

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

KAWIKA SMITH,
Plaintiff and Respondent,
v.
REGENTS OF THE UNIVERSITY
OF CALIFORNIA et al.,
Defendants and Appellants.

A160927

(Alameda County
Super. Ct. No. RG19046222)

BY THE COURT:

The petition for writ of supersedeas is denied.

We first conclude the challenged preliminary injunction is prohibitory rather than mandatory in nature and is therefore not automatically stayed on appeal. (See *Dry Cleaners & Dyers Institute of San Francisco & Bay Counties v. Reiss* (1936) 5 Cal.2d 306, 309 [injunction prohibiting sale of dry cleaning services at prices less than those set in prescribed schedule not mandatory in nature]; *People ex rel. Brown v. iMergent, Inc.* (2009) 170 Cal.App.4th 333, 342-343 [injunction requiring defendants to comply with stipulated judgment and refrain from further statutory violations prohibitory where it did not “compel [the defendants] to surrender any rights that were lawfully held when the injunction was issued.”]; *People v. Mobile Magic Sales, Inc.* (1979) 96 Cal.App.3d 1, 13 [injunction requiring removal of model mobile homes displayed in violation of Vehicle Code held “incidental to the injunction’s prohibitive objective to restrain further violation of a valid statutory provision.”].)

Although not intended as an exhaustive explanation of our reasoning, we observe appellants/petitioners contend the “status quo” was “established by the Regents May 2020 decision.” (Petn., p. 22; see *United Railroads of San Francisco v. Superior Court* (1916) 172 Cal. 80, 87 [status quo “has been defined to mean ‘the last actual peaceable, uncontested status which preceded the pending controversy.’”].) Thus, the status quo includes, among other things: (1) the Regents’ decision that campuses will not consider test scores for California applicants in fall 2023 and fall 2024 and will eliminate any use of SAT and ACT scores for California students by 2025 (2 Petrs’ Ex. (PE) 424 ¶40(b), (c)); (2) appellant Napolitano’s recognition that “[t]he ACT and SAT tests are not clearly linked to” “the curriculum that shapes student readiness” (Respondents’ Ex., p. 649); and (3) the decision of three of the nine UC campuses (Berkeley, Irvine, and Riverside) to eliminate consideration of SAT and ACT scores for the fall 2021 admissions cycle (2 PE 426 ¶45). Accordingly, while the Regents assert “UC has considered standardized test scores in admissions for decades” (Petn., pp. 27, 33), they acknowledge the status quo, as of May 2020, is now far more nuanced than what may have been the historical norm.

We secondly conclude appellants/petitioners have failed to demonstrate entitlement to discretionary supersedeas relief. (See *Dry Cleaners & Dyers Institute, supra*, 5 Cal.2d at p. 310 [writ of supersedeas will not issue where “[n]o showing is made whatever that they, or either of them, will suffer irreparable injury . . . by meeting the conditions of the injunction.”]; *Mills v. County of Trinity* (1979) 98 Cal.App.3d 859, 861 [supersedeas will issue where “stay of the judgment is necessary to protect the appellants from the *irreparable* injury they will *necessarily* sustain in the event their appeal is deemed meritorious.”], italics added; *Sun-Maid Raisin Growers v. Paul* (1964)

229 Cal.App.2d 368, 376 [“We cannot presume error, and we should not interfere with the normal incidents of a prohibitory injunction in the absence of a clear and compelling proof of extraordinary circumstances.”].) In this regard, we note, again not intending an exhaustive recitation of our reasoning, that a majority of UC campuses have now chosen not to optionally use standardized test scores, and two have done so after issuance of the temporary injunction, reflecting that appellant/petitioner’s claims of “prejudice” are significantly overstated.

The temporary stay issued by this court on September 22, 2020, is hereby dissolved.

Respondents’ request for judicial notice is granted. (*People v. Lofchie* (2014) 229 Cal.App.4th 240, 260 [taking judicial notice of “University’s conflict of interest code, faculty code of conduct, code of ethics, and its policies, guidelines, and personnel manuals implementing those codes”].)

Date: 10/29/2020

Humes, P. J. P.J.

Before: Humes, P.J., Banke, J., and Sanchez, J.

PRESIDING JUSTICE