

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

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

JOHN AND JANE DOE,

Plaintiffs,

v.

PHILIP WEISER, in his official capacity as Attorney General of the State of Colorado;
SUSANA CORDOVA, in her official capacity as Commissioner of the Colorado
Department of Education; and
SCHOOL DISTRICT 27J a/k/a 27J SCHOOLS, in its official and personal capacities,

Defendants.

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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Plaintiffs John and Jane Doe hereby file this consolidated Reply in support of their Motion for Preliminary Injunction against the Colorado Attorney General (the “Attorney General”), the Commissioner of the Colorado Department of Education (the “Commissioner”), and School District 27J a/k/a 27J Schools (the “District”).

INTRODUCTION

In its Opposition, the District does not deny the Does’ allegation that the Parental Exclusion Policy requires District schools to lie to parents when socially transitioning their children in certain circumstances. That bears repeating: by policy, schools in the District are lying to parents about what the schools are doing to their children. It is bad enough that the Name Change Law requires schools to socially transition students without regard to their parents’ wishes. Social transitioning is a significant form of psychological treatment, particularly in children. And allowing minor children to decide for themselves whether to undergo a social transition leaves them susceptible to their own imprudent choices and the serious, life-long consequences a social transition can have.

The Parental Exclusion Policy’s secrecy requirement compounds the injury. Under the Policy, when children merely assert their parents are “unsupportive” of the transition, District schools cut parents out of their children’s lives without any further investigation. Schools are not only failing to tell parents about the social transition but they are also intentionally deceiving parents by referring to their children by their birth name and pronouns in conversations with parents, despite referring to the children by their new name and pronouns at school. Worse, school personnel are required to lie to parents if parents ask whether their child is being socially transitioned. Deceiving parents about their children’s social transition isolates children from the very people who love and care for them most, just when they need them most.

Defendants seek to justify the Name Change Law and Parental Exclusion Policy on the ground that they prevent discrimination against transgender-identifying children at school. But this argument ascribes far too much permanence to what, in children, is typically a temporary identity state. Moreover, Defendants ignore the fact that a social transition *itself* can change gender outcomes. In years past, instead of undergoing a social transition, many of these children would have simply grown to realize they were gay or lesbian. Today, instead of allowing those identities to develop, schools are “transing the gay away”¹ to devastating effect on these children’s lives. Most children who are socially transitioned will go on to receive further “affirmative” care in the form puberty blockers, cross-sex hormones, and gender reassignment surgery. And persistence presents the prospect that the individual will have long-term struggles with gender-related distress. Authorizing children to make this significant life decision on their own puts them in the driver’s seat of their lives despite the fact they can’t yet reach the pedals.

To be sure, some children feel a transgender identification deeply, and some are likely to persist. For these children, a social transition may very well be appropriate. But that’s a decision for parents to make with their children and, if they chose, a mental health professional. Absent exigent circumstances that are not at issue here, Defendants have no authority to override parents’ choices, and the District certainly has no warrant to keep secrets, deceive, and lie to parents about what it is doing to their children.

¹ See Eappen, R., *Most ‘Transgender’ Kids Turn out to Be Gay*, Wall Street Journal (Dec. 14, 2023), attached as Ex. A and available online at <https://www.wsj.com/articles/most-transgender-kids-turn-out-to-be-gay-gender-affirming-care-conversion-therapy-58111b2e> (last visited Sept. 4, 2024).

Defendants admit that parents have the right to the care, custody, and control of their children, yet they claim this right doesn't apply here. While Defendants' arguments all fail, the Does agree with Defendants about one thing—the Court can and should resolve the Does' Motion without an evidentiary hearing. There are no material evidentiary disputes, and Defendants did not sponsor an expert in opposition to the Does' Motion, nor did they ask the Court for additional time to do so. And on the record as it now exists, the Does' entitlement to relief is plain. The Does are suffering ongoing constitutional harm *right now*—not to mention the realistic danger they will suffer constitutional harm in the future—so there is no justification for delay. This is especially true considering the Does do not seek a state- or District-wide preliminary injunction. Instead, they seek only to preliminarily enjoin the Law and Policy as applied to their children. The Court should grant them that narrow relief.

