

1 WILSON C. FREEMAN, Ariz. Bar No. 036953*
Email: WFreeman@pacificlegal.org
2 *Counsel for Service*
JOSHUA P. THOMPSON, Cal. No. 250955
3 Email: JThomspon@pacificlegal.org
Local Co-Counsel
4 Pacific Legal Foundation
555 Capitol Mall, Suite 1290
5 Sacramento, CA 95814
Telephone: (916) 419-7111
6 Facsimile: (916) 419-7747

7 GLENN E. ROPER, Colo. Bar No. 38723*
Email: geroper@pacificlegal.org
8 Pacific Legal Foundation
1745 Shea Center Dr., Suite 400
9 Highlands Ranch, CO 80129
Telephone: (916) 419-7111
10 Facsimile: (916) 419-7747

11 *Attorneys for Plaintiffs*

12 **pro hac vice applications forthcoming*

13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**
15 **FRESNO DIVISION**

17 CALIFORNIANS FOR EQUAL RIGHTS
18 FOUNDATION,

No. 1:25-at-169

19 Plaintiff,

20 v.

21 MISTY HER, interim superintendent of the Fresno
Unified School District; and VALERIE F. DAVIS,
22 President of the Fresno Unified School District;

COMPLAINT

23 Defendants.

INTRODUCTION

1
2 1. This case raises the question of whether a public school district’s desire to rectify
3 racial disparities can justify racial segregation in public schools.

4 2. The Fresno Unified School District’s “Office of African American Academic
5 Acceleration” (A4 Office) was created to address the lower performance of black students in the
6 district. The A4 Office sponsors over a dozen programs which are designed, marketed, and
7 promoted as available only to black students.

8 3. The California and United States Constitutions forbid the government from
9 segregating or providing preferential treatment on the basis of race. Yet Fresno Unified’s A4 Office
10 channels opportunities, funding, and outreach primarily to a single racial group while
11 systematically excluding or failing to inform other students who similarly could benefit from
12 academic support.

13 4. Californians for Equal Rights (CFER) is a nonprofit organization dedicated to
14 ensuring that government entities comply with constitutional and statutory prohibitions against
15 race-based discrimination. CFER brings this lawsuit on behalf of its members to vindicate the
16 principle that every student deserves an equal opportunity to benefit from public-school programs,
17 regardless of race.

JURISDICTION AND VENUE

18
19 5. This action arises under the Fourteenth Amendment to the United States Constitution
20 and 42 U.S.C. § 1983, and under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

21 6. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3).
22 Declaratory relief is authorized by 28 U.S.C. §§ 2201–02.

23 7. Venue is proper in this District under 28 U.S.C. § 1391(b) because Fresno Unified
24 School District is located in this District, and a substantial part of the events or omissions giving
25 rise to this claim occurred here.

26 8. Supplemental jurisdiction over Plaintiff’s state-law claim exists under 28 U.S.C.
27 § 1367(a), because that claim is so related to the federal claims that it forms part of the same case
28 or controversy.

PARTIES

1
2 9. Plaintiff Californians for Equal Rights Foundation (CFER) is a nonprofit
3 organization incorporated under the laws of California and headquartered in San Diego County. Its
4 mission is to advocate for the principle of equal rights for all by opposing race-based discrimination
5 in public education, employment, and contracting.

6 10. CFER has members who reside in the Fresno Unified School District (Fresno
7 Unified) who have children currently enrolled in Fresno Unified schools. These children are not
8 African American and are either eligible for or would benefit from the same types of academic
9 support offered by the A4 Office programs. However, because these programs are promoted and
10 operated in a racially discriminatory manner, these members are denied an equal opportunity to
11 participate.

12 11. For example, CFER Member “A” is a parent of two children, neither of whom are
13 African American and one of whom attends Fresno Unified’s Robinson Elementary School.
14 Although that child would likely be interested in the A4 Office’s programs, neither Member A nor
15 his child was ever informed of the A4 programs. The A4 programs discriminate against his children
16 because of their race in both promotion and design.

