenting Students (adopted March 26, 2019), http://gamutonline.net/DisplayPolicy/513778/; Stockton Unified School Dist., Board Policy 5146: Married/Pregnant/Parenting Students (adopted February 25, 2020), http://www.gamutonline.net/district/stocktonusd/DisplayPolicy/1163357/; Riverside Unified School Dist., Board Policy 5146: Married/Pregnant/Parenting Students (adopted May 21, 1979, revised July 21, 2020), http://www.gamutonline.net/district/riversideusd/DisplayPolicy/1129065/; Fontana Unified School Dist., Board Policy 5146: Married/Pregnant/Parenting Students (adopted September 23, 2020), http://www.gamutonline.net/district/fontana/DisplayPolicy/288158/; Elk Grove Unified School Dist., Board Policy 5146:

School districts' acceptance of the applicability of the Unruh Act to public schools is more reason not to uproot the Act from its public school context. Excluding public schools from the Unruh Act would not only disturb critical civil rights protections for students but also create significant confusion for school districts. For example, nearly half of the board policies of California's 25 largest school districts would require revision.[4] Allowing the Court of Appeal's *Brennon B.* decision to stand would cause confusion in the legal landscape and require changes that are beneficial neither to schools nor students.

II. CALIFORNIA'S HISTORY OF LEGALIZED DISCRIMINATION IN PUBLIC SCHOOLS

California's public schools were built upon state-enforced separate and substandard education for Black, Asian American, Native American, and Latine[5] students. While this history is disturbing and offensive to California's ideals and constitutional promises, it is important context for comprehending the Unruh Act's role in our state public education system.

Married/Pregnant/Parenting Students (adopted October 6, 2020), http://gamutonline.net/district/elkgrove/DisplayPolicy/854180/; San Francisco Unified School District and County Office of Education, Board Policy 5146: Married/Pregnant/Parenting Students (adopted October 15, 2019), https://go.boarddocs.com/ca/sfusd/Board.nsf/goto?open&id=AGPQ8J67914B#; Corona-Norco Unified School District, Board Policy 5146: Married/Pregnant/Parenting Students (last revised Oct. 20, 2020), https://www.cnusd.k12.ca.us/common/pages/DisplayFile.aspx?itemId=2890992 (all the aforementioned policies include "Civil Code 51: Unruh Civil Rights Act" in the "Legal Reference" section)

[4] At least 11 of the 25 largest public school districts in California explicitly recognize the Unruh Act in their board policies. (See *supra,* n. 3 for a list of these school districts.)

[5] As used in this brief, the term "Latine" is a gender inclusive term and a gender-neutral alternative to the terms "Latino" and "Latina."

From the state's inception and for many decades thereafter, California public schools were racially segregated, and this segregation was upheld by courts and Legislature alike. Notably, it was not until the 1950s, when the Unruh Act was passed, that the California Legislature began pushing for discrimination-free schools. The Unruh Act continues to be a key piece in the legislative framework working to remedy and heal the state's poignant history of racial and disability-based segregation, harassment, and discrimination in education.

The California Constitution and California Courts have expressly proclaimed a right to public education. (See *Serrano v. Priest* (1971) 5 Cal.3d 584, 609 (holding that education is a fundamental right).) However, for most of the state's existence, that right has been purposefully denied to non-white students and their parents. Upon its founding as a state, California explicitly denied education to and discriminated against Asian, Native American, Latine, and Black students. Two years later, the California Legislature made this denial even clearer by passing a bill barring Black students from schools.[6] The Legislature further clarified, in Sec. 18 of California's 1855 school law, that "the Marshals . . . shall . . . annually take a specific census of all the *white* children within their respective precincts . . . and make full report . . . to the County Superintendent of Common Schools, and . . . to the Trustees in their respective school districts."[7] A few years later, California passed the

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[6] U.S. Dept. of the Interior & National Park Service, Theme Study: Racial Desegregation in Public Education in the United States (Aug. 2000) OMB No. 1024-0018, p. 16, <https://www.nps.gov/subjects/tellingallamericansstories/upload/CivilRights_DesegPublicEd.pdf> (as of September 14, 2021).

[7] Kuo, *Excluded, Segregated and Forgotten: A Historical View of the Discrimination of Chinese Americans in Public Schools* (1998) 5 Asian L.J. 181, 190.

