

Case No. 25-1037

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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JOHN AND JANE DOE,

Appellants,

v.

PHILIP WEISER, in his official capacity as  
Attorney General of Colorado, *et al.*,

Appellees.

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On Appeal from the United States District Court  
For the District of Colorado

The Honorable Charlotte N. Sweeney  
District Judge

Civil Action No. 1:24-cv-02185-CNS-SBP

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**BRIEF OF APPELLEE, COMMISSIONER CÓRDOVA**

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Oral Argument Not Requested

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## **STATEMENT OF RELATED CASES**

10th Cir. R. 28.2(C)(3)

Appellee, Commissioner Córdova, is not aware of any prior or related appeals.

## INTRODUCTION

To help foster inclusive learning environments for gender-diverse youth, Colorado enacted House Bill 24-1039 (the “Chosen Name Law”<sup>1</sup>), requiring school employees to use a student’s chosen name during school activities. The deliberate failure to do so constitutes an act of discrimination. § 22-1-145, C.R.S. Like the broader anti-discrimination framework in which it sits, *see* § 22-1-143, C.R.S., the Chosen Name Law’s purpose is to eliminate the harassment and stigmatization faced by transgender and gender nonconforming students.

Appellants, the Does, believe that the Chosen Name Law violates their constitutional rights as parents. Like the plaintiffs in dozens of similar failed lawsuits around the country,<sup>2</sup> the Does frame the Chosen Name Law as a form of medical intervention that requires immediate parental notification and consent. Given this framing, plaintiffs like the Does claim that using a student’s chosen name at school, without

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<sup>1</sup> Throughout their briefing, the Does refer to House Bill 24-1039 as the “Name Change Law.” *See, e.g.*, Appellant’s Br. 2. This misnomer should be rejected because House Bill 24-1039 does not “change” a student’s name in any formal capacity—it simply requires school staff to address a student in their preferred manner.

<sup>2</sup> *See* List of Supplemental Authorities, appended as Ex. A.

parental notice or consent, interferes with the parents’ fundamental right to direct the “care, custody, and control of their children” within the meaning of *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality op.). This framing is both legally and factually incorrect.

The country invests billions of dollars in the health and wellness of public school students, to ensure that they have environments that are safe, inclusive, and conducive to learning. For instance, Colorado schools have on-staff school psychologists, counselors, social workers, nurses, school-based therapists, speech language pathologists, and occupational therapists. *See, e.g.*, Colo. Dep’t of Educ., “A Guide to School-Based Mental Health Services and Professionals in Colorado,” App. Vol. 3 at 640-51. The Does’ sweeping constitutional claim would threaten all these school-based systems.

Despite framing the issue as one of health care, it seems the Does’ concern is *not* whether schools can support student mental health and wellbeing. Colorado provides state-funded counseling services that can be accessed without parental consent starting at the age of twelve. § 12-245-203.5, C.R.S. The Does’ teenager received these counseling services without parental consent. First Am. Compl. ¶¶108-112, App. Vol. 3 at

787 (the “FAC”). And the Does do not challenge those services in their lawsuit. Instead, they challenge *only* the use of a chosen name. Pls.’ Mot. for Prelim. Inj. ¶¶ 1-3 & fn.1, Suppl. App. Vol. 1 at 2.<sup>3</sup> This lawsuit is not, ultimately, about health care at all. It is about nondiscrimination laws.

It is thus unsurprising that, of the many lawsuits to reach the question, almost all have rejected the premise that name-and-pronoun policies constitute medical treatment requiring parental notification and consent. *See, e.g., Foote v. Ludlow Sch. Comm.*, --- F.4th ---, 2025 WL 520578, at \*10 (1st Cir., Feb. 18, 2025) (per curiam) (“[W]e do not believe that using the Student’s chosen name and pronouns—something people routinely do with one another, and which requires no special training, skill, medication, or technology—without more, can be reasonably viewed as evidencing some indicia of medicalization.”); *Regino v. Staley*, 2023 WL 4464845, at \*3 (E.D. Cal. July 11, 2023)

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<sup>3</sup> Appellant’s Appendix does not appear to include the Motion for Preliminary Injunction or the related briefing. However, as the impetus of the present appeal, those documents are essential parts of the record. *See* 10th Cir. R. 10.4(D)(2). Accordingly, Appellee Córdova has included it in her Supplemental Appendix, filed concurrently with this brief. *See* 10th Cir. R. 30.2(A)(1).

("[W]hile Plaintiff alleges that the Regulation permits social transitioning at school and this constitutes medical treatment, this allegation is conclusory[.]"); *see also* Ex. A (collecting cases).

Instead, courts have almost-universally concluded that school administrators are in charge of running their school systems and have the discretion to create inclusive spaces that are safe, supportive, and conducive to learning. Parents are integral to that process, of course—and there are many, many state and federal laws giving parents direct statutory rights in schools, none of which the Does allege to be infringed. Yet the classroom environment itself is not a health care intervention. And the school system's obligations to protect students from discrimination and harassment cannot turn on each individual parent's views.

## **STATEMENT OF THE CASE**

### **I. STATUTORY BACKGROUND**

Colorado added sexual orientation (defined to include transgender status) to its anti-discrimination laws over fifteen years ago. 2008 Colo. Sess. Laws, ch. 341. It later updated this legal framework to distinguish sexual orientation from gender identity and gender expression. § 24-34-301(9), (10) & (24), C.R.S. (enacted by 2021 Colo. Sess. Laws, ch. 156).

Both changes applied to the anti-discrimination duties imposed on school districts. *See* § 22-32-109(1)(*ll*)(I)(A), C.R.S.

Colorado also mandates that every school district adopt rigorous policies to address discrimination and harassment, § 22-1-143, C.R.S., including when based on sex, sexual orientation, gender identity, and gender expression, *id.* at (1)(d). Districts' policies must include robust procedures for accepting and investigating complaints and providing supportive measures to complainants. *Id.* at (2). The investigations themselves must be confidential, *id.* at (2)(a) & (7), but districts' policies must be public, clear, and frequently communicated to parents and students. *Id.* at (3). Beginning this fall, all school employees must undergo regular training on their district's policy and on best practices (and the State will procure a training that offers best practices for compliance). *Id.* at (4) & (8). Finally, these policies must sit side-by-side—and investigations must run concurrently—with any procedures mandated by federal law. *Id.* at (6)(b).

House Bill 24-1039 added a clarifying obligation to this framework. It requires that schools use a student's chosen name reflecting their gender identity. § 22-1-145(1)(a) & (2), C.R.S. It also

defines the knowing failure to do so as discriminatory, within the meaning of the State's anti-discrimination frameworks. *Id.* at (3)-(4); § 22-1-143(1)(d)(IV), C.R.S. For many school districts, this merely codified existing policy and practice under longstanding anti-discrimination policies.

Consistent with the authority traditionally offered school administrators, the Chosen Name Law gives school districts substantial discretion over their implementing policies. *See* § 22-1-145(5), C.R.S. The statute leaves to school districts to determine when, how, or if to notify parents of a student's request to use a chosen name. *See id.* It also leaves to school districts to determine how best to engage with parents and students when implementing a student's request. *See id.* Some districts may choose always to notify and involve the parents; others, like School District 27J (the "District"), will involve parents unless the student requests otherwise or doing so presents a risk to the student (like being kicked out of the home).

There is no one-size-fits-all solution for implementing these details. As the State has argued elsewhere:

The question of whether and how to share information on one's gender identity is deeply personal; as the

district court recognized, such disclosures implicate “many complicated and emotional issues” and may “evoke negative or harmful reactions.” Were Plaintiffs to prevail [in their appeal], school officials would be required to insert themselves into these highly sensitive discussions and to share information that should come from the child in the context of family conversations.

