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Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

CALIFORNIANS FOR EQUAL RIGHTS
FOUNDATION, a California non-profit public
benefit corporation; ERIC GONZALES, an
individual; STEVE HOUBECK, an individual;
JOSE VELAZQUEZ, an individual;

Plaintiffs,

v.

STATE OF CALIFORNIA, CALIFORNIA
STATE BOARD OF EDUCATION,
CALIFORNIA STATE DEPARTMENT OF
EDUCATION, TONY THURMOND, in his
official capacity as State Superintendent of Public
Instruction, LINDA DARLING-HAMMOND, in
her official capacity as President of the State Board
of Education, and DOES 1-100,

Defendants.

Case No.:

COMPLAINT FOR:

**1. Violation of California
Constitution's Free Exercise and
No-Aid Clauses (Cal. Const., art. 1,
§ 4; Cal. Const., art. 16, § 5.); and
for**

2. Declaratory and Injunctive Relief.

JURY TRIAL DEMANDED

1 Plaintiffs Californians for Equal Rights Foundation, Eric Gonzales, Steve Houbeck, and Jose
2 Velazquez, allege as follows:

3 **THE PARTIES**

4 1. Plaintiff Californians for Equal Rights Foundation (“CFER”) is a California non-profit
5 public benefit corporation headquartered in San Diego, California. CFER is a non-partisan and non-profit
6 organization established following the defeat of Proposition 16 in 2020, with a mission to defend and raise
7 public awareness on the cause of equal rights through public education, civic engagement and community
8 outreach. CFER is dedicated to educating the public on this important constitutional principle of equal
9 treatment.

10 2. Plaintiff Eric Gonzales is an individual residing in San Diego County, California, with a
11 child receiving public education through the San Diego Unified School District. Plaintiff Eric Gonzales
12 has also paid taxes to the State of California.

13 3. Plaintiff Steve Houbeck is an individual residing in San Diego County, California, with a
14 child who previously received public education through the Encinitas Unified School District. Although,
15 Mr. Houbeck and his child still live within the Encinitas Unified School District, Mr. Houbeck has
16 withdrawn his child from public school because of the State Board of Education recently approving the
17 Ethnic Studies Model Curriculum (“ESMC”) discussed in more detail below. Mr. Houbeck has also paid
18 taxes to the State of California.

19 4. Plaintiff Jose Velazquez is an individual residing in San Diego County, California, with
20 children who have been educated in public schools in California. Mr. Velazquez has also paid taxes to the
21 State of California.

22 5. Defendant State of California is the legal and political entity with plenary responsibility
23 for educating all California public school students, including the responsibility to establish and
24 maintain the system of common schools and a free education, under Article IX, section 5 of the
25 California Constitution, and to assure that all California public school students receive their individual
26 and fundamental right to an equal education, under the equal protection clauses of the California
27 Constitution, Article I, section 7(a), and Article IV, section 16(a).

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1 6. Defendant California State Board of Education and its members are responsible for
2 determining the policies governing California's schools and for adopting rules and regulations for the
3 supervision and administration of all local school districts. The Board of Education is also responsible
4 for reviewing and approving the ESMC for use as a model curriculum in all California local school
5 districts including the San Diego Unified School District and the Encinitas Unified School District. In
6 approving the curriculum, including the prayers discussed below, the State Board of Education
7 believed it was obeying the State of California's directives and acting at the State's behest.

8 7. Defendant California State Department of Education is the department of State
9 government responsible for administering and enforcing the laws related to education. Pursuant to
10 California Education Code sections 33300-16, the State Department of Education is responsible for
11 revising and updating budget manuals, forms, and guidelines; cooperating with federal and state
12 agencies in prescribing rules and regulations, and instructions required by those agencies; and
13 assessing the needs and methods of collecting and disseminating financial information.

14 8. Defendant Tony Thurmond, sued here solely in his official capacity, is the State
15 Superintendent of Public Instruction for the State of California, the Secretary and Executive Officer
16 for the State Board of Education, and the Chief Executive Officer of the California Department of
17 Education. As such, he is obligated to take all necessary steps to ensure that school districts comply
18 with the California Constitution and State laws. Pursuant to California Education Code sections
19 33301-03, he is the Director of Education in whom all executive and administrative functions of the
20 California Department of Education are vested. Pursuant to California Education Code section
21 33112(a), he shall superintend the schools of this State. He is responsible for ensuring that children
22 within the State of California receive a free and equal public education.

23 9. Defendant Linda Darlin-Hammond, sued here solely in her official capacity, is the
24 President of the California State Board of Education and is responsible for ensuring that the State
25 Board of Education's actions comply with the California Constitution and State Laws.

26 10. All defendants are hereinafter collectively referred to as "Defendants."

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12. Venue is proper in San Diego County under Code of Civil Procedure sections 393(b) and 401.

