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The FAIR Act: A Legislative Victory for LGBTQ+ History Education

California, more than any other state, leads the nation in passing legislation protecting its LGBTQ+ population. These laws cover a broad spectrum of issues, from preventing housing and workplace discrimination to addressing gender identity to establishing legal parental rights for same-sex couples.¹ Since 2000, largely at the urging of then-assemblywoman Sheila Kuehl—the first openly gay member of the California state legislature and one of the founders of the state’s LGBT Caucus—California also passed several laws intended to improve school climate, alleviate bullying, and create a more open environment for LGBTQ+ students. The Fair, Accurate, Inclusive, and Respectful (FAIR) Education Act, passed in 2011, was years in the making and the product of previous acts pertaining to education that built to it. Yet, it is also different from those acts. The FAIR Act, unlike anything successfully passed before it, requires social studies classes at all grade levels to include LGBTQ+ history and issues in their curricula. This key difference is groundbreaking, as it mandated revisions to general social studies and US history curricula from elementary through high school throughout the state. Supporters of the FAIR Act did not push it through the legislature to achieve guarantees of token mentions of LGBTQ+ history in social studies classes; rather, the act’s mandate for inclusive curricula requires weaving LGBTQ+ events, figures, and issues throughout the history lessons to which students are currently exposed. The inclusiveness required by the FAIR Act should, in significant ways, make social studies education in California more relevant in the twenty-first century.

As the first law of its kind, the FAIR Act could only have passed in California, with its history of laws protecting the LGBTQ+ community. But, given that one of its primary goals was introducing potentially controversial issues in public school classes, its passage was not smooth. Though California is progressive, there is a vocal lobby and population devoted to preventing emphasis on and the

expansion of LGBTQ+ rights, especially, in this case, where minors are involved. The legislative triumph of the FAIR Act, then, was representative of evolving thought and public opinion in California and nationwide in 2011, as well as an example of successful lobbying efforts on the part of LGBTQ+ advocacy organizations and the power of the state's Democratic majority.

The FAIR-est State of All

In 2010 and 2011, when the FAIR Act was introduced and passed by the state legislature, several things set California apart from other states in the rights and opportunities it granted to its LGBTQ+ population. According to Jo Michael, the former legislative director at Equality California (EQCA), beginning in the 1990s there was a significant push to take California from a state with limited legal protections to one with “the most comprehensive protection for LGBT people in the country.”² Within ten years of its founding, EQCA claims, California became a leader in the rights and opportunities guaranteed to LGBT citizens, including, “protect[ion] from discrimination in securing employment and housing, accessing government services and participating in state-funded activities.”³

Liberal cities in California began legislating change as early as the 1970s in the wake of the Stonewall riots and the protests they spurred. In 1972, San Francisco, a city with a prominent gay population, “banned the city, and those with city contracts, from discriminating based on race, gender, religion, or sexual orientation.”⁴ Six years later, in 1978, Harvey Milk was elected to the San Francisco board of supervisors and San Francisco passed an ordinance banning “discrimination in employment, housing, and public accommodations based on sexual preference,” which, according to Milk, would “be the most stringent gay rights law in the country.”⁵ In 1984, newly incorporated West Hollywood became the first city in which the majority of lawmakers were gay. These cities, long known for liberal politics and politicians, took the first small steps toward greater acceptance—legally, at least—of LGBTQ+ Californians at a time when the population began to gain greater notice nationally. Not all Californians, inside or outside the state government, supported these policies—as previously mentioned, California State Senator John Briggs advocated for banning gay teachers from classrooms, pushing a ballot initiative that eventually failed in 1978—but the seeds of change were planted as cities and states around the country grappled with questions concerning a population no longer hidden.

California was also ahead of national politics and thinking on LGBTQ+ issues on a statewide level, decriminalizing all consensual sexual acts in 1975,⁶ eleven years before the Supreme Court upheld Georgia's anti-sodomy laws in *Bowers v. Hardwick* (1986) and almost thirty years before the Court ruled such laws unconstitutional in *Lawrence v. Texas* (2003). By the 1990s, the state began its path toward the numerous protections it would begin to legislate for its LGBTQ+ population by the end of the decade. In 1992, Governor Pete Wilson signed into law a bill banning "job-related discrimination based on sexual orientation for virtually all state and private workers."⁷ The law was not perfect—there was confusion over which professions were protected and it was a civil, rather than a criminal statute—but the law came at a time when several other states and the national government passed laws harmful to the LGBTQ+ community.⁸ With this law, California became the seventh state to protect workers from discrimination based on sexual orientation, and it was by far the largest and most prominent at that time.⁹

Since the founding of the state legislature's LGBT Caucus in 1999, hundreds of bills were proposed, with many enacted into law; within a decade, California offered unprecedented protections to its LGBT population in multiple arenas. In its first year of existence, California created a statewide domestic partnership registry and passed laws prohibiting job discrimination and mandating life imprisonment for convicted murderers who committed their crime because of their victim's sexual orientation.¹⁰ In the first decade of the twenty-first century, California enacted legislation intended to end discrimination in housing, jury selection, employment, insurance coverage, and public facilities, among others. At the same time, the state passed legislation to end school-based discrimination and harassment, strengthened its hate crimes laws and the penalties for committing such crimes, and augmented provisions for the prevention of and care for people with HIV and AIDS.¹¹ Moreover, bills that would restrict LGBT rights often died in committee. These advances, spurred by the efforts of the LGBT caucus and organizations like EQCA, were largely enacted during a Republican governor's administration, further emphasizing the importance of this legislation and the state's commitment to it. Several other states passed laws in the same time period expanding protections for their LGBT populations, but no other state did so to the same extent as California.

