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

Appellant's Brief

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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. The

Court has also granted the writ of certiorari, acknowledging jurisdiction of this case.

Statement of Questions

1. Are sex-segregated locker rooms a violation of Title IX?
    Appellant Answer: Yes
    Appellee Answer: No
    Superior Court for the County of Marin: Yes
    First District Court of Appeals: No

2. Are sex-segregated locker rooms a violation of the Equal Protection Clause?
    Appellant Answer: Yes
    Appellee Answer: No
    Superior Court for the County of Marin: Yes
    First District Court of Appeals: No

3. Is there another Title IX violation in this case beyond that which has already been argued?
    Appellant Answer: Yes

4. Are public schools “business establishments” within the meaning of the Unruh Act?
    Appellant Answer: Yes
    Appellee Answer: No
    Superior Court for the County of Marin: Yes
    First District Court of Appeals: No

5. Do sex-segregated locker rooms violate the Unruh Act?
    Appellant Answer: Yes
    Appellee Answer: No
    Superior Court for the County of Marin: Yes
    First District Court of Appeals: No

Statement of Facts

In this action, the Appellant Jane Doe is a senior at John Brown Memorial High School. During her time in attendance at this school she participated as a member of the varsity team for track and field. Due to the lack of participation of other girls at the school, there was no separate girls' team - as such Doe competed as part of the boys' team. During all four years of being part of the team, the team coach would engage in strategy sessions and pep talks before the various meets in the boys' locker room. Doe was forced to get ready for the meets alone in the girls' locker room and was unable to be privy to these pre-meet strategy sessions and pep talks, additionally she was unable to take part in immediate post-meet bonding that would occur as well. In conjunction with the inability to participate pre- and post-meet with the rest of her team, the facilities that Doe had to get ready in alone were not up to the same standards as that of her male team members - one example being noticeably higher water pressure in the boys' locker room.

These were all ongoing issues throughout her four years being on the track team. Both Doe and her parents raised issues and complaints regarding these conditions to the John Brown Memorial High School as well as the Marin County Board of Education ("the Board"). Despite repeatedly bringing it to their attention, nothing was ever done to remedy these issues.

As such, Doe brought a civil case to the Superior Court for the County of Marin. After hearing all of the facts and arguments from both sides, the trial court found that John Brown Memorial High School violated Title IX by not treating Doe equally to the other members of her team, that the separate sex-segregated facilities were prohibited by Title IX and the Fourteenth Amendment, and finally that the Sierra Unruh Civil Rights Act applied to public schools and also prohibits the sex-segreagted locker rooms.

The Board appealed the trial court decision to the First District Court of Appeals. Upon their review of the case, in a split decision, they sided with the Board and consequently reversed the trial court decision in its entirety. Following this decision, Doe has appealed to this Court for a review of the Appellate Court decision.

Argument

Sex-segregated Locker Rooms are a Violation of Title IX

The first section of Title IX provides that "[n]o person in the United States shall, on the basis of sex, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. *20 U.S.C. § 1681(a).* In the process of implementing the statute, the Department of Education issued regulations that must be discussed when determining a violation of Title IX.

These Regulations, among other things, specify that there should be an equal "opportunity to receive coaching." *34 C.F.R. § 106.41(c)(5).* By keeping Doe separate from the rest of her team in the process of getting ready, and leaving her out of the pep talks does not afford her an equal opportunity for coaching. The exclusion from these team events were entirely based off of sex - if Doe was a boy then they would have been included in these pep talks. It is appallingly obvious that this is the reason for being treated differently.

These regulations also required that the facilities that are separate based off of sex must be comparable to those same facilities provided to the other sex. *34 CFR § 106.33.* It was pointed out in the dissent that the facilities provided to the boys were superior to the girls' locker room. *See Jane Doe v. Marin County Board of Education*, 1 West Supp. 1, 8 (First Ct. App. 2020) (Brown, J., dissenting). Not

only was Doe treated differently by the coach based off of her sex, but the facilities provided to her were also subpar. Beyond the initial issue of the facilities being subpar, the school forced Doe to use these facilities - she did not have the option to use the boys' locker room. One of the benefits that could be seen as being part of the sports team is the usage of the locker rooms in order to get ready, with their current condition Doe is not able to receive the same benefits that her male counterparts receive in their locker rooms.