17 12. Another CFER Member, Member “B,” is a parent of four children, three of whom
18 attend Fresno Unified schools and none of whom are African American. Her children include a
19 10th grader at Fresno High School, 5th grader at Bullard Talent K-8 School, and 3rd grader at
20 Hamilton K-8 school. Although her children would be interested in the A4 Office’s programs,
21 neither Member B nor any of her children were ever informed of the programs. The A4 programs
22 discriminate against her children because of their race in both promotion and design.

23 13. Another CFER Member, Member “C,” is a parent of two children who attend Fresno
24 Unified schools, neither of whom are African American. Her children include a 9th grader at
25 Bullard High School and an 8th grader at Tenaya Middle School. Although her children would
26 likely be interested in the A4 Office’s programs, neither Member C nor any of her children were
27 ever informed of the programs. The A4 programs discriminate against her children because of their
28 race in both promotion and design.

1 14. Defendant Misty Her is a California resident and the Interim Superintendent of
2 Fresno Unified School District, sued in her official capacity. She exercises ultimate administrative
3 authority over the District’s programs, including the A4 Office, and is responsible for implementing
4 and enforcing the policies and programs challenged in this action.

5 15. Defendant Valerie F. Davis is a California resident and the President of the Fresno
6 Unified School District Board of Education, representing Area 3, sued in her official capacity. She
7 participates in establishing and approving policies governing the District’s programs, including
8 those challenged in this action, and oversees their implementation alongside other Board members.

9 **FACTUAL ALLEGATIONS**

10 16. Fresno Unified is among the largest school districts in California, educating over
11 70,000 students in grades K–12.

12 17. A substantial majority of Fresno Unified students—over two-thirds—are identified
13 as Hispanic (over 48,000 students in 2022–23). Students identified as African American comprise
14 roughly 5,100 of the District’s enrollment, and students identified White and non-Hispanic number
15 slightly over 5,300. Other sizeable populations include Asian students (around 7,400) and smaller
16 groups of American Indian, Filipino, and Pacific Islander students. Socioeconomic disadvantage is
17 prevalent, affecting more than 60,000 students. About one in five students qualify as English
18 Learners.

19 18. Fresno Unified students are falling behind in many categories. According to the
20 district’s own data, only 22% of K-6 students in the district read at grade level and only 17% of
21 students are at grade level for mathematics.

22 19. There are statistical disparities in performance among identified racial and ethnic
23 groups in Fresno Unified. For example, while overall 22% of the district’s elementary students read
24 at grade level, 38% of White students, 25% of Asian students, 21% of Hispanic students, 21% of
25 American Indian students, and 16% of African American students read at grade level.

26 20. In response to these and other statistical disparities, in 2017, Fresno Unified created
27 the Office of African American Academic Acceleration to “address the disparities in academic
28 outcomes faced by African American students.” The stated goal of the A4 Office is to “ensure

1 African American and Black students not only meet academic goals but thrive in a nurturing and
2 empowering environment.”¹

3 21. For the 2024 budget, the District has allocated upwards of \$12 million to the A4
4 Office and its associated programs.

5 22. The A4 Office oversees approximately thirteen race-focused programs, including
6 summer reading “for African American students,” math camps for “5th and 6th grade African
7 American students,” and specialized leadership academies and college-prep programs targeted and
8 marketed exclusively to black students.²

9 23. Official descriptions, advertisements, and District communications brand these
10 programs as being “for African Americans”—and do not indicate that non-African American
11 students are welcome.

12 24. Teachers directly invite their African American students to participate in these
13 programs, at the direction of administrators, and do not encourage or inform non-black students,
14 even if they are in similar academic need.

15 25. Non-black students who learn about A4 programs are directed to other extracurricular
16 offerings because of their race.

17 26. The A4 programs are designed and intended only for students of a particular race and
18 are racially exclusionary in their very design and operation.