FACTUAL BACKGROUND

While Defendants' Oppositions to the Does' Motion do not raise any disputed issues of material fact,² the District's Opposition does clarify one salient point. By the text of the Parental Exclusion Policy, when a child asks to be socially transitioned at school, the District will consider the child's "health, well-being, and safety" in determining whether to tell their parents. LGBTQ+ Toolkit (ECF 25-9) at 5. The District candidly admits, however, that it interprets the Policy to require parental secrecy whenever the child simply tells school personnel that their parents are "not supportive" of the transition. See District

² The District asserts that that A.D.'s 9th grade counselor did not encourage her to transition and that Ms. Doe emailed A.D. in March 2023 expressing anger that A.D. was using a different name at school. District Opp'n at 6–7. A.D. disputes these assertions, see Declaration of A.D., dated Sept. 3, 2024 ("A.D. Decl."), ¶¶ 3–6, attached as Ex. B., but these and any other disputes are not material to the Does' Motion.

Opp'n at 6 n.3; *see also id.* at 24 (noting that parents are not informed of the transition when "a student indicates that their family is not supportive" (cleaned up)). If a child makes this statement, the District does not conduct any additional evaluation of the child's "health, well-being, and safety," nor does it conduct any follow-up investigation with the child's parents to determine whether the child's statement is accurate. Instead, if a child says their parents are "not supportive," the District will socially transition the child and deceive their parents about it.

ARGUMENT

The Attorney General argues the Does' Motion is subject to a heightened standard because it seeks the "same . . . relief" the Does seek on the merits. Atty. Gen. Opp'n at 5. Not so. A request for preliminary relief only seeks the "same relief" as the merits when the "order [granting preliminary relief], once complied with, *cannot be undone*," even if the defendant prevails on the merits. *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1247 (10th Cir. 2001) (emphasis added). Here, if the Court were to grant the Does' requested preliminary injunction and Defendants were to prevail on the merits, the Court would simply vacate the preliminary injunction. And if the Does were to prevail on the merits, the Court would convert the preliminary injunction into a permanent one and award the Does nominal damages against the District. Accordingly, the Does' Motion does not seek the same relief they seek on the merits. *Id.* (holding preliminary injunction did not seek "same relief" as merits where effect of injunction was only "temporary").

Defendants also argue the Does seek to alter the status quo. That's wrong too. When the Does filed suit prior to the start of the school year, A.D. had plans to de-transition and, to the best of the Does' knowledge, B.D. was not being transitioned. While their children could seek to be transitioned under the Law and Policy during this school

year, the Does seek to prevent that. Accordingly, the Does seek to *preserve* the status quo that was in effect when they filed suit, not alter it. *Schrier v. Univ. of Co.*, 427 F.3d 1253, 1260 (10th Cir. 2005) (noting that in determining the status quo, courts should look to “the last peaceable uncontested status existing between the parties”).

Even if the Does’ Motion were subject to a heightened standard (and it is not), the Does satisfy that standard. Specifically, they make a “strong showing” that the “likelihood-of-success-on-the-merits and the balance-of-harms factors . . . tilt in their favor.” *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 797 (10th Cir. 2019).