If Sierra were to allow the standard of separate but 'equal enough' it opens the door to 'minor' acts of discrmination. The ramifications of this standard can and will ripple out across the state if allowed to stay. It may start with locker rooms today, but if this standard were to be maintained it could result in consistent differences between the equipment used by boys and girls' teams. If we look beyond the realm of schools, policies like this could affect health insurance that is provided by employers - the health insurance for the women might not be as robust as their male counterparts but if it is 'equal enough' that is okay, right?

Sex-segregated Locker Rooms Are a Violation of the Equal Protection Clause.

The implementation and usage of sex-segregated locker rooms are a violation of the Equal Protection Clause. While there is no place where equal protection should not occur, it is especially important to ensure that the youth of our country receive equal protection and are free from discrimination based off of any of their personal characteristics - such as sex, religion, and any other applicable status. One of the very foundations of this concept in our schools comes from that all important 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 US 483, 495 (1954). Just as that first step on the moon propelled the world into a new age, this ruling took a no less important step in breaking down the walls of racial segregation. Our country did not move forward to just be stopped by the wall of sex-segregation. Separate and 'good enough' should not be allowed to stand. Maintaining a policy of separate but equal never results in the items ever truly being equal and can have real and lasting

effects. *United States v. Virginia,* 518 US 515 (1996) (Equal Protection guarantee precludes from reserving exclusive and unique education opportunities for men only).

As will be discussed later on, it is important for the Court to defer to legislative intent, the Court should not defer to an agency's interpretation if the constitutional concerns that are brought up are serious enough. *Williams v. Babbitt,* 115 F.3d 657 (9th Cir. 1997). The constitutional concern that is evident in this case practically begs for the court to intervene to uphold constitutional protections.

There is no room for doubt in the ruling the Supreme Court has made with regards to the differentiations made between the sexes. When it comes to making these differentiations, 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); *Mississippi Univ for Women v. Hogan*, 458 US 718 (1982) (gender classifications must be "free of fixed notions concerning the roles and abilities" of men and women). The lower court record has shown that the Department clarified that their reasons for implementing sex-segregated locer rooms was based off of these overly broad generalizations that the Supreme Court does not allow. The very assumptions that are made ignore the reality that we live in - not everyone is heterosexual, sexual assualts occur between members of the same sex, and that not everyone is cisgender[1]. Physical boundaries, while in many cases can provide a deterrent effect to assaults, they will not prevent someone who is hell bent on violating the law.

The assumptions that are made by the Department are extremely offensive towards the male students. That the school has made the assumption that they will engage in any form of sexual assault if they were to be in the same locker room as a girl. There is a blasé attitude taken towards the population of students, making the assumption that they are mostly heterosexual - this ignores that long history of discrimination and hate that prevents members of the LGBTQ community from

[1] Cisgender is defined by Merriam-Webster - of, relating to, or being a person whose gender identity corresponds with the sex the person had or was identified as having at birth.

coming out. Just because the population may appear to be primarily heterosexual, does not mean that is the case. The implementation of sex-segregated locker rooms engages in a type of sex-identity discrimination, and has far reaching ripple effects on the transgender portion of the student population[2]. In light of all of this, the assumptions that the Department has made about their students is the epitome of unconstitutional stereotyping based on sex and gender.

There are Additional Violations of Title IX Beyond the Original Title IX Argument.

In addition to the argument that alleges a Title IX violation under 20 U.S. Code § 1681(a), there is a further violation under 20 U.S. Code § 1681(b). This section of Title IX states that:

> "Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on on account of an imbalance which may exist with respect to the total number of percentage of the persons of that sex participating in or receiving the benefits of any federally supported program or activity [...]"

