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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

1776 PROJECT FOUNDATION,

Plaintiff,

and

THE UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

ALBERTO M. CARVALHO,

No. 2:26-cv-00548-HDV-CTS

UNITED STATES OF AMERICA'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, STAY

Hearing Date: September 24, 2026
Hearing time: 1:00 PM
Courtroom: 5B
Judge: Hernán D. Vera

Superintendent of the Los Angeles Unified School District (LAUSD), *et al.*,

Defendants

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INTRODUCTION

No child should go to class knowing that her school is deprived of equal benefits because too many of her classmates look like her. But that is the weight that schoolchildren must carry in Los Angeles. The issue in this motion to dismiss is not whether "non-Anglo" schools can obtain educational benefits. The issue is whether the Los Angeles County School Board *denies* those benefits to "Anglo" schools because of their students' race, *according to the allegations in the Complaint*. If the answer to that question is yes, then every other issue is easily resolved (including whether the School Board can satisfy strict scrutiny at this early stage, whether the 1776 Project's Complaint supports its allegations of discriminatory harm, and whether this Court should abstain).

The United States' Complaint adequately alleges that the School Board engages in "race-based government action," which triggers strict scrutiny. *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 207 (2023) ("*SFFA*"). The School Board's euphemistic acronym "PHBAO" ("Predominantly Hispanic, Black, and Other Non-Anglo"), U.S. Compl., ECF 29 ¶ 2, admits the program's race-based purpose. A school can only earn "Predominantly . . . Non-Anglo" status if 30% or less of its students are "Anglo." *Id.* at ¶ 2–4. If a school attains that racial status, then the Non-Anglo Program[1] awards it with special privileges: greater school funding than "Anglo" schools, smaller class sizes, admissions preferences to its magnet schools, and other privileges that "Anglo" schools are denied. *Id.* at ¶ 5.

The School Board argues that the Non-Anglo Program does not even trigger strict scrutiny because it discriminates against schools, not people. This is the quintessential example of a racial proxy. No court would accept this logic if government denied benefits, instead, to historically black

[1] To lift the mask of race-neutrality, this memorandum rejects the School Board's euphemistic acronym ("PHBAO"), and simply call the program what it is: the Non-Anglo Program.

colleges over their racial composition. But "[t]he guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color." *SFFA*, 600 U.S. at 206.

The Non-Anglo Program also cannot satisfy strict scrutiny (especially considering recent case law). But the School Board tries to satisfy strict scrutiny by relying on factual allegations that are inadmissible in a motion to dismiss—and that are unhelpful to the School Board. For example, the School Board says that it *must* discriminate because a state "desegregation" order, *Crawford v. Board of Education*, No. 822 854 (Los Angeles Sup. Ct. Sept. 10, 1981), requires remedial discrimination. But in federal court, a state court decision (including a remedial discrimination order) cannot preclude the rights of people who were never parties to the state action. *Martin v. Wilks*, 490 U.S. 755, 760, 762–73 (1989) (superseded by statute on other grounds). Southeastern states tried throughout the Civil Rights Movement to subject federal civil rights to state law;[2] but the U.S. Constitution's Supremacy Clause, U.S. Const. art. VI, cl. 2, is not so easily upended.

Even if the United States *had* been a party in *Crawford*, that would do nothing for the School Board, because *Crawford*'s holding of "segregation" under federal law was overturned, *Crawford v. Bd. of Ed.*, 113 Cal. App. 3d 633, 636–37 (1980) (affirmed by 458 U.S. 527, 530 (1982))—a critical fact the School Board overlooks. What remains of *Crawford* was decided solely on state-law grounds. As far as federal law is concerned, there is no discrimination to remedy.

Because the Non-Anglo Program affects the children represented by the 1776 Project personally—not just schools in the abstract—it has standing. Regardless, the United States may

[2] *See, e.g., Green v. County School Board*, 391 U.S. 430, 432-433 (1968) ("The respondent School Board continued the segregated operation of the system after the *Brown* decisions, presumably on the authority of several statutes enacted by Virginia in resistance to those decisions.").

remain in a suit filed under 42 U.S.C. § 2000h-2, even if the original plaintiff is dismissed. *Pasadena City Bd. of Ed. v. Spangler*, 427 U.S. 424 (1976). Finally, this Court should reject the School Board's request to abstain and defer to state courts. Refusing to abstain is safe because courts "are never *required* to apply" the kind of abstention the School Board asks for. *Columbia Basin Apt. Ass'n v. City of Pasco*, 268 F.3d 791, 802 (9th Cir. 2001). It is also necessary because *Crawford* defies clear federal law. The School Board's motions to dismiss and abstain should be denied.

LEGAL STANDARD

In ruling on a motion to dismiss under Rule 12(b)(6), "generally the scope of review on a motion to dismiss for failure to state a claim is limited to the Complaint." *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010). A court must "accept as true all well-pleaded allegations of material fact, and construe them in the light most favorable to the non-moving party." *Id.* Finally, the court should grant the motion only if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Id.* at 249–50.

Likewise, when ruling on a motion to dismiss under Rule 12(b)(1), "[t]he general rule . . . is to take allegations as true unless denied or controverted by the movant." *Fed. Bureau of Investigation v. Fikre*, 601 U.S. 234, 237 n. 1 (2024) (citations, internal quotation marks omitted).

OBJECTIONS

The United States objects to the School Board's use of evidence from the California Department of Education. ECF 48 at xi, 27–28. Review is generally limited to the complaint. *Daniels-Hall*, 629 F.3d at 998. The School Board identifies no applicable exception.

PROCEDURAL HISTORY

In its brief, the School Board provided its rendering of the procedural background of this case. ECF 48 at 3–8. But the School Board's summary omitted details that upend its narrative.