I. THE DOES ARE SUBSTANTIALLY LIKELY TO SUCCEED ON THE MERITS

A. The Does likely have Article III standing.

Defendants argue the Does lack Article III standing to seek injunctive and declaratory relief because they do not adequately allege future injury. But Defendants’ ignore the Does’ *ongoing* injury, which is sufficient to give them standing. In addition, contrary to Defendants’ arguments, the Does face a realistic danger of *future* injury, which is also sufficient. Accordingly, the Does have standing to seek prospective relief.³

To satisfy Article III, a plaintiff must demonstrate (1) an injury (2) traceable to the defendant’s actions that (3) can be redressed through the requested relief. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Plaintiffs have standing to seek prospective relief when they are presently “suffering a continuing injury,” *Tandy v. City of Wichita*, 380 F.3d 1277, 1283 (10th Cir. 2004), or when they face the “realistic danger” they will be

³ Defendants do not argue the Does lack standing to assert their nominal damages claim against the District. Nor could they. The Does were plainly previously harmed by the Policy. This past harm gives the Does’ standing to assert their claim for nominal damages against the District.

injured “in the relatively near future.” *California v. Texas*, 593 U.S. 659, 670 (2021); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 2011 (1995); see also *Buchwald v. Univ. of New Mexico Sch. of Med.*, 159 F.3d 487, 493 (10th Cir. 1998). “Past wrongs are evidence bearing on whether there is a . . . threat of repeated injury,” *Tandy*, 380 F.3d at 1283, and past wrongs establish standing where accompanied by “continuing, present adverse effects,” *Ward v. Utah*, 321 F.3d 1263, 1269 (10th Cir. 2003) (cleaned up).

When evaluating standing, the Court “must assume . . . that each claim is legally valid.” *Citizen Ctr. v. Gessler*, 770 F.3d 900, 910 (10th Cir. 2014). Here, the Does have standing to seek prospective relief because the Law and Policy are (1) causing ongoing harm and (2) create a realistic danger of future harm in the relatively near future.

1. The Law and Policy are causing *ongoing* harm.

a. *The Policy currently restricts the Does’ access to important information about their children.*

Parents’ right to the care, custody, and control of their children includes the right to obtain important information about their children at school. *Willey v. Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trustees*, 680 F. Supp. 3d 1250, 1277 (D. Wyo. 2023). Accordingly, parents have standing to challenge school policies that prevent parents from obtaining important information about their children. *Id.*; see also *FEC v. Akins*, 524 U.S. 11, 21 (1998) (holding standing where plaintiff alleges “inability to obtain information . . . that, on [plaintiff’s] view of the law” must be disclosed); *Citizen Ctr.*, 770 F.3d at 916 (same).

Here, the Parental Exclusion Policy requires school personnel to conceal important information from parents about their children—*i.e.*, the child’s asserted gender identity and whether the child is being socially transitioned—unless the child authorizes disclosure. LGBTQ+ Toolkit at 14; see also Compl. ¶ 73. Specifically, the Policy requires

school personnel to (1) deceive parents by referring to their children by their birth name and the pronouns associated with their natal sex in parent-school communications and (2) lie to parents in response to a direct question from them regarding whether a transition is occurring. LGBTQ+ Toolkit at 14; see also Compl. ¶¶ 74–75. These requirements are harming the Does, who “intend to seek . . . information [from the District regarding whether their children are being socially transitioned] on a regular basis beginning in the 2024–25 school year.” Compl. ¶ 150. Despite trying, the Does will be unable to get truthful information from the District regarding whether their children are being socially transitioned. This inability to obtain information is a sufficient ongoing injury to establish standing to challenge the Policy. *Willey*, 680 F.Supp.3d at 1277.

Defendants cite *John & Jane Parents 1 v. Montgomery County Board of Education* in support of their standing argument, but in that case the parents’ claim was much narrower than the Does’ claims here. There, the parents specifically limited their claim to seek access *only* to their children’s “gender support plan” and related information. 78 F.4th 622, 629 (4th Cir. 2023). But because the parents did not allege their children had such a plan, the court concluded the parents’ alleged injury was speculative. *Id.* at 631. Here, by contrast, the Does seek to ascertain whether their children are being transitioned, which is information that indisputably exists. Because the Policy requires the District to keep the transition secret, deceive parents, and refuse to disclose this information to them, the Does have standing to challenge it prospectively.

b. The Law and Policy alter the decisional framework and require the Does to change their behavior.