School Law of 1860, which held that "Negroes, Mongolians, and Indians shall not be admitted into the public schools."[8] This was codified and reaffirmed by the California Legislature in 1863. (Stats. 1863, ch. 159 § 68, p. 210, at <https://clerk.assembly.ca.gov/content/statutes-and-amendments-codes-1863?archive_type=statutes> [as of Sept. 14, 2021].) The state went further to mandate that if any school were to admit non-white students, funds will be "[withheld] from the district in which such schools are situated, all shares of the State School Fund." (*Ibid*.)

In 1864, the California Legislature amended this point, but only to permit "separate School[s] for the education of Negroes, Mongolians, and Indians."[9] Two years later, this was further amended to clarify that white public school districts may admit "half breeds" (students of mixed White and Native American descent) or those Native American students living with white families, following a majority vote by the local school board.[10] Explicit discrimination against and segregation of non-white students in California public schools persisted for nearly one hundred years, from the 1850s until the 1950s. For decades, Black students were denied schooling for not being "sufficiently advanced" (*Ward v. Flood* (1874) 48 Cal. 36, 46), Native American students were forced into dangerous and family-

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[8] *Ibid*.

[9] Stats.1863, c. 159 § 68, p. 210, <https://clerk.assembly.ca.gov/content/statutes-and-amendments-codes-1863?archive_type=statutes> (as of Sept. 14, 2021). A few years later, the California legislature would delete the word "Mongolian" from this language, excluding Chinese students from both the all-white and the separate schools in the public school system – denying students of Chinese descent from any public education. Kuo, *supra* note 7 at p.184.

[10] Hendrick, *Public Policy Toward the Education of Non-White Minority Group Children in California, 1849-1970* (1975) National Institution of Education 90, <https://files.eric.ed.gov/fulltext/ED108998.pdf> (as of Sept. 14, 2021).

shattering boarding schools,[11] Asian students were sent to "Oriental schools,"[12] and Mexican-American students were sent to segregated "new Americanization schools."[13] California's esteemed public school system was, sadly, built on a foundation of racial inequality.

California education leaders not only discriminated against students based on their race but also based on their disability and national origin. In 1921, the California State Superintendent of Public Instruction argued that students with disabilities should be segregated from their nondisabled classmates and that immigrant populations in some communities were to blame for the high percentages of students with disabilities in some parts of California. (*Larry P. v. Riles* (N.D. Cal. 1979) 495 F.Supp. 926, 936–937, *aff'd in part, rev'd in part sub nom. Larry P. By Lucille P. v. Riles* (9th Cir. 1984) 793 F.2d 969.)

World War II triggered new and shifting migration patterns as well as economic fluctuations, that had differing impacts on different racial groups in California's educational system. In the 1940s and 1950s, with the "rapid influx of non-white population" leading to shifting neighborhood compositions, there was an "accelerated rate of segregation," with white parents "objecting at every turn" when primarily white schools started to become more mixed.[14] A flare-up in racial tensions across California public schools was followed by a series of legal challenges under the Equal Protection Clause, including *Mendez v Westminster School Dist. of Orange County*, (9th Cir. 1947) 161 F.2d 774, 781, which successfully outlawed

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[11] Wollenberg, *All Deliberate Speed: Segregation and Exclusion in California Schools, 1855-1975* (1975) 91.
[12] Hendrick, *supra* note 10 at 79.
[13] Scharf, *The Lemon Grove Incident* (1986) 32 J. San Diego Hist. 2, <https://sandiegohistory.org/journal/1986/april/index-htm-104/.>
[14] Hendrick, *supra* note 10 at 214.

explicit racial segregation in California's public schools. *Westminster* effectively paved the way for *Brown v. Board of Education of Topeka, Shawnee County, Kansas* (1954) 347 U.S. 483, which determined that a system of "separate but equal" schools were unconstitutional.

Unfortunately, while legal challenges aiming to integrate California's schools were able to erode *explicit* segregation in California public schools, they were insufficient to cure the ills of deeply embedded racial and social discrimination. So, shortly after the decision in *Brown*, in 1959, the California Legislature enacted the Unruh Act. The Act was passed in the context of the school integration movement,[15] and was meant to have a significant impact on the landscape of civil rights claims within California's schools. In other words, the California Legislature used the Unruh Act to help afford those public school students who had been denied a seat in the classroom for decades a tool for demanding a fair opportunity to participate in California's freshly integrating schools.