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14. The State Board of Education appointed R. Tolteka Cuauhtin, one of the authors of *Rethinking Ethnic Studies*, as the chair of the committee designated with the responsibility of developing an ethnic studies model curriculum. In the chapters of *Rethinking Ethnic Studies* written by Mr. Cuauhtin, Mr. Cuauhtin demonstrates an animus towards Christianity and Catholicism – claiming that Christians committed “theocide” (i.e., killing gods) against indigenous tribes. On information and belief, Mr. Cuauhtin’s response to this alleged “theocide” is to include in the ethnic studies curriculum various prayers that are based on indigenous religious principles.

16. Chapter 5, Lesson Resources, includes various activities for children to perform, such as writing a poem explaining their ethnic and geographical backgrounds, or suggesting various museums that focus on the histories of various ethnic groups. This chapter also lists various

1 “Affirmations, Chants, and Energizers.” According to the Model Curriculum, “This section includes
2 several ethnic studies-oriented chants, proverbs, and affirmations. These can be used as energizers to
3 bring the class together, build unity around ethnic studies principles and values, and to reinvigorate the
4 class following a lesson that may be emotionally taxing or even when student engagement may appear
5 to be low.” (Ch. 5, p. 5.)

6 **The Prayer to Five Aztec Gods Labelled as a Chant or Affirmation**

7 17. The foregoing ESMC Lesson Resources section contains a prayer entitled the “In Lak
8 Ech Affirmation” (hereinafter referred to as the “Aztec Prayer”).¹ The Aztec Prayer invokes the names
9 of five beings worshiped by the Aztecs as gods or demi-gods, specifically, Tezkatlipoka, Quetzalkoatl,
10 Huitzilopochtli, Xipe Totek, and Hunab Ku. The names of these Aztec gods are collectively invoked
11 20 times, four times each, throughout the prayer. They are honored and praised by repeatedly invoking
12 their respective names followed by the mention of various attributes and principles relating to these
13 Aztec gods.

14 18. The Aztec Prayer is also intercessory, requesting things such as beautiful knowledge,
15 the ability to become more realized human beings capable of listening to each other’s hearts,
16 willingness to act and be proactive, transformation, liberation, education, emancipation, and “the
17 strength to shed naive or self-sabotaging views, which may hinder us hold us back.” The request also
18 expresses thanksgiving.

19 19. The ancient Aztec religion is not a philosophy, dead mythology, historic curiosity,
20 general outlook on life, or mere symbol. Rather, it is a recognized living faith practiced today both by
21 descendants of the Aztecs and by others.² Practitioners report ecstatic experiences and encounters with
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25 ¹ Invocation of a deity is a feature of prayer, and the invocation itself is a religious activity. (*Engel v. Vitale*
26 (1962) 370 U.S. 421, 424 [describing “invocation of God’s blessings” as prescribed in a prayer, as a religious
27 activity].) An invocation can also involve an appeal for divine assistance. (*Santa Fe Indep. Sch. Dist. v. Doe*
28 (2000) 530 U.S. 290, 306–307 & fn.19.)

² (*Diaz v. Collins* (5th Cir. 1997) 114 F.3d 69, 70 [“Diaz is a descendant of the Aztecs of Mexico and a
follower of that tribe’s religious teachings and practices.”])

1 a “power from another plane of reality[.]”³ The fact that it is not large, institutional, or well-known
2 does not change its status as a religion.⁴

3 20. The full text of the prayer is as follows:⁵

4 183 Tú eres mi otro yo.

5 You are my other me.

6 185 Si te hago daño a ti,

7 If I do harm to you,

8 Me hago daño a mi mismo.

9 I do harm to myself.

10 Si te amo y respeto,

11 190 If I love and respect you,

12 Me amo y respeto yo.

13 I love and respect myself.

14 in lak ech, (feel empathy) panche beh, panche beh panche beh (think critically)

15 Seeking the roots of the truth, seeking the truth of the roots, elders and us

16 195 youth, (youth), critical thinking through:

17 Tezkatlipoka, Tezkatlipoka, x2

18 smoking mirror, self-reflection

19 We must vigorously search within ourselves be reflective, introspective by

20 silencing distractions and extensive comprehensive obstacles in our lives, (in

21 our lives),

22 200 in order to be warriors of love, of love,

23 for our gente representin’ justice, (justice)

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25 ³ (SpearIt, *God Behind Bars: Race, Religion & Revenge* (2007) 37 SETON HALL L. REV. 497, 499–500 [citing
26 David Carrasco, *A Perspective for a Study of Religious Dimensions in Chicano Experience: Bless Me Ultima*
27 *as a Religious Text* (1982) 13 AZTLAN 203].)

28 ⁴ (*Board of Educ. of Kiryas Joel Village School Dist. v. Grumet* (1994) 512 U.S. 687, 705 [“[A]iding this
single, small religious group causes no less a constitutional problem than would follow from aiding a sect with
more members or religion as a whole.”].)

⁵ The line numbers here are included for ease of reference, and correspond to the line numbers in the lesson
resources document.

1 local to global global to local eco-logical, & social, (social), justice (justice).
 2 Quetzalkoatl, Quetzalcoatl, x2
 3 the morning & evening star of venus double helix of human beings
 4 205 fearless here it's, precious blessed
 5 beautiful knowledge, gaining perspective,
 6 on events & experiences our ancestors endured,
 7 allows us to become more realized human beings learning
 8 to be listening to each other's hearts and our elders with humility, dignity,
 9 indigenous
 10 210 brilliance & wisdom in our hearts and our energies, remembering...
 11 ancestral memories, planning, future trajectories,
 12 la cultura cura, with remedies of knowledge,
 13 healing epistemologies, ecologies
 14 in life, home, streets, school, work, & life, fueled by...
 15 215 Huitzilopochtli, huitzilopochtli, x2
 16 hummingbird to the left, yollotl,
 17 corazon, heart, ganas, the will to action as we grow in,
 18 consciousness must be willing to be proactive,
 19 not just thinkin' and talkin' but makin' things happen,
 20 220 with agency, resiliency, & a revolutionary spirit
 21 that's positive, progressive, creative, native,
 22 Passion everlasting work hard in action,
 23 tap in, to the spark of our universal heart,
 24 pulsating creation huitzilopochtli cause like sunlight, the light inside of us, in
 25 will to
 26 225 action's
 27 what brings...
 28 Xipe Totek, Xipe Totek, x2

transformation, liberation, education, emancipation. imagination revitalization,
liberation, transformation, decolonization, liberation, education, emancipation,
230 changin' our situation in this human transformation,
the source of strength that allows us to transform and renew.

We must have the strength to shed naive or self-sabotaging views,
which may hinder us hold us back more than we ever knew,
amazing when embracing emanating r new & improved, critical compassionate
creative

235 consciousness
we're here to transform the world we're spiraling, rotating & revolving in,
giving thanks daily, tlazokamati, giving thanks daily, tlazokamati,
healing & transforming as we're evolving in this universe, universe, of
Hunab Ku, Hunab Ku, x2

240 Nahui Ollin Lak Ech - Panche Beh, Ethnic Studies For All, Represent!!

21. The Model Curriculum states that it "is an adaption of the Nahui Ollin, into poetic,
rhythmic, hip hop song form." (Ch. 5, p. 9.) Nahui Ollin is founded on traditional Aztec beliefs,
focusing especially on the four deities Tezkatlipoka, Quetzalkoatl, Huitzilopochtli, and Xipe Totek.

Tezkatlipoka

22. The first invocation is to the Aztec god Tezkatlipoka. In the native Nahuatl language,
this name literally means "smoking mirror" and refers to a deity associated with the night sky.
According to the Encyclopedia Britannica, through his mirror, "he saw everything; invisible and
omnipresent, he knew all the deeds and thoughts of humans." He also presided over "schools in which
the sons of the common people received an elementary education and military training." This is a male,
anthropomorphic being worshiped as a god by the Aztecs and by the Toltecs. The Encyclopedia
Britannica provides information regarding Tezcatlipoca as follows:

Tezcatlipoca, (Nahuatl: "Smoking Mirror") god of the Great Bear constellation and of
the night sky, one of the major deities of the Aztec pantheon. Tezcatlipoca's cult was
brought to central Mexico by the Toltecs, Nahua-speaking warriors from the north,
about the end of the 10th century AD.

1 Numerous myths relate how Tezcatlipoca expelled the priest-king Quetzalcóatl, the
2 Feathered Serpent, from the latter's centre at Tula. A protean wizard, Tezcatlipoca
3 caused the death of many Toltecs by his black magic and induced the virtuous
4 Quetzalcóatl to sin, drunkenness, and carnal love, thus putting an end to the Toltec
5 golden age. Under his influence the practice of human sacrifice was introduced into
6 central Mexico.

7 Tezcatlipoca's nagual, or animal disguise, was the jaguar, the spotted skin of which was
8 compared to the starry sky. A creator god, Tezcatlipoca ruled over Ocelotonatiuh
9 ("Jaguar-Sun"), the first of the four worlds that were created and destroyed before the
10 present universe.

11 Tezcatlipoca was generally represented with a stripe of black paint across his face and
12 an obsidian mirror in place of one of his feet. The post-Classic (after AD 900) Maya-
13 Quiché people of Guatemala revered him as a lightning god under the name Hurakan
14 ("One Foot"). Other representations show Tezcatlipoca with his mirror on his chest. In
15 it he saw everything; invisible and omnipresent, he knew all the deeds and thoughts of
16 humans.

17 By Aztec times (14th–16th century AD), Tezcatlipoca's manifold attributes and
18 functions had brought him to the summit of the divine hierarchy, where he ruled
19 together with Huitzilopochtli, Tlaloc, and Quetzalcóatl. Called Yoalli Ehécatl ("Night
20 Wind"), Yaotl ("Warrior"), and Telpochtli ("Young Man"), he was said to appear at
21 crossroads at night to challenge warriors. He presided over the telpochcalli ("young
22 men's houses"), district schools in which the sons of the common people received an
23 elementary education and military training. He was the protector of slaves and severely
24 punished masters who ill-treated "Tezcatlipoca's beloved children." He rewarded virtue
25 by bestowing riches and fame, and he chastised wrongdoers by sending them sickness
26 (e.g., leprosy) or by reducing them to poverty and slavery.

27 The main rite of Tezcatlipoca's cult took place during Toxcatl, the fifth ritual month.
28 Every year at that time the priest selected a young and handsome war prisoner. For one
year he lived in princely luxury, impersonating the god. Four beautiful girls dressed as
goddesses were chosen as his companions. On the appointed feast day, he climbed the
steps of a small temple while breaking flutes that he had played. At the top he was
sacrificed by the removal of his heart.⁶

29 23. This section of the prayer honors this god by repeating his name four times and by
30 invoking the symbolic imagery associated by with this Aztec god (i.e. "smoking mirror" and "self-
31 reflection"). The prayer proceeds to affirm the obligation to "vigorously search within ourselves" to
32 be "reflective, introspective by silencing distractions and extensive comprehensive obstacles in our
33 lives." It further affirms that these values must be sought "in order to be warriors of love... [and]
34 justice."

35 Quetzalkoatl

36 24. The chant then proceeds to invoke Quetzalkoatl, referring to him by his Aztec title as
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⁶ <https://www.britannica.com/topic/Tezcatlipoca>

1 “the morning & evening star of venus.” In ancient Aztec religion, he is “the patron of priests, the
2 inventor of the calendar and of books, and the protector of goldsmiths and other craftsmen; he was also
3 identified with the planet Venus. As the morning and evening star, Quetzalcóatl was the symbol of
4 death and resurrection.”⁷ Quetzalkoatl is depicted either as a man or a winged serpent.⁸ This god is
5 also a male, anthropomorphic being worshiped by the Aztecs. The Encyclopedia Britannica provides
6 information regarding Quetzalcoatl as follows:

7 Quetzalcóatl, Mayan name Kukulcán, (from Nahuatl quetzalli, “tail feather of the
8 quetzal bird [Pharomachrus mocinno],” and coatl, “snake”), the Feathered Serpent, one
9 of the major deities of the ancient Mexican pantheon. Representations of a feathered
10 snake occur as early as the Teotihuacán civilization (3rd to 8th century CE) on the
11 central plateau. At that time Quetzalcóatl seems to have been conceived as a vegetation
12 god—an earth and water deity closely associated with the rain god Tlaloc.

13 With the immigration of Nahua-speaking tribes from the north, Quetzalcóatl’s cult
14 underwent drastic changes. The subsequent Toltec culture (9th through 12th centuries),
15 centred at the city of Tula, emphasized war and human sacrifice linked with the worship
16 of heavenly bodies. Quetzalcóatl became the god of the morning and evening star, and
17 his temple was the centre of ceremonial life in Tula.

18 In Aztec times (14th through 16th centuries) Quetzalcóatl was revered as the patron of
19 priests, the inventor of the calendar and of books, and the protector of goldsmiths and
20 other craftsmen; he was also identified with the planet Venus. As the morning and
21 evening star, Quetzalcóatl was the symbol of death and resurrection. With his
22 companion Xolotl, a dog-headed god, he was said to have descended to the underground
23 hell of Mictlan to gather the bones of the ancient dead. Those bones he anointed with
24 his own blood, giving birth to the men who inhabit the present universe.

25 One important body of myths describes Quetzalcóatl as the priest-king of Tula, the
26 capital of the Toltecs. He never offered human victims, only snakes, birds, and
27 butterflies. But the god of the night sky, Tezcatlipoca, expelled him from Tula by
28 performing feats of black magic. Quetzalcóatl wandered down to the coast of the
29 “divine water” (the Atlantic Ocean) and then immolated himself on a pyre, emerging
30 as the planet Venus. According to another version, he embarked upon a raft made of
31 snakes and disappeared beyond the eastern horizon.

32

33 In addition to his guise as a plumed serpent, Quetzalcóatl was often represented as a
34 man with a beard, and, as Ehécatl, the wind god, he was shown with a mask with two
35 protruding tubes (through which the wind blew) and a conical hat typical of the Huastec
36 people of east-central Mexico. The temple of Quetzalcóatl at Tenochtitlán, the Aztec
37 capital, was a round building, a shape that fitted the god’s personality as Ehécatl.
38 Circular temples were believed to please Ehécatl because they offered no sharp
39 obstacles to the wind. Round monuments occur particularly often in Huastec territory.

40 ⁷ <https://www.britannica.com/topic/Quetzalcoatl>

⁸ *Id.*

1 Quetzalcóatl ruled over the days that bore the name chécatl (“wind”) and over the 18th
2 13-day series of the ritual calendar. He was also the ninth of the 13 gods of the daytime
3 hours. Although he was generally listed as one of the first-rank deities, no ceremonial
4 month was dedicated to his cult.