***Crawford I* (Los Angeles Superior Court 1970)**

In 1970, a state trial court found that Los Angeles schools were illegally segregated under state and federal law. *Crawford v. Bd. of Ed.*, No, 822 854, pp. 53, 78 (Los Angeles Sup. Ct. Feb. 11, 1970) ("*Crawford I*"). To the trial court, "segregation" meant "racial imbalance," "even in the absence of . . . affirmative discriminatory conduct by a school board." *Id.* at 14–15 (citations omitted). The state court blamed the School Board for race-neutral policies, such as failing to "overcome the effect of population movement." *Id.* at 32. To the state court, "integration" meant "the creation of racial balance" and "the elimination of racial imbalance." *Id.* at 42. The court made no distinction between *de jure* segregation and so-called "*de facto* segregation." *Id.* at 85.

But *Crawford I* rejected the theory behind the programs that the United States challenges in this suit. The court relied on the testimony of Dr. Kenneth Clark, a psychiatrist who testified that "ideas of inferiority" were unhelpful; that "the people who propose special education, special this, special that, for minority group children," are proposing something that minority children "don't need" if they are "taught well." *Id.* at 34–35. "[C]ompensatory education programs," the court said, "are no substitute for integrated education." *Id.* at 56.

***Keyes v. School District* (U.S. Supreme Court 1973)**

In the following years, the U.S. Supreme Court held that to establish unlawful segregation in violation of the U.S. Constitution, "plaintiffs must prove . . . that segregated schooling . . . was brought about or maintained by intentional state action . . . [consisting of] an unconstitutional policy of deliberate racial segregation." *Keyes* v. *School District*, 413 U.S. 189, 198 (1973). Such

"*purpose* or *intent* to segregate" was "the differentiating factor between de jure segregation and so-called de facto segregation." *Id.* at 208 (emphasis original).

***Crawford* Appeal to the Supreme Court of California (1976)**

Armed with *Keyes*, the School Board appealed *Crawford I* to the Supreme Court of California. *Crawford v. Bd. of Ed.*, 17 Cal. 3d 280 (1976). But the California Supreme Court did not address the federal question. *Id.* at 290. For purposes of the *California* Constitution's equal protection clause, the School District was *de jure* segregated because California law recognized no "de jure-de facto distinction." *Id.* at 285, 298. The California Supreme Court declared that a school board must "alleviate racial imbalance in schools," "even in the absence of . . . affirmative discriminatory conduct by [the] school board," to remedy a sweeping range of societal ailments, including "private acts of discrimination." *Id.* at 291, 300.

The trial court then ordered "large-scale mandatory pupil reassignment and transportation" (busing) to eliminate the racial imbalance in Los Angeles schools. *See Los Angeles Branch NAACP v. LAUSD*, 750 F.2d 731, 735 (9th Cir. 1984) (summarizing the case history).

Proposition 1 (1979)

In 1979, the voters of California adopted Proposition 1, which prohibited state courts from ordering race-based busing, unless busing would be required "by the Equal Protection Clause of . . . the United States Constitution." Calif. Const. art. I, § 7(a).

***Crawford* appeal to the California Court of Appeal (1980)**

Because the trial court had ordered busing, Proposition 1 made the question federal: did the School Board's "racial imbalance" violate the *Federal* Constitution's Equal Protection Clause? *Crawford v. Bd. of Ed.*, 113 Cal. App. 3d 633, 636–37 (1980). The California Court of Appeal held that "the trial court clearly erred as a matter of law" when it found "de jure segregation" under the

U.S. Constitution, because the trial court never found any "specific segregative intent with discriminatory purpose." *Id.* at 645–46. "[T]he trial court's identification of . . . de jure segregation . . . was not true at all in the sense of federal law." *Id.* at 646. Therefore, "there was no federal constitutional violation—regardless of the terminology used by the court." *Id.* at 646.

***Crawford II* (Los Angeles Superior Court 1981)**

Without busing, the trial court accepted the School Board's revised "desegregation" plan. *Crawford v. Bd. of Ed.*, No. 822 854, ECF 48-3, p. 3 (Los Angeles Sup. Ct. Sept. 10, 1981) ("*Crawford II*"). *Crawford II* held: "All facts material to the case have changed since the case was filed in 1963." *Id.* at 1. For example, in *Crawford I*, white students were the majority population; but by 1981, "Black, Hispanic, and Asian children, as well as those of other non-Anglo ancestries," had become "the vast majority of the school population." *Id.* at 4. It therefore "vacated" "[a]ll outstanding Orders of the Superior Court in this matter," *id.* at 3—including, implicitly, the *Crawford I* order. But the court still imposed a new "desegregation" order (which the School Board now relies on for its Non-Anglo Program). And *Crawford II* imposed the plan that *Crawford I* had considered demeaning and unnecessary: special programs for "non-Anglo" schools. The court issued no findings explaining why "desegregation" *remained* necessary after vacating *Crawford I*; and it made no findings explaining why special education had *become* necessary.

***Crawford* appeal to the U.S. Supreme Court (1982)**

In 1982, the U.S. Supreme Court affirmed the California Court of Appeal's decision that the *Crawford* order was rooted exclusively in state law. *Crawford v. Bd. of Ed.*, 458 U.S. 527, 530 (1982). The U.S. Supreme Court did not address the question of whether the *Crawford* order violated the Fourteenth Amendment. *Id.* at 535, n. 11 ("We do not reach this contention.").