19 27. The district’s purpose is to create a racially segregated environment in these
20 programs as much as possible and to give preferential treatment to certain students because of their
21 race.

22 28. Racial classification—even if well-intentioned—is unconstitutional under the Equal
23 Protection Clause and article I, section 31, of the California Constitution. It also violates Title VI
24 of the Civil Rights Act of 1964.

25 _____
26 ¹ Fresno Unified School District, African American Academic Acceleration (A4),
<https://www.fresnounified.org/departments/african-american-academic-acceleration-a40>.

27 ² Fresno Unified School District, African American Academic Acceleration (A4) Our Programs,
28 <https://www.fresnounified.org/departments/african-american-academic-acceleration-a40/our-programs>.

1 29. CFER has members whose children would benefit from these programs but have not
2 received (and reasonably believe they will never receive) the same outreach or invitation afforded
3 to black students. Even if they had learned about the A4 programs, they and their children are not
4 made to feel welcome because of their race.

5 30. As a result, CFER's members have been effectively denied the opportunity to
6 participate in publicly funded education programs because of race.

7 31. Fresno Unified receives substantial federal funding, making it subject to the
8 nondiscrimination mandates of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

9 32. Absent injunctive relief, Fresno Unified and its officials will continue implementing
10 these race-based programs, infringing on the constitutional and statutory rights of CFER's members
11 and other students in the District.

12 CLAIMS FOR RELIEF

13 First Cause of Action 14 Violation of the Equal Protection Clause of the Fourteenth Amendment (42 U.S.C. § 1983)

15 33. Plaintiff realleges and incorporates by reference all preceding paragraphs.

16 34. Under the Fourteenth Amendment, no State shall “deny to any person within its
17 jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

18 35. Defendants, acting under color of state law, have implemented and enforced
19 programs that differentiate among students on the basis of race, advertise services for African
20 American students only, provide services designed and intended “for” a particular racial group, and
21 disadvantage similarly situated non-black students.

22 36. Race-based government action is subject to strict scrutiny. Fresno Unified's
23 approach—targeting only one racial group for academic support and marketing these programs as
24 “for” black students—does not meet this exacting standard.

25 37. Defendants' actions thus violate the Equal Protection Clause of the Fourteenth
26 Amendment.

1 associated programs violate the Equal Protection Clause of the Fourteenth
2 Amendment, Title VI, and article I, section 31, of the California Constitution;

- 3 2. A permanent injunction prohibiting Defendants—and all persons acting in concert
4 with them—from using race in any manner in operating, funding, advertising, or
5 admitting students into the A4 Office programs, and requiring Defendants to provide
6 notice and equal outreach to all eligible students regardless of race;
- 7 3. An award of attorneys’ fees and costs pursuant to 42 U.S.C. § 1988, California law,
8 and any other applicable authority;
- 9 4. Any other legal or equitable relief the Court deems just and proper.

10 DATED: February 27, 2025.

11 Respectfully submitted,

12 JOSHUA P. THOMPSON
13 WILSON C. FREEMAN*
14 GLENN E. ROPER*

15 By /s/ Joshua P. Thompson
16 JOSHUA P. THOMPSON
17 *Attorneys for Plaintiff*

18 **pro hac vice applications forthcoming*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Californians for Equal Rights Foundation

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Joshua P. Thompson, Wilson Freeman, Glenn Roper, Pacific Legal Foundation, 555 Capitol Mall, Suite 1290, Sacramento, CA 95814. (916) 419-7111

DEFENDANTS

Misty Her, interim superintendent of the Fresno Unified School District; and Valerie F. Davis, President of the Fresno Unified School District

County of Residence of First Listed Defendant Fresno (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 310 Airplane, 365 Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 1983; 42 U.S.C. § 2000d

Brief description of cause: Fresno Unified School District's Office of African American Academic Acceleration violates the 14th Amendment and Civil Rights Act of 1964.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 2/27/2025 SIGNATURE OF ATTORNEY OF RECORD /s/ Joshua P. Thompson

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE