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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SOLANO

MATTHEW SHELTON, an Individual,

Plaintiff,

v.

NAPA VALLEY UNIFIED SCHOOL DISTRICT; BENECIA UNIFIED SCHOOL DISTRICT; and DOES 1-25, inclusive,

Defendants.

HOLLY McDEDE,

Intervenor.

Case No. CU24-03170

INTERVENOR HOLLY McDEDE'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PRELIMINARY INJUNCTION

Date: June 11, 2024
Time: 1:30 p.m.
Dept.: 10

The Hon. Christine N. Donovan

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I. INTRODUCTION

After Matthew Shelton was charged with sexually abusing children, Holly McDede sought public records from Napa Valley Unified School District and Benicia Unified School District (collectively, "Districts"), regarding his employment, any severance or settlement agreements, and any claims of misconduct against him. With limited redactions, as acknowledged by McDede, the records at issue are subject to disclosure under the California Constitution and California Public Records Act ("CPRA"), especially to the extent they go to the people's compelling interest in evaluating how public agencies respond to allegations of misconduct by persons in positions of trust and confidence. After the Districts said they would disclose certain records, Shelton filed this action seeking to prevent disclosure. The Court issued an unopposed temporary restraining order and is now deciding whether to grant Shelton's request for a preliminary injunction.

The Court should deny that request because nothing argued by Shelton defeats the people's constitutional right to disclosure of public records. He cannot prevail merely by asserting that records at issue might qualify for an exemption under the CPRA, because the asserted exemptions are permissive, not mandatory. Even assuming exemptions might apply, the Districts retain discretion to assert them, which they have not done for the records at issue, and a court cannot direct a public agency to exercise its discretion in a particular manner. To prevail, Shelton must show that disclosure is prohibited by law, which he cannot do. He invokes his interests in privacy and a fair trial, but neither can defeat the people's right to disclosure in this case.

Under controlling precedent, Shelton's alleged right to privacy must yield to the overriding public interest in disclosure of basic employment documents and findings of misconduct by public employees or reasonable grounds to believe they committed substantial misconduct. Nor does the right to a fair trial preclude disclosure. Shelton has cited no authority for that assertion, nor has he proven any substantial likelihood that publicity derived from the records at issue would bias a potential jury against him. In any event, his right to a fair trial can be protected with less restrictive alternatives such as appropriate voir dire and cautionary instructions, and if necessary a change of venue. Accordingly, the Court is respectfully requested to deny the preliminary injunction and allow the Districts to disclose the records they intended to release before Shelton filed suit.

II. FACTS

Matthew Shelton is a former teacher previously employed in the Districts who has been charged with several counts of lewd acts on a child. *People v. Shelton*, No. F24-00413 (Cal. Super. Ct. filed Feb. 23, 2024). On March 8, 2024, McDede asked the Districts for all "records related to any and all claims of misconduct against Matthew Joseph Shelton." McDede Decl. ¶ 2 & Exs. 1–2. She stated, "I am not seeking any student names or identities" and "any information that could clearly identify students can be redacted." McDede Decl. Exs. 1–2. On March 18, McDede asked for any separation or severance agreements with Shelton, all records related to his employment, and any reports of misconduct submitted to the California Commission on Teacher Credentialing. McDede Decl. ¶ 5 & Exs. 3–4. As Shelton admitted, "responsive documents" at issue in this action pertain to "acts allegedly committed by Mr. Shelton against various minors during his teaching tenure." Ex Parte Appl. for TRO at 11, Gres Decl. ¶ 3.

On March 26, the Napa district informed McDede that it had located "employment records" for Shelton and would "provide all files to you that are not exempt" in "approximately two weeks." McDede Decl. ¶ 8 & Ex. 5. The district said it would redact matters such as Shelton's social security number and "student names and identifying information" and notify Shelton "in order to give him an opportunity to make an appropriate filing in Court to prevent disclosure if he objects to the disclosure." McDede Decl. ¶ 8 & Ex. 5.