***Los Angeles Branch NAACP v. NAACP* (9th Circuit 1984)**

In 1984, the Ninth Circuit held that plaintiffs could not relitigate whether Los Angeles schools had a history of "segregation" (as federally defined) before the close of the *Crawford* trial. *Los Angeles Branch NAACP v. LAUSD*, 750 F.2d 731, 740–41 (9th 1984). *Res judicata* barred relitigation of that issue. *Id.* at 737. This bar applied to the *Crawford* class itself, as well as "nonparties whose interests were 'virtually represented.'" *Id.* at 741. Presumably, the bar must also apply to the School Board, since it was also a party to the *Crawford* litigation.

Aftermath: *Students for Fair Admissions* (U.S. Supreme Court 2023)

In 2023, the U.S. Supreme Court finally addressed questions it had not answered in its 1982 *Crawford* appeal. In *SFFA*, the Court struck down racial preferences in college admissions. But the Court did not limit its logic to college admissions. "Eliminating racial discrimination means eliminating all of it," it held. *Id.* at 206. "[O]utright racial balancing is 'patently unconstitutional.'" *Id.* at 223 (citations omitted). The Court rejected the "view that the Fourteenth Amendment permits state actors to remedy the effects of societal discrimination through explicitly race-based measures," *id.* at 226—the very issue the Court had avoided in the 1982 *Crawford* appeal.

Summary

The School Board relies on *Crawford* to establish a compelling interest in "desegregation" under federal law, and to ask this Court to abstain in this suit and defer to state courts. But the School Board never mentions (1) that *Crawford I* already contained findings of discrimination under federal law; (2) that the Court of Appeal overturned those federal findings, and was affirmed by the U.S. Supreme Court; (3) that the Ninth Circuit held the Court of Appeal's decision to be binding against the *Crawford* litigants; (4) that *Crawford II* vacated *Crawford I*, or (5) that *Crawford II* never contained its own findings of discrimination.

Crawford's "desegregation" findings do not carry out any provision in the U.S. Constitution. No court has ever addressed whether the Non-Anglo Program *violates* the U.S. Constitution. But under recent case law, the answer is clear: it does.

ARGUMENT

I. This Court has subject matter jurisdiction over both claims.

A. The United States has statutory authority to remain in this lawsuit, independent of the 1776 Project.

The School Board does not dispute the United States' Article III standing. Instead, the School Board asserts that the executive branch lacks the delegated authority to "independently maintain this lawsuit" "without the 1776 Project." ECF 48 at 8. That is incorrect. The Attorney General intervened in this suit under 42 U.S.C. § 2000h-2. According to the U.S. Supreme Court, § 2000h-2 "authorize[s] the United States to continue as a party plaintiff . . ., despite the disappearance of the original plaintiffs . . ., so long as such participation serves the statutory purpose, and that the presence of the United States as a party ensures that this case is not moot." *Pasadena City Bd. of Ed. v. Spangler*, 427 U.S. 424, 430 (1976). This makes sense, because (as the *Spangler* Court emphasized) the statute entitles the United States "to the same relief as if it had instituted the action." *Id.* at 430 (quoting § 2000h-2). The filing of the suit by a private plaintiff merely acts as a trigger for the United States' statutory authority, not a grant of constitutional standing. *See* T.L. Grove, Article: *Standing Outside of Article III*, 162 U. Pa. L. Rev. 1311, 1313 (2014) ("[Courts have] repeatedly asserted (or assumed) that the standing of . . . the executive branch, like other actors before the court, depends only on Article III [of the U.S. Constitution].").

None of the cases the School Board cites even address § 2000h-2. For example, *United States v. Mattson*, 600 F.2d 1295, 1297 (9th Cir. 1979) held that the United States generally cannot

sue "without express statutory approval." *Id.* at 1297–98. But in *Mattson*, the United States relied on a swath of other statutes—not § 2000h-2—for authority to sue.

Because § 2000h-2 authorizes the United States to remain in a lawsuit even if the original plaintiff is dismissed, this Court should reject the motion to dismiss the United States.

B. The 1776 Project has standing.

The United States should also remain in this case because the 1776 Project has standing. Racial discrimination, unlike other causes of action, is *inherently* harmful. *SFFA*, 600 U.S. at 203 ("As the [Supreme] Court subsequently recognized [after *Plessy v. Ferguson*], even racial distinctions that were argued to have no palpable effect worked to subordinate the afflicted students"); *Adarand Constructors v. Peña*, 515 U.S. 200, 211 (1995) (holding that when government discriminates in a competitive process, "[t]he injury . . . is that a discriminatory classification prevent[s] the plaintiff from competing on an equal footing."). The 1776 Project not only pleads these inherent harms in its complaint; it also goes into specific detail about how its members' children have been deprived of specific opportunities because of the Non-Anglo Program. *See*, *e.g.*, 1776 Project Complaint, ECF 1 at ¶¶ 13–16, 39. The School Board ignores or glosses over the specific injuries it has inflected on these children. *See*, *e.g.*, ECF 48 at 11 (dismissing the allegation that Parent A's children were ineligible for race-based magnet school priority points as "conclusory," without explaining what made the allegation "conclusory"). Instead, the School Board asserts (without citing legal authority for its theory) that the 1776 Project's members could avoid injury by enrolling in Non-Anglo schools. ECF 48 at 10–11. This defense is inconsistent with long-established law. Open enrollment presented no obstacle in *Green v. County School Board*, 391 U.S. 430 (1968), when the U.S. Supreme Court struck down a racial segregation regime that allowed free transfer between a black school and a white school.

The Supreme Court's rejection of open enrollment as an "optout" from civil rights laws makes sense. A child who transfers schools spends more time traveling, less time studying, and less time with her family. *See Bustop v. Superior Court*, 69 Cal. App. 3d 66, 71 (1977) ("Certainly the reassignment of students to schools distant from their residences would have a direct social, educational and economic impact on the students . . . and their parents.").