*Brief of Amici Curiae Massachusetts, et al.*, at 12-13, *Foote v. Ludlow Sch. Comm.*, --- F.4th --- (1st Cir. 2025) (No. 23-1069). The chief virtue of localized governance is to give communities the space to make these policy judgments for themselves. *Cf. Owens v. Colo. Cong. of Parents, Tchrs. & Students*, 92 P.3d 933, 935 (Colo. 2004) (local control of schools “allows local electors to tailor educational policy to suit the needs of the individual districts”). The Chosen Name Law lets each school district determine how best to balance these concerns, imposing only one limit: that ultimately, whether upon the student’s initial request or after consultation and discussion with the parents, it is the student’s wishes as to a chosen name that control. That limit aligns with the foundational purpose of the State’s anti-discrimination laws: to ensure every student’s access to education in a supportive learning environment. *Cf. Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1024-25 (Colo. 1982) (holding that the state meets constitutional obligation of

“thorough and uniform” system of public schools by imposing minimum regulatory standards).

This framework also ensures substantial protections for parents. Parents receive notice of the District’s policies each year. § 22-1-143(3)(c), C.R.S. Parents’ rights to access student records upon request—guaranteed by federal law—are incorporated into the state statute. § 22-1-145(5), C.R.S.; *see also* 34 C.F.R. § 99.10. And parents’ rights to request medical accommodations in appropriate cases, again protected by federal law, are also explicitly incorporated into the state statute. § 22-1-143(6)(a), C.R.S.; *see also* 34 C.F.R. § 104.36. The state legislature has left to school districts whether to *exceed* the federal baselines—but it has also expressly clarified that these statutorily-created parental rights are part of Colorado schools’ anti-discrimination framework.

## II. FACTUAL BACKGROUND

According to the Does’ FAC, their oldest student asked to use a “non-female name” at school to reflect her<sup>4</sup> non-female gender identity,

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<sup>4</sup> The Does allege that A.D. currently identifies as female, *see* App. Vol. 3 at 790-91, ¶¶ 135 & 138, and this allegation is verified in the student’s affidavit, *id.* at 808, so this brief will use she/her pronouns.

two years before the Chosen Name Law was enacted. App. Vol. 3 at 785-86, ¶¶ 97-106. It was the 2022-23 school year, and she was a fourteen-year-old freshman at the time. *Id.* at 769-69, ¶ 4. In March 2023, the Does learned that their teenager was “experiencing a transgender identity.” *Id.* at 788, ¶ 123. The Does never asked the District to stop using A.D.’s non-female name. *Id.* at 789-90, ¶ 132. And despite knowing of A.D.’s transgender identity for nearly 18 months, *id.* at 788, ¶ 123, the Does do not allege that they had asked for and were denied any information or accommodations available by law—nor that they ever even sought a conversation with the district, to discuss A.D.’s gender support plan and how the Does believe the school could have best supported her needs, *see id.* at 789, ¶ 132.

One year later, and still prior to the passage of the Chosen Name Law, A.D. informed her parents that she “no longer identified as a boy and wished to return to living life as a girl.” *Id.* at 790, ¶ 135. Thus, A.D. began to “de-transition” at school, asking her teachers to once again refer to her as “A.D.” and with female pronouns. *Id.* at 791, ¶¶ 138-41. Now, A.D. says she “feels like a girl,” *id.* at 792, ¶ 144, “regrets” her decision to use a non-female name, *id.* at 791, ¶ 142, and is

“thankful” her parents prohibited her from undergoing a medical transition, *id.* at 792, ¶ 143. Nevertheless, the Does sought extraordinary relief in the form of a preliminary injunction barring Defendants from enforcing the state’s anti-discrimination laws so that, on the off-chance A.D. ever asked to use a chosen name in the future, they could decide whether the school honors that request.

The district court, acting within its sound discretion, denied that request on January 24, 2025. *See* Order Den. Prelim. Inj., *Doe v. Weiser, et al.*, No. 1:24-cv-02185-CNS-SBP (D. Colo. Jan. 24, 2025), App. Vol. 4 at 880-901 (the “PI Order”). It held that the Does failed to establish *any* of the four factors required for preliminary relief. *Id.* at 888-900. Most importantly, the district court concluded that the Does lack standing and are thus unlikely to prevail on the merits. *Id.* at 891-99. This appeal followed shortly thereafter.

## SUMMARY OF THE ARGUMENT

1. The district court did not abuse its discretion by holding that the Does had failed to establish a likelihood of success on the merits. The Does likely do not have standing because (1) their alleged future injuries are not imminent and certain, relying rather on the speculative

risk that the Does' students might make several decisions, not currently planned, to change the status quo, (2) their alleged ongoing injuries are insufficient because the injuries rely on mischaracterizing the statute and the legal context surrounding it, and (3) in any event, the claimed injuries are neither traceable to the Chosen Name Law nor redressable by its enjoinder for mostly the same reasons.

Although the district court did not reach beyond standing, the Does also have not shown a likelihood of establishing any constitutional violations. The Does' substantive due process claims are unlikely to succeed because (1) courts have never recognized a fundamental right to control the nomenclature used in school by school personnel, (2) the Chosen Name Law does not implicate health care and thus does not interfere with parents' fundamental right to control their children's health care, and (3) the Chosen Name Law interferes with familial relationships only incidentally (if at all). Further, even if the statute *did* infringe on a fundamental right, it is still narrowly targeted to a compelling state interest because it provides nondiscrimination protections to only those students who explicitly invoke such protections. Finally, the Does' procedural due process claim fails

because it depends on their substantive due process claims to establish the deprivation of a constitutionally protected interest—and thus rises and falls with those other claims.

2. The district court likewise did not abuse its discretion by holding that the Does had failed to establish imminent irreparable harm. As the district court correctly noted, the Does’ alleged future injuries rely speculatively on an attenuated chain of circumstances before they could occur; and the Does’ alleged ongoing injuries rely on misconstruing the statute and surrounding legal framework to create allegedly cognizable harms. As the district court further correctly noted, the Does’ delay in seeking relief—waiting well over a year after their purported injuries were known—cuts against a finding of irreparable harm.

3. The district court also did not abuse its discretion by holding that the Does had failed to show a balance of harms tilting in their favor. The Does’ requested injunction would harm the public interest and the State of Colorado by precluding the enforcement of the anti-discrimination laws adopted by the people’s elected representatives. And it would do so by fostering a less welcoming, less inclusive, and

more discriminatory environment for *all* students, even if the relief runs solely in favor of the Does.

4. If this Court determines to vacate and remand the district court's order with instructions, the evidentiary hearing requested by Appellee Córdova should be held. Commissioner Córdova agreed that the Does' standing for pre-enforcement relief could be resolved without a hearing, given the failure of their verified complaint to establish imminent harms. Yet Commissioner Córdova requested an evidentiary hearing on the likelihood of establishing a constitutional violation, in the event the district court found standing. The State of Colorado should not be enjoined from enforcing its anti-discrimination laws without an opportunity to cross-examine the Does' proffered expert and lay witnesses and to sponsor expert testimony of its own.

### **LEGAL STANDARD**

The decision to deny a preliminary injunction rests in the sound discretion of the district court, and barring an abuse of that discretion, such denials will not be disturbed on appeal. *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 796 (10th Cir. 2019). As the party moving for injunctive relief, the Does were required to show (1) a

likelihood of success on the merits; (2) a likely threat of irreparable harm; (3) that the harm they alleged outweighed any harm to the non-moving parties; and (4) that an injunction would be in the public interest. *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1128 (10th Cir. 2013). “An injunction can issue *only* if each factor is established.” *Denver Homeless Out Loud v. Denver*, 32 F.4th 1259, 1277 (10th Cir. 2022) (emphasis added). It is likewise within the discretion of the court whether to hold an evidentiary hearing. *See Reynolds & Reynolds Co. v. Eaves*, 149 F.3d 1191, \*3 (10th Cir. 1998).

A preliminary injunction is an extraordinary remedy never awarded as of right. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). In every case, a court “must balance the competing claims of injury and must consider the effect on each party of the granting or withholding the requested relief,” paying “particular regard to the public consequences.” *Id.* And because the limited purpose of a preliminary injunction is merely to preserve the relative positions of the parties until trial, injunctions that change the status quo are especially disfavored—and even more closely scrutinized. *Schrier v. Univ. Of Colo.*, 427 F.3d 1253, 1258-59 (10th Cir. 2005).

## ARGUMENT

### **I. THE DISTRICT COURT WAS WITHIN ITS DISCRETION TO HOLD THAT THE DOES ARE UNLIKELY TO PREVAIL ON THE MERITS.**

#### **A. The Does likely lack standing to challenge a state law that has never applied to their teenager.**

Article III standing requires plaintiffs to establish three elements. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). First, plaintiffs must have suffered an “injury in fact” to a legally protected interest. *Id.* Second, plaintiffs must establish “a causal connection between the injury and the conduct complained of.” *Id.* Third, “it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Id.* (internal quotations and citations omitted). In the present matter, the Does failed to establish any of these elements.

#### **1. The Does did not show an injury in fact to a legally protected interest.**

To satisfy the first element of standing, the Does must plead an injury in fact to a legally protected interest, and such injury must be both (a) “concrete and particularized” and (b) “actual or imminent, not conjectural or hypothetical.” *Id.* Parents do not have “standing to object to any and all conduct occurring at [their] child’s school,” nor can they

“challenge the constitutionality of school policies without demonstrating that they were personally injured in some way by those policies.” *Am. Humanist Assoc., Inc. v. Douglas Cnty. Sch. Dist. RE-1*, 859 F.3d 1243, 1256 (10th Cir. 2017) (internal citations omitted).

The standing inquiry is particularly salient where, as here, plaintiffs admittedly have never, and may never, suffer any injury from the Chosen Name Law. In such cases, courts are appropriately hesitant to exercise jurisdiction. *See, e.g., Colo. Outfitters Ass’n v. Hickenlooper*, 823 F.3d 537, 551 (10th Cir. 2016). The imminence requirement must not “be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly impending*.” *Id.* at 544-45 (emphasis added) (cleaned up). Mere “‘some day’ intentions—without any description of concrete plans, or indeed even any specification of *when* the some day will be—do not” suffice. *Lujan*, 504 U.S. at 564 (emphasis in original).

Here, district court was within its sound discretion to conclude that the Does’ alleged future harms are exactly the sort of “conjectural or hypothetical” injuries that fail to establish standing. First, even though A.D. stopped using her non-female name before the Chosen

Name Law was enacted and has shown no sign of re-transitioning, *see* FAC, App. Vol. 3 at 790-92, ¶¶ 135-44, the Does worry that she might identify by a different name and gender in the future, *id.* at 793, ¶¶ 153-54. Then, the Does state an even more speculative fear that their other child—who is not alleged to have *ever* shown any sign of gender-nonconformity—might try to use a chosen name as A.D. did. *Id.* at 794-95, ¶¶ 157-63.

The Does thus worry that their children *might* become gender nonconforming, *might* not involve them in the decision to identify as a different name and gender, and *might* ask the school not to notify them. As the district court correctly noted, these fears establish only “a speculative possibility of injury.” PI Order, App. Vol. 4 at 897. Indeed, the Does have not even alleged a “some day intention” to be subject to the law—on the contrary, A.D. and B.D. have not expressed *any intention* of using a chosen name at school. *See, e.g.*, FAC, App. Vol. 3 at 793-95, ¶¶ 150-63 (speculating about chance of A.D.’s and B.D.’s future choices). When a theory of standing relies on “speculat[i]ons about the decisions of third parties,” *Murthy v. Missouri*, 603 U.S. 43, 72 (2024), it must fail, especially at the preliminary injunction stage, *id.* at 69. The

district court thus correctly held that the Does' claim of future harm is "too attenuated and too speculative" to support standing. PI Order, App. Vol. 4 at 898.

To get around their speculation problem, the Does also assert three *ongoing* injuries. The first theory is an informational injury, claiming that they cannot get truthful information from their school district. But this theory fails because the Chosen Name Law expressly incorporates parents' statutory rights to information, § 22-1-145(5), C.R.S.; because the school district's policy on its face says that when asked a question, the district will answer it as fully as possible, *see* Sealed App. at 912; and because the Does have not alleged or shown that any request for information has ever been denied. *See* PI Order, App. Vol. 4 at 894-95 (finding no ongoing harm because no request for information has been denied).

The second theory of ongoing injury is that the statute harms the Does simply by removing their control over the names their children use in their school interactions. This theory fails because, as the district court noted, students (not parents or schools) have always had control over the names they use on a day-to-day social basis; the only thing the

Chosen Name Law changes is whether school personnel honor those choices when they reflect a nonconforming gender identity. *See* PI Order, App. Vol. 4 at 895. Further, the Does' claim that the statute's mere existence harms them runs contrary to the rule that injuries must be concrete and particularized. "Article III requires more than a desire to vindicate value interests. It requires an injury in fact that distinguishes a person with a direct stake in the outcome of a litigation—even though small—from a person with a mere interest in the problem." *Diamond v. Charles*, 476 U.S. 54, 66-67 (1986) (internal citations omitted). If the Does' children have never invoked the Chosen Name Law, then the Does have never been injured by it.

Finally, the third theory of ongoing injury is that the statute harms the Does by forcing them to discuss uncomfortable topics with their kids. As the district court properly concluded, this simply is not an injury at all. PI Order, App. Vol. 4 at 895-96. The Does cite cases in which the plaintiffs also alleged harm unrelated to their behavioral changes, *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 182-84 (2000) (aesthetic harms to actual use of open space, leading to less use of said space), or else alleged that they

modified their behavior precisely to avoid having the challenged law applied to them, *e.g.*, *Clements v. Fashing*, 457 U.S. 957, 962 (1982) (declining to run for office because of new conditions attached to such runs). The Does allege no comparable change in behavior here: their preferred behavior does not trigger the law, and their modified behavior does not avoid the law. They thus have not alleged an ongoing injury as required by these cases.

**2. The Does' claimed injuries were neither caused by the Chosen Name Law nor redressable by its enjoinder.**

Although the district court did not rely on it, the Does also failed to establish causation and redressability. *See Lujan*, 504 U.S. at 560 (second and third elements of standing). As a result, even if their claims to ongoing and future injury held water, they would still fall short of a likelihood of success.

To establish causation, the Does had to show that their injuries were “fairly traceable to the challenged action of the defendant.” *Lujan*, 504 U.S. at 560 (cleaned up). And to establish redressability, as to the state defendants, the Does had to show that enjoining the Chosen Name Law would mitigate their injuries. *Cf. Nova Health Sys. v. Gandy*, 416

F.3d 1149, 1159 (10th Cir. 2005) (“In this case, like many, redressability and traceability overlap as two sides of a causation coin.” (internal marks omitted)). They have not shown either. Take the informational injury, for example, claimed as an ongoing harm: the Chosen Name Law is entirely silent on notice and disclosure to parents, aside from incorporating a federal statute guaranteeing parental access to education records. § 22-1-145(5), C.R.S. The Does thus cannot trace this alleged harm to the state law, nor redress it by enjoining that law. Or consider, next, the altered-behavior injury likewise claimed as an ongoing harm. Those hard conversations would be had with their students with or without the Chosen Name Law—as evidenced by the fact that A.D. first questioned her gender identity to her parents nearly *four years before* the law was passed, FAC, App. Vol. 3 at 784, ¶ 88. And given A.D.’s well-established ability to decide her own gender identity, enjoining the Chosen Name Law would offer no redress at all.

The Does’ other theories of injury—their claimed ongoing harm from the decisional framework, and their feared future harm of their students invoking the law someday—fare no better. These injuries are predicated on the state “socially transitioning” their children. They

cannot be traced to the statute because the statute does not require schools to “socially transition” anyone; it merely requires school personnel not to “deadname”<sup>5</sup> students with diverse gender identities. Likewise, any gender-diverse student may adopt a chosen name at any time, with or without their schools’ cooperation. *Cf.* Appellants’ Br. at 13 (“A.D. has told some—though not all—of her prior teachers that she now goes by “A.D.” and uses female pronouns. A.D. intends to inform the rest of her prior teachers of the change *when she feels the time is right.*” (emphasis added)). Consequently, enjoining the Chosen Name Law will not remedy the Does’ problem. As the district court correctly noted, “the District is not the decision maker at issue: the student is.” PI Order, App. Vol. 4 at 895. “The power to make decisions regarding a student’s preferred name and pronouns has always resided with the student.” *Id.*

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<sup>5</sup> See <https://www.merriam-webster.com/dictionary/deadname> (“the name that a transgender person was given at birth and no longer uses upon transitioning”; “to speak of or address (someone) by their deadname”).

Because the Does have established neither causation nor redressability, as required for Article III standing, they have shown no likelihood of success on their claims.

**B. The Does showed no likelihood of success on their substantive due process claims.**

Even if the Does had Article III standing to challenge the Chosen Name Law, they would still be unlikely to prevail on the merits because they failed to establish any likely constitutional violation. The Does brought three claims under 42 U.S.C. § 1983, alleging infringement of their parental rights (Count One), familial association rights (Count Three), and procedural due process rights (Count Two). FAC, App. Vol. 3 at 796-804, ¶¶ 172-203. The Chosen Name Law does not run afoul of any of these constitutional protections; moreover, the law satisfies any level of constitutional scrutiny because it is narrowly tailored to serve the compelling state interest of creating a safe and inclusive learning environment for gender-nonconforming youth. The Does thus did not show an actual “deprivation of any rights, privileges, or immunities secured by the Constitution,” as is required to show a likelihood of success on the merits of a § 1983 claim.

Counts One and Three rely on substantive due process. Such violations can take one of two forms: “(1) government action infringes a ‘fundamental right’ without a ‘compelling government interest,’ or (2) government action deprives a person of life, liberty, or property in a way that ‘shocks the conscience.’” *Maehr v. U.S. Dep’t of State*, 5 F.4th 1100, 1117 (10th Cir. 2021) (internal citations omitted). Because the Does’ claims against the state government involve an act of the legislature, the fundamental-rights approach applies. *See id.* Under this analysis, courts must: (1) determine “whether a fundamental right is at stake”; (2) determine “whether the claimed right—fundamental or not—has been infringed”; and (3) apply the appropriate level of constitutional scrutiny, *i.e.*, strict scrutiny for fundamental rights and rational basis review otherwise. *Abdi v. Wray*, 942 F.3d 1019, 1028 (10th Cir. 2019) (applying *Washington v. Glucksberg*, 521 U.S. 702 (1997)).

**1. The Does failed to allege a violation of any fundamental parental right.**

The Does’ first claim is that, by allowing students to determine the name they use at school, the Chosen Name Law infringes on the parental rights recognized under the substantive component of the

Fourteenth Amendment’s due process clause. *See Meyer v. Nebraska*, 262 U.S. 390, 399, 401-02 (1923); *Pierce v. Soc’y of the Sisters*, 268 U.S. 510, 534-35 (1925). Although parents have a fundamental liberty interest in directing the upbringing of their children, *see, e.g., Troxel*, 530 U.S. at 65, this right is “limited in scope,” particularly in the context of the operation of public schools, *Swanson v. Guthrie Indep. Sch. Dist. No. I-L*, 135 F.3d 694, 699 (10th Cir. 1998).

Given the imprecise contours of parents’ substantive due process rights, *id.*, courts must “exercise the utmost care” when determining whether an asserted interest constitutes a “fundamental” right. *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). If the asserted interest has not been formally recognized by binding authority, courts must determine whether it is “objectively among those deeply rooted in this Nation’s history and tradition and implicit in the concept of ordered liberty.” *Maehr*, 5 F.4th at 1117. The Does did not make such a showing in this case.

**a. There is no fundamental right to receive notice of or consent to the name that a student uses at school.**

The Does claim a parental right to be promptly informed that their child has asked to identify by a different name at school, and a right to consent before the school honors the student's request. Such rights have never been recognized by the Supreme Court or this Court, nor do these rights find any support in history or tradition.

Quite the contrary, the nation's legal tradition reveals a long history of deference to the state's considered judgment on how to create educational environments in which students can safely learn. The Supreme Court "has long recognized that local school boards have broad discretion in the management of school affairs." *Bd. of Educ. v. Pico*, 457 U.S. 853, 863-64 (1982) (internal citations omitted). Courts do so because "public education in our Nation is committed to the control of state and local authorities," which have "the comprehensive authority . . . to prescribe and control conduct in the schools." *Id.* Thus, courts routinely reject attempts by parents to override state regulations on matters such as school discipline, see *Hall v. Tawney*, 621 F.2d 607, 610 (4th Cir. 1980), mandatory curricula, see *Leebaert v. Harrington*, 332

F.3d 134 (2d. Cir. 2003), sex education programs, *see Fields v. Palmdale Sch. Dist.*, 427 F.3d 1197 (9th Cir. 2005), and dress codes, *see Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381 (6th Cir. 2005). *See also Swanson*, 135 F.3d at 699 (recognizing that parents have no right to exempt their students from a school's community service requirements, objectionable reading materials, or assemblies addressing controversial topics).

Ultimately, parents “do not have a constitutional right to control each and every aspect of their children’s education and oust the state’s authority over that subject.” *Id.* Cases such as *Meyer*, *Pierce*, and their progeny lend “no support to the contention that parents may replace state educational requirements with their own idiosyncratic views of what knowledge a child needs to be a productive and happy member of society.” *Runyon v. McCrary*, 427 U.S. 160, 177 (1976). As a result, the right of parents to make decisions concerning the care, custody, and control of their children does not extend so far as to override the state’s direction to government employees on how to provide services in a nondiscriminatory manner.

The Does attempt to circumvent the narrow scope of substantive due process by reframing the discussion in terms of the *in loco parentis* doctrine. *Cf. Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 189 (2021) (describing the implied delegation of parental authority to schools). As the Does see it, the Chosen Name Law is unconstitutional because it usurps parental authority beyond that which is delegated to schools acting *in loco parentis*. Appellant’s Br. at 36-37. But schools’ authority under this doctrine is not nearly as limited as the Does suggest; in fact, “the *in loco parentis* doctrine imposed almost no limits on the types of rules that a school could set while students were in school.” *Morse v. Frederick*, 551 U.S. 393, 419 (2007) (Thomas, J., concurring).

Regardless, the doctrine is inapposite because schools have authority beyond that which is delegated by parents. *See, e.g., New Jersey v. T.L.O.*, 469 U.S. 325, 336 (1985) (“Today’s public school officials do not merely exercise authority voluntarily conferred on them by individual parents; rather, they act in furtherance of publicly mandated educational and disciplinary policies.”). This includes the authority to foster a safe and inclusive learning environment in public

schools. *See id.* at 340 (recognizing the state’s “need to maintain an environment in which learning can take place”).

The operation of schools requires clearing the barriers to learning and creating conditions that are conducive to learning. For gender-diverse students, Colorado and its school districts have decided the best way to foster such a learning environment is by requiring school employees to respect the student’s wishes on how they should be addressed. As the First Circuit recently explained, this is simply how the school “chooses to maintain what it considers a desirable and fruitful pedagogical environment.” *Foote*, --- F.4th ---, 2025 WL 520578 at \*12. Such decisions “are generally committed to the control of state and local authorities,” *id.*, and thus do not require a delegation of parental authority—express or otherwise. *Cf. Morse*, 551 U.S. at 420 (“Whatever rules apply to [conduct] in public schools, those rules can be challenged by parents in the political process.”) (Thomas, J., concurring). And because the Does have not identified any Fourteenth Amendment right to control the names used by school personnel in talking to their students, they have not shown any likelihood of success on the merits.

**b. The Chosen Name Law does not implicate parents’ right to make health care decisions about their children.**

The Does also try to show a likelihood of success on the merits by arguing that the Chosen Name Law provides a form of psychological treatment, thus violating their right to make medical decisions on behalf of their children. The effort fails because identifying a student by their chosen name is not health care.

The First Circuit persuasively rejected this very theory, three weeks ago. *Footte*, --- F.4th ---, 2025 WL 520578, at \*9-10. It reasoned that the mere “use of gender-affirming pronouns or a gender-affirming name” does not constitute “mental health treatment” because—unlike every case concerning a parents’ right to make medical decisions—it “involve[s] no clinical conduct at all.” *Id.* Rather, using a student’s chosen name and pronouns is “something people routinely do with one another, and which requires no special training, skill, medication, or technology” and thus cannot “be reasonably viewed as evidencing some indicia of medicalization.” *Id.*

This Court’s recent decision in *Chiles v. Salazar*, 116 F.4th 1178, 1214 (10th Cir. 2024) (certiorari pending), draws a similar distinction.

The Court there reasoned that the statute *did* implicate the practice of health care, because “treatment” in the mental health context is “what *licensed mental health providers* do during their appointments *with patients* for compensation under the authority of a state license.” *Chiles v. Salazar*, 116 F.4th 1178, 1214 (10th Cir. 2024) (emphasis added) (internal citations omitted). The Chosen Name Law, of course, does nothing of the sort: it applies to school personnel, not medical personnel, and it applies without regard to any medical context or doctor-patient relationship. The Does even concede this distinction— noting that (like other forms of gender nonconformity) “having a transgender identity is not a psychiatric condition.” Appellant’s Br. at 6.

Nonetheless, the Does rely on a not-yet-cross-examined expert, academic articles, and various inapposite cases for the point that “social transitioning” is a common aspect of treatment plans for gender dysphoria. *See, e.g.*, Appellant’s Br. at 30. Perhaps that is true, though it matters little because the Chosen Name Law does not “socially transition” students. The statute does not direct students to adopt a chosen name; it does not authorize anyone to make or even facilitate that decision for students; and it does not control the name used by the

myriad *other* adults and peers in a student's life outside of school staff. The law simply requires that schools respect a gender-diverse student's chosen name *whenever* the student chooses to ask for such respect.

This framing is important because the point of the Does' argument is that "the constitution requires parental consent and notice *when schools* socially transition children." Pls.' Reply in Supp. of Mot. for Prelim. Inj., Suppl. App. Vol. 1 at 76 (emphasis added). Even if that were correct, the analysis undoubtedly changes if it is the *student*, rather than the state, making the decision. In that case, parental notice and consent would be optional at best, but certainly not constitutionally required. *See, e.g., Bellotti v. Baird*, 443 U.S. 622, 640 (1979) ("parental notice and consent are qualifications that typically *may* be imposed by the State on a minor's right to make important decisions" (emphasis added)); *Doe v. Irwin*, 615 F.2d 1162, 1168 (6th Cir. 1980) (finding "no deprivation of the liberty interest of parents in the practice of not notifying them of their children's voluntary decisions").

Ultimately, the Does' claim hangs on the idea that, because a chosen name *can* be one aspect of a treatment plan, it *always* amounts to health care within the meaning of the Fourteenth Amendment. That

simply does not follow as a matter of logic. As the district court in *Foote* correctly noted, this reasoning does not “explain[] how referring to a person by their preferred name and pronouns, which requires no special training or skill, has clinical significance when there is no treatment plan or diagnosis in place.” *Foote v. Town of Ludlow*, No. CV 22-30041-MGM, 2022 WL 18356421, at \*5 (D. Mass. Dec. 14, 2022). A physician’s treatment of an obese patient might include interventions like a healthy diet and exercise. But no one would argue that a school’s cafeteria staff or gym teachers provide health care treatment in the constitutional sense by offering students a balanced meal or exercise. Similarly, no one would argue that a student’s *friends* provide health care when *they* honor their friend’s request to use a chosen name.

Contrary to the Does’ suggestion, cases like *Lamb v. Norwood*, 899 F.3d 1159 (10th Cir. 2018), do not change this analysis. In *Lamb*, this Court quoted a 2011 article from the International Journal of Transgenderism which stated that gender dysphoria may be treated by, *inter alia*, “changes in gender expression and role.” *Id.* at 1161. Setting aside the fact that the Chosen Name Law does not “change [a student’s] gender expression,” cases like *Lamb* are inapposite because, again, not

everything that *can* be used as a treatment is *inherently* a form of “health care” for which parental consent is required.

Context matters. And without a medicalized context, the use of respectful names and pronouns is a matter of civility, common courtesy, and nondiscrimination—not health care. The Does have shown no likelihood of any success in establishing otherwise.

\* \* \* \* \*

Requiring schools to honor a student’s chosen name and use that name while the student is engaged in the educational environment does not violate any fundamental parental right. Without any identified right or violation thereof, the remainder of the substantive due process analysis is moot. Consequently, the Does are unlikely to prevail on the merits of Count One.

**2. The Does failed to allege a violation of their right to familial association.**

The Does’ third claim is that allowing a student to determine how school employees address them at school has infringed their rights of

familial association<sup>6</sup> by forcing them “to alter their relationships with their children.” FAC, App. Vol. 3 at 796, ¶ 168. Although presented as a First Amendment right in the FAC, familial association claims are properly analyzed under the substantive due process framework. The Does are unlikely to succeed on the merits of their familial association claim because, applying the proper framework, Count Three failed to state a claim for relief.

**a. Familial association is a substantive due process issue.**

It is well-settled in the Tenth Circuit that a “familial association claim is grounded in substantive due process.” *Thomas v. Kaven*, 765 F.3d 1183, 1196 (10th Cir. 2014). The Does nevertheless claim that familial association is a First Amendment right. *See* Appellant’s Br. at 30; Pls.’ Reply in Supp. Of Mot. for Prelim. Inj., Suppl. App. Vol. 1 at 22. This is incorrect.

The Supreme Court recognizes two distinct types of associational freedoms—a freedom of expressive association and a freedom of

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<sup>6</sup> This right has also been referred to as a right of “family integrity.” *Griffin v. Strong*, 983 F.2d 1544, 1549 n.6 (10th Cir. 1993).

intimate association. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 617-18 (1984). The freedom of *expressive* association stems from the First Amendment because it is used “for the purpose of engaging in those activities protected by the First Amendment.” *Id.* By contrast, the Supreme Court explained that the freedom of *intimate* association “receives protection as a fundamental element of personal liberty.” *Id.* This is the language of substantive due process, which is why this Court recognizes it as such. *Trujillo v. Bd. of Cnty. Commr’s*, 768 F.2d 1186, 1188 (10th Cir. 1985).

In *Halley v. Huckaby*, 902 F.3d 1136, 1153-54 (10th Cir. 2018), this Court explained the correct standard for such claims. For suits challenging a legislative action, courts apply the fundamental-rights test. *Id.* For suits challenging an executive action, courts apply the shocks-the-conscience test, along with a threshold inquiry of whether defendants had an intent to interfere with the familial relationship. *Id.* As to the state defendants, Count Three challenges a legislative action—the Chosen Name Law—and is thus evaluated under the fundamental-rights framework.

**b. The Chosen Name Law does not implicate familial association rights.**

Under the fundamental-rights approach, the first step is to determine whether the asserted interest is fundamental. *Abdi*, 942 F.3d at 1028. The second is to determine whether the right “has been infringed through either total prohibition or ‘direct and substantial’ interference.” *Id.* The Does have shown no likelihood of success under this test.

The right of familial association is undoubtedly fundamental, even if its contours are unclear. *See Halley*, 902 F.3d at 1153-54. Yet the Does have identified no plausible infringement of it. After all, a state’s enforcement of “reasonable regulations that impose incidental and non-substantial burdens on even fundamental rights” will not amount to a constitutional infringement. *Stewart v. City of Okla. City*, 47 F.4th 1125, 1138 (10th Cir. 2022). And the Chosen Name Law is no more than incidental. It requires teachers and other school personnel to address a student by their chosen name, but it says nothing about how parents address or otherwise interact with their children. As the First Circuit recently reasoned, under such laws, parents “remain free to strive to

mold their child according to [their] own beliefs, whether through direct conversations, private educational institutions, religious programming, homeschooling, or other influential tools.” *Foote*, --- F.4th ---, 2025 WL 520578, at \*14-15.

The Does claim that, when school staff use a student’s chosen name without parental consent, it “sow[s] seeds of doubt” in their children about their fitness as parents and forces them to have uncomfortable conversations as a family about gender. FAC, App. Vol. 3 at 795-96, ¶¶ 167-69. As a result, they argue the law “driv[es] a wedge in the family.” Appellant’s Br. at 9. But even this argument falls far short of the established precedent. Consider *Arnold v. Bd. of Educ. of Escambia Cnty.*, 880 F.2d 305, 308-09 (11th Cir. 1989), cited in the Does’ brief, in which school employees *coerced* a minor into getting an abortion, drove the minor to the facility, and paid for the service. Or consider *Patel v. Searles*, 305 F.3d 130 (2d. Cir. 2002), also cited by the Does, in which police investigating a murder concocted false evidence and shared it with a suspect’s family in the hopes it would lead them to produce evidence against him. These cases prove the incidental nature of the Chosen Name Law: whatever else the state’s anti-discrimination

laws are, they are not remotely comparable to coercing a minor to get an abortion or framing someone for murder to make his family turn on him.

By contrast, consider *Stewart*, 47 F.4th at 1129-30. A police officer there was disciplined for an off-duty domestic dispute, and he claimed that the discipline infringed his familial association rights by deterring him from “attend[ing] various social and family events . . . out of fear that additional altercations may occur, prompting [new] investigations.” *Id.* at 1138. This Court sided with the employer, holding that the claimed burden on the plaintiff’s rights was “purely incidental” to a reasonable policy and did not amount to a “substantial interference.” *Id.* at 1138-39.

Under the Chosen Name Law, the state and its schools do not “socially transition” anyone. They merely take students at their word that they are gender-diverse and direct school personnel to treat that identity with respect. It does not inject the state or its schools into family conversations about the matter, and it does not stop parents from handling such conversations with their children in any way they wish. In fact, as one court recognized, laws like this actually “*refrain*[]

from interfering with the established parent-child relationship by allowing students to disclose their gender identity to their parents on their own terms.” *Regino*, 2023 WL 4464845 at \*6 (emphasis added).

The statute is not remotely as burdensome as the actions at issue in *Arnold* or *Patel*. Indeed, it is even less burdensome and more incidental than the policy upheld in *Stewart*. And because the Does have alleged facts showing neither direct nor substantial interference, they have shown no likelihood of success on the merits of the claim.

**3. The Chosen Name Law satisfies any level of constitutional scrutiny.**

Since neither Count One nor Count Three establish the violation of a fundamental right, the appropriate level of constitutional review is *at most* rational basis. *See Swanson*, 135 F.3d at 700 n.5 (school policy which allegedly burdened parental right to direct child’s education was “a reasonable means of promoting a legitimate government interest.”); *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275, 291 (5th Cir. 2001) (“[A]” rational-basis test is the appropriate level of scrutiny for parental rights in the public school context.”). *But see Abdi*, 942 F.3d at 1028 (noting that *no* level of scrutiny applies when the asserted right has not

been infringed at all). Regardless, the Chosen Name Law is narrowly tailored to serve a compelling state interest and would thus satisfy strict scrutiny anyway. *See id.*

Colorado has a compelling interest in creating a school environment where students feel safe and welcomed so that they may focus on learning. *See Trujillo v. Taos Mun. Schs.*, 1996 WL 366214 at \*3 (10th Cir. July 1, 1996) (noting the “vital state interest in providing a safe environment conducive to learning”); *Martinez v. Mafchir*, 35 F.3d 1486, 1493 (10th Cir. 1994) (“the state itself has a compelling interest in the health, education and welfare of children”). The compelling state interest in protecting the well-being of minors “is at its apex when a school board seeks to protect children who are particularly vulnerable, such as transgender minors.” *Foote*, --- F.4th ---, 2025 WL 520578 at \*16. The failure to protect students from discrimination at school “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.” *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954).

These anti-discrimination interests are precisely the interests served by the Chosen Name Law, and it does so in the straightforward

manner of prohibiting discrimination against gender-diverse students. *See Foote*, --- F.4th ---, 2025 WL 520578 at \*16 (noting that trans-inclusion policies “equalize[] educational opportunities” for transgender students “[b]y cultivating an environment where students may feel safe in expressing their gender identity.”). The Does disagree, arguing that these interests are “not compelling in the absence of parental consent.” Appellant’s Br. at 40. But that is circular reasoning: the state’s interest in limiting an alleged right to consent cannot turn on the alleged right to consent *not* being limited. In any event, the Does cite no authority for the idea that a state’s interest in anti-discrimination laws is compelling only when certain private citizens consent to their enforcement.

Moreover, the Chosen Name Law is narrowly tailored because it applies only to students who ask for it to be applied. There is no narrower means of protecting gender-diverse students than by letting them opt-in to the law’s protections. *Cf. Does 1-11 v. Bd. of Regents of Univ. of Colo.*, 100 F.4th 1251, 1278 (10th Cir. 2024) (explaining that “the narrow tailoring analysis requires explaining why the interest identified . . . cannot be achieved by narrower [means].” (internal quotation marks omitted)). The Does find this to be unduly broad

because not every gender-diverse student becomes transgender. But the statute is designed to protect *all* gender-diverse students, not only those who identify (or will someday identify) as transgender.

The Does are thus unlikely to prevail on the merits of their substantive due process claims because, even if they had alleged an interference with their fundamental rights, the Chosen Name Law satisfies even strict scrutiny (let alone any lesser tier of scrutiny).

**C. The Does showed no likelihood of success on their procedural due process claim.**

The Does equally failed to show any likelihood of success on their procedural due process claim. Such claims require (1) deprivation of a constitutionally protected interest, and (2) insufficient procedural protections. *M.A.K. Inv. Grp., LLC v. City of Glendale*, 897 F.3d 1303, 1308-09 (10th Cir. 2018). The analysis here stops on the first prong, because the Does rely on their substantive due process claims to establish the constitutionally protected interests alleged to be deprived. *See Appellant's Br.* at 42.

As discussed above, these alleged interests and deprivations do not exist, *supra* at I.B, and the Does assert no other legal source for this

liberty interest, *cf. Castanon v. Cathey*, 976 F.3d 1136, 1140 (10th Cir. 2020) (“Liberty interests may arise from the Constitution itself, by reason of guarantees implicit in the word ‘liberty’” or “from an expectation or interest created by state laws or policies.”). Because the Does did not establish the deprivation of a constitutionally protected interest, they did not show any likelihood of success on their procedural due process claim.

## **II. THE DISTRICT COURT CORRECTLY CONCLUDED THAT THE DOES FAILED TO ALLEGE AN IRREPARABLE HARM.**

The second preliminary-injunction factor is whether “irreparable injury is *likely* in the absence of an injunction.” *Winter*, 555 U.S. at 22 (emphasis in original). The Does rest their claim to such harm solely on their allegation of a constitutional violation. Appellant’s Br. at 43. This misstates the law.

### **A. Presenting a constitutional question does not, by itself, establish an irreparable harm per se.**

An irreparable harm is one that cannot be remedied at the end of the trial, usually by monetary relief. *Free the Nipple*, 916 F.3d at 806. Although constitutional violations often fit the bill, *id.*, “[a]llowing *any* deprivation of *any* constitutional right to serve as per se irreparable

harm is a far-too-powerful tool in most cases,” *Leachco, Inc. v. Consumer Prod. Safety Comm’n*, 103 F.4th 748, 755 (10th Cir. 2024) (emphasis in original). As a result, even in constitutional cases, a plausible violation creates only a rebuttable presumption of an irreparable harm. *See, e.g., Garlick v. Regents of the Univ. of Colo.*, 2022 WL 18533663 at \*6 (D. Colo. Jan. 25, 2022) (“Even where there are allegations of constitutional violations, the Court must nonetheless engage in its traditional equitable inquiry as to the presence of irreparable harm.” (internal citations omitted)); *Rocky Mountain Gun Owners v. Polis*, 701 F. Supp. 3d 1121, 1146 n.22 (D. Colo. 2023).

Hence, in *Leachco*, this Court held that an alleged violation of the separation of powers, though potentially unconstitutional, was not an irreparable harm. 103 F.4th at 755. Similarly, in *Rocky Mountain Gun Owners*, the district court found that an alleged violation of the Second Amendment did not establish an irreparable harm per se. 701 F. Supp. 3d at 1146-47. Simply put, the Does cannot meet their burden of establishing an irreparable harm solely by raising a constitutional question.

**B. The Does did not allege any harm sufficiently imminent or irreparable to warrant preliminary relief.**

The Does' allegations consist of (1) complaints that are not legally cognizable injuries, and (2) fears of hypothetical future injuries. Neither category satisfies the test for irreparable harm.

To warrant injunctive relief, the moving party must establish a harm that is "certain, great, actual and not theoretical." *Heideman v. South Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003). That is not "an easy burden to fulfill" because harms that are "merely serious or substantial" are insufficient to satisfy this requirement. *Dominion Video Satellite, Inc. v. Echostar Satellite Corp.*, 356 F.3d 1256, 1262 (10th Cir. 2004).

The district court correctly held that the Does failed to meet this high bar for much the same reason they failed to show standing at all. Their alleged past injuries are irrelevant to preliminary relief. *Pinson v. Pacheco*, 397 F. App'x 488, 492 (10th Cir. 2010). Their alleged future injuries are purely speculative. PI Order, App. Vol. 4 at 896-99. And their alleged ongoing injuries are not cognizable harms, were not caused by the Chosen Name Law, and are too "theoretical" to warrant a

preliminary injunction. PI Order, App. Vol. 4 at 894-96; *Heideman*, 348 F.3d at 1189.

The district court also correctly reasoned that the Does' delay in filing suit "cuts against finding against finding irreparable injury." *Fish v. Kobach*, 840 F.3d 710, 753 (10th Cir. 2016). Here, the Does did not initiate the present suit until nearly a year and a half after they learned of A.D.'s previously expressed transgender identity, and the alleged involvement of A.D.'s district. See FAC, App. Vol. 3 at 788-90, ¶¶ 123 & 131-32. This lack of urgency strongly undermines their claim of an imminent, irreparable injury here.<sup>7</sup>

### **III. THE DISTRICT COURT SOUNDLY HELD THAT THE BALANCE OF HARMS WEIGHED AGAINST RELIEF.**

The party seeking preliminary relief must also show that the harm they alleged outweighs any harm to the non-moving parties, and that an injunction would be in the public interest. *Hobby Lobby Stores*,

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<sup>7</sup> Contrary to the Does suggestion, see Appellant's Br. at 44, Appellee Córdova *did* raise this argument in the district court. See Def.'s Resp. to Mot. for Prelim. Inj., Suppl. App. Vol. 1 at 57-58 (citing *Fish v. Kobach* to argue that the Does' inaction for a year and a half discredits their claimed need for emergency relief).

723 F.3d at 1128. These factors “merge” when the government is the non-moving party. *Nken v. Holder*, 556 U.S. 428, 435 (2009).

The district court correctly concluded that both factors weigh against preliminary relief. PI Order, App. Vol. 4 at 900. To begin with, “[t]here is always a public interest in prompt execution” of the law, absent a showing of its unconstitutionality. *Nken*, 556 U.S. at 436. As a result, any time “a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (internal marks omitted). As the district court put it, “[t]he public has interest in establishing learning environments free from discrimination, and Defendants have made a clear showing that the Law and Policies facilitate that interest.” PI Order, App. Vol. 4 at 900.

Further, a state’s paramount interest in executing its laws is especially great with respect to a civil-rights statute intended to shield minors in a protected class. *Cf. Aid for Women v. Foulston*, 441 F.3d 1101, 1119-20 (10th Cir. 2006) (noting the government’s “strong *parens patriae* interest in protecting the best interests of minors” and “in promoting public health, particularly the health of minors”). The

purpose of the Chosen Name Law is to protect gender-diverse students from discrimination and harassment. And the purpose of respecting the wishes of students is to allow the school environment to be an inclusive, welcoming space where the student can learn—even when the student is not yet ready to have a frank conversation with their parents, and even when the parents disagree about what it means to create an inclusive, welcoming space for transgender and gender-nonconforming youth.

As the district court soundly reasoned, the narrow scope of the Does’ requested relief limits but does not eliminate the harm to the state. PI Order, App. Vol. 4 at 900. Hostile environments have long been understood to be harmful and discriminatory, and as a result, schools have a duty not only to stop discrimination against individual students, but also to create an environment as free from such discrimination as feasible. *See Bryant v. Indep. Sch. Dist. No. I-38*, 334 F.3d 928, 933 (10th Cir. 2003) (recognizing schools have a “duty to provide a nondiscriminatory educational *environment*” (emphasis added)). Referring to any gender-diverse student by a name that denies their self-asserted identity risks a hostile environment not just for that

student but also for all *other* gender-diverse students—each of whom experiences the discrimination vicariously. *Cf. Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 22 (1993) (noting that a discriminatory work environment can “destroy completely the emotional and psychological stability of minority group workers”). The district court thus correctly concluded that there “would be a tangible harm” by enjoining the Chosen Name Law “because it would impede the District’s ability to support LGBTQ+ students and create a learning environment free from discrimination.” PI Order, App. Vol. 4 at 900.

#### **IV. ANY REMAND SHOULD INCLUDE AN EVIDENTIARY HEARING.**

The Does ask for this Court not only to remand the matter but also to direct the district court to enter a preliminary injunction. Appellants’ Br. at 47-48. But doing so without an evidentiary hearing would be an abuse of discretion. *See Reynolds & Reynolds Co. v. Eaves*, 149 F.3d 1191, \*3 (10th Cir. 1998) (decision to hold preliminary injunction hearing sits within court’s discretion).

In response to the Does’ motion for preliminary relief, Appellee Córdova agreed that no hearing was needed to address standing, but requested an evidentiary hearing at which to crosse-examine the Does’

proffered expert witness on merits issues. *See* Def.'s Resp. to Mot. for Prelim. Inj., Suppl. App. Vol. 1 at 41, 59. Indeed, Appellee Córdova identified several disputed factual points to be resolved by lay witnesses as well as expert witnesses, and she moved for leave to conduct early discovery tied to the preliminary injunction hearing. *Id.* at 44 n.7, 46 n.9, 51, 59; Def.'s Mot. for Expedited Disc., Suppl. App. Vol. 1 at 104-08.

Given that the district court resolved the motion on jurisdictional grounds, it was not an abuse of discretion to do so without an evidentiary hearing. Should the district court's order be vacated and remanded, however, it would be an abuse of discretion to enjoin the sovereign State of Colorado from enforcing its anti-discrimination laws without first affording it the evidentiary hearing it requested to (1) present its own expert witness, (2) cross-examine the Does' expert witness, and (3) take testimony from the Does and A.D.

## CONCLUSION

The district court did not abuse its discretion in denying the Does' motion for preliminary relief. The Does are unlikely to succeed on the merits of their claim because they lack standing to challenge the Chosen Name Law and, in any event, have shown no constitutional

violation. Moreover, the limited harms alleged to be irreparable are easily outweighed by the irreparable harm to the State and the public interest that the requested injunction would create. This Court should not disturb the district court's sound ruling.

Dated March 7, 2025.

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts exempted by Fed. R. App. P. 32(f) and 10th Cir. R. 32(B), this brief contains 10,166 words.

s/ *M. Blake McCracken*  
M. Blake McCracken

**10TH CIR. R. 28.2(C)(2) STATEMENT**

Oral argument is unnecessary in this case because, as articulated in the preceding brief, the issues raised in this appeal stem from well-settled matters of law. Because the law is clear, oral argument will not assist this Court in rendering a decision.

### **CERTIFICATE OF SERVICE**

This is to certify that I have served the foregoing **BRIEF OF APPELLEE, COMMISSIONER CÓRDOVA**, upon all parties using this Court's CM/ECF filing system, this 7th day of March, 2025.

/s/Dave Sluss

IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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JOHN AND JANE DOE,

Appellants,

v.

PHILIP WEISER, in his official  
capacity as Attorney General of  
Colorado, *et al.*,

Appellees.

Case No. 25-1037

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On Appeal from the United States District Court  
For the District of Colorado

The Honorable Charlotte N. Sweeney  
District Judge

Civil Action No. 1:24-cv-02185-CNS-SBP

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**EXHIBIT A**

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Brief of Appellee, Commissioner Córdova

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**Exhibit A: The Failed National Campaign of Litigation  
(with the three exceptions listed in boldface font)**

- 1) *Doe v. Madison Metro. Sch. Dist.*, No. 20-cv-454 (Dane Cnty., Wis., Cir. Ct.)
  - Filed, Feb. 18, 2020
  - Dismissed for lack of standing, Nov. 23, 2022 (see 2022 WL 21768939)
- 2) *John and Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, No. 8:20-cv-3552 (D. Md.)
  - Filed in state court, Oct. 20, 2020; removed, Dec. 7, 2020
  - Dismissed for failure to state a claim, Aug. 18, 2022 (see 622 F.Supp.3d 118);
  - Dismissal affirmed for lack of standing, Aug. 14, 2023 (see 78 F.4th 622 (4th Cir.))
- 3) *Littlejohn v. Sch. Bd. of Leon Cnty., Fla.*, No. 4:21-cv-415 (N.D. Fla.)
  - Filed, Oct. 18, 2021
  - Dismissed for failure to state a claim, Dec. 22, 2022 (see 647 F.Supp.3d 1271)
  - Appeal docketed, Feb. 6, 2023 (11th Cir.)
- 4) *T.F. v. Kettle Moraine Sch. Dist.*, No. 21-cv-1650 (Waukesha Cnty., Wis. Cir. Ct.)
  - **Filed, Nov. 11, 2021**
  - **Summary judgment granted to plaintiffs, Oct. 2, 2023 (see 2023 WL 6544917)**
- 5) *Perez v. Broskie*, No. 3:22-cv-83 (M.D. Fla.)
  - Filed, Jan. 24, 2022
  - Dismissed for failure to state a claim, Mar. 27, 2023
- 6) *Doe v. Manchester Sch. Dist.*, No. 216-2022-cv-117 (N.H. Sup. Ct.)
  - Filed, Mar. 3, 2022
  - Dismissed for failure to state a claim, Sept. 5, 2022;

- Dismissal affirmed for failure to state a claim, Aug. 30, 2024 (324 A.3d 921 (N.H.))
- 7) *Foot v. Ludlow Sch. Comm.*, No. 3:22-cv-30041 (D. Mass.)
    - Filed, Apr. 12, 2022
    - Dismissed for failure to state a claim, Dec. 14, 2022 (see 2022 WL 18356421)
    - Dismissal affirmed for failure to state a claim, Feb. 18, 2025 (see --- F.4th ---, 2025 WL 520578 (1st Cir.))
  - 8) *Vesely v. Illinois Sch. Dist. 45*, No. 1:22-cv-02035 (N.D. Ill.)
    - Filed, Apr. 19, 2022
    - Dismissed for failure to state a claim, Apr. 18, 2023 (see 669 F.Supp.3d 706)
    - Appeal voluntarily dismissed (see 2023 WL 8809305 (7th Cir.))
  - 9) *Figliola v. Sch. Bd. of the City of Harrisonburg, Va.*, No. CL22001304-00 (Rockingham Cnty., Va., Cir. Ct.)
    - Filed, June 1, 2022
    - Parent-plaintiffs dismissed for lack of standing, Dec. 2, 2022
  - 10) *Thomas v. Loudoun Cnty. Pub. Schs.*, No. CL22003556-00 (Loudoun Cnty., Va., Cir. Ct.)
    - Filed, June 29, 2022
    - Dismissed for lack of standing, May 3, 2023
  - 11) *Parents Defending Educ. v. Linn-Mar Cmty. Sch. Dist.*, No. 1:22-cv-78 (N.D. Iowa)
    - Filed, Aug. 2, 2022
    - Preliminary injunction denied on merits, Sept. 12, 2022 (see 2022 WL 4232912 and 629 F.Supp.3d 891),
    - Dismissed as moot, Sept. 29, 2023 (see 83 F.4th 658 (8th Cir.))
  - 12) *Parents Protecting Our Children v. Eau Claire Area Sch. Dist.*, No. 3:22-cv-00508 (W.D. Wis.)
    - Filed, Sept. 7, 2022

- Dismissed for lack of standing, Feb. 21, 2023 (see 657 F.Supp.3d 1161);
  - Dismissal affirmed for lack of standing, Mar. 7, 2024 (see 95 F.4th 501 (7th Cir.))
- 13) *Regino v. Staley*, No. 2:23-cv-32 (E.D. Cal.)
- Filed, Jan. 6, 2023
  - Dismissed for failure to state a claim, July 11, 2023 (see 2023 WL 4464845)
  - Appeal docketed, July 25, 2023 (9th Cir.)
- 14) *Kaltenbach v. Hilliard City Schs.*, No. 2:23-cv-187 (S.D. Ohio)
- Filed, Jan. 16, 2023
  - Dismissed for lack of standing, Apr. 19, 2024 (see 730 F.Supp.3d 699)
  - Appeal docketed, Apr. 24, 2024 (6th Cir.)
- 15) *Doe v. Washoe Cnty. Sch. Dist.*, No. 3:23-cv-129 (D. Nev.)
- Filed, Jan. 16, 2023
  - Dismissed for lack of standing, Jan. 22, 2024 (see 2024 WL 279051)
  - Dismissal affirmed for lack of standing, Jan. 13, 2025 (2025 WL 80363 (9th Cir.))
- 16) *Lavigne v. Great Salt Bay Cmty. Sch. Bd.*, No. 2:23-cv-158 (D. Me.)
- Filed, Apr. 4, 2023
  - Dismissed for failure to state a claim, May 3, 2024 (see 2024 WL 1975596)
  - Appeal docketed, May 23, 2024 (1st Cir.)
- 17) *Willey v. Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trustees*, No. 1:23-cv-69 (D. Wyo.)
- Filed, Apr. 20, 2023
  - Preliminary injunction denied on merits (as to healthcare-treatment theory), June 30, 2023 (see 680 F.Supp.3d 1250)
  - Dismissed as moot, Dec. 18, 2023 (see 2023 WL 9597101)
- 18) *Blair v. Appomattox Cnty. Sch. Bd.*, No. 6:23-cv-47 (W.D. Va.)

- Filed, Aug. 22, 2023
  - Dismissed for failure to state a claim, June 25, 2024 (see 2024 WL 3165312)
  - Appeal docketed, July 24, 2024 (4th Cir.)
- 19) *Short v. N.J. Dep't of Educ.*, No. 1:23-cv-21105 (D. N.J.)
- Filed, Oct. 12, 2023
  - Dismissed for lack of standing, July 16, 2024 (see 2024 WL 3424729)
- 20) *Walden v. Mesa Unified Sch. Dist.*, No. cv2023-018263 (Maricopa Cnty., Ariz. Super. Ct.)
- Filed, Nov. 20, 2023
  - Dismissed for lack of standing, July 19, 2024
  - Appeal docketed, Oct. 24, 2024 (Ariz. Ct. App.)
- 21) *Mead v. Rockford Pub. Sch. Dist.*, No. 1:23-cv-1313 (W.D. Mich.)
- Filed, Dec. 18, 2023
  - Motion to dismiss still pending
- 22) *Doe v. Del. Valley Reg'l High Sch. Bd. of Educ.*, No. 3:24-cv-107 (D. N.J.)
- Filed, Jan. 12, 2024
  - Temporary restraining order denied on merits, Feb. 21, 2024, and June 17, 2024 (see 2024 WL 706797 and 2024 WL 3029154)
  - Preliminary injunction denied on merits, Nov. 27, 2024 (see 2024 WL 5006711)
  - Appeal docketed, Dec. 13, 2024 (3d Cir.)
- 23) *Doe v. Pine-Richland Sch. Dist.*, No. 2:24-cv-51 (W.D. Pa.)
- Filed, Jan. 12, 2024
  - Preliminary injunction denied due to lack of standing, May 7, 2024 (see 2024 WL 2058437)
  - Dismissed for lack of standing, Dec. 12, 2024 (see 2024 WL 5274669)
  - Appeal docketed, Dec. 20, 2024 (3d Cir.)

- 24) *Vitsaxaki v. Skaneateles Cent. Sch. Dist.*, No. 5:24-cv-155 (N.D. N.Y.)
- Filed, Jan. 31, 2024
  - Motion to dismiss still pending
- 25) *Landerer v. Dover Area Sch. Dist.*, 1:24-cv-566 (M.D. Pa.)
- Filed, Apr. 3, 2024
  - Motion to dismiss denied, Feb. 13, 2025 (see 2025 WL 492002)
- 26) *Mirabelli v. Olson*, 3:23-cv-768 (S.D. Cal.)
- Filed, Apr. 27, 2023
  - Motion to dismiss denied, Jan. 7, 2025 (see --- F.Supp.3d ---, 2025 WL 42507)