5 As the god of learning, of writing, and of books, Quetzalcóatl was particularly venerated
6 in the calmecac, religious colleges annexed to the temples, in which the future priests
7 and the sons of the nobility were educated. Outside of Tenochtitlán, the main centre of
8 Quetzalcóatl’s cult was Cholula, on the plateau region called Mesa Central.

9 25. Here, the chant acknowledges Quetzalkoatl as particularly related to books and
10 knowledge, and so the students look to him to provide “precious blessed/beautiful knowledge” and to
11 help them “gain[] perspective on events & experiences,” and thereby “become more realized human
12 beings,” able to “listen[] to each other’s hearts and our elders,” especially “ancestral memories” (Lines
13 205-211).

14 Huitzilopochtli

15 26. The affirmation next turns to Huitzilopochtli, the Aztec sun and war god, often
16 represented as either a hummingbird or an eagle. “Huitzilopochtli’s name is a cognate of the Nahuatl
17 words huitzilin, ‘hummingbird,’ and opochtli, ‘left.’ Aztecs believed that dead warriors were
18 reincarnated as hummingbirds and considered the south to be the left side of the world; thus, his name
19 meant the ‘resuscitated warrior of the south.’” “The Aztecs believed that the sun god needed daily
20 nourishment (tlaxcaltiliztli) in the form of human blood and hearts and that they, as ‘people of the sun,’
21 were required to provide Huitzilopochtli with his sustenance.”⁹ Huitzilopochtli “was the devil
22 incarnate to the Spaniards.”¹⁰ This was also a male, anthropomorphic being worship by the Aztecs as
23 a god.

24 27. The Encyclopedia Britannica provides information regarding Huitzilopochtli as
25 follows:

26 Huitzilopochtli, also spelled Uitzilopochtli, also called Xiuhpilli (“Turquoise Prince”) and Totec (“Our Lord”), Aztec sun and war god, one of the two principal deities of Aztec religion, often represented in art as either a hummingbird or an eagle.

27 Huitzilopochtli’s name is a cognate of the Nahuatl words huitzilin, “hummingbird,” and opochtli, “left.” Aztecs believed that dead warriors were reincarnated as hummingbirds

28 ⁹ <https://www.britannica.com/topic/Huitzilopochtli>

¹⁰ ROBERTO CINTLI RODRÍGUEZ, OUR SACRED MAÍZ IS OUR MOTHER: INDIGENEITY AND BELONGING IN THE AMERICAS 217 (2014)

1 and considered the south to be the left side of the world; thus, his name meant the
2 “resuscitated warrior of the south.” His other names included Xiuhpilli (“Turquoise
3 Prince”) and Totec (“Our Lord”). His nagual, or animal disguise, was the eagle.

4 Huitzilopochtli’s mother, Coatlicue, is one aspect of the Aztecs’ multidimensional earth
5 goddess; she conceived him after having kept in her bosom a ball of hummingbird
6 feathers (i.e., the soul of a warrior) that fell from the sky. According to tradition,
7 Huitzilopochtli was born on Coatepec Mountain, near the city of Tula.

8 Huitzilopochtli’s brothers, the stars of the southern sky (Centzon Huitznáua, “Four
9 Hundred Southerners”), and his sister Coyolxauhqui, a moon goddess, decided to kill
10 him. He foiled their plot and exterminated them with his weapon, the xiuh cóatl
11 (“turquoise snake”).

12 Huitzilopochtli is presented as the deity who guided the long migration the Aztecs
13 undertook from Aztlan, their traditional home, to the Valley of Mexico. During the
14 journey his image, in the form of a hummingbird, was carried upon the shoulders of
15 priests, and at night his voice was heard giving orders. Thus, according to
16 Huitzilopochtli’s command, Tenochtitlán, the Aztec capital, was founded in 1325 CE
17 on a small, rocky island in the lake of the Valley of Mexico. The god’s first shrine was
18 built on the spot where priests found an eagle poised upon a rock and devouring a snake,
19 an image so important to Mexican culture that it is portrayed on the national flag of
20 Mexico. Successive Aztec rulers enlarged the shrine until the year Eight Reed (1487),
21 when an impressive temple was dedicated by the emperor Ahuitzotl.

22 The Aztecs believed that the sun god needed daily nourishment (tlaxcaltiliztli) in the
23 form of human blood and hearts and that they, as “people of the sun,” were required to
24 provide Huitzilopochtli with his sustenance. The sacrificial hearts were offered to the
25 sun quauhtlehuanitl (“eagle who rises”) and burned in the quauhxicalli (“the eagle’s
26 vase”). Warriors who died in battle or as sacrifices to Huitzilopochtli were called
27 quauhteca (“the eagle’s people”). It was believed that after their death the warriors first
28 formed part of the sun’s brilliant retinue; then after four years they went to live forever
in the bodies of hummingbirds.