Because the 1776 Project represents children who are injured by the Non-Anglo Program, the Court should reject the School Board's motion to dismiss the 1776 Project.

II. The School Board's Non-Anglo Program cannot satisfy strict scrutiny.

Because the Non-Anglo Program is "race-based government action," it triggers "strict scrutiny," *SFFA*, 600 U.S. at 207—a standard it cannot meet. Three months ago, the U.S. Supreme Court held that "the Constitution almost never permits . . . a State to discriminate on the basis of race." *Louisiana v. Callais*, 146 S. Ct. 1131, 1152 (2026). Racial discrimination—that is, "race-based government action," *SFFA*, 600 U.S. at 207—always "triggers strict scrutiny, and . . . only two compelling interests . . . can satisfy that standard." *Callais*, 146 S. Ct. at 1152 (quoting *SFFA*, 600 U.S. at 207). Those compelling interests are (1) "avoiding imminent and serious risks to human safety in prisons, such as a race riot," *id.*, and (2) "remediating specific, identified instances of past discrimination that violated the Constitution or a statute." *Id.*

A. The School Board's Non-Anglo Program triggers strict scrutiny because it is race-based government action.

When a school obtains Non-Anglo status, the School Board awards the school, "and the students who reside in their geographic areas," with "greater school funding," a student-teacher ratio that is "roughly 5.5 fewer students per teacher than in comparable [Non-Anglo] schools," and other benefits. U.S. Compl., ECF 29 at ¶ 5. The program also awards students of non-Anglo schools with increased "Magnet Priority Points," that is, an increased chance of acceptance to a

magnet school. And the schools that do not qualify for these benefits are a small minority, because the District classifies roughly 90% of its schools as Non-Anglo. *Id.* at ¶ 20.

1. The Non-Anglo Program uses Anglo and Non-Anglo schools as a racial proxy for their individual students.

The Non-Anglo Program's hierarchy of Anglo and Non-Anglo schools is direct discrimination because each category is racially defined. At best, it is a racial proxy. The Ninth Circuit has explained: "Proxy discrimination . . . arises when the defendant enacts a law or policy that treats individuals differently on the basis of seemingly neutral criteria that are so closely associated with the disfavored group that discrimination on the basis of such criteria is, constructively, facial discrimination against the disfavored group." *Davis v. Guam*, 932 F.3d 822, 837 (9th Cir. 2019) (citations omitted); *see also Rice v. Cayetano*, 528 U.S. 495, 514 (2000). And because "[p]roxy discrimination is a form of *facial* discrimination," *Guam*, 932 F.3d at 837, it requires no showing of "invidious discriminatory purpose," ECF 48 at 19, as the School Board contends. *See Pritchard v. Blue Cross Blue Shield*, 159 F.4th 646, 664 (9th Cir. 2025) (facial discrimination requires no "proof of mental state" because it is "intentional" "by its very terms").

The School Board contends that the Non-Anglo Program does not racially discriminate because it "allocates resources to schools—not individual students—based on aggregate demographic data." ECF 48 at 19. This argument is erroneous for two reasons.

First, this "aggregate demographic data" is not just "demographic"; it is *racial* data. Still, the School Board argues, this racial data is assessed at the "school level," so that "[a] white student enrolled at a [Non-Anglo] school would receive the same [benefits] as, for example, a Hispanic student at that school." ECF 48 at 32. This argument ignores the law on racial proxies. "[D]iscriminating against individuals with gray hair is a proxy for age discrimination because the

'fit' between age and gray hair is sufficiently close." *Guam*, 932 F.3d at 837–38. Likewise, the "fit" between attending a Non-Anglo school and being "Non-Anglo" is sufficiently close. Not only is it close; it is calculated: it is impossible for a school to qualify as Non-Anglo unless its "Anglos" are 30% or less of the school population. ECF 29 ¶ 3.

Second, every Non-Anglo school benefit is given to benefit individual students, not schools in the abstract. It is students, for example, who are given preference to admission at magnet schools. ECF 29 ¶ 5. In fact, apart from the racial proxy, the program's race-based preferences in Magnet Schools admissions are no different than race-based preferences in college admission.

The implications of the School Board's argument are staggering. If government may avoid strict scrutiny by discriminating against racially defined schools, may employers "screen[] out all applicants who previously attended historically black colleges when recommending candidates to be considered for interviews"? *Mobley v. Workday*, 740 F. Supp. 3d 796, 806 (N.D. Calif. 2024).

The School Board's problem is unavoidable. The Non-Anglo Program discriminates against schoolchildren, not just schools in the abstract.

2. The Non-Anglo Program uses race as a negative.

The Equal Protection Clause commands that "race may never be used as a 'negative.'" *SFFA*, 600 U.S. at 218. But the Non-Anglo Program does exactly that. In *SFFA*, two colleges claimed that "an individual's race is never a negative factor in their admissions programs," *id.*, but the Supreme Court found this argument "hard to take seriously" because "[c]ollege admissions" are "zero sum": a "benefit provided to some applicants but not to others necessarily advantages the former group at the expense of the latter." *Id.* at 218–19.

Admissions to magnet schools are no different. Enrollment at magnet schools is a restricted opportunity—which is why students must compete for it. ECF 29 ¶ at 5. Funding for small class

sizes, likewise, is a limited resource—which is why the student-teacher ratio is significantly better for Non-Anglo schools than for Anglo schools. ECF 29 ¶¶ 5, 21. Non-Anglo Program benefits, therefore, are the very *definition* of zero-sum.

The School Board contends that the Non-Anglo Program is not "zero-sum" because "one student's receipt of programmatic benefits at a [Non-Anglo] school does not deprive any other student of the same resource." ECF 48 at 21. This is the same logic that *SFFA* rejected.