Despite California's outstanding legislative record on this subject, the general population remained much more divided with many Californians opposed to extending certain rights—marriage, in particular—to the LGBTQ+ community. Though it has a reputation as a progressive state, California's divisions—political

and otherwise—run deep. The state is ethnically diverse; in 2000, the population was 47 percent white, 33 percent Latino, 12 percent Asian, and 6 percent African American.¹² Presidential election data from 2008 indicate that the state's coastal regions voted Democratic, while the interior, especially in the north, leaned Republican. This, according to the *New York Times*, resulted from a confluence of factors: in the post-Cold War era, conservative, affluent whites followed defense industry jobs out of the state; the Latino and Asian populations increased; and the filmmaking and technology industries flourished, bringing educated professionals to California's cities.¹³ As these changes shifted party affiliation and electoral politics to the left, religion and culture continued to influence Californians' stance on social and civil rights issues like LGBTQ rights.

The fight for gay rights in California in 2008 centered on marriage as the state became embroiled in the controversy over Proposition 8 and the ensuing Supreme Court case. The battle not only revealed a lack of consensus on same-sex marriage, but it also brought nuanced divisions among Californians to light. A 2003 study, for example, revealed that "Blacks disapprove of homosexuality more strongly than whites" and "nearly three-quarters of Blacks say homosexual relations are always wrong."¹⁴ A 2007 Pew Research survey indicated that Catholic and evangelical Christian Latinos tend to hold socially conservative beliefs, though they are also likely to vote Democratic.¹⁵ Furthermore, responding to a 2008 *Los Angeles Times*/KTLA poll, approximately one-third of Asians, Blacks, Latinos, and whites strongly agreed with the statement, "If gays are allowed to marry, the institution of marriage will be degraded"; nearly the same proportion of Asians, Blacks, and Latinos strongly disagreed.¹⁶

On May 15, 2008, the California Supreme Court ruled in favor of same-sex marriage. Two weeks later, on June 2, Proposition 8, a ballot measure that "would amend the state Constitution to define marriage as a union 'between a man and a woman,'"¹⁷ thereby overturning the Court's ruling, garnered over a million signatures and earned its place on the November ballot. In the next six months, campaigns urging people to vote "Yes" or "No" on 8 pervaded the state. With polling on the initiative close as November approached, the Mormon church, which viewed marriage as "a kind of firewall to be held at all costs," played an "extraordinary role" "in helping to pass [Proposition 8] with money, institutional support and dedicated volunteers."¹⁸ California, then, became the focus of the growing nationwide debate over same-sex marriage. Proposition 8, and the strategies and resources employed by each side, revealed a deep divide on LGBTQ+ rights within a traditional institution as well as the efficacy and failure of tactics implemented to persuade voters¹⁹—many of the arguments

and voices in this campaign would also be prominent in the public and media debates over the FAIR Act. Proposition 8 passed with 52 percent of the vote in the same election that saw Barack Obama decidedly win California. Seventy percent of Black voters, following their churches' lead, and 53 percent of Latino voters supported the measure, contributing significantly to its victory.²⁰ Though Proposition 8 was ultimately overturned and same-sex marriage legalized with the Supreme Court's decision in *Hollingsworth v. Perry* in 2013, the ramifications and impact of the battle were profound and instructive.

Thus, California was no stranger to first of its kind laws supporting and protecting LGBT citizens or protracted fights to defend them. Moreover, by 2010 the Democratic supermajority in the California state legislature was even more determined to take action to extend existing protections, both school-centered and societally,²¹ especially after the uproar surrounding Proposition 8. Though other states include sexual orientation as a protected category and some, like Massachusetts, mandate anti-bias and bullying curriculum in schools—which California did, as well, beginning in 2000—the FAIR Act made California the first to require wholesale change to social studies curricula. Past efforts, and the political climate in 2011—including the inauguration of a Democratic governor—made it the most appropriate place for what supporters hoped would be groundbreaking legislation.

The Path to FAIR Legislation

California's efforts to improve the school environment and experience for LGBTQ+ students date back to the beginning of the twenty-first century, with the legislative push for greater protection of and equality for the LGBTQ+ population statewide and the legislative tenure of Sheila Kuehl, a Democrat from Santa Monica who served in the state assembly and, later, the state senate. Kuehl authored several bills aimed at extending existing antibias laws covering other underrepresented groups to further include gender and sexuality and promoted bias-free curricula across California, setting the precedent that would eventually lead to the FAIR Act and encountering similar struggles with opposition and implementation, albeit in a different, and potentially more adverse, climate.

Aiming to make schools safer and create an environment conducive to learning for all students, the California state legislature began debating bills meant to ameliorate the bullying and discrimination LGBTQ+ students regularly faced in the late 1990s. On October 2, 1999, Democratic Governor Gray Davis

signed the California Student Safety and Violence Prevention Act of 2000 (AB 537), which added gender and sexual orientation to existing law that guaranteed equal rights and opportunities to all public school students “regardless of their sex, ethnic group identification, race, national origin, religion, or mental or physical disability”;²² this aligned legal code regarding education with hate crimes legislation that already offered wider coverage and protection. This law, then, treated schools as a microcosm of society aiming to create safe spaces in which students could learn without the fear or threat that their gender identity or sexuality would place them in harm’s way.