In this case, there was only one girl who was part of the track team - and it is clear that there was an imbalance between how both parts of the team were being treated. Doe never asked for the pre-meet pep talks or coaching opportunities *not to occur*, she is only asked that the same treatment be given to her as well. Due to the erroneous requirement that the sex-segregated locker rooms be used, it by default causes preferential treatment to the male portion of the team. If there were more girls who participated, it is possible that this treatment would not occur - but because there is only one girl participating it is clear they are being treated differently because of their sex.

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[2] Davis, H. F., Why the "transgender" bathroom controversy should make us rethink sex-segregrated public bathrooms (2017). Politics, Groups, and Identities, doi: 10.1080/21565503.2017.1338971

Public Schools are "Business Establishments" Within the Meaning of the Unruh Act.

When making an assessment regarding legislative intent, specifically in this case for indicating what is and is *not* covered, it is important to look at the history of the Act in question. The very purpose of the Sierra Unruh Civil Rights Act was to eradicate every form of discrimination - ranging from sex, race, religion and disability status. In the original iteration of the Act enacted in 1897, it listed a number of specific establishments "[...] inns, restaurants, hotels, eating-houses, barber shops, bath-houses, theaters, skating rinks, and all other places of public accommodation or amusement, subject only to the conditions and limitations established by law and applicable alike to all citizens." Subsequent iterations of the Act broadened it even further; one draft of the current iteration of the Act listed public schools as one of the organizations covered.

What followed were a series of cases that led the legislature to presumably be worried that the courts were being too narrow with regards to what businesses the Act covered. The change in the Act went from specifically listing businesses and tacking on "[...] and all other places [...]" to the end they instead went with the phrase of "business establishments of every kind whatsoever." *Sierra Unruh Civil Rights Act.* Due to the change in language for this Act being so broad, it has been held that the appropriate means of interpreting this act must be in the most reasonably broadest sense possible. *Isbister v. Boys Club of Santa Cruz, Inc.* 40 Cal. 3d 72 (1985) (ruled that a homeowners' association is a business under the Act). When you take the term 'business establishment' to its broadest sense possible it encompasses "[...] everything about which one can be employed [...]" at both a fixed location as well as a permanent "commercial force or organization." *O'Connor v Village Green Owners Assn.,* 662 P.2d 427 (Cal. 1983) (ruled that a non-profit boys' club is a business establishment); *Burks v. Poppy Construction Co.,* 370 P.2d 313 (Cal 1962) (holding that a construction company is a business establishment).

Following these rulings, it was not a stretch by any means for public schools to be ruled as being under the authority of the Act. *Sullivan v. Vallejo City Unified School Dist.* 731 F. Supp. 947 (E.D. Cal 1990); *Doe v Petaluma City School Dist.,* 830 F.Supp 1560 (N.D. Cal 1993); *Nicole M. v Martinez Unified School Dist.,* 96 F. Supp. 1369 (N.D. Cal 1997); *DK v. Solano County Office of Education,* Distc. Ct. (E.D. Cal 2008). This indicates a clear history of such interpretations, albeit through the federal courts. On the State level, it has been ruled that private schools are not covered by the Act. *Doe v. California Lutheran High School Ass'n*, 170 Cal.App.4th 828 (Cal. Ct. App. 2009). The difference between *Doe v California Lutheran High School Ass'n* and this instant case is the matter of public and private schools. An important factor to take into account is whether the organization in question does business entirely with members, completely open to the public, or a combination of the two. A private social club has been found to be subject to the Act because there was a substantial amount of interaction with nonmembers from the public. *Warfield v. Peninsula Golf & Country Club,* 896 P.2d 766 (Cal. 1995).