The Unruh Act was passed during extraordinarily tense times for students of color. Many courts were hostile toward integration. As *Reed v. Hollywood Professional School* (1959) 169 Cal.App.2d Supp. 887 ("*Reed*") demonstrates, courts readily excused actors who exposed students to racial discrimination. In rejecting the right to bring a discrimination claim against a private school that excluded children based solely on their race, the *Reed* court observed that, "private schools should be entitled to contract or refuse

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[15] See Horowitz, *The 1959 California Equal Rights in Business Establishments Statute-A Problem in Statutory Application* (1960) 33 So.Cal.L.Rev. 260, 265 (explaining that the Unruh Act was introduced in the California Assembly in 1959 after a trial court decision held that a privately-owned grammar and secondary school could discriminate against a Black child in enrollment because the school was not a "'place of public accommodation' under the old Sections 51 and 52" of the Civil Code).

to contract with students of their choice for whatever reason if such contract or refusal does not fall within the constitutional or statutory proscription against discrimination on the basis of race or color." (*Id.* at p. 892.) The *Reed* court used a narrow construction of Civil Code section 51, the precursor to the Unruh Act, to successfully thwart a young Black student from enforcing her civil rights against a private school. The Legislature rejected the notion that any entity could engage in blatant racism and passed the Unruh Act and subsequently amended it to expand the language of Civil Code section 51. The language of the Act has since been consistently, and correctly, applied in the "*broadest sense reasonably possible*," (*Isbister*, *supra*, 40 Cal.3d at p. 76)—giving students in both public and private schools a powerful tool to protect their civil rights.

III. THE UNRUH ACT IS CRITICAL TO PROTECTING MILLIONS OF PUBLIC SCHOOL STUDENTS FROM DISCRIMINATION

A. California's K-12 Student Population is Highly Diverse

The Unruh Act is a key part of the legal framework that protects children from unlawful discrimination and harassment in schools based on protected characteristics enumerated in the Act. These protected characteristics include sex, race, color, religion, national origin, disability, sexual orientation, or medical condition. According to the California Department of Education's DataQuest resource, California serves 6,002,523 students.[16] California's 6 million K-12 students are extremely diverse:

[16] Cal. Dept. of Education—DataQuest, *State Report: 2020-21 Enrollment by Ethnicity and Grade*, <https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthGrd.aspx?cds=00&agglevel=State&year=2020-21> (as of Sept. 14, 2021).

- 73 percent are students of color[17];
- 11.7 percent are students with a disability[18];
- 18.6 per cent are English learners[19];
- 10.3 percent of middle and high school students identified as LGBTQ in a 2017 survey[20];
- 48.7 percent of currently enrolled students are girls[21]

California's K-12 student diversity is an asset to our state. But diversity alone does not create inclusive and safe spaces for all. Conversely, researchers have found that "whites exposed to the racial demographic shift information . . . expressed more negative attitudes toward Latinos, Blacks, and Asian Americans; and expressed more automatic pro-White/anti-minority bias."[22] The continuing prevalence of discrimination in public schools reaffirms the importance of the Unruh Act and its cruciality in California's schools.

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[17] *Ibid.*
[18] Cal. Dept. of Education—Cal. School Dashboard, *2020 State of California Performance Overview*, <https://www.caschooldashboard.org/reports/ca/2020> (as of Sept. 14, 2021).
[19] *Ibid.*
[20] Choi, Baams & Wilson, *LGBTQ Youth in California's Public Schools: Differences Across the State* (The Williams Institute, 2017) p. 4, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-Youth-CA-Public-Schools-Oct-2017.pdf> (as of Sept. 14, 2021).
[21] Cal. Dept. of Education—DataQuest, *State Report: Enrollment Multi-Year Summary by Grade*, <https://dq.cde.ca.gov/dataquest/dqcensus/EnrGrdYears.aspx?cds=00&agglevel=state&year=2020-21> (as of Sept. 14, 2021).
[22] Craig & Richeson, *More Diverse Yet Less Tolerant? How the Increasingly Diverse Racial Landscape Affects White Americans' Racial Attitudes* (2014) 40 Personality and Social Psychology Bull. 750, 758, <https://spcl.yale.edu/sites/default/files/files/Pers%20Soc%20Psychol%20Bull-2014-Craig-750-61.pdf> (as of Sept. 14, 2021).

B. Students in K-12 Schools Routinely Face Harassment and Discrimination in Schools

The Court of Appeal's decision in *Brennon B.* over-simplified and understated the ways that students continue to experience discrimination in schools. California schools continue to be harmful and hostile learning environments for students who have been traditionally disenfranchised by the public education system, including students of color and students with disabilities.[23] This is extremely concerning, as children "spend most of their waking hours from early children until late adolescence" at school, and are particularly vulnerable.[24] School discrimination can produce responses "similar to post-traumatic stress disorder," and children generally lack power and agency in school, which exacerbates the impact of discrimination. The continuing prevalence of discrimination in public schools, and the harsh impact of such discrimination, reaffirms the critical importance of the Unruh Act's applicability to California's schools.

Examples of racial segregation in schools persist despite *Brown v. Board of Education* finding such discrimination unlawful more than fifty

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[23] See, generally, Darling-Hammond & Cook-Harvey, *Educating the Whole Child: Improving School Climate to Support Student Success* (Sept. 2018) Learning Policy Institute, pp. 5-7, <https://learningpolicyinstitute.org/sites/default/files/product-files/Educating_Whole_Child_REPORT.pdf> (as of Sept. 14, 2021) (explaining that "[c]onsiderable research shows that exclusionary responses, such as suspensions and expulsions, disproportionately affect students of color from low-income families and students with disabilities, who receive harsher penalties than those received by other students who engage in similar behaviors"); see also, *infra*, Section III.C.

[24] Spears Brown, *The Educational, Psychological, and Social Impact of Discrimination on the Immigrant Child* (Sept. 2015) Migration Policy Institute, pp. 3, 9, <https://www.migrationpolicy.org/sites/default/files/publications/FCD-Brown-FINALWEB.pdf> (as of Sept. 14, 2021).

years ago. For example, the State of California recently filed a lawsuit, and reached a favorable settlement, against the Sausalito Marin City School District after the "Attorney General's Office concluded in October of 2018 that the District had knowingly and intentionally maintained and exacerbated existing racial segregation, and had established an intentionally segregated school." (Complaint at ¶5.1, *The People of the State of California ex rel. Xavier Becerra, Attorney General of the State of California v. Sausalito Marin City School Dist*. (S.F. Super. Ct., Aug. 8, 2019, No. CGC-19-578227).)

Similar recent stories illustrating the need for stringent anti-discrimination and anti-harassment laws in public schools abound:

- In 2017, the Kern High School District settled a lawsuit challenging the district's discriminatory practices that subjected Latine and Black students to higher rates of suspension, expulsion, and pushout to alternative schools.[25]
- In 2018, Modesto City Schools reached a settlement with a coalition of families and advocates due to the district's discriminatory practices that subjected Black students, Latine students, and English learners to higher discipline rates.[26]
- In 2019, parents of a Black student with disabilities filed a discrimination complaint against the Moreno Valley Unified School

[25] Adams, *Settlement in Kern discrimination lawsuit for new school discipline policies*, EdSource (July 24, 2017) <https://edsource.org/2017/settlement-in-kern-discrimination-lawsuit-calls-for-new-school-discipline-policies/585212> (as of September 11, 2021).
[26] Carlson, *Modesto school district, charged with unfair discipline practices, reaches settlement*, The Modesto Bee (May 22, 2018) <https://www.modbee.com/news/article211604669.html> (as of September 11, 2021).

District after school resource officers handcuffed the student four separate times for non-threatening, disability-related behavior.[27]

- In 2019, Stockton Unified School District settled a complaint by the California Department of Justice alleging that the district and its police department had been systematically discriminating against Black and Latine students and students with disabilities when referring them to law enforcement.[28]
- In 2020, the California Healthy Kids Survey found that LGBTQ students are more than twice as likely as their cisgender and straight peers to experience bullying or harassment and that fewer than half of LGBTQ students reported feeling safe at school.[29]
- In 2020, the Barstow Unified School District, Oroville City Elementary School District, and Oroville Union High School District

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[27] Schwebke, *Parents of 11-year-old Black student repeatedly handcuffed by deputies file complaint against Moreno Valley Unified*, The Press-Enterprise (July 16, 2020) <https://www.pe.com/2020/07/16/parents-of-11-year-old-black-student-repeatedly-handcuffed-by-school-police-files-complaint-against-moreno-valley-unified/> (as of September 11, 2021).