Next, the School Board argues, the Non-Anglo Program is not "zero-sum" because California's "open enrollment" law entitles students "to enroll at any district school regardless of residential address." ECF 48 at 21 (citing Cal. Educ. Code § 35160.5(b)). There are three problems with this argument. First, open enrollment does not excuse racial discrimination between schools. *See Green*, 391 U.S. at 437, 439–40 (striking down a school district's school segregation even though it allowed open enrollment between black schools and white schools, "regardless of race"). Second, California's "open enrollment" law contains an exception that swallows the rule: "except that school districts" may "maintain appropriate racial. . . balances among their respective schools." Cal. Educ. Code § 35160.5(b)(2)(A). Third, as noted under Part I(B), transferring schoolchildren to other schools harms both them and their parents.

3. The Non-Anglo Program is based on racial stereotypes.

Racial stereotyping is another way government uses race as a negative, and thus triggers strict scrutiny. *See SFFA*, 600 U.S. at 219–20. The Non-Anglo Program is built on unfounded stereotypes. Neither *Crawford I* nor *Crawford II* ever made a finding that Non-Anglo schools needed special treatment. *Crawford I* specifically found that minorities did *not* need special treatment. *Crawford I* at 35 (quoting Dr. Clark). *Crawford I* rejected such "ideas of inferiority." *Id.* at 34 (quoting Dr. Clark). *Crawford II* imposed them anyway.

Likewise, the School Board's binary division of all people groups into "Anglos" and "Non-Anglos" advances "irrational stereotypes," because the classification is "overbroad" and "imprecise." *SFFA*, 600 U.S. at 216. The Supreme Court used those words to describe a school's *six*-race classification, because the classification said nothing about the vast cultural differences between, for example, the many different people groups labeled "Hispanic" or "Asian." *Id.*

The School Board cannot avoid the issue. Its assignment of benefits to schools based on their students' race remains "race-based government action." *Id.* at 207. This action affects schoolchildren in real life, not just schools in the abstract. The School Board must therefore satisfy the "daunting two-step examination known as 'strict scrutiny.'" *Id.* at 184.

B. The School Board lacks a compelling interest for its racial discrimination.

The School Board argues that, if its Non-Anglo Program is race-based, it has two compelling interests: compliance with a state court order, and remedying past discrimination. Both arguments are unsound; and both hang on allegations the Court cannot even consider in a Rule 12(b)(6) motion.

1. A state court order, decided under state law, does not constitute a separate compelling interest under the Fourteenth Amendment's Equal Protection Clause.

As described earlier, "only two compelling interests" allow race-based government action. *Callais*, 146 S. Ct. at 1139. But the School Board seeks to add a third compelling interest: compliance with the *Crawford II* order. ECF 48 at 25. Closely related is the School Board's contention that this lawsuit is an "improper collateral attack in federal court" on a "valid state-court order," ECF 48 at 14—a claim it repeatedly makes, *id.* at 29, without citing legal authority.

Martin v. Wilks disposes of the School Board's "improper collateral attack" theory. In that case, white firefighters sued a city in federal court for racially discriminating against them in

promotions. 490 U.S. at 760. The city answered that the white firefighters were making an "impermissible collateral attack" on a state court order, which required the city to make "race-conscious employment decisions." *Id.* at 760. The U.S. Supreme Court answered that the state court order was irrelevant, because the white firefighters were not parties to the state court lawsuit. *Id.* at 844. *See also Lance v. Dennis*, 546 U.S. 459 (2006) (applying the same principle).

In its effort to create a third compelling interest out of a court order, the School Board cites a pre-*SFFA* opinion from outside the Ninth Circuit: *Citizens Concerned About Our Children v. School Board*, 193 F.3d 1285 (11th Cir. 1999). ECF 48 at 37. But in *Citizens Concerned*, the plaintiffs were not seeking compliance with federal law; they were seeking to "punish[] the [defendant] for failing to disobey the court." *Id.* at 1292. (The court noted that "this suit as it stands now is only one for damages." *Id.* at 1291, n. 6.) The compelling interest exists only to save the defendant from being pitted between two alternative punishments. "When the compelling interest is compliance with a court order, that means that the governmental entity must face a likelihood of contempt under the order if it abandons the racial policy." *Id.* at 1293.

In contrast, the United States (like the 1776 Project) does not seek to punish the School Board for the Non-Anglo Program. No damages are sought in this lawsuit. This suit merely seeks compliance with federal law. The School Board therefore faces no "likelihood of contempt . . . if it abandons the racial policy," *id.* at 1293, because "the Judges in every State" (including the judges of the Los Angeles County Superior Court) "shall be bound" by the supreme requirements of federal law, U.S. Const. art. VI, cl. 2, including the orders of this Court. The U.S. Constitution's Supremacy Clause would become meaningless if a state court—operating purely under state law—could create exceptions to the requirements of the Federal Constitution. State authorities are ill-equipped to excuse school districts from performance of their obligations under the Fourteenth

Amendment. *Cooper v. Aaron*, 358 U.S. 1, 18 (1958) ("[T]he interpretation of the Fourteenth Amendment . . . is the supreme law of the land. . . . No state . . . judicial officer can war against the Constitution without violating his undertaking to support it.").

2. The School Board's prior history of "segregation" is not a compelling interest, because its unintentional "segregation" is not considered actual segregation under federal law.

The School Board also lacks a compelling interest in "remedying . . . specific, identified instances of past discrimination.'" *SFFA*, 600 U.S. at 207. To "rise to the level of a compelling state interest," such remediation efforts must satisfy "two conditions." *Callais*, 146 S. Ct. at 1152. First, the defendant must "identify the specific instances of past discrimination that it aims to remediate" and "determine the precise scope of the injury it seeks to remedy." *Id.* at 1152. Second, the defendant must have "a strong basis in evidence to conclude that [its] remedial action [is] necessary." *Id.* (internal quotation marks omitted). The School Board satisfies neither condition.

a. The School Board fails to identify "specific instances of past discrimination" with "a precise scope."

The School Board cannot satisfy the first condition for a compelling interest in remedying past discrimination—especially not on a motion to dismiss. The School Board relies upon the *Crawford* order in the absence of specific evidence. But *Crawford*'s findings of (federally defined) discrimination "clearly erred as a matter of law." *Crawford v. Board of Education*, 113 Cal. App. 3d 633, 646 (affirmed by *Crawford*, 458 U.S. at 530). Even *Crawford*'s findings as to *state* law are not binding on the United States, because the United States was not a party to *Crawford*. *See Martin*, 490 U.S. at 760. Nor can the Board judicially notice *Crawford I*'s findings. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018) ("Just because the document itself is susceptible to judicial notice does not mean that every assertion of fact within that document is judicially noticeable for its truth.").

Because *Crawford*'s federal component was overturned, the School Board is left relying on federal buzzwords used by *Crawford*: findings of "segregation," ECF 48 at 38, which are "not true at all in the sense of federal law." *Crawford*, 113 Cal. App. 3d at 646. The School Board's argument commits the logical fallacy of equivocation (or "semantic shift"). Equivocation "occurs when a word or phrase is used in one sense in one premise and in another sense in some other needed premise or in the conclusion."[3] For example: "The loss made Jones mad [= angry]; mad [= insane] people should be institutionalized; so Jones should be institutionalized." *Id.* The School Board, likewise, invokes the terms "segregation" and even "de jure segregation" in their *state* law sense, to justify a compelling interest in combating discrimination in its *federal* sense.

The School Board next claims that facts identified by *Crawford I* "establish de jure segregation" (in the federal sense). ECF 48 at 38 (citing *Crawford*, 551 P.2d at 32–33). (In other words, *Crawford I* was right, and the appellate courts were wrong.) The School Board identifies, specifically, school siting, neighborhood-school policies, an open transfer policy, and feeder-school arrangements. *Id.* Appellate courts rejected that theory because the school board was being faulted for being race-*neutral* in these methods—for failing to use those methods to "overcome the effect of population movement," *Crawford I* at 32, "rectify the existing racial imbalances," *id.*, and take "corrective action" to a sweeping range of societal forces over which it had no control. *Crawford*, 17 Cal. 3d at 310. These facts cannot satisfy the requirement for "*specific* instances of past discrimination" with a "*precise* scope." *Callais*, 146 S. Ct. at 1152. That was true then; and it is especially true today. Since *Crawford*, the U.S. Supreme Court has made it clear: "[a]n effort to

[3] Encyclopedia Brittanica, "Equivocation," https://www.britannica.com/topic/equivocation (accessed July 22, 2026)

alleviate the effects of societal discrimination"—the objective of *Crawford*—"is not a compelling interest." *SFFA*, 600 U.S. at 226.

b. The School Board lacks a strong basis in evidence to conclude that remedial action is necessary.

The School Board cannot satisfy the second condition for establishing a compelling interest in remedying past discrimination: "a strong basis in evidence to conclude that [its] remedial action" for "specific acts of past discrimination" is "necessary." *Callais*, 146 S. Ct. at 1152.

Apparently to support this burden, the School Board cites the California Department of Education's website, which, it claims, proves "educational gaps": specifically, "while white . . . students met state performance metrics in English language arts and mathematics, Hispanic and black students met neither." ECF 48 at 27. This theory raises four problems.

First, the evidence is inadmissible in a Rule 12(b)(6) motion (as noted under "Objections").

Second, the website that the School Board cites merely shows that its "educational gaps" theory is baseless. The School Board cherry-picks two subjects where black and Hispanic students underperform their white peers. But the same website shows that black students outperform white students on the most basic of all performance metrics: graduation rate.[4] So is the educational gap closed now? Or must the School Board now deny benefits to predominantly black schools until white students catch up? These questions cannot be answered during the motion to dismiss stage; but ultimately, the solution to this endless cycle of grievances is simple. "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race." *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007).

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[4] Cal. Dep't of Educ., "Los Angeles Unified: Student Group Report for 2025," https://perma.cc/E3JC-MDT3 (captured July 23, 2026); *see also* Cal. Dep't. of Educ., "How Colors are Determined," https://perma.cc/T4LV-QLBK (captured July 23, 2026).

Third, the School Board's evidence fails to connect with "specific acts of past discrimination." *See Vitolo v. Guzman*, 999 F.3d 353, 361 (6th Cir. 2021) ("Statistical disparities don't cut it."). So what if white students outperform black and Hispanic students in two particular school subjects? Is that because of societal forces in the 1960s and '70s? Or is it because of the Non-Anglo Program's paternalism toward non-white students? Or is it due to other factors? Is the gap even statistically significant? In a 12(b)(6) motion, the Court must answer all of these questions "in the light most favorable to the non-moving party." *Daniels-Hall*, 629 F.3d at 998.

Fourth, the School Board—unable to rely on *Crawford*'s overturned federal findings—uses its new evidence to construct an after-the-fact justification for the Non-Anglo Program. The School Board cannot do that. "[T]he institution that makes the racial distinction must have had a 'strong basis in evidence' to conclude that remedial action was necessary, *before* it embarks on an affirmative-action program." *Wis. Legis. v. Wis. Elections Comm'n*, 595 U.S. 398, 404 (2022) (emphasis original) (citations, internal quotation marks omitted).