Despite prohibiting violence and discrimination, the law provided no structure for implementation or enforcement. Thus, two years after the California Student Safety and Violence Prevention Act was passed and set to go into effect, few districts had implemented it. Kuehl, by this time a state senator, appealed to school superintendents. In a letter dated December 18, 2002, she wrote,

We know that there is still substantial and documented harassment and discrimination against students who actually are or are perceived to be gay, lesbian, bisexual, or transgender, even though the law was first enacted more than two and one-half years ago. I believe this is, in part, due to the fact that the law has not, yet, been implemented or directly applied in many local school districts in California.²³

The letter was accompanied by a resource intended to inform superintendents and districts how to implement the law and answer common questions. Despite these efforts, though, implementation was lax and discrimination persisted.

Four years later, and four years before Mark Leno would introduce the FAIR Act, Kuehl introduced a similarly minded bill to the California state senate. This bill, a response to the harassment and bullying LGBTQ+ students continued to face in schools, called for a bias-free curriculum that would increase awareness among heterosexual students and create a safer school environment for the LGBTQ+ population. In its original form, the Bias-Free Curriculum Act (SB 1437) focused more on classroom learning than its predecessor, mandating that “no textbook or other instructional materials shall be adopted by the state board or by any governing board for use in public schools that contains any matter reflecting adversely upon persons because of their race or ethnicity, gender, disability, nationality, sexual orientation, or religion,” and “when adopting instructional materials for use in schools, government boards shall include only instructional materials which, in their determination, accurately portray, in an age-appropriate manner the cultural, racial, gender, and sexual orientation

diversity of our society.”²⁴ Following veto threats by Governor Schwarzenegger, who claimed that he would “veto any bill that, in his words, ‘micromanaged’ state education by requiring inclusion of LGBT individuals in textbooks,”²⁵ the Assembly passed an amended version of the bill that removed these curricular mandates.²⁶ Schwarzenegger, however, still vetoed it, claiming, “This bill offers vague protection when current law already provides clear protection against discrimination in our schools based on sexual orientation.”²⁷ Schwarzenegger signed seven other bills that supported the LGBT community that year; he was unwilling, however, to pass the two education-related bills that crossed his desk. California maintained its burgeoning reputation for legally protecting its LGBTQ+ population, but it failed to further extend protection and improve circumstances in its schools.

Schwarzenegger’s veto did not derail those in and outside the legislature who viewed the situation in schools as untenable. In 2007, Kuehl authored, and the Senate passed, SB 777, the Student Civil Rights Act. Unlike the Bias-Free Curriculum Act, this bill aimed at strengthening and clarifying existing state law rather than issuing new requirements. In its analysis of the bill, the Senate Judiciary Committee wrote, “This bill would create a consistency among statutes prohibiting various forms of discrimination based on specified personal characteristics by revising the list of prohibited bases of discrimination in Education Code ... consistent with the list in ... the Penal Code.”²⁸ According to Kuehl,

research has shown that inclusive school policies and curriculum make a difference: when students report that their schools have non-discrimination and anti-harassment policies that include sexual and gender identity, and when they say that they have learned about LGBT [Lesbian, Gay, Bisexual, and Transgender] issues at school, they report less harassment and they feel safer.²⁹

EQCA also emphasized the need for clarity in its support of the law, claiming, “Lack of clarity in state law has resulted in lawsuits that cost taxpayers millions of dollars in unnecessary litigation and settlement costs. ... Individual school districts have paid anywhere between \$45,000 and more than \$1.1 million in settlements or judgments, not including attorney fees.”³⁰ Despite the governor’s veto message the previous year, stating that there was no need for law that simply recapitulated existing legislation, the problems those laws were meant to address persisted. The Student Civil Rights Act passed and was hailed as a success by the legislators and lobbyists who advocated for it.

Each of these acts, whether passed or vetoed by the governor, met with virulent backlash by conservative and family groups all centering on similar themes: interference with religious beliefs and family traditions, government overreach in education, and influencing students' sexual ideas and attitudes. In 2000, the Committee on Moral Concerns officially recorded its opposition to the bill with the state assembly, and the Senate's analysis of the bill reiterated a statement issued by the Traditional Values Coalition on AB 222, a similar bill vetoed the previous year, asserting, "Administrators already have the legal authority to prevent harassment of any student for any reason, including perceived homosexuality ... By specifically teaching the acceptance of homosexuality ... this bill will directly challenge ... strongly held religious beliefs."³¹ In 2006, California State Senator Bill Morrow criticized the Bias-Free Curriculum Act for treating race and sexual orientation as similar categories, claiming that the former was biological fact and the latter a choice and thus cannot be treated as the same.³² Karen England of the Capitol Resource Center, which would later be a major player in the battle against the FAIR Act, called the 2007 law "reverse discrimination" and "an outright attack on the religious and moral beliefs of California citizens."³³ Furthermore, the Campaign for Children and Families warned that the law would lead to "curriculum changes that include transvestite speakers and transsexual videos, classroom handouts on sex-change operations, and curriculum teaching children homosexual 'marriage' is completely normal"³⁴—all in a bill with no mandate for curricular change. In 2007, in fact, legislation remained focus on eliminating bias and discrimination and guaranteeing equal protection to all students in California public schools.³⁵ This heightened awareness of the adverse circumstances LGBTQ+ students faced and the altruistic intent among LGBTQ+ rights advocates represented a victory for their cause, but opposition and vague provisions for enforcement presented significant obstacles.

Several things changed in California between 2007 and 2010. In 2008, Governor Schwarzenegger vetoed three laws acknowledging LGBTQ+ students and their plight. Additionally, the staunch division created by the battle over Proposition 8 and its resulting amendment to California's state constitution reverberated in decision-making related to other LGBTQ+ issues and changed the landscape and import of these decisions for many on both sides. In 2009, Mark Leno proposed a holiday in honor of Harvey Milk which the governor signed in the wake of the critical success of the film about his life, Sean Penn's Academy Award for the title role, and a strong lobbying effort by EQCA and students from Gay-Straight Alliances throughout California.³⁶ In 2010, Tyler

Clementi's suicide made national headlines and Jerry Brown, a Democrat with a record of supporting the LGBTQ+ community and its goals, was elected governor of a state with a Democratic majority in the state legislature. The idea of a curriculum bill once again gained support.

Thus, when Mark Leno introduced the FAIR Act in 2010 it was the most recent in a succession of attempts to enhance both education and the educational environment for all students, but especially for those who faced discrimination, bullying, and violence as a result of their real or perceived identity. Where the FAIR Act significantly differs from legislation enacted earlier, though, is its emphasis on curriculum and classroom instruction as the arenas through and in which to create change.

Legislating FAIR-ness

The 2000 and 2007 acts spearheaded and passed by Sheila Kuehl and her colleagues in the California state legislature represented meaningful accomplishments for LGBTQ+ students and the community as a whole, as well as for California, in general. As Mark Leno wrote in 2013, though,

despite successful efforts in California during the past decade to pass laws intended to make schools safer for LGBT students, we continue to hear about young people who are bullied, at times violently, or are so mistreated by their own peers that they take their own lives. Clearly, our work to help promote understanding within our schools has only scratched the surface.³⁷

The antidiscrimination policies prescribed by previous laws did not create the intended safe environment and connection to school community. Moreover, research indicates, "LGBT students in schools with an LGBT-inclusive curriculum ... felt more connected to their school community" and are less likely to encounter homophobia, miss school, or feel unsafe.³⁸ Further legislation was necessary, and attention again turned to curriculum.

Leno introduced the bill in December 2010,³⁹ arguing, "The historically inaccurate exclusion of LGBT Americans in social sciences instruction as well as the spreading of negative stereotypes in school activities sustains an environment of discrimination and bias in school throughout California."⁴⁰ Leno introduced SB 48, a bill pertaining to "prohibition of discriminatory content" in pupil instruction, on December 13, 2010.⁴¹ Speaking on the bill at that time, Leno meshed the bullying epidemic that previous laws attempted to

resolve with the curricular focus of the FAIR Act. He declared, “Our collective silence on this issue perpetuates negative stereotypes of LGBT people and leads to increased bullying of young people. We can’t simultaneously tell youth it’s OK to be yourself and live an honest, open life when we aren’t even teaching students about historical LGBT figures or the LGBT equal rights movement.”⁴²

Specifically, the bill mandates that social science instruction include the contributions of several groups, among them lesbian, gay, bisexual, and transgender Americans, to the “economic, political, and social development of California and the United States”; neither instruction nor school sponsored activities may promote “a discriminatory bias on the basis of race or ethnicity, gender, religion, disability, nationality, sexual orientation”; and textbooks and instructional materials must “accurately portray the cultural and racial diversity of our society” including, among other contributions, those of LGBT Americans.⁴³ Many of the groups included in the FAIR Act’s mandate—for example African Americans, Native Americans, and Mexican Americans—were previously included in educational legislation of a similar nature. Where the FAIR Act differs is in its inclusion of people with disabilities and, of course, lesbian, gay, bisexual, and transgender Americans.

The FAIR Act’s journey through the California state legislature was illustrative of the political divide surrounding LGBTQ+ issues in California and throughout the nation. In both committee and floor votes in the Senate and Assembly, support for and opposition to the bill was largely determined by the side of the aisle on which a legislator sat. The legislative debate over the FAIR Act, then, was as much about politics as it was about education. In its analysis of the bill, the Education Committee referenced the vagueness of and potential problems with implementation, including the fact that the “bill does not specifically require the inclusion of lesbian, gay, bisexual, or transgender people in the History-Social Science Framework”—the document that details the social and historical information teachers and textbooks are meant to convey in each grade—and the state’s moratorium on new instructional materials prior to the 2013–14 academic year.⁴⁴ Moreover, Republican Senator Robert Huff claimed that the bill, if passed, would “actively promot[e] a lifestyle.”⁴⁵ The Judiciary Committee, too, noted the requisite delay in the changes the bill mandated resulting from California’s budget crisis and the lack of available funds for new educational resources.

Support for the bill, however, trumped these concerns. Testifying in front of the Senate Education Committee, Carolyn Laub of the GSA asserted, “Bullying of lesbian, gay, bisexual, and transgender (LGBT) youth is a pervasive problem

in our schools with serious consequences for students' mental health and academic achievement."⁴⁶ In addition, both committees cited the necessity of such a bill, reiterating Mark Leno's goal of making history properly inclusive, further clarifying and reducing confusion on what existing law entailed and, in the Judiciary Committee's assessment, referencing California's "history of requiring instruction that includes the various roles of different ethnic, gender, and minority groups ... to promote understanding, and to recognize the accomplishments of all groups of people."⁴⁷ The Senate Education and Judiciary Committees passed SB 48 along party lines in a Democratic triumph, 6–3 (one vote not recorded) and 3–2, respectively. Sent to the Senate floor, the FAIR Act passed 23–14, with three votes unrecorded;⁴⁸ no senator crossed the aisle.