In letters dated March 18 and March 28, the Benicia district indicated it had responsive records relating to "well-founded and substantial claims of misconduct" against Shelton, but it also stated, "As the records you seek may relate specifically to complaints or allegations of employee misconduct, the District needs to provide advance notification to Mr. Shelton prior to disclosure." McDede Decl. ¶¶ 9–10 & Exs. 6–7. The Benicia district said it would redact "information which would identify individual students." McDede Decl. ¶¶ 9–10 & Exs. 6–7.

Neither district indicated it would withhold the requested records in their entirety, although each noted it would withhold certain records in whole or in part. McDede Decl. ¶¶ 8–10 & Exs. 5–7. After Shelton filed this action, the Court issued an unopposed temporary restraining order

precluding disclosure of the records at issue. The Court is now deciding whether to issue a preliminary injunction preventing the Districts from disclosing any records requested by McDede.

III. ARGUMENT

To obtain a preliminary injunction, Shelton must "present evidence of the irreparable injury or interim harm that [he] will suffer if an injunction is not issued pending an adjudication of the merits," and the Court must consider "(1) the likelihood that the plaintiff will prevail on the merits, and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief." *White v. Davis*, 30 Cal. 4th 528, 554 (2003). Shelton cannot justify a preliminary injunction interfering with the constitutional right to disclosure of public records because he has neither proven sufficient harm nor shown he can prevail on the merits.

As an initial matter, the only records at issue are those the Districts planned to disclose before Shelton filed suit. With respect to records or information that the Districts intend to withhold or redact, Shelton cannot obtain a preliminary injunction because the Districts do not intend to engage in the allegedly prohibited act of disclosure. Code Civ. Proc. § 526(a)(3); *Korean Phila. Presbyterian Church v. Cal. Presbytery*, 77 Cal. App. 4th 1069, 1084 (2000). McDede reserves the right to evaluate or pursue CPRA claims against the Districts for records they intend to withhold, and Shelton could be heard on those issues if they arise. But for now, Shelton has no right to an injunction against disclosure of such records.

Under controlling precedent, Shelton's alleged privacy interests cannot defeat disclosure of records at issue that contain the basic facts of his employment, any settlement or severance agreements, or any findings that he committed misconduct or at least reasonable cause to believe he committed substantial misconduct. Nor can Shelton prove that disclosure of such records would deprive him of a fair trial, assuming the Court considers that argument, which is unsupported by authority. He has proven no facts showing that disclosure would inevitably prejudice a potential jury at some indefinite future time. Pretrial publicity does not inherently deprive a defendant of a fair trial, and in any event, a court retains abundant alternatives to ensure a fair and impartial jury, such as voir dire, cautionary instructions, and if necessary a change of venue. This Court should therefore deny a preliminary injunction and vacate the temporary restraining order. *Landmark*

Holding Grp. v. Superior Ct., 193 Cal. App. 3d 525, 529 (1987) ("A TRO is purely transitory in nature and terminates automatically when a preliminary injunction is issued or denied.").

A. The California Public Records Act Covers the Records at Issue.

"Openness in government is essential to the functioning of a democracy." *Int'l Fed'n of Pro. & Tech. Eng'rs, Local 21 v. Superior Ct.*, 42 Cal. 4th 319, 328 (2007) [hereinafter *Local 21*] To that end, access to public records is a constitutional right in California. "The people have the right of access to information concerning the conduct of the people's business, and, therefore . . . the writings of public officials and agencies shall be open to public scrutiny. . . . In order to ensure public access to . . . the writings of public officials and agencies, . . . each local agency is hereby required to comply with the California Public Records Act." Cal. Const., art. I, § 3(b)(1), (7).

The CPRA reflects "legislative impatience with secrecy in government," for "secrecy is antithetical to a democratic system of 'government of the people, by the people [and] for the people.'" *San Gabriel Trib. v. Superior Ct.*, 143 Cal. App. 3d 762, 771–72 (1983) (quoting Opinion No. 67-144, 53 Ops. Cal. Atty. Gen. 136, 143 (1970)). As the CPRA declares, "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." Gov't Code § 7921.000.