In addition to being unfounded, California's purported "compelling interest in closing . . . educational gaps," ECF 48 at 39, is not among the "only two compelling interests" that can justify race-based government action. *Callais*, 146 S. Ct. at 1152. Its goal amounts to nothing more than "[o]utright racial balancing," which is "patently unconstitutional." *SFFA*, 600 U.S. at 223. Such logic "effectively assure[s] that race will always be relevant . . . and that the ultimate goal of eliminating race as a criterion will never be achieved." *Id.* (internal quotation marks omitted).

The School Board lacks any compelling interest in its race-based program.

C. The Non-Anglo Program is not narrowly tailored because its duration is indefinite, and because it perpetuates the very problems it complains of.

The Non-Anglo Program also fails the second prong of strict scrutiny. The Non-Anglo Program does nothing to create a "unitary, nonracial system," *Green*, 391 U.S. at 440, which is the legitimate goal of desegregation. Instead, it creates a binary racial system. It imposes the very compensatory education model that *Crawford I* found to be condescending and unhelpful to minorities.

Additionally, to be "narrowly tailored," "a deviation from the norm of equal treatment of all racial and ethnic groups must be a temporary matter," that is, "limited in time." *SFFA*, 600 U.S. at 311 (citations, internal quotation marks omitted). The Non-Anglo Program has no durational limits. Like the programs struck down in *SFFA*, the Non-Anglo Program hangs on "an amorphous concept of injury that may be ageless in its reach into the past." *SFFA*, 600 U.S. at 226. It "imposes disadvantages upon persons . . . who bear no responsibility for whatever harm the beneficiaries of the [race-based] admissions program are thought to have suffered." *Id.* at 226.

III. *Pullman* abstention does not apply.

This Court should reject the School Board's request to abstain under *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941). "*Pullman* abstention is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy that is properly before it." *Porter v. Jones*, 319 F.3d 483, 492 (9th Cir. 2003). "*Pullman* holds that federal courts should abstain from decisions when difficult and unsettled questions of state law must be resolved before a substantial federal constitutional question can be decided." *Columbia Basin Apt. Ass'n v. City of Pasco*, 268 F.3d 791, 801 (9th Cir. 2001). The Ninth Circuit "review[s] *de novo* whether the requirements for *Pullman* abstention are satisfied." *Gearing v. City of Half Moon Bay*, 54 F.4th 1144, 1147 (9th Cir. 2022) (citations omitted). But even if those requirements are satisfied, the

district court will not be reversed for declining to abstain unless it committed an "abuse of discretion." *Id.* Simply put, courts "are never *required* to apply *Pullman* because . . . the doctrine does not implicate our subject matter jurisdiction." *Columbia Basin*, 268 F.3d at 802.

Ninth Circuit precedent holds that that a federal court may resort to *Pullman* abstention only when three elements are established:

> (1) The complaint touches a sensitive area of social policy upon which the federal courts ought not to enter unless no alternative to its adjudication is open.
> (2) Such constitutional adjudication plainly can be avoided [or narrowed] if a definitive ruling on the state issue would terminate the controversy.
> (3) The possibly determinative issue of state law is doubtful.

Gearing, 54 F.4th at 1150 (citations omitted). *Pullman* abstention has two core purposes, which run like a thread between all three elements. The first is "avoiding advisory constitutional decisionmaking." *Pustell v. Lynn Pub. Schs.*, 18 F.3d 50, 53 (1st Cir. 1994). The second is "promoting the principles of comity and federalism by avoiding needless federal intervention into local affairs." *Id.* (citing 17A Charles Wright et al., *Federal Practice & Procedure* § 4242 (1988)).

The School Board's argument for *Pullman* abstention does not satisfy either of these two core purposes. Nothing about the United States' claim would require this Court to issue an "advisory opinion." *Pustell*, 18 F.3d at 53. And although there was an era when courts considered racial discrimination in schools to implicate "needless federal intervention into local affairs," *id.*, those days are long behind us. Not surprisingly, the School Board also does not satisfy any of the three elements of *Pullman* abstention.

A. The School Board fails the first element of *Pullman* abstention, because this case does not present a constitutionally sensitive question that courts must not enter.

The School Board relies on an abbreviated version of the first element of *Pullman* abstention. According to the School Board, the first element simply requires that "a federal

constitutional issue touches on a sensitive area of social policy"—full stop. ECF 48 at 14 (citing *Gearing*, 54 F.4th at 1147). But the School Board omits the most important part of the element. The full text of the first element is: "The complaint touches a sensitive area of social policy *upon which the federal courts ought not to enter unless no alternative to its adjudication is open*." *Gearing*, 54 F.4th at 1150 (emphasis added). By abbreviating the first element, plaintiffs miss what renders the "area of social policy" "sensitive" in the first place. Such areas of social policy are "sensitive," not when they are *socially* sensitive, but when they invoke "sensitive federal constitutional questions" that courts ought not to enter. *Id.* at 1147.

