Sierra Supreme Court

JANE DOE,
Appellant-Plaintiff

v.

MARIN COUNTY BOARD OF EDUCATION,
Appellee-Defendants

/u/CardWitch	|	/u/ChaoticBrilliance
/u/ConfidentIt	|	/u/Dr0ne717
Attorneys for	|	Attorneys for
Appellant-Plaintiff	|	Appellee-Defendants

Petition for Certiorari

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Statement of Jurisdiction

The Sierra Supreme Court has jurisdiction to this case as it is an appeal of a decision made by the First District Court of Appeals of the State of Sierra.

Statement of Questions

1. Were John Brown Memorial High School (JBMHS) and by extension, the Marin County Board of Education ("the Board"), in violation of Title IX of the Education Amendments of 1972 by not treating Doe equally with the other members of her team?
    Appellant Answer: Yes
    Appellee Answer: No
    Superior Court for the County of Marin: Yes
    First District Court of Appeals: No

2. Are sex-segregated facilities, such as locker rooms, prohibited by Title IX and the Fourteenth Amendment?
    Appellant Answer: Yes
    Appellee Answer: No
    Superior Court for the County of Marin: Yes
    First District Court of Appeals: No

3. Does the Sierra Unruh Civil Rights Act apply to public schools?
    Appellant Answer: Yes
    Appellee Answer: No
    Superior Court for the County of Marin: Yes
    First District Court of Appeals: No

Petition for Certiorari

The Appellant comes before the court to request that the Sierra Supreme Court grant certiorari and review the decision of the First District Court of Appeals. It is clear that there is a debate over the issues of sex-segregation, and whether the actions by John Brown Memorial High School (JBMHS) and the Marin County Board of Education ("the Board") were a violation of Title IX. Furthermore, it is important for the question of whether the Sierra Unruh Civil Rights Act applies to public schools be answered once and for all. The lower court found in favor of the Appellant, and these findings were reversed by a divided First District Court of Appeals. Without a doubt this indicates a deep divide on views, and with a ruling from the Sierra Supreme Court, it should provide guidance for all of the courts in this State. The Appellant will provide reasons why each question presented above should be reviewed, considered, and answered by this Court.

JBMHS and the Board have violated Title IX of the Education Amendments of 1972 by not treating Doe equally with the other members of her team.

Not every school in the United States is able to have enough participants to fully form an all girls' and all boys' team. Title IX provides that "[n]o person in the United states shall, on the basis of sex, be excluded from the participation in, bednied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). It is important to note that Title IX further specifies that "[n]othing contained in subsection (a) … shall be interpreted to require any education institution to grant preferential or disparate treatment to members of one sex on account of an imbalance which may exist with respect to the … percentage of persons of that sex participating in or receiving benefits of any federally supported program or activity." 20 U.S.C. § 1681(b).

A series of Regulations were created to ensure that equal opportunities are provided to all those who participate in athletics. The Court of Appeals reviewed these Regulations and noted that all of the boxes have been checked and concluded that "[u]nder these factors, Doe has been afforded 'equality in athletic opportunity.'" *Jane Doe v. Marin County Board of Education*, 1 West Supp. 1 (First Ct. App. 2020). None of the parties dispute that before the meets, there would be pep talks provided exclusively to the boys in their locker room - which the majority in their opinion appeared to minimize the importance of. The Regulations, among other things, specify that there should be an equal "opportunity to receive coaching" 34 C.F.R. § 106.41(c)(5).

Anyone who has participated in any sort of athletic activity is able to positively say that the pep talks would most definitely constitute as a form of coaching - anywhere from raising the confidence of the athletes to last minute coaching advice. How could any athlete not feel like they are being excluded, and left out in the cold, if they are forced to get ready alone? Not one of those male athletes have to deal with the feelings, and the far reaching effects of this segregation, like Doe has had to. The situation presented at this school clearly shows preferential treatment towards the male portion of the team.

Sex-segregated facilities are prohibited by Title IX and the Fourteenth Amendment.