18 Huitzilopochtli’s high priest, the Quetzalcóatl Totec Tlamacazqui (“Feathered Serpent,
19 Priest of Our Lord”), was, with the god Tlaloc’s high priest, one of the two heads of the
20 Aztec clergy. The 15th month of the ceremonial year Panquetzaliztli (“Feast of the
21 Flags of Precious Feathers”) was dedicated to Huitzilopochtli and to his lieutenant
22 Paynal (“He Who Hastens,” so named because the priest who impersonated him ran
23 while leading a procession around the city). During the month, warriors and auianime
24 (courtesans) danced night after night on the plaza in front of the god’s temple. War
25 prisoners or slaves were bathed in a sacred spring at Huitzilopochco (modern
26 Churubusco, near Mexico City) and were then sacrificed during or after Paynal’s
27 procession. The priests also burned a huge bark-paper serpent symbolizing the god’s
28 primary weapon. Finally, an image of Huitzilopochtli, made of ground maize (corn),
was ceremonially killed with an arrow and divided between the priests and the novices;
the young men who ate “Huitzilopochtli’s body” were obliged to serve him for one
year.

25 Representations of Huitzilopochtli usually show him as a hummingbird or as a warrior
26 with armour and helmet made of hummingbird feathers. In a pattern similar to that
27 found in many hummingbirds, his legs, arms, and the lower part of his face were painted
28 one colour (blue) and the upper half of his face was another (black). He wore an
elaborate feathered headdress and brandished a round shield and a turquoise snake.

28. In this part of the affirmation, the phrases echo the ancient description of Huitzilopochtli. The affirmation essentially asks for a strong will, “the will to action as we grown in consciousness,” “willing[ness] to be proactive,” “makin’ things happen, with agency.” It repeats “yollotl, corazon, heart,” which all essentially mean “heart.” This is followed by “ganas,” which is a conjugated form of the Spanish word “ganar,” meaning to win, acquire, gain (literally, “you gain”).

Xipe Totek

29. The next deity whose name is chanted is Xipe Totek, the Toltec “god of spring and new vegetation and patron of goldsmiths.” His name translates to “Our Lord the Flayed One.” “As a symbol of the new vegetation, Xipe Totek wore the skin of a human victim—the ‘new skin’ that covered the Earth in the spring. His statues and stone masks always show him wearing a freshly flayed skin.” During . . . the second ritual month of the Aztec year, the priests killed human victims by removing their hearts. They flayed the bodies and put on the skins, which were dyed yellow and called *teocuitlaquemitl* (‘golden clothes’). Other victims were fastened to a frame and put to death with arrows; their blood dripping down was believed to symbolize the fertile spring rains.”¹¹ This was also a male, anthropomorphic being worshiped by the Aztecs as a god.

30. The Encyclopedia Britannica provides information regarding Xipe Totek as follows:

Xipe Totek, (Nahuatl: “Our Lord the Flayed One”) Mesoamerican god of spring and new vegetation and patron of goldsmiths. Xipe Totek was venerated by the Toltecs and Aztecs. As a symbol of the new vegetation, Xipe Totek wore the skin of a human victim—the “new skin” that covered the Earth in the spring. His statues and stone masks always show him wearing a freshly flayed skin.

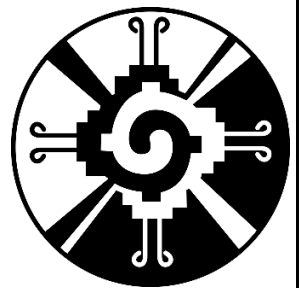
Representations of Xipe Totek first appeared at Xolalpan, near Teotihuacán, and at Texcoco, in connection with the Mazapan culture—that is, during the post-Classic Toltec phase (9th–12th century AD). The Aztecs adopted his cult during the reign of Axayacatl (1469–81). During *Tlacaxipehualiztli* (“Flaying of Men”), the second ritual month of the Aztec year, the priests killed human victims by removing their hearts. They flayed the bodies and put on the skins, which were dyed yellow and called *teocuitlaquemitl* (“golden clothes”). Other victims were fastened to a frame and put to death with arrows; their blood dripping down was believed to symbolize the fertile spring rains. A hymn sung in honour of Xipe Totek called him *Yoalli Tlauana* (“Night Drinker”) because beneficent rains fell during the night; it thanked him for bringing the Feathered Serpent, who was the symbol of plenty, and for averting drought.

¹¹ <https://www.britannica.com/topic/Xipe-Totec>

31. Here, the affirmation recognizes Xipe Totek as the god of growth and Spring. It asks for “transformation, liberation, education, emancipation,” and “the strength to shed naive or self-sabotaging views, which may hinder us hold us back” (Lines 220-234).

Hunab Ku

32. The final lines of the affirmation reference Hunab Ku, an older Mayan creator deity. It literally translates to “one-god.”¹² Alternate translations include “the Supreme Being or the Grand Architect of the Universe or ‘The Great Mystery.’”¹³ Recently, Hunab Ku has been coopted as part of New Age Mayanism, to give the novel faith credibility, by emphasizing a form of monotheism. Hunab Ku is not depicted as having a body, but of being ethereal, and is primarily represented by a symbol that combines Aztec carvings with yin-yang imagery. As part of this new age understanding, Hunab Ku “is a simple acknowledgement that all peoples everywhere in the history of humanity have given a name to how they perceive and understand (the function of) the universe, and that, contrary to the teachings that were brought by European colonizers five hundred years ago, no one understanding is superior to any other understanding.”¹⁴



33. In contrast to cultural or historical displays teaching about religion, the Aztec prayer is designed to effect a spiritual change in the students themselves, both in terms of how they feel and how they perceive truth.