The Districts are subject to the CPRA and must provide public records upon request unless they assert and prove the records are exempt from disclosure. Gov't Code §§ 7920.510(d), 7920.525(a), 7922.000, 7922.530(a). It is undisputed that the documents requested by McDede are public records, and the Districts are not seeking to prevent their disclosure in their entirety.

B. Shelton Must Prove Disclosure of the Records at Issue Is Prohibited by Law.

In bringing this action to preclude disclosure, Shelton cannot merely contend the records at issue might qualify for an exemption under the CPRA, even if one applied. The CPRA's exemptions "are permissive, not mandatory" and thus "allow nondisclosure but do not prohibit disclosure." *Amgen Inc. v. Cal. Corr. Health Care Sers.*, 47 Cal. App. 5th 716, 732 (2020); *see also* Gov't Code § 7921.500. The discretion to assert exemptions belongs to the Districts, not Shelton, and the Districts cannot be compelled to exercise discretion "in a particular manner." *Marken v. Santa Monica-Malibu Unified Sch. Dist*., 202 Cal. App. 4th 1250, 1266 (2012).

Because each district "has the discretion to invoke an exemption" and an injunction "cannot be used to control an exercise of discretion," Shelton "must show disclosure is otherwise prohibited by law, that is, that the government agency *lacks* discretion to disclose" the records at issue.[1] *Amgen*, 47 Cal. App. 5th at 732 (citations and quotation marks omitted). Shelton asserts interests in privacy and a fair trial, but neither can defeat the people's right to disclosure of the requested records in this case.

C. The People's Constitutional Right to Disclosure of Records about Public Employment and Misconduct by Teachers Outweighs any Privacy Interests Shelton Might Possess.

Under controlling precedent, any privacy interests claimed by Shelton cannot preclude disclosure of the records at issue. Although a public employee may argue that disclosure would violate the right to privacy, that right is not absolute. *Marken*, 202 Cal. App. 4th at 1271. The "strong public policy supporting transparency in government" that is "grounded in both the California Constitution and the CPRA" can "outweigh constitutional privacy interests" and require disclosure of public records. *Id*. (quotations omitted). That is the case here.

The CPRA contains an exemption for "personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." Gov't Code § 7927.700. This exemption parallels the CPRA's catchall exemption, Gov't Code § 7922.000, and balances any privacy interests against the public's interest in disclosure. *Versaci v. Superior Ct.*, 127 Cal. App. 4th 805, 818 (2005); *Braun v. City of Taft*, 154 Cal. App. 3d 332, 345 (1984). To the extent the records at issue do not fall within the personnel files exemption, their disclosure cannot violate the constitutional right to privacy. *Marken*, 202 Cal. App. 4th at 1271 n.18. Under settled law, the

[1] This case does not involve records that agencies may "have no discretion to disclose" such as "personnel records of peace officers" or "pupil records." *Marken*, 202 Cal. App. 4th at 1266 n.12. Student privacy laws do not apply to records about misconduct of staff. *BRV, Inc. v. Superior Ct*, 143 Cal. App. 4th 742, 754–55 (2006). Shelton wrongly relies on a statute that provides school district employees with "the right to inspect" their own "personnel records" and the right to "notice and an opportunity to review and comment" on "[i]nformation of a derogatory nature." Educ. Code § 44031(a), (b)(1). The statute does not limit the public's right to such records.

records at issue do not qualify for this exemption, and therefore their disclosure cannot invade Shelton's right to privacy.[2]

1. Records Documenting Shelton's Employment Must Be Disclosed.

To the extent the records at issue show the fact and duration of Shelton's employment, his salary, and his professional background, their disclosure cannot invade any privacy rights. *Local 21*, 42 Cal. 4th at 333 (requiring disclosure of public employees' names and salaries due to "the strong public interest in knowing how the government spends its money"); *Eskaton Monterey Hosp. v. Myers*, 134 Cal. App. 3d 788, 794 (1982) (noting "information as to the education, training, experience, awards, previous positions and publications of [the employee]. . . . is routinely presented in both professional and social settings, is relatively innocuous and implicates no applicable privacy or public policy exemption").

2. Any Settlement or Severance Agreements Must Be Disclosed.

Any settlement or severance agreement is a contract with a public agency that implicates no cognizable privacy rights. *Sanchez v. County of San Bernardino*, 176 Cal. App. 4th 516, 526 (2009) (noting that if severance agreement had not contained "carve out" for "disclosures that were required by law," it "*would have* violated the Public Records Act and therefore *would have* been void as against public policy"); *Reg. Div. of Freedom Newspapers v. County of Orange*, 158 Cal. App. 3d 893, 909 (1984) (requiring disclosure of settlement agreement notwithstanding any "assurances of confidentiality"); *Braun*, 154 Cal. App. 3d at 342, 344 (holding that "letters appointing then rescinding the appointment of [employee] to the post of transit administrator" were not exempt from disclosure where "[t]he letters were memoranda of [employee's] appointment to a position and the rescission thereof; they therefore manifested his employment contract"); *Yakima Newspapers v. City of Yakima*, 77 Wash. App. 319, 328 (1995) (requiring city

[2] Shelton cannot invoke privacy rights of "alleged victims." Shelton Suppl. Br. at 3. He can assert only his own. *Ass'n for L.A. Deputy Sheriffs v. L.A. Times Commc'ns LLC*, 239 Cal. App. 4th 808, 821 (2015) ("It is well settled that the right of privacy is purely a personal one; it cannot be asserted by anyone other than the person whose privacy has been invaded, that is, plaintiff must plead and prove that *his* privacy has been invaded."). In any event, the Districts indicated they would redact students' identifying information.

to disclose severance agreement due to "reasonable concern by the public that government conduct itself fairly and use public funds responsibly" and noting "if a public agency's settlement agreement cannot withstand public scrutiny, it may be flawed in the first place").

3. The Public Is Entitled to Disclosure of Records that Document Findings of Misconduct or Contain Reasonable Grounds to Believe Shelton Committed Substantial Misconduct.

With respect to records relating to complaints about Shelton, misconduct of public employees is "undoubtedly an issue of public interest." *Collondrez v. City of Rio Vista*, 61 Cal. App. 5th 1039, 1050 (2021). The public has a compelling interest in disclosure of records that "shed light on the public agency's performance of its duty" to respond to such complaints, *Versace*, 127 Cal. App. 4th at 820 (citation omitted), and show "whether the law is being properly applied or carried out in an evenhanded manner." *CBS, Inc. v. Block*, 42 Cal. 3d 646, 656 (1986). The right to transparency is "intended to safeguard the accountability of government to the public." *Reg. Div.*, 158 Cal. App. 3d at 901 (citation omitted). Accordingly, the people's right to disclosure goes beyond the mere fact that Shelton has been "accused of sexual offenses." Shelton Suppl. Br. at 4. The "public interest demands the ability to verify" how promptly, effectively, and fairly the Districts responded to concerns about Shelton's conduct, which is an entirely different matter from the investigation or prosecution of criminal charges by law enforcement or the district attorney.[3] *Connell v. Superior Ct.*, 56 Cal. App. 4th 601, 617 (1997).

California law is clear that "where the charges are found true, or discipline is imposed" on a public employee such as a teacher, the relevant records must be disclosed. *Am. Fed'n of State, Cnty. & Mun. Emps. v. Regents of Univ. of Cal.*, 80 Cal. App. 3d 913, 918 (1978). "In such cases a member of the public is entitled to information about the complaint, the discipline, and the information upon which it was based." *Id.* (quotation marks omitted). Accordingly, whenever "the

[3] Shelton cannot rely on the investigatory records exemption, Gov't Code § 7923.600, which is permissive. *Black Panther Party v. Kehoe*, 42 Cal. App. 3d 645, 656 (1974). Nor could a school district assert the exemption over its personnel records. *See California ex rel. Div. of Indus. Safety v. Superior Ct.*, 43 Cal. App. 3d 778, 783–84 (1974). The records at issue are far from the "entire case file" compiled by law enforcement, Ex Parte Appl. at 5, which presumably includes independent evidence not derived from school district records.

complaint has been upheld by the agency involved or discipline imposed, even if only a private reproval, it must be disclosed," regardless of the nature of the misconduct. *Marken*, 202 Cal. App. 4th at 1275 (citation omitted).