[28] Washburn, *Stockton Unified settles state complaint over discriminatory policing practices*, EdSource (Jan. 22, 2019), <https://edsource.org/2019/stockton-unified-settles-state-complaint-over-discriminatory-policing-practices/607559> (as of Sept. 11, 2021).

[29] Hanson, Zhang, Cerna, Stern, & Austin, *Understanding the Experiences of LGBTQ Students in California* (2019) WestEd, <https://www.wested.org/wp-content/uploads/2020/09/Infographic-LGBTQ-R21.pdf> (as of Jan. 22, 2021); see also Choi, Baams & Wilson, *LGBTQ Youth in California's Public Schools: Differences Across the State* (The Williams Institute, 2017) p. 4, https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-Youth-CA-Public-Schools-Oct-2017.pdf (as of Sept. 14, 2021) ("LGBTQ youth reported higher rates of experiencing victimization in the form of verbal and physical harassment and abuse compared to non-LGBTQ youth. LGBTQ youth also reported feeling less safe at school than their non-LGBTQ peers.").

entered into separate settlement agreements with the California Attorney General's Office for systematically discriminating against Black students and students with disabilities through punitive discipline.[30]

Continued discrimination and harassment in California's schools underscore the importance of maintaining the Unruh Act's strong protections against discrimination in schools.

C. Education Equity Amici and Other Civil Rights Organizations Rely on the Unruh Act to Protect Public School Students

For decades, the Unruh Act has served as an effective tool for California's most vulnerable students—particularly students of color, LGBTQ+ students, and students with disabilities— to have legal recourse when their schools engage in harmful discrimination or allow such discrimination and harassment to occur unchecked. As explained above *supra*, in Sections III.A-B., the need for civil rights protections in schools remains high.

The Unruh Act has served as a strong vehicle for advocates to ensure that California realizes its promise of providing safe, inclusive, and discrimination-free schools. Amici and other civil rights and legal organizations have relied on the Unruh Act to challenge student harassment and discrimination in public schools across the state. By way of example:

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[30] Cal. Att'y Gen., *Attorney General Becerra Secures Settlements with Barstow and Oroville School Districts to Address Discriminatory Treatment of Students Based on Race and Disability Status,* Cal. Dep't of Just. (Aug. 25, 2020), <https://oag.ca.gov/news/press-releases/attorney-general-becerra-secures-settlements-barstow-and-oroville-school> (as of Sept. 14, 2021).

- In *Reeder v. Chawanakee Unified School Disrict.*, (Madera Cnty. Super. Ct., 2019, MCV080168), the ACLU Foundation of Northern California asserted an Unruh Act claim against a northern California school district for censoring students who sought to publish pro-LGBTQ quotes in their yearbook.
- In *Jessica K. v. Eureka City Schools*, (N.D. Cal., Feb. 21, 2014, No. 3-13-cv-05854-JSC) 2014 WL 689029, the ACLU Foundation of Northern California and the National Center for Youth Law asserted an Unruh Act claim to challenge the racially and sexually hostile educational environment for Black and Native students, particularly Black and Native girls, in Eureka schools in northern California. *Jessica K.* resulted in a settlement requiring a district-wide school climate and disability services assessment, implementation of assessment recommendations and community engagement opportunities, policy revisions, monetary awards for the minor plaintiffs, and attorneys' fees.
- In *Doe v. Newport-Mesa Unified School Dist.*, (Orange Cnty. Super. Ct. Sept. 9, 2009, No. 30-2009-00120182-CU-CR-CJC), the ACLU Foundation of Southern California and Chapman University School of Law asserted an Unruh Act claim against a southern California school district that failed to protect a high school student from sexual harassment and took little action to address the school's hostile environment for female, gay, and lesbian students. The plaintiff settled for injunctive relief, including a written apology from the school district and mandatory training on sexism and homophobia for district staff and students, and attorneys' fees.
- In *C.N. v. Wolf* (C.D. Cal. 2005) 410 F.Supp.2d 894, 900, the ACLU Foundation of Southern California asserted an Unruh Act claim

against a southern California school district for sexual orientation discrimination against a lesbian student.