A public school is entirely open to the public, the only 'requirement' so to speak is living in the requisite area to be enrolled in the school. Comparatively speaking, a private school by nature has 'members' and when applying to any organization (school or otherwise) that requires a membership, it is the selective policies that are the essence of the organization. *Curran v. Mount Diablo Council of the Boy Scouts,* 17 Cal. 4th 670 (Cal 1998). The intent is important - is there an intent or a plan for there to be exclusiveness for the organization. *Sullivan v. Little Hunting Park, Inc,* 396 US 229 (1969); *Marina Point, Ltd. v. Wolfson,* 640 P.22 115 (Cal 1982) (ruled that a privately owned apartment complex is a business under the Act). A public school in no way intends to be exclusive like a private school.

The Appellant agrees with the dissent's conclusion that *Isbister* should be controlling in this instance with regards to how the Act is interpreted and applied. *See Jane Doe v. Marin County Board of Education*, 1 West Supp. 1, 8 (First Ct. App. 2020) (Brown, J., dissenting). While there are some instances in which drawing the line between federal and state courts is vital, the federal courts can provide guidance for the state courts and vice versa.

Sex-Segregated Locker Rooms Violate the Unruh Act.

The Act states that "all persons within the jurisdiction of this state are free and equal" and as such they are "entitled to the full and equal accommodations, advantages, facilities, privileges, or services" regardless of sex. *The Sierra Unruh Civil Rights Act*. In order to establish that a case under the Act exists, one must "plead and prove intentional discrimination." *Harris v Capital Growth Investors XIV*, 805 P.2d 873 (Cal. 1991). In this instant case, over the course of *four* years, Doe and her family have contacted the school about the different conditions between the locker rooms and the discriminatory actions regarding strategy sessions pre-meet. Not once over these four years has a change been made - to either attempt to improve the facilities or to change how the coach handles the separate locker room situation.

Furthermore, there is no language or requirement in the text of the Act that provides limitation on one's right to be free from discrimination. The Act should be interpreted as broadly as it has been written. The Act has "both a broad meaning to include noncommercial entities as well as a narrow meaning to include commercial entities." *Curran v. Mount Diablo Council of the Boy Scouts,* 17 Cal. 4th 670 (Cal 1998); *Pines v. Tomson,* 160 Cal.App.3d 370 (1984) (the nonprofit organization Christian Yellow Pages is business under *Curran* definition). It is because of this definition that it has allowed for it to be applied to a variety of entities from hospitals and beyond. (*O'Connor v Village Green Owners Assn.,* 62 P. 2d 427 (Cal. 1983) (references hospitals as an organization to fall under the Act); *Rotary Club of Duarte v Board of Directors*, 178 Cal.App.3d 1035 (1986) (nonprofit rotary club constitutes a business under the Act).

When the Act is interpreted as broadly has it was intended to be the sex-segregated locker rooms violate this Act. The concept of requiring a showing of arbitrary discrimination is nonexistant. *Harris v. Capital Growth Investors XIV,* 805 P.2d 873 (Cal. 1991) ("After further analysis, we cannot regard the letter as persuasive evidence of a legislative intention to treat our "arbitrary discrimination"

language as if it were part of the statue.") This is extremely important when considering the court's role in making rulings on any given statute, they must take into account what the legislative intent was and defer to that interpretation. *Kansas v Hendricks,* 521 US 346 (1997). The Act did not require arbitrariness, and instead explicitly stated the right to be free from discrimination was absolute.

Even if the test of arbitrary discrimination were to be used with regards to this instant case, the justification for sex-segregated locker rooms would also fail. The justifications provided are based on stereotypes of the sexes which do more harm than good. It minimizes the presence of sexual assaults that could occur between individuals of the same sex, and assumes that the boys are more likely to commit such a sexual assualt - instead of working to solve a social problem they instead brush it away out of sight and ignore it.

Relief Requested

In light of the justifications provided by the Appellant, we humbly request that the Court reverse the ruling of the First District Court of Appeals and uphold the ruling of the Superior Court for the County of Marin which ruled that in favor of Doe for de-segregated locker rooms.