For example, where a school district found that a teacher's conduct "violated the District's board policy prohibiting the sexual harassment of students," the Court of Appeal held that the teacher could not prevent "release of the investigation report and disciplinary record" on the grounds that disclosure would violate his right to privacy. *Id.* at 1275–76. A teacher "occupies a position of trust and responsibility," and "the public has a legitimate interest in knowing whether and how the District enforces its sexual harassment policy." *Id.* at 1275. As a result, "the public's interest in disclosure of this information—the public's right to know—outweighs [the teacher's] privacy interest in shielding the information from disclosure." *Id.* at 1276.

The same is true here to the extent that the records at issue contain or describe any findings that Shelton violated any policies or committed any misconduct. The Districts indicated they would make appropriate redactions to protect identities of students, which dispel any speculative concerns about "the safety and identity of minor victims and witnesses" or deterring them from "cooperating with investigations." Ex Parte Appl. at 9.

While findings of misconduct are sufficient to require disclosure, they are not necessary. Although "there is a strong policy for disclosure of true charges," the relevant "cases do not stand for the premise that either a finding of the truth of the complaint contained in the personnel records or the imposition of employee discipline is a prerequisite to disclosure." *Bakersfield City Sch. Dist. v. Superior Ct.*, 118 Cal. App. 4th 1041, 1045 (2004). As the Court of Appeal held, "where complaints of a public employee's wrongdoing and resulting disciplinary investigation reveal allegations of a substantial nature, as distinct from baseless or trivial, and there is reasonable cause to believe the complaint is well founded, public employee privacy must give way to the public's right to know." *Id.* (citation omitted).

Therefore, if the records "reveal sufficient indicia of reliability to support a reasonable conclusion that the complaint was well founded" and substantial, their disclosure cannot be enjoined. *Id.* at 1047 (upholding disclosure of records about district employee where complaint of

sexual misconduct and threats of violence was substantial and there was reasonable cause to believe it was well founded); *see also Marken*, 202 Cal. App. 4th at 1272 (holding that "a proper reconciliation between the right to information embodied in the CPRA and the constitutional right to privacy" upholds "the right of public access" when alleged misconduct is of "substantial nature" and "there is reasonable cause to believe the complaint to be well founded").[4]

That standard is met here. The Benicia district admitted it possesses records relating to "well-founded and substantial claims of misconduct" against Shelton. McDede Decl. ¶¶ 9–10 & Exs. 6–7. Under controlling precedent, the Court cannot enjoin disclosure of those records, because the public's constitutional right to know about a school district's response to such claims outweighs Shelton's alleged privacy interests.

D. Shelton Cannot Defeat the People's Constitutional Right to Disclosure of Public Records by Speculating about Potential Bias, and a Court Retains Abundant Alternative Means to Ensure a Fair Trial.

Shelton cannot defeat the people's right to know merely by speculating that disclosure of records would result in pretrial publicity that might jeopardize his right to a fair trial. He has cited no authority for that assertion, nor has he articulated any legal standard for the Court to apply in evaluating it. The Court may therefore decline to consider Shelton's argument. *People v. Bryant*, 60 Cal. 4th 335, 363 (2014) ("If a party's briefs do not provide legal argument and citation to authority on each point raised, the court may treat it as waived, and pass it without consideration.") (citation and quotation marks omitted).