The Assembly Committee on Education, which counted among its members Tommy Ammiano, the bill's sponsor in that chamber, likewise passed the FAIR Act along party lines with seven Democrats voting for and four Republicans against. The committee's analysis similarly acknowledged the expected delay in creating new instructional materials and amending state standards while also arguing,

Instruction and instructional materials that portray the various roles and contributions of different ethnic and minority groups promote understanding of the diversity of the state and recognizes the accomplishments of all groups of people. Projecting such diversity gives pupils pride in his or her roots and a sense of equal opportunity. Hence it can be argued that by requiring instruction and textbooks to include the roles and contributions of persons with disabilities and LGBT Americans, this bill ensures equal representation of all people within the curriculum.⁴⁹

The committee noted that, as advocates claimed, this revised curriculum could lead to the safe school environment sought for more than ten years. On July 5, 2011, the Democrat-dominated Assembly approved the bill by a vote of 50–26; the FAIR Act's legislative journey was significantly determined by—and benefitted from—the Democratic dominance in both houses. Liberal, urban Californians, and the political party that represented them, succeeded in passing the LGBTQ+ curriculum law Kuehl suggested was necessary in 2000, but the overwhelmingly positive Assembly vote indicated division even more than it did consensus.

Reactions to the bill as the state legislature considered it focused predominantly on the clauses pertaining to sexual orientation. Both the Senate and Assembly Committees' analyses of the bill include sizable lists of

organizations that registered support for and opposition to the FAIR Act; many of these organizations maintained the stance taken regarding past legislation focused on LGBT rights. Human rights groups, teachers' organizations, and school districts in Los Angeles and San Francisco endorsed the bill. The California Teachers Association, for example, wrote, "CTA is pleased to support this measure to ensure the areas of social science instruction be expanded to include the contributions of LGBT individuals and other ethnic and cultural groups as such supporting the human and civil rights of all students."⁵⁰ California Church Impact, one of the few religious organizations to support the bill, stated, "We do not desire, from either political or moral positions, to consign the contribution of gay and lesbian members of our society to the hidden history we so easily ignore. Our faith principles uphold the equal humanity and therefore equal contributions of all members of our society."⁵¹

Meanwhile, many religious, family advocacy, and conservative organizations vehemently opposed the bill. The Calvary Christian Church, for example, claimed that the bill would "play with the minds of all California's students; even as young as Kindergarten!! Whatever the personal beliefs of adults on homosexuality, bisexuality, and transgender, the state has NO RIGHT trying to influence the beliefs, thinking and mindset of young students!"⁵² Upon the bill's passage in the Assembly, Randi Thomasson of SaveCalifornia.com, one of the leading voices opposed to the FAIR Act, asserted, "Because of the raft of sexual indoctrination laws already in force, which promote homosexuality, bisexuality, and transsexuality under the guise of discrimination and harassment, the social engineers are already having their way with more than six million boys and girls, with or without SB 48"; he implored parents to remove their children from public schools.⁵³ The *Los Angeles Times* published an editorial criticizing legislative interference in education. It opined,

These battles no doubt have a legitimate place in the social studies curriculum. But that's a decision for educators and textbook writers to make. If more is added to the social studies curriculum, something else will have to be deleted or treated more shallowly. Teachers already struggle to get through all the required material before the state's standardized tests are administered in the spring.⁵⁴

Despite this opposition, the FAIR Act benefitted from a core of vocal and industrious supporters⁵⁵ and the Democratic supermajority; it was approved by the legislature and went to the governor.

On July 7, 2011, EQCA wrote to Governor Jerry Brown urging him to sign the FAIR Act into law. Roland Palencia, then EQCA's executive director, wrote,

While LGBT people represent a sizable and important part of the state, mention of the LGBT community's role in California history and contemporary society is virtually non-existent in textbooks and other school instructional materials. The FAIR Education Act would require that lesbian, gay, bisexual, and transgender (LGBT) Americans are included and recognized for their important historical contributions to the economic, political, and social development of California and the United States.⁵⁶

EQCA and the GSA placed a great deal of hope in Governor Brown, with his long and documented history of supporting LGBT rights and causes. This hope was not misplaced: Brown signed the FAIR Act into law on July 14, 2011; it was set to go into effect on January 1, 2012. As in the legislature, the FAIR Act became law largely because the politics were in place to make it happen. Brown, a Democrat, and the Democratic legislative supermajority pushed through a bill that previously failed, and would likely have again under a Republican administration.

California, a leader in LGBTQ+ rights, was a clear place for potentially groundbreaking legislation; the FAIR Act extended California's protections in unprecedented ways. Upon signing the law, Governor Brown issued the following statement:

History should be honest. This bill revises existing laws that prohibit discrimination in education and ensures that the important contributions of Americans from all backgrounds and walks of life are included in our history books. It represents an important step forward for our state, and I thank Senator Leno for his hard work on this historic legislation.⁵⁷

The bill's advocates celebrated their victory as California passed legislation in the making since 2006, becoming the first state to mandate history and social science classes and curricula offer instruction in LGBTQ+ history and include information on LGBTQ+ individuals and lives and, through this, address bullying, discrimination, and violence in schools and in society at large. The opposition, however, did not accept defeat. The day Governor Brown signed the law, Randy Thomasson responded,

It's ridiculous that Jerry Brown says he's making history "honest." ... The bill he signed prohibits teachers and textbooks from telling children the facts that homosexuality has the highest rate of HIV/AIDS and other STDs, higher cancer rates, and earlier deaths. ... This revisionist history will actually make more children believe a lie—that homosexuality is biological, which it's not, and healthy, which it isn't.⁵⁸

The bill became law, but the battle was not over.

For the organizations that long supported including LGBTQ+ figures and history in the curriculum, the FAIR Act's passage was monumental. It was years in the making, the product of a confluence of factors, and, at the time it was passed, the only law in the nation specifically targeting social studies education as an arena in which LGBTQ+ history was a curricular necessity. The FAIR Act reflected emerging shifts in public opinion and attitudes, and the political success of an increasingly vocal and well-organized lobby that prioritized school-based protections and invested the time and resources to make them realities.

This political success, however, was complicated. The relative speed and ease with which the bill passed was more indicative of the Democratic power of California's legislative and executive branches than a true consensus around the law; thus, its enactment did nothing to take away, and in fact exacerbated, its controversial nature. Opponents seized on the clauses pertaining to gender and sexual orientation, ignoring the long list of other groups listed in the act, in a phenomenon reminiscent of the Rainbow Curriculum controversy nearly twenty-five years prior. Its subsequent path was fraught with continued attacks and opposition. The initial battle was over, but another would launch imminently as the political battle over educational change continued.

A FAIR Fight

Backlash to the FAIR Act, which emerged early in the legislative process, persisted and increased when it was voted into law. Stop SB 48, a coalition of religious and family-focused groups dedicated to placing a referendum on the June 2012 ballot to overturn the law, launched a petition to gather the signatures necessary to do so within two weeks of the law's enactment. Individuals and groups in favor of the law, many of whom recalled the sting of losing the battle over Proposition 8 three years prior and criticism of the "sub-par" campaign they ran at that time, including the obstinacy and inexperience of those in charge,⁵⁹ vowed to devote the resources and energy necessary to curtail this effort. Though the law had passed, the political maneuvering continued.

After Governor Brown signed the FAIR Act into law, opponents maintained their position that it would restrict parents' voices in their children's education; Randy Thomasson asserted, "Jerry Brown has trampled on the parental rights of the broad majority of California mothers and fathers who don't want their children to be sexually brainwashed."⁶⁰ Catholics for the Common Good, which

also lobbied against the bill, released a statement reiterating protests recorded in 2006, declaring, “Politicians should not be co-opting school curricula and writing textbooks to push an ideological agenda, whether it be conservative or liberal.”⁶¹ DefendChristians.org portrayed the fight against the FAIR Act as a national struggle, claiming, “Because California is the largest consumer of textbooks, the content of California textbooks will likely end up in the textbooks of other states. Even if you don’t live in California your help is urgently needed to stop this wicked curriculum.”⁶² According to SaveCalifornia.com, SB 48 would have a dangerous and life-changing impact on student learning, including, “teachers will be made to positively portray homosexuality, same-sex ‘marriages,’ bisexuality, and transsexuality, because to be silent can bring the charge of ‘reflecting adversely’ or ‘promoting a discriminatory bias.’”⁶³ For these conservative groups, such alarming changes were unacceptable; there was no question that the FAIR Act had to be repealed.

The Stop SB 48 campaign launched shortly after Mark Leno introduced the bill in December 2010 in association with the Capitol Resource Institute, a socially conservative organization that “encourages churches to influence public policy.”⁶⁴ It first focused on contacting and lobbying state representatives to vote against the bill. Though this initial effort proved unsuccessful, the Stop SB 48 campaign persisted, turning its attention to overturning the law through referendum. On its website, Stop SB 48 asserted, “The bill casts a wide-reaching net that includes all social sciences like economics, government, and cultural and social anthropology. ... Essentially teachers and administrators are being asked not to tolerate but to advocate”;⁶⁵ the website also directed viewers to sign and distribute the referendum petition, donate to the effort, and follow Stop SB 48 on Facebook. In a press release announcing the launch of the petition, Brad Dacus, the president of the Pacific Justice Institute, an organization at the forefront of the campaign, posited, “Every Californian who believes in parental rights and passing down an unbiased history to our children is going to have to get involved. ... We need people to give like our future depends on it—because it does.”⁶⁶ As the opposition coalesced around Stop SB 48’s referendum, they found broader ways to spread their message, employing tactics designed to reach and persuade a large swath of voters to join their cause; this included YouTube videos and text messages delivered to all California cell phone numbers. For these organizations and their supporters, these statements and actions were commensurate with the grave danger that the FAIR Act posed to education.

Organizations like Calvary Chapel, the Family Research Council, and the Capitol Resource Institute opposed SB 48—like they did LGBT-related bills and

laws in the past—from the moment it was introduced. With its passage, they used every resource at their disposal to lobby the people, whom they hoped would see the danger posed by this law and aid their cause. Similar to the battle over Proposition 8, in which conservative and religious organizations argued that same-sex marriage was harmful to children, they argued that teaching children about LGBTQ+ history and lives would adversely affect students. Unlike Proposition 8, though, the effort failed to gain the support of Mormon and Catholic churches and national Christian and conservative organizations; thus, it lacked access to the infrastructure and financial backing that such institutions and organizations provide.⁶⁷ The campaign was thus stymied by a severe lack of funds and an inexperienced, all-volunteer effort led by conservative Christian groups.

EQCA and like-minded organizations were determined to prevent the FAIR Act from being overturned. Previous experience, especially in the battle against Proposition 8, made them apprehensive about their chances of defeating the referendum; moreover, they faced the powerful tactics employed by the Stop SB 48 campaign which emphasized “kids learning about gays” as a scare tactic intended to rally support.⁶⁸ Guaranteeing the survival of the FAIR Act, though, emerged as a priority as Stop SB 48 gained momentum. Rick Jacobs, founder of the Courage Campaign, accused his opponents of using “fear tactics to prevent California high school students from learning history.”⁶⁹ In a letter responding to Stop SB 48 and countering their claims about the law, he stated, “This new law has nothing to do with sex education. . . . The law merely requires that California schools integrate age-appropriate, factual information about social movements, current events and the social contributions of lesbian, gay, bisexual and disabled individuals into existing history and social studies lessons.”⁷⁰ The Courage Campaign, along with EQCA, GSA Network, and the National Center for Lesbian Rights also collaborated on a “decline to sign campaign,” countering Stop SB 48’s efforts by dispatching “truth squads” to clarify the intentions and implications of the FAIR Act.⁷¹ Learning from their mistakes in 2008, LGBTQ+ rights organizations used every resource and strategy at their disposal to ensure the defeat of the petition and referendum.

EQCA, one of the bill’s original sponsors, launched its own fundraising campaign and recruitment effort to counter the referendum. In the 2008 battle over Proposition 8, gay rights groups found themselves on the losing side because, according to Garry South, a Democratic strategist, their effort “was essentially run by a committee of community activists who didn’t trust any non-gay professionals and wouldn’t take advice from more experienced campaign strategists on the outside who know what they’re doing.”⁷² On August 25, 2011,

they issued a press release announcing a coalition to protect the FAIR Act from repeal, encompassing “people of faith; labor organizations; lesbian, gay, bisexual, and transgender (LGBT) rights groups; disability rights advocates; racial justice organizations and many other groups who care about equality.”⁷³ Moreover, on August 30, Executive Director Roland Palencia released the following statement in response to allegations made against the law by Tony Perkins of the Family Research Council: “It’s critical that these groups are exposed for what they really are: fear-mongers who prey on good parents’ deep, instinctive desire to protect their children in order to advance a hateful, anti-equality agenda.”⁷⁴ EQCA’s most politically minded move, though, was filing a complaint with California’s Fair Practices Commission alleging that the primary organizations involved in the Stop SB 48 campaign—Stop SB 48, the Capitol Resource Center, and the Pacific Justice Institute—violated campaign finance laws.⁷⁵ Though these claims were refuted, they nevertheless marked the attempt at mounting a referendum as a political battle and effectively challenged the Stop SB 48 campaign in its final rush to accrue signatures.

Stop SB 48 faltered when the coalition failed to accumulate the 505,000 signatures needed to bring the referendum to ballot. On October 11, 2011, the ninety-day period allotted to gather signatures expired, and EQCA claimed victory. Mark Leno, who predicted the referendum would fail, said, “I’m glad to learn my early suspicions have been validated and from all indications it appears they failed by a wide margin.”⁷⁶ The opposition, however, refused to acknowledge defeat. Stop SB 48 insisted, “To be sure, a referendum was the most direct route to stopping this misguided law in its tracks. ... But there are other tools available. An initiative involves a very similar process of gathering signatures, yet the citizens get more time to gather signatures.”⁷⁷

New groups, motivated by the referendum’s defeat, emerged to continue the battle, including the Tea Party Patriots, the Christian Coalition of California, and the Committee for Parental Rights and Education. In its second attempt, Stop SB 48 submitted two ballot initiatives: the Children Learning Accurate Social Sciences (CLASS) Act—which removed the clauses pertaining to sexual orientation and religion, mandating instead, “Inclusion of the study of a person in social science instruction shall be accurate and based solely upon historical significance rather than membership in a protected class”⁷⁸—and an initiative giving parents the right to opt out of LGBTQ+-related instruction if and when administered. Ultimately, this effort also failed—in fact, it collected fewer signatures than the first—and by July 2012, a year after the FAIR Act passed, the political campaign to repeal or reduce the law ceased.

As the political battle over the FAIR Act ensued, coupled with the uncertainty of whether it would remain good law, the focus remained on the politics and the struggle rather than on the significance of the law and the changes it mandated in curriculum and classroom settings. There is a standardized process for passing a law and denying a referendum thus facilitating political change—in as much as legislation equates with actual change in society. Educational change is a more nuanced, time-consuming process, requiring different, less conspicuous, actions and mobilization to yield success. The lack of funding in support of the law, coupled with the dearth of classroom resources available, made implementing the FAIR Act on the date it officially went into effect problematic under any circumstances; the political tumult surrounding the law exacerbated and added to these difficulties, maintaining the focus on political debate over schooling. Few districts outside of Los Angeles and San Francisco, which included LGBT history in its curriculum even before the law was passed,⁷⁹ took any action to implement the law when it officially went into effect, nor was there any instruction on how to do so. This would be the next, and a more complicated, battle.

