



May 2, 2016

Via fax and electronic mail

Principal Jim Bartow
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Dear Mr. Bartow:

It has come to our attention that Foothill High School has a policy that same-sex couples may not be nominated for the king and queen roles at proms or school dances. In particular, it is our understanding that Foothill High School recently refused to allow a senior, Hayley Lack, and her girlfriend to be nominated for prom king and queen. Positions to be decided by student vote at the Foothill High School prom on May 7. I'm writing to inform you that this policy violates the constitutional and statutory rights of gay and lesbian students and must be rescinded immediately.

Students have a recognized free expression right to bring same-sex dates to the prom, and that right extends to running for prom king and queen. As a federal court in Mississippi found more than five year ago, "this expression and communication of her viewpoint [bringing a same-sex date to prom] is the type of speech that falls squarely within the purview of the First Amendment."¹ The expression courts have found inherent in bringing a same-sex date to the prom—the expression of a sexual orientation, the statement of equality for same-sex couples, and the challenge to traditional gender roles—is no less true of a student and her female prom date seeking the titles of prom king and queen. If anything, it would only amplify all these messages for the same-sex couple to seek and potentially win prom king and queen.

It is also plainly illegal under applicable law—the U.S. Constitution, the California Constitution, and the California Education Code—to discriminate against students based on

¹ *McMillen v. Itawamba County School District*, 702 F.Supp.2d 699 (N.D. Miss. 2010); *see also Fricke v. Lynch*, 491 F.Supp. 381 (D.R.I. 1980).

sexual orientation.² The nomination form for prom king and queen allows students to nominate couples, and it is our understanding that different-sex couples are often nominated for and elected prom king and queen. To prohibit same-sex couples from engaging in an activity regularly allowed different-sex couples is discrimination based on sexual orientation.

Given that the prom is on Saturday, May 7, please let me know no later than noon on Tuesday, May 3 if you will reinstate Hayley and her girlfriend's nomination for prom king and queen. Please contact me at: 415.621.2493 or via email egill@aclunc.org.

Sincerely,



Elizabeth Gill
Senior Staff Attorney

Cc: Jim Cloney, Superintendent jcloney@suhsd.net
Constance Pepple, President, Board of Trustees cpepple@suhsd.net
Hayley Lack
Kelly Lack

² See *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015); *Strauss v. Horton*, 46 Cal.4th 364 (Cal. 2009) (holding that discrimination based on sexual orientation warrants strict scrutiny); Cal. Ed. Code § 220 *et seq.*; see also *Videckis v. Pepperdine University*, 100 F. Supp. 3d 927, 937 (C.D. Cal. 2015) (discriminating against same-sex couple also likely violates Title IX).