If the Court wishes to consider Shelton's argument, it should apply a stringent standard that properly accounts for the people's compelling interest in disclosure. Like the right of access to court records, the right to disclosure of public records is constitutional, and although courts are not

[4] The existence of litigation against the Benicia district cannot justify preventing disclosure. Public records are no less subject to disclosure when they are relevant to litigation. *Wilder v. Superior Ct.*, 66 Cal. App. 4th 77, 82–83 (1998). Even if Shelton could invoke the exemption for records "pertaining to pending litigation," Gov't Code § 7927.200(a), it does not cover every document relevant to a lawsuit. It only applies to documents "specifically prepared for use in litigation." *Bd. of Trs. of Cal. State Univ. v. Superior Ct.*, 132 Cal. App. 4th 889, 897 (2005) (emphasis and citation omitted). It does not cover an ordinary internal investigation. *City of Hemet v. Superior Ct.*, 37 Cal. App. 4th 1411, 1419 (1995).

subject to the CPRA, the public interest in disclosure of court records is founded on similar principles of transparency and accountability. Cal. Const., art. I, § 3(b)(1), (7); Gov't Code § 7920.540(a); *Local 21*, 42 Cal. 4th at 333; *NBC Subsidiary (KNBC-TV), Inc. v. Superior Ct.*, 20 Cal. 4th 1178, 1207–08 (1999).

Accordingly, in deciding whether to prohibit disclosure of public records in the interest of ensuring a fair trial, the Court should apply the strict standard for deciding whether sealing of court records is justified on the same ground. In doing so, the Court must also follow the constitutional requirement that any "statute, court rule, or other authority . . . shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access." Cal. Const., art. I, § 3(b)(2).

Under the standard for sealing court records, the party seeking to prevent disclosure must prove "(i) there exists an overriding interest supporting closure and/or sealing; (ii) there is a substantial probability that the interest will be prejudiced absent closure and/or sealing; (iii) the proposed closure and/or sealing is narrowly tailored to serve the overriding interest; and (iv) there is no less restrictive means of achieving the overriding interest.**"** *NBC Subsidiary*, 20 Cal. 4th at 1218. Shelton cannot meet those demanding elements, especially when they are narrowly construed as limits on access to public records. He has not proven any substantial probability of prejudice. Even assuming he did, an injunction against disclosing all records at issue is not narrowly tailored to that interest, and there are abundant less restrictive means to protect his right to a fair trial without infringing the people's constitutional right to disclosure.

Although the "right to a fair trial" may be considered "in the abstract, an overriding interest," *id.* at 1222, Shelton merely speculates that disclosure would bias a potential jury. Not all of the records at issue relate to his alleged misconduct, but to the extent they do, it cannot be presumed that disclosure would inherently deprive him of a fair trial. He has proven no facts demonstrating the frequency, contents, or readership of any relevant news coverage; the size of the jury pool; or the extent to which potential jurors have been or would be exposed to any such coverage or would retain any knowledge of it by the time of trial.

Therefore, he has not proven there is any substantial probability that disclosure of the records would compromise his right to a fair trial. *See Hurvitz v. Hoefflin*, 84 Cal. App. 4th 1232, 1242 (2000) ("Where a party contends his or her right to a fair trial has been or will be compromised by pretrial publicity, the law has long imposed on that party the burden of producing evidence to establish the prejudice," and "speculation" that publicity "might prejudice potential jurors" is insufficient); *S. Coast Newspapers v. Superior Ct.*, 85 Cal. App. 4th 866, 873 (2000) (overturning order against publishing defendants' photographs based on concern for "due process right to a fair trial" where record showed no "substantial probability that, absent the prior restraint, the witnesses' in-court identifications of the defendants would be based on photographs seen in the newspapers rather than their observations of the perpetrators at the crime scene"); *cf. CBS*, 42 Cal. 3d at 652 ("A mere assertion of possible endangerment does not 'clearly outweigh' the public interest in access to these records.").

As the Supreme Court has noted, "pre-trial publicity, even if pervasive and concentrated, cannot be regarded as leading automatically and in every kind of criminal case to an unfair trial." *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 565 (1976). To ensure a fair trial, "jurors need not be totally ignorant of the facts and issues involved," and instead, "[i]t is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court." *People v. Cooper*, 53 Cal. 3d 771, 807 (1991) (citation omitted). The issue "is not whether the community remembered the case, but whether the jurors . . . had such fixed opinions that they could not judge impartially the guilt of the defendant." *People v. Famalaro*, 52 Cal. 4th 1, 31 (2011) (citation omitted).