- In *Massey v. Banning Unified School Dist.* (C.D. Cal. 2003) 256 F.Supp.2d 1090, the ACLU Foundation of Southern California and the National Center for Lesbian Rights asserted an Unruh Act claim against a southern California school district on behalf of an eighth-grade student after she was prohibited from attending physical education because of her sexual orientation. The settlement in *Massey* required the school district to change its non-discrimination policy, provide training for staff and students, and pay $45,000 to plaintiff.
- In *Gay-Straight Alliance Network v. Visalia Unified School Dist.* (E.D. Cal. 2001) 262 F.Supp.2d 1088, the ACLU Foundation of Northern California asserted an Unruh Act claim against a Central Valley school district for discriminating against a student based on his sexual orientation and failing to protect him from anti-gay slurs and comments from teachers and students. The plaintiff settled for $130,000 and injunctive relief requiring revision of the anti-harassment policy, staff training, campus compliance officers, and annual incident reports.

The Unruh Act has permitted education equity advocates to achieve important, broad-reaching policy changes benefiting thousands of students and increasing equity in California's school system. Accordingly, Amici urge the Court to preserve this critical protection for students facing discrimination and harassment by affirming that public schools are "business establishments" under the Unruh Act.

D. The Unruh Act Provides Critical Remedies for Californians Who Endure Discrimination

The Unruh Act is one of the few civil rights protections that provides statutory damages acknowledging the inherent harm arising from identity-based discrimination. The Individuals with Disabilities Education Act and related state laws provide students with Individuals Education Program plans access to educational remedies, but not economic damages. (*Blanchard v. Morton School District* (9th Cir. 2007) 509 F.3d 934; *see*, *also*, *White v. State of California* (Ct. App. 1987) 195 Cal.App.3d 452.) The possibility of recovering economic damages has, at times, aided education advocates to encourage schools to institute systemic changes to remove harmful school policies and practices.

The Unruh Act also provides victims of discrimination with the potential to recover attorneys' fees, an important remedy that this Court has acknowledged is critical to advance the goals of our state civil rights laws. (*See* Civ. Code § 52 [stating violators of the Unruh Act are "liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars ($4,000), and any attorney's fees that may be determined by the court[.]"); see also *Woodland Hills Residents Association, Inc. v. City Council of Los Angeles* (1979) 23 Cal.3d 917, 933 ("privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible.") (internal citations omitted).) This unique feature of the Unruh Act bolsters the broad and impactful civil rights protections it

offers to public school students—protections which the Court of Appeal's decision in *Brennon B.* threatens to abolish.

CONCLUSION

For all the foregoing reasons, Education Equity Amici respectfully request that this Court overturn the *Brennon B.* decision and hold that public schools are "business establishments" for purposes of the Unruh Civil Rights Act.

Dated: September 15, 2021

ACLU Foundation of Southern California

ACLU Foundation of Northern California

ACLU Foundation of San Diego and Imperial Counties

By: */s/ Ana Mendoza*
Ana Mendoza

Attorney for Amici Curiae

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.520 (c) of the California Rules of Court and in reliance on the word count of the computer program used to prepare this Proposed Amici Curiae Brief, counsel certifies that the text of this brief (including footnotes) was produced using 13-point type and contains 6,972 words. This includes footnotes but excludes the tables required under Rule 8.204(a)(1), the cover information required under Rule 8.204(b)(10), the Certificate of Interested Entities or Persons required under Rule 8.208, the Application to File Amici Curiae Brief required under Rule 8.200(c)(1-3), this certificate, and the signature blocks. See Cal. Rule of Court, Rule 8.204(c)(3).

ACLU Foundation of
Southern California

Dated: September 15, 2021

By: */s/ Ana Mendoza*
Ana Mendoza

Attorney for Amici Curiae

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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1313 West Eighth Street, Los Angeles, California 90017. I am employed in the office of a member of the bar of this court at whose direction the service was made. On September 15, 2021, I served the attached document by electronically transmitting a true copy via this Court's TrueFiling system to the recipients listed on the below service list. Also on this date, I transmitted the above document to be mailed by Nationwide Legal, LLC via U.S. mail to the recipients listed on the below service list.

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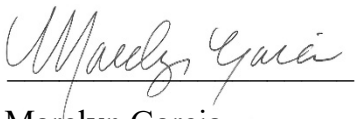

Marelyn Garcia

STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

Case Name: **B. (BRENNON) v. S.C. (WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT)**
Case Number: **S266254**
Lower Court Case Number: **A157026**

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9/15/2021

Date

/s/Ana Graciela Najera Mendoza

Signature

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