The School Board cites *Pustell* in support of its claim that "educational policy" is sensitive because it "is a matter of particularly local concern." 18 F.3d at 54. But that case also satisfied the *rest* of the first element. *Pustell* raised a novel question of federal constitutional law: asking the court to decide, under the Fourteenth Amendment, "what information local school officials need in order to evaluate whether homeschoolers are being educated adequately." *Id.* at 54. Plaintiffs' interpretation of the Fourteenth Amendment was novel in that case. The case, then, was "best resolved by those closer to the issue than federal court judges." *Id.*

Pullman presented the same dilemma. In that case, railroad porters challenged a regulation of the Texas Railroad Commission, which required sleeper trains to be under the immediate control of a conductor, rather than a porter. *Id.* at 497. At that time, the industry norm was that "porters . . . [were] colored and conductors [were] white." *Id.* The porters claimed that the regulation violated Texas law (because the regulation exceeded the statutory scope of the Railroad Commission's authority) and also that it "discriminat[ed] against Negroes in violation of the Fourteenth Amendment," *id.* at 498, under what modern observers call racial proxy discrimination. *See Guam*, 932 F.3d at 837. But in 1941 when the Court decided the case, the idea of racial proxies

was novel,[5] and *Plessy v. Ferguson*, 163 U.S. 537 (1896), was still good law. The U.S. Supreme Court, therefore, said that "[t]he complaint of the . . . porters undoubtedly tendered a substantial constitutional issue." *Id.* at 498. The Court found it appropriate to avoid this novel-at-the-time constitutional issue, because Texas administrative law presented a clear alternative to deciding the sticky constitutional question, while also giving the plaintiffs relief. *Id.* at 498, 501.

"[E]ducational policy" generally might be a sensitive "matter of particularly local concern," *Pustell*, 18 F.3d at 54; but racial discrimination in education is not a local concern. Countless federal appellate cases demonstrate a longstanding commitment by the federal courts to adjudicate racial discrimination in schools. *See*, *e.g.*, *Brown v. Board of Education*, 344 U.S. 1 (1952). The issues raised in the United States' Complaint do not require this court to issue an advisory opinion, nor do they tread on novel constitutional questions. Rather, the United States' Complaint asks this Court to apply U.S. Supreme Court rulings that today are clear and direct.

B. The School Board fails the second element for *Pullman* abstention, because a state court has already issued a definitive ruling in *Crawford*.

The second element for *Pullman* abstention requires that "constitutional adjudication plainly can be avoided [or narrowed]" by "a definitive ruling on the state issue" that "would terminate the controversy." *Gearing*, 54 F.4th at 1150 (citations omitted).

The School Board argues that it meets the second *Pullman* element because "the state court . . . could modify [the *Crawford* order] or narrowly construe it in light of . . . intervening developments." ECF 48 at 16. (These alleged "intervening developments" are discussed further under the third element.) But a state court has already definitively ruled on *Crawford*. And even if

[5] The U.S. Supreme Court would not come to recognize racial proxy theory until many years later. *See Rice v. Cayetano*, 528 U.S. 495 (2000).

the Los Angeles Superior Court changed its mind and terminated *Crawford*, there is no reason to believe the School Board would withdraw its Non-Anglo Program. After all, the School Board relies on the *Crawford* order as only one of *several* alternative justifications for the Non-Anglo Program. The School Board believes, for example, that the Non-Anglo Program is not racially discriminatory in the first place. ECF 48 at 19–25.

The School Board contends, nonetheless, that it satisfies the second element because the *Crawford* order "rests on a state constitutional provision with no federal parallel." ECF 48 at 27 (citing *Columbia Basin*, 268 F.3d at 806). But there is a federal parallel: the Constitution forbids what *Crawford* requires. The School Board does not satisfy the second element.

C. The School Board fails the third element of *Pullman* abstention, because *Crawford* is not an unsettled area of state law.

The third element for *Pullman* abstention is satisfied only when the case turns on a question of state law that is "doubtful," *Gearing*, 54 F.4th at 1147, 1151 (citations omitted), that is, "an unsettled area of state law." *Cingular Wireless, LLC v. Thurston County*, 150 Fed. Appx. 633, 636 (9th Cir. 2005). If the state law issue is *not* doubtful, the federal court can resolve the state law issue itself. *See id.* at 636; *cf.* 28 U.S.C. § 1367(c)(1) (allowing courts to decline supplemental jurisdiction over state law issues that are "novel or complex").

For example, in *Cingular Wireless*, the plaintiff presented claims under both federal law and state law. *Id.* at 634. The Ninth Circuit found *Pullman* abstention inappropriate because, even though the plaintiff had an alternative claim under state law, the third element was not satisfied: "Washington [State] courts have confronted . . . actions pursuant to [the state law]." *Id.* at 635.

In this case, not only have California courts confronted actions related to school desegregation; they spent nearly two decades confronting *this very* action.

The School Board's only defense under the third element is that California courts *could* rule differently this time. The School Board refers to "intervening developments," ECF 48 at 16, that could change a state court's mind; but it only points out one such development: white students are now a small fraction of the school district's population, while Hispanic students make up the district's largest ethnic group. *Id.* But that is not an intervening development since the *Crawford* litigation concluded; it is only an intervening development since the *Crawford* litigation *began*. The *Crawford II* order specifically noted this exact same demographic shift, when it found that students of "non-Anglo ancestries" had become "the vast majority of the school population" since the litigation had first begun, and that Hispanic students were the largest racial group in the student population. *Crawford II* at 4 & n. 6. If that "intervening development" did not change the *Crawford II* Court's mind, why would it change the mind of a hypothetical *Crawford III* Court?

State litigation over the *Crawford* order dragged out for long enough. It is high time to let the United States Constitution speak.

CONCLUSION

The U.S. Constitution is clear. Although in the past, the judiciary has "failed to live up to the [Federal Equal Protection] Clause's core commitments," *SFFA*, 600 U.S. at 203, its "core purpose" remains: "do[ing] away with all governmentally imposed discrimination based on race." *Id.* at 206. As Justice Harlan's vindicated dissent declares, the Federal Constitution "is color-blind, and neither knows nor tolerates classes among citizens." *Id.* at 230 (quoting *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting). The Court should deny the School Board's motions to dismiss and its motion to abstain.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel of record for Plaintiff-Intervenor United States of America certifies that this memorandum of points and authorities, which is twenty-five pages long, complies with Judge Vera's Civil Standing Order Rule IX.C.

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