Accordingly, it cannot be said that "juror exposure to . . . news accounts of the crime with which he is charged alone presumptively deprives the defendant of due process." *People v. Harris*, 28 Cal. 3d 935, 949 (1981). "Prominence does not necessarily produce prejudice, and juror *impartiality*, we have reiterated, does not require *ignorance*." *Skilling v. United States*, 561 U.S. 358, 381 (2010) (citation omitted). The California Supreme Court has "long held that juror exposure to pretrial publicity regarding a case does not presumptively disqualify the juror; credible assurances that the juror can set aside any preexisting knowledge and opinions about the case and

judge it fairly based upon the evidence presented at trial are sufficient to protect defendant's right to an impartial jury." *People v. Riggs*, 44 Cal. 4th 248, 281 (2008). Therefore, even if "most prospective jurors had heard of defendant's case," that is not sufficient to prevent a fair trial. *People v. Scully*, 11 Cal. 5th 542, 572–73 (2021).

In addition, any adverse publicity will likely have dissipated by the time of trial. *People v. McCurdy*, 59 Cal. 4th 1063, 1077 (2014) ("The passage of time ordinarily blunts the prejudicial impact of pretrial publicity."). Also, it cannot be assumed that the entire jury pool of Solano County, which has a population of almost 450,000, *see QuickFacts Solano Cnty., Cal.*, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/solanocountycalifornia/PST045222 (last visited May 30, 2024), would have read or seen publicity derived from the records at issue or that it would be impossible to seat a fair jury, especially when news coverage in an election year is dominated by other matters. *Cf. Scully*, 11 Cal. 5th at 574, 576 (holding defendant in capital case "has not shown a reasonable likelihood that a fair trial could not be had in Sonoma County," which had population of 421,500). Therefore, Shelton cannot show any substantial probability that pretrial publicity would inherently deprive him of a fair trial.[5]

Even assuming otherwise, certain records at issue, such as severance agreements, do not present the concerns alleged by Shelton, and thus an injunction against disclosing all records at issue would not be narrowly tailored to his asserted interests. More importantly, there are abundant "less restrictive means" of "achieving the overriding interest in a fair trial" without infringing the people's constitutional right to disclosure of records concerning claims of misconduct by a public school teacher. *NBC Subsidiary*, 20 Cal. 4th at 1223.

Those alternatives include, for example, "frequent and specific admonitions and instructions, coupled with careful voir dire of the jurors." *Id.* at 1224. "We must presume that jurors generally follow instructions to avoid media coverage, and to disregard coverage that they

[5] Nor can he prevail by speculating that disclosure of public records would somehow "jeopardize the integrity of the investigation or evidence." Ex Parte Appl. at 3. Presumably, law enforcement officers or prosecutors already investigated the facts, collected relevant evidence, and interviewed the alleged victims before filing charges, and it cannot be assumed that disclosure of the Districts' records would deprive Shelton of a fair trial.

happen to hear or see." *Id.* at 1223. Even in capital cases, courts ensure fair trials through voir dire and cautionary instructions. *See, e.g., Famalaro*, 52 Cal. 4th at 31 (holding jury "selection process resulted in a panel of jurors untainted by the publicity surrounding this case"); *People v. Pride*, 3 Cal. 4th 195, 226 (1992) (noting "jury had been repeatedly admonished to avoid any coverage of the case" and without contrary evidence "it must be assumed the jury followed its instruction to avoid all publicity in the case").

The Supreme Court has confirmed that even in inflammatory cases, voir dire and cautionary instructions are typically sufficient to prevent pretrial publicity about potentially incriminating evidence from jeopardizing the right to a fair trial. *Press-Enterprise Co. v. Superior Ct.*, 478 U.S. 1, 15 (1986) (holding in capital murder case against nurse that any "risk of prejudice" from publicizing inadmissible evidence discussed in pretrial hearings "does not automatically justify refusing public access to hearings" where voir dire allows court to "identify those jurors whose prior knowledge of the case would disable them from rendering an impartial verdict"); *Neb. Press Ass'n*, 427 U.S. at 564 (reversing injunction against publishing defendant's confessions or admissions to alleged murder of family committed in course of sexual assault where court could protect fair trial with "searching questioning of prospective jurors" and "emphatic and clear instructions on the sworn duty of each juror to decide the issues only on evidence presented in open court").

