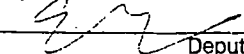


JUL 27 2021

CLERK OF THE COURT

BY:  Deputy Clerk

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
DEPARTMENT 304

GEORGE WASHINGTON HIGH SCHOOL  
ALUMNI ASSOCIATION, a California public  
benefit corporation,

Petitioner,

v.

SAN FRANCISCO UNIFIED SCHOOL  
DISTRICT; SAN FRANCISCO UNIFIED  
SCHOOL DISTRICT BOARD OF  
EDUCATION, and DOES 1 to 10,

Respondents.

Case No. CPF-19-516880

ORDER GRANTING PETITIONER'S WRIT  
OF MANDATE

Date Action Filed: October 4, 2019  
Trial Date: April 8, 2021

California law requires elected public officials to follow procedures designed to ensure consideration of the environmental consequences of their decisions *before* a decision is made. These neutral administrative procedures must be applied without regard to political interests.

The law at issue in this case, the California Environmental Quality Act ("CEQA"), was enacted to protect California's environmental and historical resources. "The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor

1 environmental consideration. At the very least, however, *the People have a right to expect that those who*  
2 *must decide will approach their task neutrally, with no parochial interest at stake.*” (*Bozung v. Local*  
3 *Agency Formation Company* (1975) 13 Cal.3d 263, 283 [emphasis added].)

4 Petitioner, the George Washington High School Alumni Association, challenge the failure of the  
5 San Francisco Unified School District (“SFUSD”) and San Francisco Unified School District Board of  
6 Education (“the Board”) to follow CEQA when they decided to destroy and remove historic murals  
7 located at George Washington High School (“GWHS”). As explained below, the Court will GRANT the  
8 petition and issue a writ requiring Respondents to follow the clear requirements of CEQA going forward.  
9 The Court finds that Respondents ignored CEQA in pursuit of a predetermined result; the administrative  
10 record is devoid of evidence that Respondents followed or even attempted to follow the requirements of  
11 the law.

12 Political actors at every level are tempted to circumvent what they consider to be inconvenient  
13 legal requirements in order to advance parochial political agendas. It is the role of the independent  
14 judiciary to ensure that the political branches adhere to the rules of law – including *in particular* the  
15 procedural requirements of administrative laws – regardless of the merits of the agenda or the political  
16 actors involved.<sup>1</sup>

17 The hallmark of our system is that whether it concerns the President of the United States or a local  
18 school board, the rule of law – the process – is more important than the result. Because Respondents did  
19 not follow the procedural requirements of the law, the Court must issue the writ.

## 20 INTRODUCTION AND SUMMARY OF ARGUMENT

21 On October 14, 2019, Petitioner filed a Petition for Writ of Mandate and Complaint for  
22 Declaratory and Injunctive Relief (“Petition”). Petitioner asserts that SFUSD and the Board (collectively,  
23 “Respondents”) unlawfully pre-committed to remove the Victor Arnautoff mural panels (“the murals”)   
24 located at GWHS from public view without first conducting a mandatory environmental impact report

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25 <sup>1</sup> See, e.g., Barbash & Paul, *The real reason the Trump Administration is constantly losing in court*,  
26 Washington Post, March 19, 2019, [https://www.washingtonpost.com/world/national-security/the-real-reason-president-trump-is-constantly-losing-in-court/2019/03/19/f5ffb056-33a8-11e9-af5b-b51b7ff322e9\\_story.html](https://www.washingtonpost.com/world/national-security/the-real-reason-president-trump-is-constantly-losing-in-court/2019/03/19/f5ffb056-33a8-11e9-af5b-b51b7ff322e9_story.html) (reversals of dozens of administrative law cases “paint a remarkable portrait of  
27 a government rushing to implement far-reaching changes in policy without regard for long-standing rules  
28 against arbitrary and capricious behavior.”)

1 (“EIR”) under CEQA. (Petition, ¶¶ 24-25; Opening Brief, 15:18-20.) Petitioner seeks a writ of mandate  
2 invalidating the Board’s August 13, 2019 resolution to remove the murals and instead, require SFUSD  
3 and the Board to comply with CEQA and conduct an EIR.

4 The Court heard argument in this case on April 8, 2021 in Department 304 of the San Francisco  
5 Superior Court, the Honorable Anne-Christine Massullo presiding. Susan Brandt-Hawley, Esq. appeared  
6 for Petitioner and Sabrina V. Teller, Esq. appeared for Respondents.

7 At the close of the hearing, the Court requested supplemental briefing by the parties regarding the  
8 sole issue of how “project” is defined for the purposes of CEQA. The Court also bifurcated the  
9 proceedings such that the issue to be resolved now is whether Petitioner sustained its burden of proof on  
10 the issue of pre-commitment asserted in the Petition. The parties timely submitted supplemental briefs on  
11 April 26, 2021 and the matter was taken under submission by order filed on May 10, 2021.

12 After considering the certified administrative record (“AR”), arguments, supplemental briefing,  
13 and applicable law, the Court GRANTS the Petition for Writ of Mandate and will issue a peremptory writ  
14 ordering the Board to set aside all actions and approvals relating to removal of the murals from public  
15 view.<sup>2</sup>

16 //

17  
18 <sup>2</sup> Two other motions are related to the April 8, 2021 hearing. On February 22, 2021, Respondents filed a  
19 Motion to Strike portions of Petitioner’s opening brief relying on extra record evidence. Specifically,  
20 Respondents moved to strike any reference to SFUSD’s website quotations regarding actions taken at the  
21 June 18, 2019 and August 13, 2019 meetings because the website postings were not part of the AR filed  
22 on November 9, 2020. The references in Petitioner’s brief were contained at page 12: lines 1-8; page 13:  
23 lines 20-26; page 22: lines 6-9; and page 29: line 2. (Respondents’ Motion to Strike, p. 3.) On March 29,  
24 2021, Petitioner filed a Motion in Limine, or alternatively, Request for Judicial Notice of the same  
25 website postings. (Petitioner’s Motion in Limine, pp. 2-3, Exh. A.) California Rules of Court, rule  
26 3.2225, subdivision (c), paragraph (1) sets forth the procedure a party must follow to augment the  
27 administrative record: “Any request to augment or otherwise change the contents of the administrative  
28 record must be made by motion served and filed no later than the filing of that party’s initial brief.” Here,  
Petitioner’s Opening Brief was filed on January 19, 2021. No motion to augment the AR was made on or  
before January 19, 2021. Based on Petitioner’s failure to follow the manner prescribed to augment the  
record, Respondents’ Motion to Strike is granted and Petitioner’s Motion in Limine, or alternatively,  
Request for Judicial Notice is denied. Additionally, “extra-record evidence is generally not admissible”  
unless “in those rare instances in which (1) the evidence in question existed *before* the agency made its  
decision, and (2) it was not possible in the exercise of reasonable diligence to present this evidence to the  
agency *before* the decision was made so that it could be considered and included in the administrative  
record.” (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal. 4th 559, 576, 578.) Petitioner  
failed to make the required showing that the narrow exception is applicable in this case. Accordingly, the  
Court does not consider the related references in Petitioner’s brief for purposes of its decision.

## BACKGROUND

### I. Petition for Writ of Mandamus and History of GWHS

George Washington High School “is located on four square blocks . . . in San Francisco’s Outer Richmond District.” (Petition ¶ 7; AR: 381.) The high school was built in phases in Streamline Moderne style under the auspices of the federal Public Works Administration between 1935 and 1952. (Petition ¶ 7; AR: 374, 380-81, 386-482.) The master architect was Timothy Pflueger, one of the most important architects of his time in Northern California. (Petition ¶ 7; AR: 374, 448-452.) “The high school benefitted from New Deal-sponsored public arts<sup>3</sup> . . . including . . . [a mural by] Victor Arnautoff, whose mural . . . is recognized as a character-defining feature of the historic school.” (Petition, ¶ 8.) “Victor Arnautoff’s *Life of George Washington*, a 1,600 square-foot mural completed in 1936, is painted on thirteen large panels on the north and south walls of the stairway and main lobby entrance.” (*Id.* at ¶ 9.)<sup>4</sup> “The mural presents a chronological visual history.” (*Ibid.*)

“Relevant to this action, two tableaus have generated controversy.” (Petition, ¶ 10.) “One shows Washington in a scene at Mount Vernon with enslaved African Americans and another depicts him with Benjamin Franklin and frontiersmen standing over the body of a Native American.” (*Ibid.*) “Eleven of the thirteen frescoes depict Washington’s storied achievements.” (*Id.* at ¶ 11.) The subject matter of the other eleven frescoes include Washington helping his elderly mother; establishing a national university; mediating between Hamilton and Jefferson over the meaning of the new Constitution; Washington at Valley Forge; and an American Army victory over Hessian. (AR: 2314.) In 2019, the Board voted to remove the murals from public view. (Petition, ¶¶ 1, 18, 20.)

On October 9, 2019, Petitioner initiated this action for injunctive relief. Petitioner alleges the “Board abused its discretion and failed to act in the manner required by law in taking action to implement its decision to remove the Arnautoff mural from public view without first preparing and certifying a

<sup>3</sup> Other New Deal sponsored public art projects at GWHS include a frieze by sculptor Sargent Johnson, bas-relief portraits by Robert Howard, and murals by Lucian Labaudt, Ralph Stackpole, and Gordon Langdon. (AR: 380.)

<sup>4</sup> The record is inconsistent as to the title of the murals. Throughout the record, the murals are referred to as the “Life of George Washington” and “Life of Washington.” (See Landmark Designation Report [AR: 386, 416]; Public notice of the June 18, 2019 special meeting of the Board of Education [AR: 4467]; and June 18, 2019 Board of Education resolution [AR: 77:18-20].) When referring to the title of the murals, the Court uses “Life of Washington.”

1 project EIR and meeting all mandates of CEQA.” (Petition, ¶ 25.) Petitioner claims the “Board  
2 unlawfully pre-committed to the removal by vote, public declarations of its removal decision on its  
3 website, and further actions creating substantial bureaucratic and financial momentum that now precludes  
4 consideration of alternatives to removal.” (*Ibid.*) Petitioner seeks a peremptory writ to order the Board to  
5 set aside its decision to remove the Arnautoff mural from public view and comply with CEQA by  
6 conducting “an EIR process to consider whether or not to leave the mural in place.” (*Id.* at ¶ 1.)

7 In their Answer filed on December 24, 2019, Respondents admit that at the June 18, 2019 Board  
8 meeting, “members of the Alumni Association objected to obscuring or removing the mural and requested  
9 that the School Board prepare an EIR.” (Answer, ¶ 16.) Respondents also admit that they “deleted the  
10 option of removing the mural from public view by painting over it due to expectation of delay.” (*Id.* at ¶  
11 20.)

## 12 **II. Preparation of Administrative Record**

13 Pursuant to Public Resources Code section 21167.6, subdivision (b), paragraph (1), Respondents  
14 began preparation of the AR in or about November or December 2019. The complete preparation was  
15 delayed due to the COVID-19 pandemic but, after four stipulations to extend the time to file, Respondents  
16 certified the AR on November 9, 2020. No request was timely made to augment the record. (See fn. 2.)  
17 No objections to the record were timely filed.

## 18 **III. Administrative Record**

### 19 **a. Victor Arnautoff’s *Life of Washington* Murals**

20 On October 18, 2017, the Historic Preservation Commission of San Francisco, approved a  
21 resolution to initiate the designation of GWHS, along with two other schools in San Francisco, as  
22 historical landmarks. (AR: 371.) A detailed Landmark Designation Report (“Report”) was prepared in  
23 advance of the resolution. (AR: 376-482.) The Report describes various artworks commissioned by the  
24 Federal Arts Project during the New Deal Era. (AR: 433.) One of those works was the Victor Arnautoff  
25 murals, *The Life of George Washington*, which is “the largest and most prominent of the New Deal-era  
26 artworks, a visual history lesson . . .” as well as “one of the best-known New Deal murals in San  
27  
28

1 Francisco.” (AR: 386, 418.) The Report details both the murals<sup>5</sup> and the artist as follows:

2 The project was awarded to Victor Arnautoff, an artist born in Imperial Russia who was an  
3 assistant to Diego Rivera. The approximately 1,600-square-foot mural cycle spans the north  
4 and south walls of the stairway and lobby entrance at 32<sup>nd</sup> Avenue. Arnautoff described the  
5 imagery on the south stairway wall as illustrating the ‘formation of [Washington’s]  
6 personality and personality in action.’ The future president is depicted in his early career as  
7 a surveyor, followed by his activities as a scout, messenger, and officer of the revolutionary  
8 militia. The scenes are organized chronologically, beginning at the vestibule with  
9 Washington standing in the foreground using surveyor’s tools; in the background is a scene  
10 of African Americans working in the fields in front of Washington’s Virginia estate, Mount  
11 Vernon. Arnautoff used rocks, plants, and two tree trunks reaching from the bottom to the  
12 top of this panel to organize the subsequent sections above the stairs. The next scene  
13 includes Washington portrayed as a scout and as a messenger wearing a dark coat or  
14 buckskins with a coonskin cap, surrounded by elaborately garbed soldiers and Native  
15 Americans – many bearing firearms. The tableau at the south wall of the lobby atop the  
16 stairs shows Washington standing near a table with Benjamin Franklin and two other  
17 figures, pointing with his right hand to a map and with his left hand gesturing toward a  
18 group of buckskin-clothed frontiersmen depicted standing over a prone, lifeless Native  
19 American. The frontiersmen are the only figures in these colorful murals painted in  
20 *grisaille*, or grey monochrome, perhaps to indicate that they are “ghostly figures of the  
21 imagination,” as contemporary art critic Alfred Frankenstein surmised.

22 The section on the north side of the vestibule, stair, and lobby portrays Washington’s  
23 personality in “action” according to Arnautoff. Above the stairs are the scenes of stamps  
24 being burned and tea dumped into Boston Harbor, British soldiers opening fire on colonists  
25 (the Boston Massacre), and revolutionaries raising a pole with the new national flag. The  
26 chaos of these scenes, which the *San Francisco Chronicle* described as “Breughellesque,” is  
27 organized by diagonal linear elements composed of poles, ropes, and chains. At the top of  
28 the stairs, Washington appears on horseback accepting command of the Revolutionary  
Army. The north wall of the lobby depicts Washington as the master of Mount Vernon,  
standing with a riding crop in hand, with a young African American man holding the reins  
of his horse. Washington is interacting with an overseer who points to African Americans  
picking cotton, shucking corn, and hauling loads, while three white male workers build  
wooden casks. An alcove off the north side shows Washington at Valley Forge and the  
surrender of the Hessians, under a ceiling panel symbolic of war. An alcove on the south  
side shows Washington greeting Lafayette, Von Steuben, and Pulaski, and Washington as  
president implementing the new Constitution by mediating between Hamilton and Jefferson,  
under a ceiling panel symbolic of peace. The other alcove on the south side shows  
Washington bidding farewell to his aged mother and Washington proposing establishment of  
a national university, under a ceiling panel showing a bare-breasted representation of liberty  
placing thirteen stars in the firmament.

\* \* \*

Historian and Arnautoff biographer, Robert Cherny, describes a ‘counter-narrative’ to the  
then-standard high school treatment of the founding fathers and westward expansion that

<sup>5</sup> The terms “the murals” and “the mural” are used interchangeably in this Order and the AR. Both refer to the 13-panel Arnautoff mural at GWHS attached as Appendix 1.

1 places African American, Native American, and working-class revolutionaries at the center  
2 of the major compositions of the *Life of George Washington*. High school curricula in the  
3 1940s did not address the inconsistency between the founding fathers' adherence to the  
4 concept that "all men are created equal" and the fact that many of them, including George  
5 Washington, profited from the ownership of African Americans as chattel slaves. Likewise,  
6 the figure of the dead Native American with the ghostly frontiersman over him provided  
7 students with an image that challenged the common perspective that westward expansion  
8 filled territory that had been empty and underutilized.

9 (AR: 418-421 [footnotes and citations omitted]; see AR: 4470 [the fresco "technique requires the artist or  
10 her/his assistants to apply a patch of wet plaster directly onto a solid subsurface, and to apply pigments  
11 suspended in water onto the plaster before it dries."].)

12 **b. Prior Controversy Regarding Victor Arnautoff's *Life of Washington Murals***

13 "In 1968, Black, Asian and Chicano students waged a protest against the murals . . . because they  
14 felt these murals depicted Blacks and Native Americans in subservient and demeaning roles." (AR: 362;  
15 see also AR: 42:15-24, 79:10-16, 274:19-23, 355, 362, 661, 1605, 4449, 4460, 4844.) African American  
16 students "found the depictions of enslaved African Americans shucking corn, picking cotton, and loading  
17 barges as servile and humiliating." (AR: 434.) However, members of the local community and teachers  
18 demanded that the murals remain. (AR: 355.)

19 Dr. Robert Jenkins, the then Superintendent of Schools, suggested that "[a] supplement to the  
20 mural, including Black history, should be considered for a suitable location in the school and plans be  
21 launched immediately in cooperation with the Black students." (AR: 356, 434.) "After several weeks of  
22 meetings and conferences . . . the Board of Education offered the students a compromise: the original  
23 frescoes . . . would remain as they were, but new murals would be painted elsewhere in the school by an  
24 artist selected by the students." (AR: 362.) The Board of Education, student leaders of the GWHS Black  
25 Students Union, the Director of Art, and the Assistant Principal of GWHS all agreed that a supplemental  
26 mural would be planned by "the entire student body, under the direction of a faculty sponsor selected by  
27 the Black students." (AR: 357-358.) "In 1970 the Board of Education commissioned Mr. Dewey  
28 Crumpler<sup>6</sup> to paint three murals which would depict the cultural experiences of Blacks, Asians, Chicanos  
and Native-Americans." (AR: 362, 435, 458.) The Dewey Crumpler murals, *Multi-Ethnic Heritage*, were

<sup>6</sup> Dewey Crumpler, a young African-American painter, was one of several local artists who submitted a mural design. Dewey Crumpler was selected to paint the new murals by GWHS students. (AR: 362.)

1 made in response, as a compromise, or “a counterpoint” to Victor Arnautoff’s murals. (AR: 40:6-14,  
2 79:17-23, 134:11-15, 362, 426, 435, 458, 661.) Dewey Crumpler also provided a detailed analysis of the  
3 meaning of the each of his panels: The Black Panel, Latin and Native American Panel, and the Asian  
4 Panel. (AR: 4844-4847.)

5 **c. Current Controversy Regarding Victor Arnautoff’s *Life of Washington* Murals**

6 From 2016 to 2018, the American Indian Parent Advisory Council (“the PAC”)<sup>7</sup> at GWHS raised  
7 concerns about the murals which, in one section, depict a dead Native American. (AR: 493, 511, 660;  
8 4340.) Removing the murals was stated as one of the priorities of the PAC. (AR: 493, 693.) On January  
9 23, 2018, the PAC met with the Board regarding the murals. In a January 29, 2018 follow-up meeting  
10 where Board Vice President Mark Sanchez (“Board Vice President”)<sup>8</sup> was present, the agenda items  
11 included “[r]emove the racially insensitive murals at WHS.” The notes also stated:

12 II. Washington Mural

- 13 - Board will see what the school site says first. It is up to the school site to make that  
14 determination.
- 15 - If they challenge the request for removal the next step is for the Board to make a resolution.
- 16 - It is important to build good working relationships with school sites. Indian Ed. Program  
17 would like to attend a school site visit/meeting to present on the mural.
- 18 - One idea is for the Indian Ed. PAC to connect with APAC to co-present.

19 (AR: 493.)

20 During this same timeframe, the PAC noted in its updates that “there is a push to make the murals  
21 a historical site, meaning that the murals cannot be changed or removed.” (AR: 681.) In February of  
22 2018, the Washington School Site Council also expressed concerns about the impact of GWHS being  
23 designated a historic landmark and that such a designation would be a potential obstacle to removing the  
24 murals. (AR: 501-507.) Dr. Brent Stephens (“Dr. Stephens”), Chief Academic Officer of SFUSD,  
25 followed up with an inquiry on the historical designation status and the “implications of the school’s  
26 landmark status on any potential options involving the mural.” (AR: 503.) He stated that he was  
27 “collecting information for the Board of Education about the issue.” (*Ibid.*)

28 <sup>7</sup> The PAC has also been called Indian Education Parent Advisory Committee. (AR: 4280.)

<sup>8</sup> Although Mark Sanchez was a commissioner in January of 2018, the Court refers to Mark Sanchez throughout this Order as Board Vice President because he was Board Vice President in 2019.



1 In a February 2, 2018 email, SFUSD wrote to several members of the San Francisco Planning  
2 Department regarding the Board's concern about landmark designation:

3 Thanks for your patience with this. We reported back to our Buildings and Grounds  
4 Committee last week about our very helpful meeting [with], including the clarification that  
5 the landmark status doesn't place legal restrictions on SFUSD's right to modify the  
6 buildings or features in the future. That was appreciated; however, the Committee  
7 members continue to have reservations and suggested that a presentation be made to the  
8 full Board of Education.

9 (AR: 511.) SFUSD went on to address the PAC's concern about the murals' racial insensitivity and that  
10 these concerns "...could very well influence the Board of Education's thinking and position about the  
11 landmark proposal, at least for Washington High School." (*Ibid.*)

12 On March 6, 2018, the San Francisco Planning Commission presented to the Board. (AR: 644-  
13 654.) The Report was also provided to SFUSD. (AR: 531, 535-643.) The President of San Francisco  
14 Heritage, the organization sponsoring the three SFUSD schools for landmark designation, spoke during  
15 the public comment period of the March 6, 2018 Board meeting.<sup>9</sup> The Board requested that San  
16 Francisco Heritage submit the full written testimony of Donna Graves "presenting options for addressing  
17 controversial depictions in the . . . murals at George Washington High School." (AR: 659.) In a March 9,  
18 2018 letter to then Board President, Hydra Mendoza-McDonnell, San Fransico Heritage followed up on  
19 that request noting that "[c]ontrary to how our testimony was characterized during the Board's  
20 deliberations, it was not our intent to tell anyone how to feel about the Arnautoff murals. To the contrary,  
21 our goal was to openly acknowledge these sensitivities and engage the Board in a thoughtful dialogue on  
22 how they could be remedied." (*Ibid.*)

23 Ultimately, GWHS was not designated as a historical landmark. (AR: 676, 678.) On March 15,  
24 2018, the Board Vice President wrote that "the board did reject the city's request to name Washington  
25 High School a historical landmark due to the mural." (AR: 676.) Thereafter, during the summer of 2018,  
26 the SFUSD and the Board formed a Blue-Ribbon Committee on school names. (AR: 705.) There was a  
27 discussion about whether that committee would address the murals. It was decided that a separate  
28 committee would be formed to address the murals. (AR: 705, 721.)

<sup>9</sup> The minutes of the March 6, 2018 meeting are not in the record.

1                   **i. The Reflection and Action Committee**<sup>10</sup>

2                   In August of 2018, SFUSD began the process of forming a committee to address issues raised by  
3 the PAC about removing the murals. (AR: 725, 800.) On October 30, 2018, Dr. Stephens sent a draft  
4 proposal for a Reflection and Action Committee (“the Committee”) to SFUSD and PAC members. (AR:  
5 825-852.) In November of 2018, SFUSD created and sought out individuals for the Committee. (AR:  
6 4340.) The group was to be composed of members of the Native American community, students, GWHS  
7 and SFUSD representatives, as well as local artists “who are committed to examining the mural, learning  
8 about Native American and Native Californian history; art history; artistic interventions related to  
9 controversial depictions of non-dominant peoples; developing options for addressing the impact of the  
10 mural; and making recommendations to the SFUSD Superintendent and Board of Education.” (AR: 899,  
11 4340.) One of the three objectives of the Committee was to “[m]ake recommendations for action to the  
12 Superintendent and Board of Education of SFUSD about the murals.” (AR: 4341.) The thirteen  
13 members<sup>11</sup> selected for the Committee were: Susan Saunders, Principal, GWHS; Bill Sanderson, Assistant  
14 Superintendent, High Schools; Thomas Reddy, English teacher at GWHS; Mary Travis Allen, Amy  
15 Anderson, Beth Trujillo, and Mari Villaluna, PAC members; Lope Yap, Jr., Vice President, GWHS  
16 Alumni Association (“Yap”); B.K and K.S., GWHS students;<sup>12</sup> Barbara Mumby, San Francisco Arts  
17 Commission; Virginia Marshall, SFUSD, Alliance of Black Student Educators; and Nyzeina Eberhart,  
18 African American Parent Advisory Council (“AAPAC”). (AR: 2079, 2119-2120, 4340.)

19                   After the Committee was purportedly formed, Dr. Stephens reached out to members of the  
20 AAPAC to join the Committee. (AR: 1780-1782.) His outreach came just over a week after SFUSD  
21 provided the San Francisco Chronicle with a list of Committee members. (AR: 1733.) Dr. Stephens also

22 \_\_\_\_\_  
23 <sup>10</sup> The Reflection and Action Group, Reflection and Action Working Group, Reflection and Action  
Committee, and Community Action Committee are all different names for the same group.

24 <sup>11</sup> Petitioner alleges that the Committee had “11” members, not thirteen. (Petition, ¶ 13.) The record  
25 indicates otherwise. Indeed, the final vote shows that ten members voted to paint over the murals, two  
26 were undecided and one, Yap, voted to keep the murals. (AR: 4339-4342.) Nonetheless, the Court agrees  
that the record is inconsistent as to the composition of the Committee. (Compare listed members on the  
December 14, 2018 “BOE Weekly Update” [AR: 1332-1333] and December 5, 2018 email recipients  
[AR: 1319] with February 15, 2019 “Response to Request for Information, ‘The Life of Washington’  
Mural” [AR: 2079].)

27 <sup>12</sup> The Court uses only the initials of the students for privacy concerns. While there is no evidence in the  
28 record, the Court presumes both are minors. Their involvement is limited in the decision at hand, and it is  
not necessary to include their full names.

1 requested that Committee member Barbara Mumby reach out to get three muralists to support the  
2 Committees' recommendation to remove the murals. (AR: 1695.) Barbara Mumby recruited three  
3 muralists. On January 9, 2019, Dr. Stephens wrote: "They [the muralists] sound like they'd be strong  
4 contributors to the group's thinking." (AR: 1693.) Dr. Stephens went on to say that he would be "happy  
5 to speak with them in advance of the meeting – maybe with Nikki too so that we're all on the same page  
6 about the intent of their engagement." (*Ibid.*) In that same email thread, Dr. Stephens discussed how the  
7 artists might "broaden the set of possible options that [the Committee] has to work with, even though our  
8 goal is to try and support the group to narrow down to a single recommendation if this is possible."  
9 (*Ibid.*)

10 The Committee held public meetings on December 7, 2018, January 24, 2019, February 7, 2019,  
11 and February 28, 2019. (AR: 901,1032, 4341.) The December 7, 2018 and January 24, 2019 meetings  
12 addressed Native American culture and contemporary issues amongst Native American communities.  
13 (AR: 1013, 4341.)

14 At the February 7, 2019 meeting, the Committee discussed alternatives to demolishing the murals.  
15 (AR: 4245.) The individual reflection for that meeting was: "What could be done? What should be  
16 done?" (AR: 4267.) There is no record of what was said during that discussion. The PowerPoint  
17 presentation for the February 7, 2019 meeting commits only one of thirty-two slides to the topic of  
18 alternatives to demolition. (AR: 4234-4366.) The remaining slides discuss the murals and Arnautoff, but  
19 the vast majority address "Indian Images in Dominant Culture." (*Ibid.*) One slide shows a covered  
20 painting. (AR: 4248-4249.) The record also indicates that a straw poll was taken at the February 7  
21 meeting; small groups were formed, and the Committee worked to "pull[] a proposal together." (AR:  
22 4268.)

23 However, the Committee had all but decided what it would do after the February 7, 2019 meeting.  
24 Dr. Stephens wrote SFUSD staff on February 8, 2019 stating:

25 The [Committee] that I am leading is working towards a final recommendation to the  
26 Superintendent on February 21. Though I don't think there will be a single unanimous  
27 view, the large majority of the group will recommend that the mural be painted over in its  
28 entirety. [¶] I am not certain what steps we'll take at that point. The Board is interested  
in this issue, though I'm not aware that this topic is scheduled this spring. [¶] I'm

1 writing for two reasons. First, I hope that we're ready to act on this recommendation.  
2 SFUSD's Indian families have been articulate, patient, and fearless about removing this  
3 harmful image. [¶] Second, this mural has no place in our schools. It is racist and  
4 harmful and part of the colonial project of the state and country, which wasn't over in the  
5 1930's and isn't over yet. This is one of SFUSD's 'Robert E Lee' statues – put there  
6 with the intention of telling a particular story, and defended now by people who can't  
7 comprehend it's full damaging impact. [¶] I'm optimistic that we'll do the right thing,  
8 and have a plan to act.

9 (AR: 1996-1997.) In response, Dawn Kamalanathan (“Kamalanathan”), Chief of Facilities for SFUSD,  
10 asked if the murals had been “officially photographed yet? For the preservation record?” (*Ibid.*) Dr.  
11 Stephens replied: “No - I don't know. I could find out probably, though it would create further alarm  
12 among the preservation folks to even ask this question.” (*Ibid.*)

13 The Committee held its last public meeting on February 28, 2019. (AR: 4273-4275.) One of the  
14 primary objectives of the meeting was “to develop a recommendation, or recommendations, from the  
15 group to the Superintendent about the ‘Life of Washington’ mural.” (AR: 4274.) The facilitators for the  
16 meeting were Dr. Stephens, Mary Elisalde, Supervisor of State and Federal Programs, and Nicole-Myers-  
17 Lim, Executive Director of the California Indian Museum and Cultural Center. (AR: 4278.) Dr. Stephens  
18 clarified that the recommendation of the Committee to the Superintendent would be shared with the  
19 Board, public comment would be held, and then the Board “may decide something.” (AR: 4269.) An  
20 SFUSD PowerPoint was used at that meeting. In the “Immediate Background” section it stated:

21 The issue of the impact of the Washington [H]igh School mural on Native American students  
22 was most recently brought to the Board of Education by members of the Indian Education  
23 Parent Advisory Committee in Fall 2016, and repeated in 2017 and 2018.

24 The Superintendent asked that a group form to reflect on and recommend action on the  
25 mural. The group is deliberately small, and is composed deliberately to represent key  
26 perspectives and avoid further marginalization.

27 (AR: 4280.)

28 The PowerPoint also noted that “[t]he composition of the group and the selection of co-facilitators  
breaks with historical patterns of deliberate exclusion.” (AR: 4284.) The PowerPoint presentation  
described the “Outcomes” for the Committee. The three “Outcomes” were: (1) “Consider a variety of  
perspectives related to the mural images . . . including, critically, the perspectives of students and  
community members whose cultural history is represented in the mural”; (2) “Identify options for

1 addressing the social and emotional impact of the mural images on past, current, and future students . . .  
2 with deliberate attention to the experiences of students and community members whose cultural history is  
3 represented in the mural”; and (3) “Make a recommendation – or recommendations – for action to the  
4 Superintendent and Board . . . about the murals.” (AR: 4285.)

5 One meeting attendee, a GWHS librarian who also taught English and Drama, expressed concern  
6 about the Committee recommendation process because only thirteen persons were proposing the fate of the  
7 murals when 2,000 students attend GWHS and there are many alumni. (AR: 3, 4271.) Another individual  
8 who attended all four of the Committee meetings noted that the murals were in jeopardy. (AR: 4269.)

9 At the February 28 meeting, Dr. Stephens specifically told the Committee that *according to*  
10 *SFUSD’s counsel and the Board*, the Committee had the authority to decide the disposition of the mural  
11 *without* a CEQA review process because the school was not currently protected as a historic landmark.  
12 (AR: 4344.) Dr. Stephens made a similar comment to a member of the public who attended the meeting.  
13 “Woman: Let’s assume the recommendation is to paint over the murals. Taken to BOE [Board of  
14 Education]. Is that the end? Brent [Dr. Stephens]: I believe it is. If it were a historically protected  
15 landmark, it might be more complicated.” (AR: 4270.)

16 The PowerPoint presentation for the February 28, 2019 meeting did not contain one reference to  
17 keeping the murals. The majority of the PowerPoint was devoted to defining critical terms such as  
18 “historical trauma, erasure, cultural appropriation, institutional racism, micro aggressions, lateral  
19 oppression and stereotypes.” (AR: 4276-4289.) At the conclusion of the meeting, recommendations were  
20 made and voted on. In handwritten notes from the meeting, one set of recommendations was to create a  
21 digital archive of the mural and then use white paint to cover the mural. That recommendation also included  
22 creating a school and community-based committee to decide what to put up in place of the white washed  
23 murals. (AR: 4337-4338.) Five Committee members’ names appeared on that recommendation. (*Ibid.*)  
24 The other recommendation was to restore and keep the murals showing their positive images throughout  
25 the GWHS campus, adding plaques to explain the artist’s perspective, and create a new curriculum on First  
26 Nations and African American history. (AR: 4339.) There was only one Committee member whose name  
27  
28

1 appeared on that recommendation: Yap.<sup>13</sup> (*Ibid.*)

2 On March 4, 2019, Dr. Stephens submitted a memorandum to the Superintendent of SFUSD, Dr.  
3 Vincent Matthews (“Superintendent Matthews”), with the Committee’s recommendation regarding the  
4 murals. (AR: 4340-4342.) The memorandum stated that the Committee based their recommendation from  
5 three options: (1) painting over the murals; (2) restoring the murals as well as adding murals and a plaque;  
6 and (3) undecided. (AR: 4341.) Ten of the thirteen Committee members voted to paint over the murals.  
7 (AR: 4341-4342.)<sup>14</sup> Two members were undecided, and Yap was the sole dissenting vote. (AR: 4339-  
8 4342.) As a result, painting over the murals with white paint, before the 2019-2020 school year, was the  
9 Committee’s final recommendation. (AR: 4341.)

10 The Superintendent and the Board received over fifty letters from individuals that opposed the  
11 Committee’s recommendation. (AR: 4345-4390, 4392-4435, 4438-4439, 4441-4452.) Among them was  
12 the Executive Director of the Western Neighborhoods Project, a history nonprofit focused on the Richmond  
13 District in San Francisco requesting a solution that did not destroy the murals. “The outright destruction of  
14 controversial artwork feels censorious, suppressive and illiberal. It sets a terrible precedent and feels very  
15 un-San Franciscan.” (AR: 4351.) Dr. Robert Cherny, Professor Emeritus of History at San Francisco State  
16 University and a scholar on Victor Arnautoff, requested that all perspectives on the murals be considered  
17 (including those that want to preserve the murals) and “suggest[ed] that you [SFUSD and the Board]  
18 carefully review your obligations under the California Environmental Quality Act, the California Art  
19

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20 <sup>13</sup> One of the Petitioner’s arguments is that the Board hand selected the Committee to be “deliberately  
21 small, . . . composed deliberately to represent key perspectives and avoid further marginalization.”  
22 (Opening Brief, 8:13-16.) In his June 17, 2019 letter, Yap, the sole representative of the GWHS Alumni  
23 Association on the Committee wrote the Superintendent, Dr. Vincent Matthews, the Board President, and  
24 the Board complaining that the Committee was “slanted from the beginning for the recommendations  
25 approved by the near unanimous vote of the [Committee].” (AR: 4463.) Yap provided examples of how  
26 the Committee was “slanted.” (*Ibid.*) For example, Dewey Crumpler was not invited participate; none of  
27 the other Committee members considered options to preserve the murals; and speakers in favor of  
28 removing the murals did not have their time cut off at Committee meetings whereas speakers who favored  
preserving the murals were subject to disrespectful behavior without admonishment. (*Ibid.*) Yap also  
complained that the Committee panelists boasted about having the murals painted over before the start of  
the 2019-2020 school year. (*Ibid.*) The record contains several references to “preservation folks” in  
matters consistent with Yap’s observation. (AR: 1966.)

<sup>14</sup> Unlike the Board minutes, there is no evidence in the AR recording the vote of members of the  
Committee, other than Yap and Barbara Mumby. On February 28, 2019, Barbara Mumby emailed the  
Committee stating: (1) she was unable to attend the meeting and (2) she was voting to paint over the  
murals. (AR: 1119-1123.)

1 Preservation Act, and the General Services Administration’s legal fact sheet for art work produced under  
2 the 1930s and 1940s New Deal Administration.” (AR: 2313-2317, 4352-4354.) Dr. Robert Cherny also  
3 discussed how the Board is seeking to destroy the whole mural when only two panels were discussed by  
4 the Committee. (AR: 2315, 4353.) Similarly, Carol Roland Nawi, PhD, the former California State Historic  
5 Preservation Officer serving under Governor Jerry Brown, reminded SFUSD and the Board of its obligation  
6 under CEQA in making their decision regarding the mural. (AR: 4446-4448.) The AR also contains  
7 numerous communications from the community to SFUSD, the large majority of which express support for  
8 preserving the murals, and internal communications on how to respond these messages. (AR: 2290-3237.)

9 **ii. Board Meetings Following the Committee’s Recommendation to Paint Over the Murals**

10 The Board is comprised of seven members, all elected by the citizens of the City and County of  
11 San Francisco.<sup>15</sup> (AR: 6.) During the relevant time period, Stevon Cook was the President of the Board  
12 (“Board President”); Mark Sanchez was the Vice President; and Alison Collins, Jenny Lam, Gabriela  
13 Lopez, Faaauga Moliga, and Rachel Norton were Commissioners. (AR: 231.) Following the vote by the  
14 Committee to recommend that SFUSD and the Board paint over the murals, four public meetings were  
15 held by the Board.

16 **1. June 11, 2019 Meeting**

17 On June 11, 2019, the Board held its first meeting regarding the “George Washington Murals.”  
18 (AR: 4453-4459.) SFUSD considered options and costs for removing or covering the murals with a  
19 textile covering, solid panels, or paint. (AR: 4454-4458.) There was one mention in the PowerPoint  
20 presentation to “conserve” the murals which was listed on the “Intervention Scale.” (AR: 4454.) No  
21 follow-up discussion on “conserve” is contained in the record from that meeting.

22 **2. June 18, 2019 Meeting**

23 On June 18, 2019, the Board held a special meeting. (AR: 6.) Agenda item B2 was a “Discussion  
24 of Potential Options to Remove From Public View the Arnautoff Mural at George Washington High  
25 School.” (AR: 6:22-25, 7:7-10, 4467.) The public notice of the special meeting stated as background:  
26

27 <sup>15</sup> The Court is taking judicial notice of the fact that the Board is an elected body in the City and County  
28 of San Francisco pursuant to Evidence Code section 452, subdivision (h). Only the Board names are  
contained in the record.

1 Earlier this year the District convened an 11-member community advisory committee  
2 (CAC) to address longstanding public concerns over objectionable content depicted in the  
3 13-panel "Life of Washington" mural ("mural"), located in the administration building . . .  
4 The controversial mural, commissioned by the U.S. Government in 1936 under the New  
5 Deal era art program, was painted using the fresco technique by a well-known muralist, the  
6 late Victor Arnautoff. Fresco mural painting is done on wet plaster; once the plaster dries,  
7 the mural becomes a permanent, integral part of the wall it was painted on. The CAC  
8 supports permanently removing the offensive content of the mural.

9 In recent months, numerous community members, art historians and local preservationist  
10 [*sic*] have voiced their concern over the District's intention to alter the murals.

11 This presentation will discuss potential options to remove the mural From Public View.  
12 The Board will hear public comment and discussion and staff will return on June 25 with a  
13 recommendation for action.

14 (AR: 4467.)

15 Six of the seven Board members were present for the meeting. (AR: 6, 231.) Before opening the  
16 floor for public comment, the Chief of Facilities for SFUSD, Kamalanathan, explained that the  
17 Committee held four public meetings before voting to remove the murals from public view. (AR: 8:9-11,  
18 18-24.) After working with two consulting firms, Architectural Resources Group and ICF International,  
19 to determine options, cost estimates, and timing, Kamalanathan presented three options for removing the  
20 mural: (1) coverings, (2) solid panels, or (3) painting. (AR: 9:2-10, 9:17-25, 10:19-11:23.) The cost for a  
21 textile covering was estimated at \$375,000 and would take up to sixteen and a half months to complete.  
22 (AR: 10:24-11:3.) The estimate included CEQA review time. (*Ibid.*) The solid panel option was  
23 estimated to take up to fourteen months. (AR: 10-11.) The option to paint over the mural, which had  
24 been recommended by the Committee, was estimated to cost \$600,000 and take up to three plus years to  
25 complete, including CEQA review. (AR: 11:15-23.)

26 Kamalanathan stated that "[w]e will eventually have to hire a design team and also at the same  
27 time evaluate the site's constraints more closely while also pursuing CEQA review for any option that we  
28 pursue." (AR: 10:14-18.) "But ultimately the idea would be to develop a project for the purposes of  
CEQA review and allow us to complete design for whatever option is recommended." (AR: 12:4-7.)

Public comment was divided between those who favor removing the murals and those who  
oppose. (AR: 7:11-15.) Each side was allotted thirty minutes of public comment. (AR: 7:11-15, 4466.)



1 Yap spoke in opposition to removing the murals and requested that the SFUSD comply with CEQA by  
2 preparing an EIR. (AR: 15:2-5, 16:19-21.) Yap submitted hard copies of a memorandum from San  
3 Francisco Heritage, which explained, among other things, that painting over a fresco is an irreversible act.  
4 (AR: 4468-4470.)

5 After public comment concluded, members of the Board spoke. Commissioner Rachel Norton  
6 asked whether the Committee considered moving the mural to another site as an option. (AR: 71:9-11.)  
7 Kamalanathan responded that relocating the mural would be too complicated and cost-prohibitive given  
8 the nature of the mural.<sup>16</sup> (AR: 71:12-72:2.)

9 Commissioner Alison Collins was the next Board member to address the public. She described  
10 the first time she saw the murals, saying, “it’s just kind of awe-inspiring how awful they are.” (AR:  
11 72:19-21.) Commissioner Alison Collins favored removing the murals stating: “I know my history as a  
12 black person. I think most black people do. It’s kind of in your face all the time. You’re a Native  
13 American it’s also in your face all the time. So when people say it’s really important to remember  
14 history, my question is, you know, who needs to remember it, right? Like who needs reminding? I don’t  
15 need reminding.” (AR: 73:19-74: 2.)

16 She went on to discuss change and its importance. “We need to change as a society if we want  
17 racism to go away. We don’t maintain things that memorialize racism.” (AR: 75: 5-7.) She concluded  
18 her remarks as follows:

19 White supremacy culture is when folks are more concerned about the Life of Washington  
20 murals than they are about Native-American and black lives. And when white supremacy  
21 is also centering the perspectives of people who have benefited from racial privilege and  
oppression.

22 So I want to acknowledge all that and I want to say just thank you for the testimony and for  
23 coming out tonight. And for your consistency in pushing for us to change as a district.  
24 (AR: 76:14-23.)

25 The Board Vice President next read into the record a resolution he had prepared even though the  
26 Board was not going to vote on any resolution at the meeting. (AR: 77:12-14.) The resolution was about  
27 “removal of Washington High School Life of Washington Mural.” (AR: 77: 18-20.) In the resolution, he

28 <sup>16</sup> The AR contains no evidence that the Committee ever considered the option to move the mural to  
another site.

1 addressed, among other things, the Board’s renaming of SFUSD schools in 2018 (AR: 80:12-24.), the  
2 removal of the Early Days Pioneer monument at the Civic Center in 2017 (AR: 82:16-25), and at the end  
3 remarked that “[t]he resolve clause<sup>17</sup> is to remove the mural. I support removing the mural.” (AR: 83:22-  
4 23.)

### 5 3. June 25, 2019 Meeting

6 On June 25, 2019, the Board held a regular meeting. (AR: 113:2-4.) All Board members were  
7 present, except Commissioner Rachel Norton. (AR: 113:5-24, 179:18-23.) Agenda item H2 was the  
8 “recommendation to remove from public view the [Arnautoff] mural at George Washington High  
9 School.” (AR: 119:7-9.) The background for Agenda Item H2 stated, “[b]ased on a review of options of  
10 physical treatments for the mural and consistent with the [Committee’s] recommendation to remove the  
11 offensive content from view, staff recommends installation of solid panels or equivalent material to  
12 obscure the mural from public view.” (AR: 4487.)

13 At that public meeting two members of the Board, sitting in their official capacity, wore tee shirts  
14 advocating for their positions. Commissioner Gabriela Lopez wore a tee shirt that said, “Take It Down”  
15 and Commissioner Faauuga Moliga wore a tee shirt that said “Resistance.” (AR: 4488-4490.)<sup>18</sup>

16 Similar to the June 18, 2019 meeting, the Board allowed one hour of public comment from those  
17 who want to preserve the murals and those who want the murals removed. (AR: 119:14-22, 4486.)<sup>19</sup>  
18 After public comment concluded, the Board President called for a motion on the recommendation to  
19 remove the mural from public view. (AR: 173:8-17.) Kamalanathan then read the recommendation into  
20 the record. (AR: 173:18-174:5 [“to authorize staff to develop a project for the purposes of [CEQA]  
21 review *that removes from public view* the Arnautoff mural at George Washington High School using solid  
22 panels or equivalent material.”] [emphasis added].) Subsequently, however, the Board Vice President

23 \_\_\_\_\_  
24 <sup>17</sup> The resolve clause refers to the resolution that the Board President read into the record. (See AR 77:21-  
83:21.)

25 <sup>18</sup> Attached as Appendix 2 are photos from the AR of the commissioners wearing the referenced shirts.  
(See AR: 4488-4490.)

26 <sup>19</sup> Mary Ann Philip, who attended the February 28, 2019 Committee meeting and three other public  
27 Committee meetings, wrote an email to the Board and Superintendent Matthews on the morning of June  
28 25, objecting to removing the murals. She urged the Board to use the murals as a teaching opportunity.  
She also noted that if the murals are covered, a less costly alternative should be used. “However, when the  
cost analysis is done, knowing that every \$100,000 spent could be another teacher’s salary, it makes the  
choice to spend money on an expensive covering hard to consider.” (AR: 4483-4485.)

1 sought to amend the motion to state: “The Board authorizes staff to develop a project for the purposes of  
2 CEQA review that removes from public view the Arnautoff mural at George Washington High School by  
3 painting over the mural or -- or, if in the judgment of staff, painting over the mural will result in undue  
4 delay, staff shall develop a project that removes the mural from public view using solid panels or  
5 equivalent material.” (AR: 174:10-19.)

6 The Board President opened the floor for discussion on the amended motion. (AR: 174:24-25.)  
7 Kamalanathan shared two goals: “One is to permanently remove the murals from public view and two, to  
8 do so in the fastest and most cost-effective way possible.” (AR: 175:15-18.) The Board President  
9 commented that he would “support the Staff’s recommendation to cover the mural.” (AR: 176:18-19.)  
10 Kamalanathan described the EIR process as well as appeal processes.<sup>20</sup> (AR: 176:21-179:7.) The Board  
11 President read into the record a letter prepared by Commissioner Rachel Norton who was unable to attend  
12 the meeting in person. (AR: 183:13-186:3.) Commissioner Rachel Norton’s letter expressed support for  
13 covering the murals as relocating or painting over the murals would permanently destroy the murals.  
14 (AR: 180:8-9, 181:4-7.) Commissioner Faauga Moliga advocated for painting over the mural and  
15 supported going to court if necessary. (AR: 182:15-24.) “And so, where I stand tonight is, I would like  
16 for these murals to be painted down.” (AR: 182:23-24.)

17 Commissioner Alison Collins discussed litigation and how people who were at the meeting were  
18 also involved in raising money to sue to “keep them up” and that it was “disheartening.” (AR: 183:1-13.)  
19 She discussed the oppression of Native Americans. (AR: 183:19-186:3.) Commissioner Alison Collins  
20 twice stated her voting position. “So, I will be voting to cover them [the murals] up as soon as possible  
21 and I don’t want children to ever have to see these things.” (AR: 186: 23-25.) “And so, I will be voting  
22 to move quickly to remove the mural from public view and also remove it permanently. (AR 187:16-18.)

23 Commissioner Gabriela Lopez, who was wearing a “Take It Down” tee shirt, also voted to remove  
24 the murals.

25 So I will be voting to take it [the murals] down and I appreciate Commissioner Sanchez’s  
26 fearlessness in bringing this to the Board. The fact that there’s a majority to keep [the

27 \_\_\_\_\_  
28 <sup>20</sup> The transcript in the AR fails to identify the “woman” who asked about the EIR process, but it appears  
to be a Board Commissioner. (AR: 176: 21-23; 179: 8-17.)

1 murals] is no argument. We would still have slavery and women would still not have the  
2 right to vote if we went with the majority.

3 (AR: 188:15-21.)

4 The Board President asked Danielle Marie Houck, General Counsel for SFUSD, to address the  
5 implications of painting over the murals. (AR: 188:23-25.) She discussed how painting over the murals  
6 would be more time-consuming than the other options, especially when “part of the direction from the  
7 Board and from the Superintendent was to look for a more expeditious resolution.” (AR: 189:7-18.)

8 The Board President, Danielle Marie Houck, and Kamalanathan also discussed how painting over  
9 the mural would take longer and cost more as it would require a “full-blown EIR” versus voting on the  
10 staff’s recommendation to cover the murals. (AR: 189:19-191:21.)

11 President Stevon Cook: So -- excuse me, so you’re saying that we can vote on a  
12 recommendation now and it will cover it up sooner, or we can do an analysis to paint it  
13 over and that analysis will take a year?

14 Ms. Houck: That’s exactly right.

15 (AR: 189:19-24.) Many of the statements by the Board members supporting painting and removing the  
16 murals were met with applause. (AR: 187:19; 188:22; 196:16.) Statements of Board members at the  
17 meetings also unequivocally supported removing the murals.

18 Funding to remove the murals was also discussed at the meeting. The Board President inquired  
19 about where the Board would receive funding for removing the murals. Kamalanathan outlined three  
20 funding sources: (1) the deferred maintenance program, (2) the general obligation bond program, and (3)  
21 the general fund. (AR: 191:22-192:19.) The Board President stated, “what I believe is going to work best  
22 for our young people, that’s . . . what’s sort of pulling me in this other direction of not trying to do  
23 something that’s going to produce an unnecessary price tag when the objective of covering the mural will  
24 be accomplished with the recommendation that we have in front of Staff.” (AR: 193:10-17.) The Board  
25 Vice President asked for a cost comparison of placing panels over the mural versus painting over the  
26 mural.

27 Commissioner Mark Sanchez: Can you give us the range -- the cost range for both the  
28 panelling over and painting over the mural?

Chief Dawn Kamalanathan: The solid panels had a range of \$645,000 to \$825,000, so it  
had an endpoint on it [*sic*] whereas for the environmental impact report and the painting,

1 there was, kind of, an entry price threshold of \$600,000, but also that it could be far in  
2 excess of that.

3 Commissioner Sanchez: All right, so that's what we are dealing with. Essentially, the face  
4 value right now, they're about the same. We know that painting over could entail further  
5 costs, but they're both expensive and we've been hearing that it is not an undue term to use  
6 right now, that this is reparations. That basically, if we can do our small part after  
7 offending, not just one culture, but many cultures for 70 years with this mural or set of  
8 murals, it is about time that we stood up and paid for it and this is one way we can do it.  
9 So the cost factor, to me, although it is always an issue, is not insurmountable and we  
10 should do it because it is the right thing to do.

11 (AR: 196:17-197:16.)

12 Superintendent Matthews stated that his first response to the murals was to "paint them over" (AR:  
13 198:13-15) but because the amended resolution before the Board looked not at cost but to undue delay  
14 (AR: 197:21-23), he stated that "what's critically important is removing [the murals] from [the] site."  
15 (AR: 198:22-23.) The Board Vice President stated that if painting over the murals was going to take three  
16 years "then that would be an unduly [*sic*] amount of time" and he commented that the amended motion  
17 provided for one result (to cover the mural). (AR: 200:5-12.) Commissioner Jenny Lam noted that she  
18 wanted to have the murals removed "as quickly as possible." (AR: 200:22-23.)

19 At the end of the discussion, all six Board members present at the meeting voted in favor of the  
20 amended motion "to remove the murals." (AR: 203:11, 235.) The amended motion read as follows:

21 The Board authorizes staff to develop a project for the purposes of CEQA review that  
22 removes from public view the Arnautoff mural at George Washington High School by  
23 painting over the mural [] or, if in the judgment of staff, painting over the mural will result  
24 in undue delay, staff shall develop a project that removes the mural from public view using  
25 solid panels of equivalent material.

26 (AR: 174:10-19.)

27 The Board's vote garnered national attention as members of the public and media directly  
28 contacted the Board, published articles and news stories, or publicly shared their responses.<sup>21</sup> In response

29 <sup>21</sup> AR: 3248-3249, 3252-3253, 3261-3264, 3266-3268, 3273, 3277-3278, 3281-3365, 3368-3369, 3372-  
30 3395, 3397-3519, 3522-3530, 3532, 3539-3543, 3551, 3554-3556, 3559-3561, 3564-3566, 3569-3571,  
31 3610-3611, 3649-3716, 3719-3728, 3732-3735, 3738-3744, 3746-3750, 3754-3755, 3764-3771, 3775,  
32 3777-3786, 3789-3791, 3794-3831, 3833-3848, 3851-3853, 3855-3888, 3890-3898, 3906, 3909-3918,  
33 3956-3957, 3962-3964, 3966-3979, 3981-3989, 4001-4011, 4019-4033, 4036-4084, 4088-4096, 4103-  
34 4110, 4121-4134, 4136-4142, 4494, 4496-4565, 4568-4751, 4754-4759, 4762-4778, 4783-4832, 4842,  
35 4848-4849.

1 to a June 30, 2019 article in the New York Times Sunday Review by Bari Weiss entitled “San Francisco  
2 Spends \$600,000 to Erase History,” the Board President and Vice President wrote a response to the New  
3 York Times editor in their official capacity. (AR: 2529, 3401, 3818.) In that response, they discussed  
4 “the board’s decision.” (AR: 2529, 3401.) The Board President and Vice President acknowledged that  
5 “[t]he preponderance of email we’ve received at this time, indeed, speaks to the desire to keep the mural  
6 as is.” (*Ibid.*) However, the Board Vice President and Vice President then defended the Board’s decision  
7 by stating that the Board “decided that amplification of voices who have all too often been silenced was  
8 the course to go, with confidence that the decision will land on the right side of history.” (*Ibid.*)  
9 Additionally, on July 10, 2019, Artist Dewey Crumpler was interviewed and spoke against the Board’s  
10 vote to “destroy” the mural. (AR: 4582-4588.) “If you destroy his work [the Arnautoff mural] you are  
11 destroying mine as well.” (AR: 4588.)<sup>22</sup>

12 On August 9, 2019, the SFUSD issued a press release titled, “S.F. School Board President Stevon  
13 Cook Proposes Solution to Dispute Over Controversial Mural.” (AR: 4056-4059, 4760-4761.) The press  
14 release discussed how the Board President would propose a solution at the August 13, 2019 Board  
15 meeting to cover the murals rather than destroying or removing them. (AR: 4056-4059, 4760-4761.)  
16 “Now, the Board will consider a resolution at its next meeting . . . that authorizes staff to develop a  
17 project, assessing a range of alternatives, for the purposes of CEQA review that removes from public view  
18 the Arnautoff Mural at George Washington High School using solid panels or equivalent material. The  
19 mural will be digitized as well, so that art and art historians can access it, but it will no longer be on  
20 public view at the school.” (AR: 4056-4059, 4761.) Members of the community, both in support of and  
21 against the murals, expressed dismay at the decision to propose alternative solutions to removing the  
22 murals. (AR: 4066, 4071-4074, 4076, 4083-4084, 4108-4110, 4121-4134, 4137-4142, 4771-4778.) In  
23 response to one email, the Board President stated, “[m]y position is to cover the mural, not destroy it with  
24  
25

26 <sup>22</sup> In an earlier June 10, 2019 letter to the Board, Dewey Crumpler outlined the history of the murals in the  
27 1960’s and his involvement in painting his murals. “My murals took six years to happen, from the  
28 protests to the dedication in 1974. . . . I accepted the commission with the promise[] that none of the  
murals—neither Arnautoff’s [n]or mine—would ever be censored or destroyed.” (AR: 4449-4450.) The  
Court was unable to find a reply to Dewey Crumpler’s June 10 letter.

1 paint.” (AR: 4092.) Other letters requested that the Board adopt a process that complies with CEQA.  
2 (AR: 4096, 4772-4773.)

#### 3 4. August 13, 2019 Meeting

4 On August 13, 2019, SFUSD held a regular meeting. (AR: 238, 351, 4779-4780.) Agenda item  
5 H2 was “Recommendation to Remove From Public View the Arnautoff Mural at George Washington  
6 High School.” (AR: 240:2-6, 15-18; 4779-4780.) Again, public comment was divided between those  
7 who favor removal of the murals and those who do not. (AR: 240:19-23.) Before opening the floor,  
8 Kamalanathan read the recommendation into the record. (AR: 241:23-242:12, 351 [“Now, therefore be it  
9 resolved, the Board authorizes staff to develop a project, assessing a range of alternatives, for the  
10 purposes of CEQA review that removed [*sic*] from public view the Arnautoff Mural at George  
11 Washington High School using solid panels or reasonably similar equivalent materials, means or methods.  
12 Be it further resolved that this action shall supersede the Board’s action on June 25, 2019 regarding the  
13 Arnautoff Mural at Washington High School.”].)

14 Several members of the public spoke, including Reverend Doctor Amos Brown, President of the  
15 San Francisco Branch of the National Association for the Advancement of Colored People and Pastor of  
16 the historic Third Baptist Church of San Francisco. (AR: 244:1-246:1.) Reverend Doctor Amos Brown  
17 asked that the Board leave the murals alone. (AR: 244:1-245:1.)

18 After public comment ended, Commissioner Alison Collins proposed amending the motion to  
19 include “the additional options of permanently remov[ing] the murals from student view, or remov[ing]  
20 the murals and potentially relocate[] them to an off-site location. And that allows us to engage in the  
21 CEQA process . . . but it allows us to research multiple options *and explore ways that we can actually get*  
22 *them out of Washington High School.*” (AR: 291:22-292:6, 292:22-293:6 [emphasis added].)

23 Commissioner Alison Collins’ proposal left intact the option to paint over the mural thereby destroying it.  
24 (AR: 293:17-294:1.) Kamalanathan explained that the Board would need to agree on alternatives to  
25 accomplish the Board’s goal for CEQA review, which also requires a “no-project alternative.” (AR:  
26 295:7-21.) The Board then voted against Commissioner Alison Collins’ proposed amendment. (AR:  
27 299:8-300:12, 351.)  
28

1 Subsequently, each Board member then proceeded to comment on the original resolution. (AR:  
2 300:13-18.) Commissioner Jenny Lam expressed that she supports the CEQA process on covering the  
3 mural. (AR: 304:2-5.) Commissioner Gabriela Lopez advocated for removing the mural. (AR: 304:8-  
4 305:7.) The Board Vice President stated that he did not support the resolution as it did not include an  
5 option of painting over the mural.<sup>23</sup> (AR: 305:11-15.) Commissioner Rachel Norton remarked that “the  
6 murals should be covered . . . this is the appropriate course of action. I would be supportive or willing to  
7 change my mind at some point in the future if it’s f[ou]nd to be possible to move the murals to another  
8 location . . . [b]ut for now, I do think that covering permanently the murals is the appropriate course of  
9 action.” (AR: 311:16-21, 23-25.) Commissioner Faauga Moliga voiced his support for SFUSD’s  
10 recommendation. (AR: 315:22-24.) Commissioner Alison Collins remarked that “[t]he CEQA process is  
11 a process. But what I’m hearing is that some people feel uncomfortable affirming the need for these  
12 murals to be permanently removed.” (AR: 316:20-23.)

13 Commissioner Alison Collins declined to support the resolution. (AR: 318:20-24.) The Board  
14 then voted four to three to approve the resolution. (AR: 321:14-322:12, 351, 4779-4781.) The four  
15 commissioners who voted to adopt the new resolution that included covering the murals were: the Board  
16 President, Commissioners Jenny Lam, Faauga Moliga, and Rachel Norton. The three Board members  
17 that did not approve the new resolution, meaning that they maintained the prior vote to paint over the  
18 murals as an option thereby permanently destroying them were: the Board Vice President and  
19 Commissioners Alison Collins and Gabriela Lopez.

20 As with the June 25, 2019 resolution, the Board’s August 13, 2019 resolution garnered the  
21 attention of the public and press. (AR: 4783-4832.) As before, there were publications in support and  
22 critical of the decision. Two months later, this Petition followed.

### 23 LEGAL STANDARD

24 “In any action or proceeding, other than an action or proceeding under Section 21168, to attack,  
25 review, set aside, void or annul a determination, finding, or decision of a public agency on the ground of  
26 noncompliance with this division, the inquiry shall extend only to whether there was a prejudicial abuse  
27

28 <sup>23</sup> As previously noted from Yap’s presentation at the June 18, 2019 meeting, painting over the fresco  
mural would permanently destroy it. (See AR: 15:2-3, 16:19-21, 4468-4470.)



1 of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by  
2 law or if the determination or decision is not supported by substantial evidence.” (Pub. Resources Code,  
3 § 21168.5.) “[T]he substantiality of the evidence supporting such administrative decisions is a question  
4 of law’ and ‘a court generally may consider only the administrative record in determining whether a  
5 quasi-legislative decision was supported by substantial evidence within the meaning of Public Resources  
6 Code section 21168.5.” (*Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th  
7 1170, 1182, quoting *Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th at p. 573.)  
8 “While judicial review of CEQA decisions extends only to whether there was a prejudicial abuse of  
9 discretion . . . [j]udicial review of these two types of error[s] differs significantly: while we determine de  
10 novo whether the agency has employed the correct procedures, ‘scrupulously enforc[ing] all legislatively  
11 mandated CEQA requirements’ [citation] we accord greater deference to the agency’s substantive factual  
12 conclusions.” (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116 (“*Save Tara*”), 131, quoting  
13 *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412,  
14 435 [internal citations omitted].) “As a result of this standard, ‘[t]he court does not pass upon the  
15 correctness of the EIR’s environmental conclusions, but only upon its sufficiency as an informative  
16 document.’” (*Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392,  
17 quoting *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 189.)

## 18 DISCUSSION AND ANALYSIS

### 19 I. CEQA and EIRs

20 As noted above, “[t]he purpose of CEQA is not to generate paper, but to compel government at all  
21 levels to make decisions with environmental consequences in mind. CEQA does not, indeed cannot,  
22 guarantee that these decisions will always be those which favor environmental considerations.” (*Bozung*  
23 *v. Local Agency Formation Company, supra*, 13 Cal.3d at p. 283.) “The foremost principle under CEQA  
24 is that the Legislature intended the act ‘to be interpreted in such a manner as to afford the fullest possible  
25 protection to the environment within the reasonable scope of the statutory language.’” (*Laurel Heights*  
26 *Improvement Assn. v. Regents of the University of California, supra*, 47 Cal.3d at p. 389, citing *Friends of*  
27 *Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.)

1           “An EIR shall describe a range of reasonable alternatives to the project, or to the location of the  
2 project, which would feasibly attain most of the basic objectives of the project but would avoid or  
3 substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the  
4 alternatives.” (Cal. Code Regs., tit. 14, § 15126.6(a).) “A fundamental purpose of an EIR is to provide  
5 decision makers with information they can use in deciding whether to approve a proposed project, not to  
6 inform them of the environmental effects of projects that they have already approved. If post-approval  
7 environmental review were allowed, EIR’s would likely become nothing more than *post hoc*  
8 rationalizations to support action already taken.” (*Laurel Heights Improvement Assn. v. Regents of Univ.*  
9 *of Cal.*, *supra*, 47 Cal. 3d at p. 394, as modified on denial of reh’g (Jan. 26, 1989) [emphasis in original].)  
10 “[S]ince the preparation of an EIR is the key to environmental protection under CEQA, accomplishment  
11 of the high objectives of that act requires the preparation of an EIR whenever it can be fairly argued on  
12 the basis of substantial evidence that the project may have significant environmental impact.” (*No Oil,*  
13 *Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, supplemented, 13 Cal.3d 486.)

14           The California Supreme Court, “like the CEQA Guidelines, has thus recognized two  
15 considerations of legislative policy important to the timing of mandated EIR preparation: (1) that CEQA  
16 not be interpreted to require an EIR before the project is well enough defined to allow for meaningful  
17 environmental evaluation; and (2) that CEQA not be interpreted as allowing an EIR to be delayed beyond  
18 the time when it can, as a practical matter, serve its intended function of informing and guiding decision  
19 makers.” (*Save Tara, supra*, 45 Cal.4th at p. 130, as modified (Dec. 10, 2008).)

## 20 **II. Unlawful Pre-Commitment**

### 21 **A. Background Law**

22           Unlawful pre-commitment requires that Petitioner demonstrate “approval” of “the decision by a  
23 public agency which commits the agency to a definite course of action regarding a project intended to be  
24 carried out by any person.” (Cal. Code Regs., tit. 14, § 15352(a).) To determine whether an agency has  
25 approved a commitment to a project before conducting the necessary CEQA review, “courts should look  
26 not only to the [agency’s actions] but to the surrounding circumstances to determine whether, as a  
27 practical matter, the agency has committed itself to the project as a whole or to any particular features, so  
28

1 as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to  
2 be considered, including the alternative of not going forward with the project.” (*Save Tara, supra*, 45  
3 Cal.4th at p. 139, citing Cal. Code Regs., tit. 14, § 15126.6(e).) “[A]n agency may abuse its discretion  
4 under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual  
5 conclusions unsupported by substantial evidence.” (*Save Tara, supra*, 45 Cal.4th at p. 131.)

6 **B. *Save Tara v. City of West Hollywood***

7 In *Save Tara*, the California Supreme Court considered “whether and under what circumstances an  
8 agency’s agreement allowing private development, conditioned on future compliance with CEQA,  
9 constitutes approval of the project . . .” (*Id.* at p. 121.) The Supreme Court concluded that “under some  
10 circumstances” an agreement with a CEQA compliance condition amounts to project approval and must  
11 be preceded by preparation of an EIR. (*Ibid.*)

12 The two-prong approach adopted by the Supreme Court in *Save Tara* requires the Court first  
13 consider “whether, in taking the challenged action, the agency indicated that it would perform  
14 environmental review before it makes any further commitment to the project, and if so, whether the  
15 agency has nevertheless effectively circumscribed or limited its discretion with respect to that  
16 environmental review.” (*Save Tara*, 45 Cal.4th at p. 139.) The second prong of the analysis requires the  
17 Court to “consider the extent to which the record shows that the agency or its staff have committed  
18 significant resources to shaping the project. *If, as a practical matter, the agency has foreclosed any*  
19 *meaningful options to going forward with the project, then for purposes of CEQA the agency has*  
20 *‘approved’ the project.”* (*Id.* at p. 139 [emphasis added].) The Court in *Save Tara* ultimately concluded  
21 that “the City of West Hollywood’s conditional agreement to sell land for private development, coupled  
22 with financial support, public statements, and other actions by its officials committing the city to the  
23 development, was, for CEQA purposes, an approval of the project that was required to have been  
24 preceded by preparation of an EIR.” (*Id.* at pp. 121-122.)

25 //

26 //

27 //

1           **C. Application of *Save Tara* factors to the record**

2           **1. Respondents Did Not Indicate That They Would Perform an EIR Before Making Any**  
3           **Further Commitment to the Project, Which Effectively Circumscribed or Limited**  
4           **Their Discretion with Respect to an EIR.**

5           The wording of the August 13, 2019 resolution could not be clearer: “NOW, THEREFORE BE IT  
6 RESOLVED, The Board authorizes staff to develop a project, assessing a range of alternatives for the  
7 purposes of CEQA review *that removed from public view* the Arnautoff Mural at George Washington  
8 High School using solid panels or reasonably similar equivalent material, means or methods; and BE IT  
9 FURTHER RESOLVED, That this action shall supersede the Board’s action on June 25, 2019 regarding  
10 the Arnautoff Mural at George Washington High School.” (AR: 351 [emphasis added].)

11           Respondents argue that the August 13, 2019 resolution merely demonstrates that they “direct[ed]  
12 staff ‘to develop a project for purposes of CEQA review to remove the Mural from public view,’” and that  
13 they “retain[] complete discretion to either approve or deny removal of the mural from public view based  
14 on what is learned during the CEQA process.” (Opposition Brief, 17: 24-25, 18: 3-4; Hearing Transcript  
15 “TR” at 84:13-85:1; 130:5-24; see also AR: 351.) If the Court only looked at the wording of the August  
16 13, 2019 resolution and no further, Respondents argument may be persuasive. But the analysis does not  
17 begin and end with this one resolution. If that were the case, every arbitrary pre-commitment challenge  
18 would simply depend on whether the agency added the phrase “for purposes of CEQA review” to save the  
19 day. Instead, the Court must consider the totality of the circumstances.

20           *Save Tara* expressly requires this Court to look at the totality of the circumstances surrounding the  
21 August 13, 2019 meeting and not that meeting standing alone. Indeed, it is the gravamen of Petitioner’s  
22 claim that Respondents committed to removing the mural well before the August 13, 2019 meeting and  
23 resolution and well before publicly committing to comply with CEQA. When considering the Board and  
24 SFUSD’s meritless position, the Court wonders if they are looking at the record they filed in this  
25 proceeding. Quite to the contrary of Respondents’ claim, the Court finds that the AR overwhelmingly  
26 supports Petitioner’s reading of the evidence.

27 //

28 //

1                                   **a. The Committee Formed by SFUSD was Pre-Determined to Remove the**  
2                                   **Murals.**

3                   The history of the murals and the impact of their content predates CEQA. In 1968, school  
4 administrators and Board members worked with student leaders of the GWHS Black Students Union, the  
5 Director of Art, and the Assistant Principal of GWHS, in response to a controversy over the murals. All  
6 agreed that a supplemental mural would be planned and artist, Dewey Crumpler, was retained to paint  
7 murals that depict the cultural experiences of Blacks, Asians, Chicanos, and Native Americans in a  
8 positive light. In 2016, 2017, and 2018, the PAC again raised the issue of the murals. (AR: 493, 511,  
9 660, 4340.) In response to the current controversy that began in 2016, the Board decided to form the  
10 Committee to meet and make recommendations regarding the future of the murals. (AR: 4340.)

11                   Petitioner contends that the Committee that was formed was deliberately small and slanted to  
12 secure one outcome: removal of the murals. The record contains substantial evidence to support  
13 Petitioner's challenge. First, the PowerPoint presentation by SFUSD at the February 28, 2019 public  
14 Committee meeting expressly stated that "[t]he group is deliberately small, and is composed deliberately  
15 to represent key perspectives and avoid further marginalization." (AR: 4280.) One of the objectives for  
16 the February 28, 2019 meeting was to "learn and reflect . . . on contemporary issues related to Native  
17 American student experiences . . . the experiences of many students of color, including historical trauma,  
18 erasure and cultural appropriation, institutional racism, micro aggression and lateral oppression." (AR:  
19 4286.) The PowerPoint also stated that one of the "Outcomes" for the Committee was to "[c]onsider a  
20 variety of perspectives related to the mural images . . . including, critically, the perspectives of students  
21 and community members whose cultural history is represented in the mural." (AR: 4285.) These public  
22 statements, despite their intention to avoid further marginalization, are admissions that Respondents  
23 selected members for the Committee who overwhelmingly shared the objectives of the PAC: to remove  
24 the murals.<sup>24</sup>

25                   Second, Yap's June 17, 2019 letter to Superintendent Matthews and the Board about the  
26 Committee stands almost entirely unchallenged. Yap details events he witnessed, which caused him to

27 <sup>24</sup> The PAC's original concern focused only on the one section of the murals containing a dead Native  
28 American. The record ebbs and flows between comments about this one section and the murals as a  
whole.