Spreading FAIR-ness

Following in California's footsteps, four additional states developed and passed their own LGBTQ+ curriculum laws. Beginning on January 31, 2019, and over the course of eight months, New Jersey, Colorado, Oregon, and Illinois enacted legislation mandating the presence of LGBTQ+ topics in academic subjects, particularly history and social studies, in schools throughout the state. Each of these laws, like California's, aim to make coursework more inclusive and representative. Also, as in California, the legislatures voted on party lines and the laws were both celebrated and reviled by different groups for distinct reasons.

New Jersey, Colorado, Oregon, and Illinois's laws issue similar mandates, all akin to that established by the FAIR Act. New Jersey was the second state in the nation to pass an LGBTQ+ curriculum law. Like California, it had a history of laws supporting the LGBTQ+ population and a newly elected Democratic governor.⁸⁰ The law states, "A board of education shall include instruction on the political, economic, and social contributions of persons with disabilities and lesbian, gay, bisexual, and transgender people, in an appropriate place in the curriculum of middle school and high school students as part of the district's implementation of the New Jersey Student Learning Standards"; it directs boards of education to create policies and procedures to guide the selection of instructional materials

to fulfill these goals.⁸¹ Colorado echoed this call to teach “the history, culture, and social contributions of minorities,” among them LGBTQ+ Americans, and “the intersectionality of significant social and cultural features within these communities.”⁸² Colorado, unlike California and New Jersey, added a funding provision to its bill to support its implementation allocating \$37,495 for “content specialists.”⁸³

Oregon, meanwhile, included all of the subjects that encompass social studies in its law. HB 2023 specifies that “academic content standards for history, geography, economics and civics include sufficient instruction on the histories, contributions and perspectives of individuals who: (i) Are Native American; (ii) Are of African, Asian, Pacific Island, Chicano, Latino or Middle Eastern descent; (iii) Are women; (iv) Have disabilities; (v) Are immigrants or refugees; or (vi) Are lesbian, gay, bisexual or transgender.”⁸⁴ Oregon’s law, unlike others, explicitly calls for amending state standards, a key component in successful curriculum change. Illinois, the last of these five states to pass its LGBTQ+ curriculum law, established, “In public schools only, the teaching of history shall include a study of the roles and contributions of lesbian, gay, bisexual, and transgender people of this country and this state”; Illinois, like the states that preceded it, called for other marginalized groups’ curricular inclusion, as well.⁸⁵ Each of these laws, like the FAIR Act, offered the promise of reform and inclusion. Moreover, the eight-year time difference between the FAIR Act and New Jersey, Colorado, Oregon, and Illinois’s laws meant that the four latter states had a model from which to learn.

The Democratic majority in each state legislature was instrumental to the process. In New Jersey and Colorado, the laws passed almost entirely along party lines. In New Jersey, where the curriculum bill was signed into law on January 31, 2019, of the fifty-two votes in favor in the Assembly, fifty-one were Democrats; in the Senate, Democrats represented twenty-four of the twenty-seven votes for the law. All of the votes against—ten in the Assembly and eight in the Senate—were Republican.⁸⁶ The results were similar in Colorado, where the bill passed the House 40–24 and the Senate 24–11 almost entirely on party lines; one Republican senator crossed the aisle.⁸⁷ On May 28, 2019, the nation’s first openly gay governor signed the bill. It was more bipartisan in Oregon, where, one week later, its bill “relating to inclusive education” received overwhelming legislative support. Nearly a quarter of the votes in favor in both the House and the Senate were Republican; opposition to the bill—twelve votes across both houses—was entirely Republican.⁸⁸ It was closer in Illinois, where the bill’s journey was more protracted. In a 37–17 vote in the Senate, one Republican joined Democrats in

support. All of the bill's support in the 60–42 vote in the House was Democratic; four Democrats, though, joined Republicans voting against it.⁸⁹ Despite small variations the pattern, as established in California, is clear: strong Democratic majorities, in states with liberal-leaning regions populated by people with social justice values, have the power and directive to pass these laws. Though this does not detract from the accomplishment, it renders the victories one-sided, a status that does not bode well when they call for profound and potentially controversial change.

In these states, as in California, advocacy groups celebrated while religious groups and concerned parents sought ways to opt out. LGBTQ+ activists in all four states triumphantly described laws that “get closer as a state to telling the whole story of our shared history”⁹⁰ and “cultivate respect towards minority groups, allow students to appreciate differences, and acquire the skills and knowledge needed to function effectively with people of various backgrounds,”⁹¹ and through which “invisibility is being transformed into visibility.”⁹² In September 2020, the *Washington Blade*, an LGBTQ+ publication, published an article eagerly anticipating New Jersey and Illinois's laws going into effect.⁹³ Parents in New Jersey, meanwhile, sought avenues to opt out of LGBTQ+ curriculum; a Hackensack school board member claimed she was “disgusted and appalled” by the law.⁹⁴ Religious organizations and publications lamented the existence of additional laws intended to “indoctrinate children.”⁹⁵ Regarding Oregon's law, Family Policy Alliance claimed, “If enacted, this bill would require history textbooks to include people based on their sexuality or internal feelings about gender. This means teachers will be forced to teach radical identity politics in the classroom, whether or not it has anything to do with the subject being taught.”⁹⁶ Though none of the laws faced the same mass mobilization to repeal as the FAIR Act, each encountered similar resistance, ignorance, and backlash. Implementation, like the challenge facing advocates and curriculum designers in California, is the next frontier.⁹⁷