It is a requirement that facilities that are separate based off of sex must be comparable to those same facilities provided to the other sex. 34 CFR § 106.33. The parties have all admitted, as pointed out in the dissent, that "the facilities provided in the boys' locker room is superior to those provided in the girls' locker room." *Jane Doe v. Marin County Board of Education*, 1 West Supp. 1 (First Ct. App. 2020). If it appears that the findings of fact and the regulation are at odds with one another, the Appellant must respectfully point out that it is because they are.

One of the most important foundational bricks that has led the United States to its current form of public education comes from the ruling that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." *Brown v Board of Education*, 347 U.S. 483, 495 (1954). This ruling did not break down the wall of segregation based off of race, to be halted and welcoming of segregation based off of sex. However, without intervention, the concept of facilities that are close to being equal will begin to chip away at this all important ruling.

The Appellant would like to bring to the Court's attention that, while it is acknowledged that in many cases the Court must defer to agency interpretation when considering how to rule on an alleged violation - sometimes there are exceptions to the rule. In some instances the Court may refuse to defer to an agency's interpretations if the constitutional concerns that arise are serious enough. *Williams v Babbitt,* 115 F. 3d 657 (9th Cir. 1997). This is without a doubt the case here.

The Department of Education has made it clear that when they implemented sex-segregated locker rooms they did so for reasons so firmly rooted in overly broad generalizations based off of sex. They have made the assumption that without these separations the students will be eyeing each other - and yet ignores the very reality of the world that we live in, not everyone is heterosexual. The Department further argues that this is the necessary means of preventing sexual assault of female students, and yet seems to again ignore the reality of the world we live in - physical boundaries are not going to prevent someone who is hell bent on violating the law. Furthermore, it is highly offensive that the Department would deign to make these assumptions about their male students. They have also made it

clear that they do not have any concern for the assaults that may occur exclusively between males or females.

The Supreme Court has been very clear that when there are any state differentiations made between the sexes, the state "must not rely on overbroad generalizations about the different talents, capacities, or *preferences of males and females."*[emphasis added] *United States v Virginia,* 518 US 515 (1996). In light of this, the assumption that the Department has made about their students is the epitome of unconstitutional stereotyping based on gender. Instead of using their powers as educators to teach why wanton ogling and sexual assault are not okay, such as through a sex-education program - they rely on these stereotypes to justify sex-segregated locker rooms.

The Sierra Unruh Civil Rights Act applies to public schools.

The purpose of the Sierra Unruh Civil Rights Act was prohibit any descrimination by businesses based off of a variety of characteristics, ranging from sex and race to religion and disability status. The majority opinion has interpreted the Act to not apply to public schools. The original form of the Act provided a list of specific entities that the Act applied to, and then was changed later on with broader language. *Jane Doe v. Marin County Board of Education*, 1 West Supp. 1 (First Ct. App. 2020). When attempting to make an interpretation of any Act, and with this one specifically, it has been held that it must be interpreted in the most reasonably broadest sense possible. *Isbister v. Boys Club of Santa Cruz, Inc.* 40 Cal. 3d 72 (1985).

It also cannot, and should not, be ignored that the Act has been seen to interpret public schools as business establishments under the Act numerous times. *Nicole M. v Martinez Unified school Dist.,* 964 F. supp. 1369 (N.D. Cal. 1997); *Sullivan v. Vellejo City Unified School Dist.* 731 F. Supp. 947 (E.D. Cal 1990). These are from the only times it has been interpreted as such, with the combination of the three rulings being relied on as interpreting the Act to apply to public schools. *See DK v. Solano County Office of Education*, Dist. Ct. (E.D. Cal 2008)(the Solano County Office of Education is a business establishment under the Act). It is clear that a precedent has been set, and while there are times for precedents to be changed with the times, to do so here would be to allow for the

door of wanton discrimination to be opened with regards to our schools. It is clear through legislation and the ruling of prior courts that the Act *should be applied to public schools*.

Relief Requested

In light of the justifications provided by the Appellant, we humbly request that the Court grant the request for certiorari in its entirety.