Assuming "those qualified for potential service by a court may have had some prior exposure to the case," a court may "rigorously vet potential jurors to screen out those tainted and irrevocably biased by pretrial publicity," if any. *People v. Peterson*, 10 Cal. 5th 409, 441 (2020). Therefore, even if media coverage might be prejudicial, the "traditional means of countering inadmissible, prejudicial information," such as thorough voir dire and "regular and specific cautionary jury admonitions and instructions" are "an adequate and less intrusive means of accomplishing the goal of ensuring a fair trial" in this case. *NBC Subsidiary*, 20 Cal. 4th at 1225.

At best, Shelton offers only "generalized conjecture" about exposure of potential jurors to the records at issue and speculates "that their deliberations might be tainted irreparably by that exposure," which cannot justify infringing the people's right to disclosure of public records. *Id.*

Even if sufficient evidence of irremediable prejudice emerged before trial, a court could order a change of venue. Penal Code § 1033(a). Therefore, Shelton cannot show that this case presents the "exceptional circumstances" necessary to rebut the strong presumption that voir dire, cautionary instructions, and if necessary a change of venue are less restrictive alternatives to depriving the people of their constitutional right to disclosure. *NBC Subsidiary*, 20 Cal. 4th at 1224.

An order prohibiting disclosure cannot be justified by *People v. Jackson*, 128 Cal. App. 4th 1009 (2005). That case involved saturation coverage of sensational accusations against Michael Jackson as a worldwide celebrity. In those unique circumstances, the court upheld sealing of a "search warrant affidavit" and "motion to set aside the indictment and related documents," such as the grand jury transcript, *id.* at 1017, which likely contained far more detail than the school district records at issue here. *See id.* at 1023, 1027 (referring to "82-page search warrant affidavit" and "1,900 page transcript"). The records at issue here are internal school district documents, not a search warrant application that represented "an extension of the criminal investigation" and required "imparting sensitive information to judicial officers." *Id.* at 1026 (citation omitted). Although the District Attorney's office may have later obtained records at issue from one or both of the Districts, Ex Parte Appl. at 11, Gres Decl. ¶ 2, the Districts were not apparently acting as agents of law enforcement in compiling them.

This case does not involve the "extraordinary circumstances" of "notoriety of a celebrity defendant" with "intensity of the media coverage" that "is unprecedented." *Id.* at 1016–17. There is no similar "torrent of pretrial publicity," in which "[n]ews sources from around the world—newspapers, magazines, radio, television and the Internet—are saturated with information (or disinformation) about the case." *Id.* at 1025. Only on those unique and extreme facts did the *Jackson* court find that voir dire and cautionary instructions would not ensure a fair trial. *Id.* at 1026–27. In effect, *Jackson* is the exception that proves the rule. Absent similarly extreme circumstances, which are not present, this Court must uphold the people's constitutional right to disclosure because Shelton has not proven sufficient prejudice and the less restrictive alternatives of voir dire, cautionary instructions, and if necessary a change of venue can ensure a fair trial.

IV. CONCLUSION

For the foregoing reasons, the Court is respectfully requested to deny Shelton's request for a preliminary injunction, vacate the temporary restraining order and allow the Districts to disclose public records requested by McDede.

Dated: May 31, 2024

FIRST AMENDMENT COALITION

By 

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ANN CAPPETTA
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PROOF OF SERVICE

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Marin, State of California. My business address is 534 4th Street, Suite B, San Rafael, CA 94901-3334.

On May 31, 2024, I served true copies of the following document(s) described as **INTERVENOR HOLLY McDEDE'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PRELIMINARY INJUNCTION** on the interested parties in this action as follows:

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BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address rregnier@firstamendmentcoalition.org to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 31, 2024, at East Palo Alto, California.

Robin P. Regnier