1 reach the conclusion that the intention of the Committee and the process to make recommendations to the  
2 Board, “was incomplete, flawed, [had] potential procedural irregularities, and [was] slanted from the  
3 beginning for the recommendations approved by the near unanimous vote.” (AR: 4463.) He wrote about  
4 several events, including “[b]oasting from Panelists that the ‘white washing’ vote is an already done [sic]  
5 deal and will be done before the Fall 2019 Semester.” (*Ibid.*)

6 Third, the public proceedings with the Committee are not well documented. The Committee held  
7 four public meetings prior to making a recommendation to Superintendent Matthews and the Board. The  
8 record of those meetings regarding what was said, by whom, and the resolution, is limited at best. The  
9 PowerPoint presentations in the record, however, overwhelmingly demonstrate a slant towards removing  
10 the murals. One slide even shows another painting that contained offensive content covered and sectioned  
11 off. (AR: 4326.) Others discuss issues related to the Native American student experiences to include  
12 “historical trauma, erasure, cultural appropriation, institutional racism, micro aggression, and lateral  
13 oppression” and defines those terms. (AR: 4306-4316.) When taken as a whole, the PowerPoint  
14 presentations clearly demonstrate support for the PAC’s original goal of reducing the trauma for Native  
15 American students by removing the mural that depicted a dead Native American. In the end, ten of the  
16 thirteen Committee members voted to paint over not just that section of the murals but all thirteen panels  
17 of the murals. Yap was the sole Committee member who voted to keep them intact, and two Committee  
18 members were “undecided.”

19 Fourth, the record contains comments made at the February 28 meeting by two members of the  
20 public who expressed concerns about the murals. One individual who attended *all four* Committee  
21 meetings stated that the murals were in jeopardy. (AR: 4269.) Another attendee, who was also a GWHS  
22 librarian and teacher, expressed concern “why a committee of 10 people is what will make the  
23 recommendation when there are 2000 students and so many alumni?” (AR: 4271.) These comments  
24 were made before the Committee vote and they underscore *how members of the public* viewed the  
25 proceedings to be consistent with what Yap explained in his June 17, 2019 letter.

26 Lastly, Dewey Crumpler, the artist who painted the *Multi-Ethnic Heritage* murals in the 1960’s,  
27 was not invited to be on the Committee. In a June 10, 2019 letter to the Board, Dewey Crumpler stated  
28

1 that when he accepted the commission to paint the *Multi-Ethnic Heritage* murals, he did so on the express  
2 agreement that neither one of the murals – Arnautoff’s or his – would ever be censored or destroyed. He  
3 also explained the six-year process it took to create his murals.

4 Taken together, there is substantial evidence to support Petitioner’s claim that the Committee was  
5 selected in a manner that resulted in one outcome: removal of the murals.

6 **b. Avoiding Landmark Designation to Bypass CEQA.**

7 Around the same time that the Committee was holding public meetings regarding the murals,  
8 GWHS, and two other schools, were being considered for historical landmark designation. While  
9 unremarkable standing alone, the record establishes that Respondents’ lack of enthusiasm to agree to the  
10 landmark designation was driven by the desire to do what they wished with the murals.

11 The record demonstrates that SFUSD and the Board believed, albeit incorrectly, that if GWHS  
12 was not a historical landmark, removal of the murals could be accomplished without complying with  
13 CEQA. Members of the PAC noted in their updates that “there is a push to make the murals a historical  
14 site, meaning the murals cannot be changed or removed.” (AR: 681.) In February of 2018, the  
15 Washington School Site Council also expressed concerns about the impact of GWHS being designated a  
16 historic landmark and that such a designation would be a potential obstacle to removing the murals. (AR:  
17 501.) Dr. Stephens, Chief Academic Officer of SFUSD, followed up with an inquiry on historical  
18 designation status and the “implications of the school’s landmark status on any potential options  
19 involving the mural.” (AR: 503.)<sup>25</sup> Dr. Stephens even went as far as disclosing to the Committee that  
20 SFUSD’s legal counsel said that because the building was not a historical landmark, whatever  
21 recommendation the Committee made about the murals would not need to comply with CEQA.

22 Moreover, on March 6, 2018, the Board held a regular meeting where the San Francisco Planning  
23 Department presented on the landmark designation of three schools, including GWHS. While there are  
24 no minutes of that meeting in the AR, what is in the record depicts a Board that did not want landmark

25 \_\_\_\_\_  
26 <sup>25</sup> The SFUSD had numerous discussions regarding the historic landmark designation. On February 2,  
27 2018, the SFUSD specifically discussed the Arnautoff murals saying “SFUSD’s (American) Indian  
28 Education Parent Advisory Council has raised concerns that several of the the [sic] murals (which as you  
know are featured in the landmark proposals) at George Washington High School are racially insensitive.  
We are following up on these concerns as well, which could very well influence the Board of Education’s  
thinking and position about the landmark proposal, at least for Washington High School.” (AR: 511.)

1 designation for GWHS solely because of the murals. The President of San Francisco Heritage, the  
2 sponsor of the landmark designation, was met with hostility and a Board who mischaracterized his  
3 comments. In the end, the Board Vice President's email captured the intent of the Board in objecting to  
4 landmark designation: the Board rejected it because of the murals.

5 **c. Momentum Following the Committee Recommendation Continued as**  
6 **Evidenced by Public Comments and Displays by Board Members at**  
7 **Meetings and Board Member Voting.**

8 While it is true that the Committee was told that the final decision, if any, about the murals, was  
9 left to the discretion of the Board, the momentum behind the recommendation to paint over the murals is  
10 evident throughout the record. Aside from being a "deliberately small" and result-oriented Committee,  
11 the PowerPoint presentations accompanying the Committee meetings clearly demonstrate the politically  
12 charged momentum surrounding the topic of the murals. In all of the slides covering four meetings, two,  
13 and only two, discussed keeping the murals and alternatives to destroying them. The record demonstrates  
14 that the momentum that surrounded the Committee and the PAC's clear objective to remove the murals  
15 started well before and continued well after the February 28, 2019 Committee meeting adopting the  
16 recommendation to paint over the murals.

17 At the June 11, 2019 Board meeting, options and costs for removing or covering the murals were  
18 discussed in detail. The three options to remove the murals were with a textile covering, solid panels, or  
19 paint. No discussion of an option to leave the murals in place is contained in the record. (AR: 4454-  
20 4459.) The following week, on June 18, 2019, the Board held a special meeting. (AR: 6.) Before  
21 opening the floor for public comment, Kamalanathan explained the work of the Committee. She  
22 informed the public that the Committee held four public meetings of their own before voting to remove  
23 the murals from public view. (AR: 8:9-12, 18-24.) The three options to remove the murals were  
24 presented along with the respective cost estimates and timing for each proposed removal action. (AR:  
25 9:2-10, 9:17-25, 10:19-11:23.) Although there was a mention that a project would need to be developed  
26 for the purpose of CEQA review, the focus on the public comment period focused exclusively on removal  
27 of the murals. (AR: 12:4-7.)  
28



1 The focus on removal was also evident at the June 25, 2019 meeting. The published meeting  
2 agenda item was to discuss the different ways “to remove the offensive content from view.” (AR: 4487  
3 [emphasis added].) After public comment, the Board President called for a motion on the  
4 recommendation to remove the murals from public view. (AR: 173:10-23.) The motion, which was  
5 unanimously approved, had the stated purpose to “remove[ ] [the murals] from public view.” (AR:  
6 174:10-19, 203:11, 235.)

7 Respondents assert that the statements made by Board members in support of removing the murals  
8 do not constitute a decision. Petitioner contends, to the contrary, that these public statements are indicia  
9 of bureaucratic momentum in favor of removal which commit the Board to the removal of the murals.  
10 (See *Save Tara*, 45 Cal.4th at p. 132.) Caselaw recognizes that not every public statement of support for a  
11 project by a member of an agency constitutes a decision. (*Save Tara*, 45 Cal.4th at p. 142 [the  
12 combination of the “City’s public announcements that it was determined to proceed with the development  
13 . . . , its actions in accordance with that determination by preparing to relocate tenants from the property,  
14 its substantial financial contribution to the project, and its willingness to bind itself” to the draft  
15 agreement constitute commitment to a definite course of action.]; *John R. Lawson Rock & Oil, Inc. v.*  
16 *State Air Resources Bd.* (2018) 20 Cal.App.5th 77, 100 [“In response to this information [about required  
17 compliance and economic challenges], the Board directed its staff to propose modifications to the  
18 regulations. While such conduct certainly built momentum behind a change to the regulations, such  
19 momentum was well in line with *Save Tara*’s reminder that agencies may express an interest in or even  
20 inclination toward proposed projects.”]; *Bridges v. Mt. San Jacinto Community College Dist.* (2017) 14  
21 Cal.App.5th 104, 122 [“The board of trustees’ discussion about the possibility of building a campus on  
22 the Wildomar property at the May 8 meeting is simply that, discussion. None of the statements at the  
23 meeting were binding on the college or commit it to any course of action regarding the Wildomar  
24 property. The same goes for the statement in the newsletter that the college hopes to build STEM  
25 program facilities in Wildomar.”]; *Cedar Fair, L.P. v. City of Santa Clara* (2011) 194 Cal.App.4th 1150,  
26 1173, quoting *City of Vernon v. Board of Harbor Comrs.* (1998) 63 Cal.App.4th 677, 688, disapproved on  
27 other grounds in *Save Tara*, 45 Cal.4th at p. 131, fn. 10 [“a local agency may be a vocal and vigorous  
28

1 advocate of a proposed project as well as an approving agency. But ‘an agency does not commit itself to  
2 a project “simply by being a proponent or advocate of the project.”’].) But what happened here goes  
3 beyond mere support.

4 The AR includes numerous public statements Board members made, in their representative  
5 capacity, that demonstrate a firm and unrelenting commitment to removal of the murals. Indeed, in the  
6 three to four vote on the August 13, 2019 resolution, the Board Vice President and two of Commissioners  
7 (Collins and Lopez) *maintained the option to paint over the murals*. Nothing could be clearer from that  
8 vote: three elected officials on the Board committed to the irreversible destruction of the murals, all  
9 thirteen panels.

10 Statements and rhetoric used by Board members at meetings also unequivocally supported  
11 removing the murals. Many of those statements were met with applause from members of the public who  
12 were present at the meetings. (AR: 187:19, 188:22, 196:16.) For example, at the June 18, 2019 meeting,  
13 the Board Vice President stated, “I support removing the mural.” (AR: 83:22-23.) At the June 25  
14 meeting, Superintendent Matthews noted that “what’s critically important is removing them from [the]  
15 site.” (AR: 198:22-23.) The Board Vice President commented that the amended motion provided for one  
16 result—removal. (AR: 200:11-12.) Commissioner Jenny Lam remarked that she wants to have the  
17 murals removed “as quickly as possible.” (AR: 200:22-23.) Kamalanathan shared two goals for the  
18 Board: “One is to permanently remove the murals from public view and two, to do so in the fastest and  
19 most cost-effective way possible.” (AR: 175:15-18.) The Board President commented that he would  
20 “support the Staff’s recommendation to cover the mural.” (AR: 176:18-19.) Danielle Marie Houck,  
21 General Counsel for SFUSD, also discussed how painting over the murals would be more time-  
22 consuming than the other options, especially when “part of the direction from the Board and from the  
23 Superintendent was to look for a more expeditious resolution.” (AR: 189:7-18.)

24 In addition to the unequivocal statements favoring removal, at the June 25, 2019 meeting, two  
25 Board members wore tee shirts advocating for their positions while sitting in their official capacity.  
26 Commissioner Gabriela Lopez wore a tee shirt that said, “Take It Down” and Commissioner Faauga  
27 Moliga wore a tee shirt that said, “Resistance.” (AR: 4488-4490.)  
28

1 Board statements were not limited to the public meetings. Following the June 25, 2019 vote to  
2 paint over the murals, the Board President and Vice President, *in their official capacity*, wrote a response  
3 to a June 30, 2019 article published in the New York Times Sunday Review that criticized the Board. In  
4 their response, the Board President and Vice President defended the decision to paint over the murals,  
5 while acknowledging that most members of the public favored keeping them. “[The Board] *decided* that  
6 amplification of voices who have all too often been silenced was the course to go, with confidence that  
7 *the decision* will land on the right side of history.” (AR 2529, 3401 [emphasis added].)

8 Statements of Board members favoring removal continued at the August 13, 2019 meeting.  
9 Commissioner Gabriela Lopez advocated for removing the mural. (AR: 304:8-305:7.) Commissioner  
10 Rachel Norton remarked that “the murals should be covered . . . this is the appropriate course of action. I  
11 would be supportive or willing to change my mind at some point in the future if it’s f[ou]nd to be possible  
12 to move the murals to another location . . . [b]ut for now, I do think that covering permanently the murals  
13 is the appropriate course of action.” (AR: 311:16-21, 23-25.) Ultimately, the vote was to remove the  
14 murals, leaving only the question of how that decision would be accomplished.

15 In *Save Tara*, the bureaucratic momentum was the drafting and executing of an agreement  
16 conditioned on CEQA requirements having been satisfied. (*Save Tara*, 45 Cal.4th at p. 132.) Here, the  
17 content and context of these numerous statements, made while acting in a representative capacity,  
18 provides overwhelming and substantial evidence of a bureaucratic momentum that, as a practical matter,  
19 committed the Board to removal and would render the proposed EIR “a document of post hoc  
20 rationalization.” (*Id.* at p. 136.)

## 21 **2. Financial Commitment.**

22 Respondents assert that no financial commitments were made to remove the murals. Petitioner  
23 contends that obligating funds to proceed with an EIR defined as “removal of the mural from public  
24 view” is sufficient to satisfy the financial commitment factor set forth in *Save Tara*. (*Save Tara*, 45  
25 Cal.4th at p. 135.) Petitioner argues that even if the project was defined as “whether to remove the mural”  
26 instead of “removal of the mural from public view,” the Board already committed the \$500,000 projected  
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28

1 cost of an EIR to the defined project—removing the murals. (TR: 62:17-64:17.) Based on the record, the  
2 Court finds Petitioner’s argument supported by substantial evidence.

3 In *Save Tara*, the financial commitment in the public/private project was funding of \$1.5 million  
4 in land value through the sale of the property at a negligible cost. (*Save Tara*, 45 Cal.4th at p. 123.)  
5 Here, the financial commitment is more nuanced but no less present. During the June 25, 2019 and  
6 August 13, 2019 meetings, funding to remove the murals was discussed in detail. Indeed, the only  
7 options then before the Board were removal either by painting over the murals or covering them.

8 Three sources of funds were identified. Cost was not an issue for the Board. The Board Vice  
9 President said as much when he commented on the range of options calling payment for removal  
10 “repairs.” Other Board members continued to support removal, but the issue was not funding or cost,  
11 it was timing. Superintendent Matthews commented that he would spend whatever it took to remove or  
12 destroy the murals so students would not have to see them again. Similar comments were made by other  
13 Board members. In essence, the Board committed itself to spend whatever was necessary to remove the  
14 murals and had the funds to proceed.

15 The Court also finds substantial evidence to support Petitioner’s argument that had the project  
16 been defined as whether to remove the murals, the Board would not have funded an EIR. The AR shows  
17 that a result-oriented Board was determined to take down all thirteen panels of the murals and not just the  
18 ones that originally generated concern among students and parents. Similar to rejecting the request to  
19 designate GWHS as a historical landmark, the Board wanted to exercise total control over the removal of  
20 the murals. Any EIR that might suggest something short of total removal would not have been tolerated.

21 For all these reasons, the Court finds that the Board committed to fund removal of the murals.

22 **3. The Board’s Explanation About its Use of the Phrase “removal of the mural from**  
23 **public view” in the August 13, 2019 Resolution is Meritless.**

24 During the April 8, 2021 hearing, Respondents stated that they chose to use the phrase “removal  
25 of the mural from public view” in the August 13, 2019 resolution because they needed to specifically  
26 define the project for purposes of the EIR under CEQA. (TR: 98:3-100:15 [“what the vote reflects is that  
27 they want to achieve taking the murals out of public view, and [the Board] wrestled a bit with exactly how  
28 they wanted to achieve that.”].) Essentially, the Board’s core argument is that CEQA requires a defined

1 project before an EIR can begin and defining a project as whether or not to remove the mural is too open  
2 ended. (Respondents' Supp. Brief, 4: 8-9.)

3 The term "project" should be interpreted by the Court "to afford the fullest possible protection to  
4 the environment within the reasonable scope of the statutory language." (*Lake Norconian Club*  
5 *Foundation v. Dept. of Corrections & Rehabilitation* (2019) 39 Cal.App.5th 1044, 1050, citing Cal. Code  
6 Regs., tit. 14, § 15003(f); *Laurel Heights Improvement Assn. v. Regents of Univ. of California, supra*, 47  
7 Cal.3d at p. 390.) Under CEQA, a project is defined as "an activity which may cause either a direct  
8 physical change in the environment, or a reasonably foreseeable indirect physical change in the  
9 environment, and which is [¶] ... directly undertaken by any public agency." (Pub. Resources Code, §  
10 21065(a).) CEQA's definition of project "refers to the *underlying activity* which may be subject to  
11 approval and not the approval of that activity." (*POET, LLC v. State Air Resources Bd.* (2017) 12  
12 Cal.App.5th 52, 73 [internal quotations omitted], quoting *California Unions for Reliable Energy v.*  
13 *Mojave Desert Air Quality Management Dist.* (2009) 178 Cal.App.4th 1225, 1238; see Pub. Resources  
14 Code, § 15378(c).) "The broad interpretation of 'project' to encompass 'the whole of an action' . . .  
15 ensures CEQA's requirements are not avoided by chopping a proposed activity into bite-sized pieces  
16 which, when taken individually, may have no significant adverse effect on the environment." (*POET,*  
17 *LLC v. State Air Resources Bd., supra*, 12 Cal.App.5th at p. 73, citing *Tuolumne County Citizens for*  
18 *Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1223; see Pub. Resources  
19 Code, § 15378(a).)

20 Respondents rely on *Washoe Meadows Community v. Dept. of Parks and Recreation* (2017) 17  
21 Cal.App.5th 277 in support of their argument that a project defined as "whether or not" to take some  
22 action is insufficient under CEQA. The facts of *Washoe* are distinct from those presented here. The  
23 Court of Appeal in *Washoe* found that the agency did not define a project, rather the agency only  
24 "presented five different alternatives for addressing the Upper Truckee River's contribution to the  
25 discharge of sediment into Lake Tahoe, and indicated that following a period for public comment, one of  
26 the alternatives, or a variation thereof, would be selected as the project." (*Id.* at p. 288 ["[a] range of  
27 alternatives simply cannot be a stable proposed project."]) Here, the Board defined the project as  
28

1 “remov[ing] from public view the Arnautoff Mural at George Washington High School using solid panels  
2 or reasonably similar equivalent materials, means or methods.” (AR: 351.) Unlike the agency in *Washoe*  
3 which set out numerous alternatives and variations on the alternatives, the Board here decided on one  
4 alternative – removal of the murals.

5 Respondents’ position that they needed to use the word “removal” in the August 13, 2019  
6 resolution because they needed to define a project for CEQA is yet another glaring example of  
7 Respondents holding themselves above the law. On June 25, 2019 and August 13, 2019, the Board used  
8 the word “remove” when discussing the murals. On both occasions, the Board held a vote and members  
9 made specific comments unequivocally indicating that they were taking a course of action – and only one  
10 course – with respect to the murals. The Board Vice President was unequivocal about his intent to  
11 remove the murals during more than one Board meeting by stating: “[t]he resolve clause is to remove the  
12 mural. I support removing the mural.” (AR: 83:22-23); and “the cost factor . . . although it is always an  
13 issue, is not insurmountable and we should do it because it is the right thing to do.” (AR 197:13-16.)  
14 Similarly, Commissioner Alison Collins voted to remove the murals, including permanent destruction by  
15 painting over them. She made long and firm public comments, often met with applause, including that  
16 GWHS students should never have to see the murals again.

17 Requesting an EIR on whether or not to remove the murals or what actions may be taken to  
18 address the offensive content in the *two panels* of the murals is designed to provide the fullest possible  
19 protection to the environment while adequately defining the project. That is the purpose of CEQA and  
20 why an EIR must be prepared *before* a decision is made to permanently remove the murals or destroy  
21 them. (*Save Tara*, 45 Cal.4th at p. 134 [“CEQA itself requires environmental review *before* a project’s  
22 approval, not necessarily its *final* approval (Pub. Resources Code, §§ 21100, 21151), so the guideline  
23 defines ‘approval’ as occurring when the agency *first* exercises its direction to execute a contract or grant  
24 financial assistance, not when the *last* such discretionary decision is made.”] [emphasis in original];  
25 *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 141 [“an agency must . . .  
26 prepare and consider an EIR, before undertaking any ‘project.’”]; *Clews Land & Livestock, LLC v. City*  
27 *of San Diego* (2017) 19 Cal.App.5th 161, 183 [CEQA “require[s] that a state or local agency prepare an  
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1 EIR before pursuing or approving any project falling within CEQA’s scope that may have a significant  
2 impact on the environment.”]; See Cal. Code Regs., tit. 14 § 15004(b)(2)(B) [agencies shall not  
3 “[o]therwise take any action which gives impetus to a planned or foreseeable project in a manner that  
4 forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that  
5 public project.”].)

6 Moreover, the Board’s attempt to distance itself from the words *it* chose for the August 13, 2019  
7 resolution is strikingly inconsistent with its course of conduct and this record. Ultimately, the Board  
8 voted not once, but twice, to remove the murals. First, on June 25, 2019, the Board unanimously voted in  
9 favor of removal. Second, on August 13, 2019, the Board superseded the June 25, 2019 vote by narrowly  
10 adopting a resolution to develop a project that removed the murals from public view. The fact that the  
11 resolutions included language “for purposes of CEQA” has little if no import when the resolutions and  
12 surrounding circumstances clearly demonstrate that the Board decided and committed to remove the  
13 murals from public view without any consideration for other alternatives designed to mitigate adverse  
14 impacts on the environment. The only question left to be decided was the manner in which the murals  
15 would be removed, not removal itself. (See e.g., *POET LLC v. State Air Resources Bd.* (2013) 218  
16 Cal.App.4th 681, 724 [“LCFS regulations had significant bureaucratic momentum after they were  
17 approved for adoption . . . [t]he phrase ‘adopted a regulation’ [in a press release] describes what happened  
18 in the past and the phrase ‘will implement’ . . . describes ARB’s view of what will happen in the future.  
19 This unqualified public statement about the future ‘increased the political stakes’ [] and left little doubt  
20 that ARB was committed to implementing the LCFS regulations as a result of that action taken by the  
21 Board.”] [internal citations omitted].)

22 When reviewing the record as a whole, this case is indistinguishable from *Save Tara*. That the  
23 Board directed staff to develop a project for “purposes of CEQA review” or that the Board may have  
24 retained its discretion are insufficient. (See *Save Tara*, 45 Cal.4th at p. 139.) “A public entity that, in  
25 theory, retains legal discretion to reject a proposed project may, by . . . lending its political and financial  
26 assistance to the project, have as a practical matter committed itself to the project.” (*Id.* at p. 135.) Thus,  
27 “the [Board’s] conditioning of final approval on CEQA compliance is relevant but not determinative.”  
28

1 (*Id.* at p. 139.) Indeed, the manner in which Respondents went about devising a process that was focused  
2 on only one result coupled with the repeated statements and commitments of elected officials, and other  
3 unchallenged evidence, makes this case one of the clearest examples of pre-commitment since *Save Tara*.  
4 (*Ibid.* [“When an agency has not only expressed its inclination to favor a project, but has increased the  
5 political stakes by publicly defending it over objections, putting its official weight behind it, devoting  
6 substantial public resources to it, and announcing a detailed agreement to go forward with the project, the  
7 agency will not be easily deterred from taking whatever steps remain toward the project’s final  
8 approval.”])

9 To further underscore the complete and singular focus of Respondents to remove the murals  
10 regardless of any environmental impact their decision might have, the Board did so despite repeated  
11 warnings about compliance with CEQA. During the time the Committee was conducting its public  
12 meetings, Yap cautioned SFUSD about compliance with CEQA. The Board was also cautioned in writing  
13 about compliance with CEQA shortly after the Committee’s recommendation was made *and before any*  
14 public Board meetings were held. On March 26, 2019, Dr. Robert Cherny, Professor Emeritus of History  
15 at San Francisco State University and a scholar on Victor Arnautoff, requested that all perspectives on the  
16 murals be considered (including those that wanted to preserve the murals) and concluded his letter by  
17 “suggest[ing] that you [SFUSD and the Board] carefully review your obligations under the California  
18 Environmental Quality Act, the California Art Preservation Act, and the General Services  
19 Administration’s legal fact sheet for art work produced under the 1930s and 1940s New Deal  
20 Administration.” (AR: 2313-2317, 4352-4354.) On June 2, 2019, Carol Roland Nawi, PhD, the former  
21 California State Historic Preservation Officer serving under Governor Jerry Brown, reminded SFUSD and  
22 the Board of its obligation under CEQA in making their decision regarding the murals. (AR: 4446-4448.)  
23 These admonitions and reminders fell on the deaf ears of a Board that saw itself above the law.

24 Lastly, the murals contain *thirteen* separate frescoes. The offensive content identified in the AR is  
25 depicted in *two* of the thirteen frescoes, which show imagery of a dead Native American and George  
26 Washington’s slaves. The eleven other frescoes depict George Washington helping his elderly mother;  
27 establishing a national university; mediating between Hamilton and Jefferson over the meaning of the new  
28



1 Constitution; Washington at Valley Forge; and the American Army victory over Hessian. (AR: 419,  
2 2314.) The Committee recommendation and Board resolutions sought to cover all thirteen frescoes even  
3 though the overall objective replete in the record was to reduce trauma from the two offensive frescoes.  
4 (See AR: 1188 [one of the Committee’s objectives was to “[i]dentify options for addressing the social and  
5 emotional impact of the mural images on past, current, and future students of the school, with deliberate  
6 attention to the experiences of students and community members whose cultural history is represented in  
7 the mural.”].) The record highlights that the Board resolutions are disconnected from the overall  
8 objective. (*South of Market Community Action Network v. City and County of San Francisco* (2019) 33  
9 Cal.App.5th 321, 345, citing Cal. Code Regs., tit. 14 §15126.6 [“the City was responsible for selecting a  
10 range of project alternatives that could feasibly accomplish most of the basic objectives of the project and  
11 could avoid or lessen one or more of its significant impacts.”]; *Bay Area Citizens v. Association of Bay  
12 Area Governments* (2016) 248 Cal.App.4th 966, 1015 [finding that the objectives were sufficiently broad  
13 enough to determine a reasonable range of alternatives].) One purpose advanced by CEQA is to  
14 “disclose to the public the rationale for governmental approval of a project that may significantly impact  
15 the environment.” (*Clews Land & Livestock, LLC v. City of San Diego*, *supra*, 19 Cal.App.5th at p. 183,  
16 quoting *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th  
17 369, 382.) This purpose is advanced by conducting an EIR and further underscores the need to conduct  
18 an EIR here. (See *San Franciscans for Livable Neighborhoods v. City and County of San Francisco*  
19 (2018) 26 Cal.App.5th 596, 634 [alternatives identified in an EIR provide “decision makers a meaningful  
20 context to weight the project’s objective against its environmental impacts.”].)

21 **CONCLUSION AND ORDER**

22 The Board and SFUSD failed in their primary duty to follow the requirements of the law.  
23 California, as a matter of long-standing public policy, places enormous value on its environmental and  
24 historical resources and the People are entitled to expect public officials to give more than lip-service to  
25 the laws designed to protect those resources.

26 The Petition is granted and a writ will be issued. The Board is ordered to set aside all actions and  
27 approvals relating to destroying or removing the murals from public view. Specifically, the Board is  
28

1 ordered to withdraw and vacate the August 13, 2019 and June 25, 2019 resolutions, which the Court  
2 declares to have been passed in violation of CEQA.

3 A case management conference is scheduled for August 26, 2021 at 3:30 p.m. in Department 304.  
4 Counsel for the parties shall meet and confer prior to August 26, 2021 to agree on a date to schedule a  
5 status hearing before the Court in September 2021. Prior to the September status hearing, the parties shall  
6 submit to the Court agreed-upon language to be used in preparing an EIR that complies with the  
7 requirements of CEQA. If an agreement cannot be reached, the parties shall submit a single document in  
8 which the area of agreement and disagreement are set forth. Respondents shall not enact any other  
9 resolution regarding the murals prior to that submission.

10  
11 IT IS SO ORDERED.

12  
13 Dated: July 26, 2021

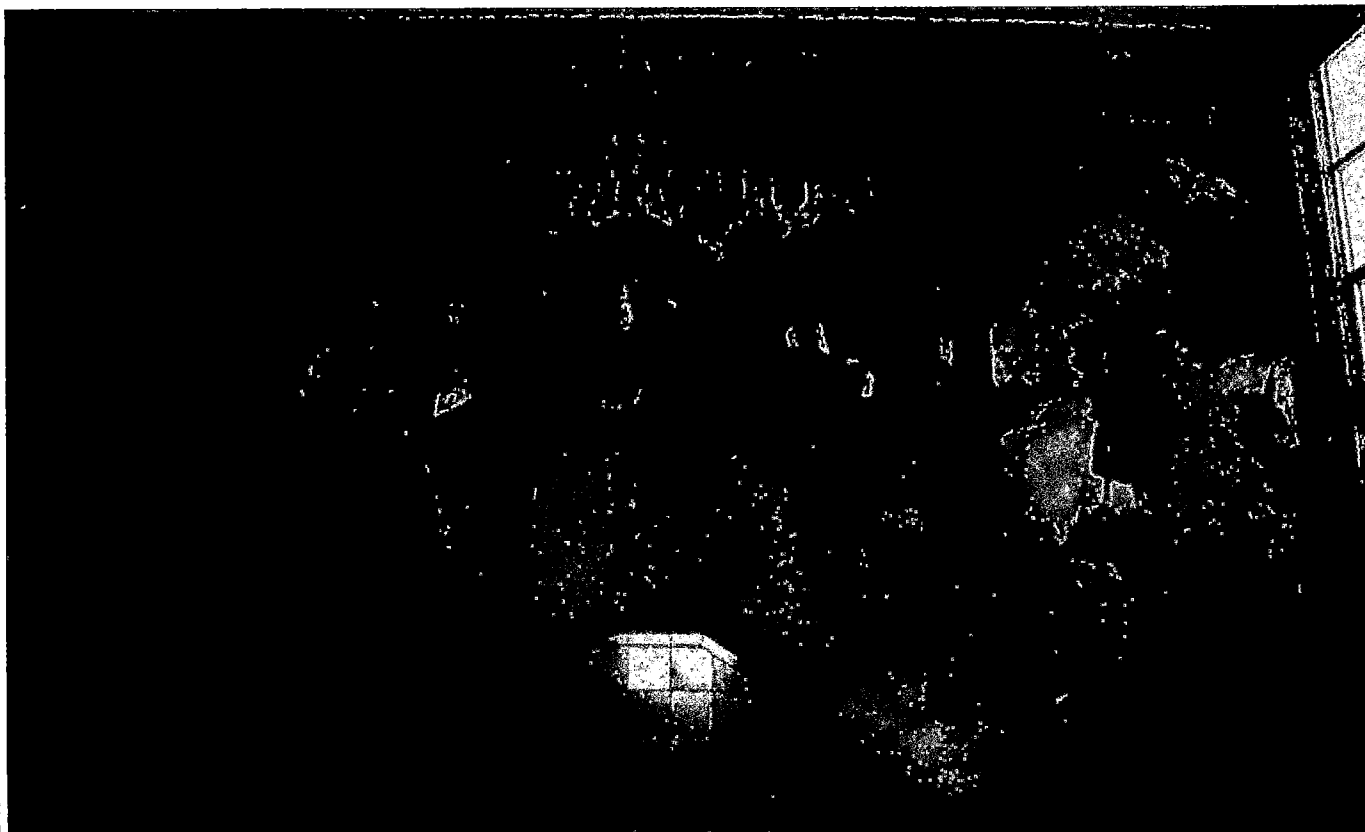


14 Anne-Christine Massullo  
15 Judge of the Superior Court

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**APPENDIX 1**

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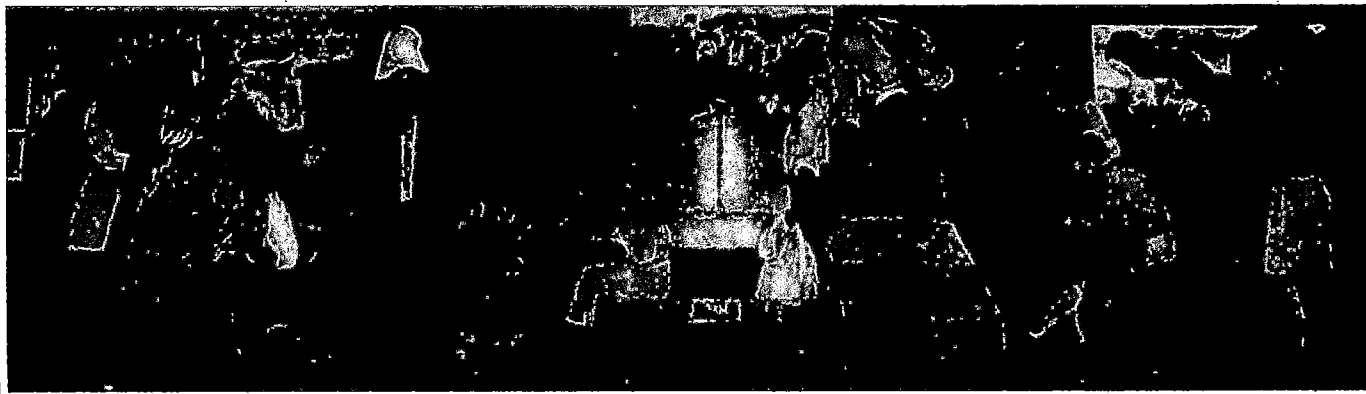


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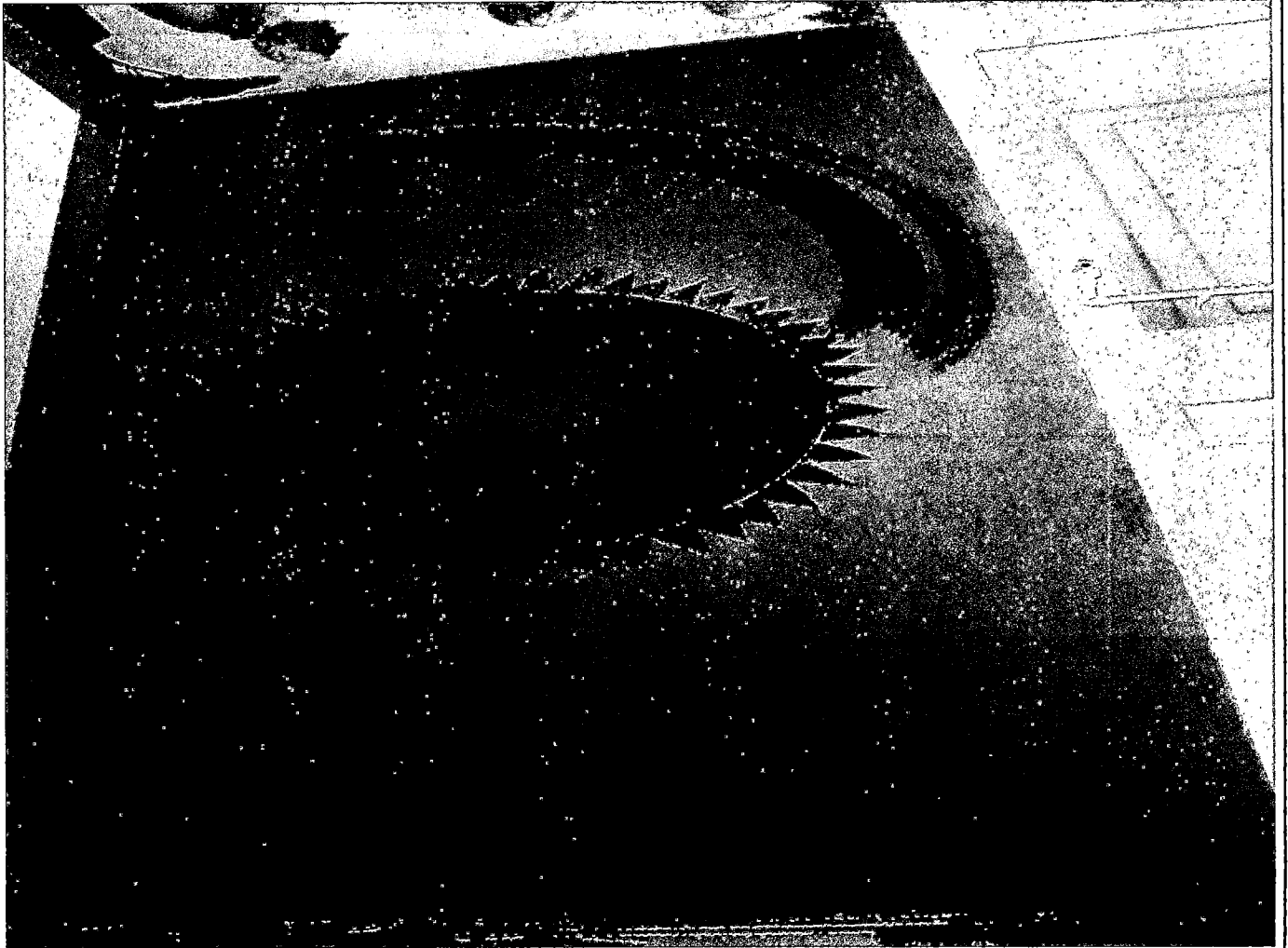


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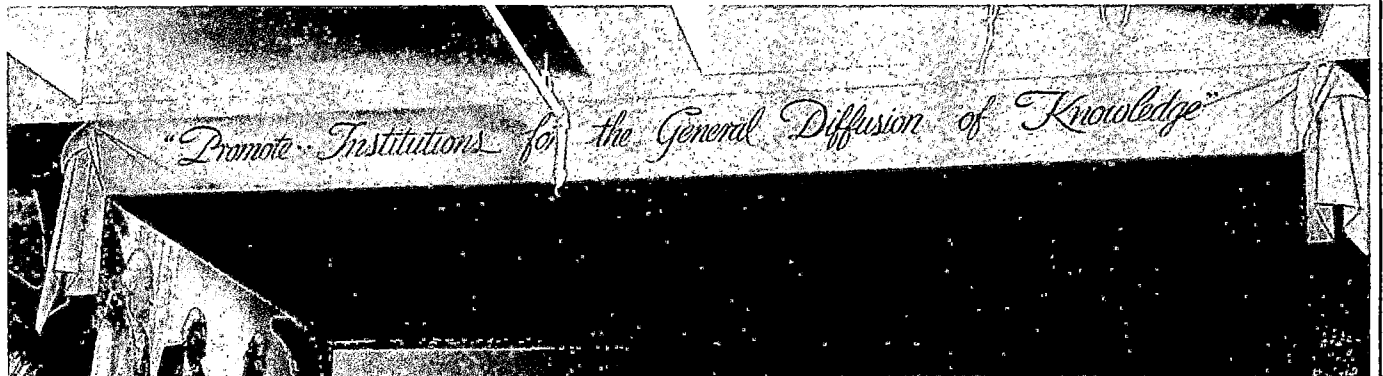


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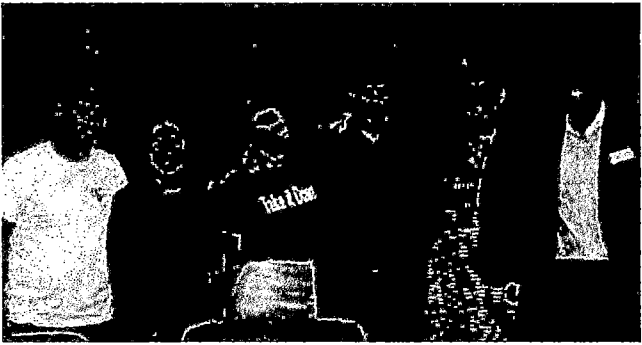
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**APPENDIX 2**

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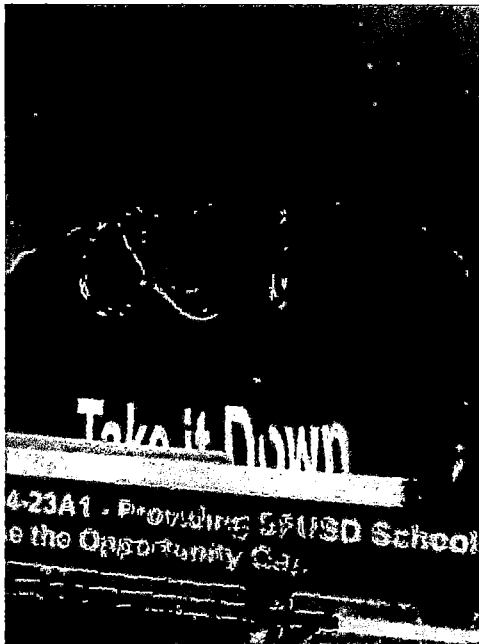


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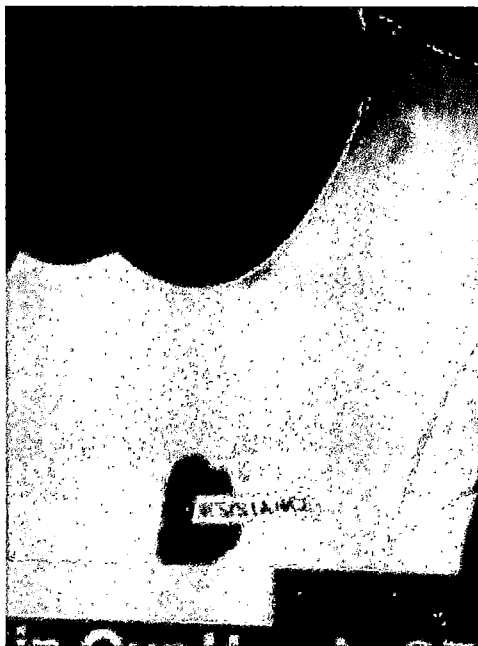


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(AR: 4489.)



(AR: 4490.)



**CERTIFICATE OF ELECTRONIC SERVICE**  
(CCP 1010.6(6) & CRC 2.251)


I, Ericka Larnauti, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On July 27, 2021, I electronically served the attached document via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: July 27, 2021

T. Michael Yuen, Clerk

By:



\_\_\_\_\_  
Ericka Larnauti, Deputy Clerk