34. The prayer repeatedly refers to ancestral practices and beliefs (lines 194–95; 207, 209–10). The prayer invokes three of the deities by title as well as name: Tezkatlipoka—smoking mirror (lines 196–197); Quetzalkoatl—the morning & evening star (lines 203–204), and Huitzilopochtli—hummingbird to the left (lines 215–216). It recognizes Xipo Totek as the benevolent worker of “transformation, liberation, education, emancipation,” etc. as well as “the source of strength that allows us to transform and renew.” (Lines 227–231.) The wording “source of strength” emphasizes that the

¹² <https://www.britannica.com/topic/pre-Columbian-civilizations/The-Maya-calendar-and-writing-system>

¹³ Rodríguez, *supra*, 176.

¹⁴ Rodríguez, *supra*, 176.

students are receiving these gifts from something external. It expresses thanks,¹⁵ and acknowledges that the students live in “this universe, universe of Hunab Ku. . . .” (Lines 236–239). Finally, it makes a request to Huitzilopochtli to “cause like sunlight, the light inside of us, to will to action’s. . . .” (Lines 215, 224–225.)

Prayer to Ashe – a Divine Force of the Religion Practiced by the Yoruba

35. Section 5 of the ESMC includes the “Ashe Affirmation,” which invokes the divine forces of the Yoruba religion four times – honoring this divine force and seeking assistance for the school day. Wikipedia provides as follows regarding the Yoruba religion:

“Ase or ashe (from Yoruba àṣẹ)[1] is a Yoruba philosophical concept through which the Yoruba of Nigeria conceive the power to make things happen and produce change. It is given by Olodumare to everything — gods, ancestors, spirits, humans, animals, plants, rocks, rivers, and voiced words such as songs, prayers, praises, curses, or even everyday conversation. Existence, according to Yoruba thought, is dependent upon it.[2]

In addition to its sacred characteristics, ase also has important social ramifications, reflected in its translation as “power, authority, command.” A person who, through training, experience, and initiation, learns how to use the essential life force of things to willfully effect change is called an alaase.

Rituals to invoke divine forces reflect this same concern for the autonomous ase of particular entities. The recognition of the uniqueness and autonomy of the ase of persons and gods is what structures society and its relationship with the other-world.”

(<https://en.wikipedia.org/wiki/Ashe>.)

36. The full text of the prayer to Ashe is as follows:

Ashe Affirmation

289 Who is going to have a positive day? Say, “Ashe!”

290 Who is going to have a positive learning day? Say, “Ashe!”

291 Who will respect themselves today? Say, “Ashe!”

292 Who will respect their teachers today? Say, Ashe!”

293 Who will smile today? Say, “still”

294 Who will laugh to today? Say, “I”

¹⁵ Besides using the English phrase, “giving thanks” it also uses the word “tlazokamati,” which means “to be thankful, or to thank someone for something,” or “to give thanks.”
<https://nahuatl.uoregon.edu/content/tlazocamati>

295 Who will love today? Say, “rise”

296 Who will represent their people, this day? Say, “Ashe!”

37. The forgoing prayer invokes Ashe, the divine force at the root of the Yoruba religion. It seeks intercession from this divine force with regard to the school day, it honors this spiritual force by chanting its name, and it includes speaking to Ashe in a religious way as the invocation clearly includes the statement “Ashe, Ashe, Ashe, still I rise, Ashe.” Reasonably informed observers would conclude that this “affirmation” involving Ashe is a prayer that violates the establishment clause.

38. Plaintiffs hereby demand trial by jury in this action.

FIRST CLAIM FOR RELIEF

Free Exercise and Establishment Clause: Art. 1, § 4 of the Cal. Const.; and

No Government Aid: Art. 16, § 5 of the Cal. Const.

(By all Plaintiffs Against All Defendants)

39. Plaintiffs re-allege and incorporate by reference each and every allegation set forth herein above.

40. In California “[f]ree exercise and enjoyment of religion without discrimination or preference are guaranteed” and “the Legislature shall make no law respecting an establishment of religion.” (Cal. Const., art. I, § 4.) Additionally, government aid of religion is prohibited. (Cal. Const., art. XVI, § 5.)

41. “In general, the religion clauses of the California Constitution are read more broadly than their counterparts in the federal Constitution,” requiring even greater separation of church and state. (*Carpenter v. City and County of San Francisco* (9th Cir. 1996) 93 F.3d 627, 629.)

42. Both the U.S. and California Supreme Courts have made absolutely clear that prayer in public schools is prohibited. (*School Dist. of Abington Tp., Pa. v. Schempp* (1963) 374 U.S. 203; *Sands v. Morongo Unified School Dist.* (1991) 53 Cal.3d 863.) Prayer at graduations is also prohibited. (*Lee v. Weisman* (1992) 505 U.S. 577; *Sands, supra*, 53 Cal.3d 863; *Bennett v. Livermore Unified School Dist.* (1987) 193 Cal.App.3d 1012.) Prayers drafted by public school officials are doubly prohibited. (*Lee, supra*, 505 U.S. at 588, *Sands, supra*, 53 Cal.3d at 882.) Prayers in public schools violate both the federal and California constitutions. (*Sands, supra*, 53 Cal.3d at 883.)

1 43. “Prayer is an address of entreaty, supplication, praise, or thanksgiving directed to some
2 sacred or divine spirit, being, or object. That it may contemplate some wholly secular objective cannot
3 alter the inherently religious character of the exercise.” (*Sands, supra*, 53 Cal.3d at 873.) In *Sands*, the
4 California Supreme Court noted that government endorsement of a particular prayerful activity violates
5 the establishment clause because such an endorsement may appear to prefer (i) religion over non-
6 religion, or (ii) religions that practice petitionary prayer over religions that do not recognize such
7 prayer, or (iii) religions that believe prayer should be public over religions that believe prayer should
8 be private, or (iv) religions that address anthropomorphic, male deities over those that do not. (*Id.*)

9 44. Here the Aztec Prayer violates the establishment clause of the California Constitution.
10 As discussed in detail above, the Aztec Prayer satisfies the *Sands* definition of a prayer because it
11 honors and praises these Aztec gods by repeatedly invoking their names, by making intercessory
12 requests, and by giving thanks. Four of the Aztec gods are anthropomorphic, male deities.
13 Consequently, the Aztec Prayer is a prayer that favors religion over non-religion; it favors petitionary
14 forms of prayer over religions that do not recognize such prayer; it favors religions that believe prayer
15 should be public rather than private; and it favors religion that addresses anthropomorphic, male deities
16 over those that do not.

17 45. The rituals performed by the Aztecs in relation to these beings were gruesome and
18 horrific, involving human sacrifice, cutting out human hearts, flaying the sacrificed victims and
19 wearing the skin, sacrificing war prisoners, and other inhuman acts and ceremony. Any form of prayer
20 and glorification of these beings in whose name horrible atrocities were performed is repulsive to
21 Plaintiffs and to any reasonably informed observer.

22 46. Additionally, the Aztec Prayer is intended to involve all students in the class room,
23 forcing students to either participate in the prayer or elect not to participate and face the social
24 implications of declining to participate, which represents a violation of such students’ rights to the free
25 exercise of religion under the California constitution. Printing and disseminating the prayer also
26 constitutes an improper government aid of religion in violation of the California constitution.

27 47. In sum, the Aztec Prayer represents a governmental endorsement of religion that is not
28 permissible and violates the free exercise, establishment clause, and no-aid clauses of the California

1 constitution. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to
2 their constitutional rights. Plaintiffs are entitled to declaratory relief and temporary, preliminary, and
3 permanent injunctive relief striking the Aztec Prayer from the ESMC.

4 48. Here, the Ashe Prayer also violates the establishment clause of the California
5 Constitution. Ashe is a spiritual divine force honored by the Yoruba in a religious fashion. The Ashe
6 Prayer honors and praises Ashe by repeatedly chanting the name and by stating, “Ashe, Ashe, Ashe,
7 Ashe, Still I Rise, Ashe.” The Ashe Prayer also invokes and seeks the intercession of Ashe for the
8 school day. The Ashe Prayer is intended to involve all students in the classroom, forcing students to
9 either participate in the prayer or elect not to participate and face the social implications of declining
10 to participate, which represents a violation of such students’ rights to the free exercise of religion under
11 the California constitution. Printing and disseminating the prayer also constitutes an improper
12 government aid of religion in violation of the California constitution.

13 49. In sum, the Ashe Prayer represents a governmental endorsement of religion that is not
14 permissible and violates the free exercise, establishment clause, and no-aid clauses of the California
15 constitution. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to
16 their constitutional rights. Plaintiffs are entitled to declaratory relief and temporary, preliminary, and
17 permanent injunctive relief striking the Ashe Prayer from the ESMC.

18 50. Plaintiffs have found it necessary to engage the services of private counsel to vindicate
19 their rights under the law. Plaintiffs are therefore entitled to an award of attorney’s fees and costs
20 pursuant to California Code of Civil Procedure Section 1021.5.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs respectfully pray for judgment against Defendants and request the
23 following relief:

- 24 1. For costs and expenses of suit including but not limited to statutory attorney’s fees;
- 25 2. For a preliminary and permanent injunction enjoining Defendants from approving the
26 Aztec Prayer and Ashe Prayer for use in public schools and striking the Aztec Prayer and
27 Ashe Prayer from the ESMC.
- 28 3. For such other and further relief as the Court may deem just and proper.

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Respectfully submitted,

LiMANDRI & JONNA LLP

Dated: September 3, 2021

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