As the Does have explained, parents have the right to consent when the state seeks to facilitate the social transition of their children. Pls.’ Mem. Supp. Mot. Prelim.

Injunc. (“Pls.’ Mem.”) at 10–17. But under the Law and Policy, Defendants have created a framework under which children may make that decision on their own. This decisional framework *itself* usurps parental authority, encouraging children to consider whether they want to socially transition, and giving them a means to do so in secret from their parents. As the Supreme Court has held, the state may not “transfer the power” to make decisions on major life decisions away “from . . . parents” absent sufficient cause. *Parham v. J.R.*, 442 U.S. 584, 603 (1979). Because the decisional framework created by the Law and Policy transfers parental power to children and authorizes them to make those decisions under the cover of state-supported secrecy, the Does have standing even if their children never seek to be socially transitioned. *Deanda v. Becerra*, 96 F.4th 750, 757 (5th Cir. 2024) (holding father had standing to seek prospective relief regarding contraception distribution program that “over[rode his] parental rights” despite no allegation his children sought to obtain contraceptives); *Parents United for Better Schs., Inc. v. Sch. Dist. of Phila. Bd. of Educ.*, 166 Pa. Cmwlth. 462, 466 (1994) (same with respect to school condom distribution program), *cited with approval in Parents United For Better Schs., Inc. v. Sch. Dist. of Phila. Bd. of Educ.*, 148 F.3d 260, 275 (3d Cir. 1998); *Parents 1*, 78 F.4th at 644 (Niemeyer, J, dissenting) (concluding parents had standing to challenge policy similar to Law and Policy even if children do not seek transition because it “invites minor children to develop and implement a gender transition plan without the knowledge, consent, or participation of their parents”).

In addition, the mere existence of the Law and Policy has required the Does to “curtail their [behavior]” in response. *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 184 (2000); *see also Parents 1*, 78 F.4th at 641 (Niemeyer, J,

dissenting) (concluding parents had standing to challenge similar policy because it caused “the dynamics and dialogue between parent and child [to] change on an ongoing basis”). Specifically, the Does are now required to “speak with their children about gender-identity related issues they otherwise would not discuss with them,” “self-censor their speech” with B.D. to avoid giving her the impression they would not approve of a social transition (lest she seek to transition in secret), and “monitor their children’s activities at school more closely than they otherwise would.” *Id.* ¶¶ 154–56. Because the Does are required to engage in these behavioral modifications to counter the impact of the Law and Policy on their relationships with their children, the Does are suffering ongoing harm.

2. The Does face a “realistic danger” of future harm.

The Does are also suffering the threat of future harm. While A.D. presently identifies as a girl again and has taken certain steps toward de-transitioning at school, her “gender journey is not complete.” Compl. ¶ 7. Instead, she is likely to continue to struggle with feelings of transgender identification for the foreseeable future:

- In youth, coming to have a gender identity can be a process, and A.D. only recently (March 2024) began feeling like a girl again after approximately five years. *Id.* ¶ 135. While A.D. currently feels like a boy, there is a part of her that does not yet feel comfortable in a female body, and she is still trying to understand those feelings and get back to her prior self. A.D. Decl. ¶ 12.
- Over the five years A.D. has identified as a boy, she has gone through other periods—like this one—where she has not felt a transgender identification, yet the transgender identification returned. Compl. ¶ 135.
- A.D. is still suffering from the underlying conditions that likely triggered her transgender identification in the first place, a fact that makes the reappearance of her transgender identity more likely. *Id.* ¶ 136.
- Socially transitioning makes it likely that the young person’s transgender identification will persist, Anderson Decl. ¶¶ 37–42, and A.D. was socially transitioned at school for two school years, a fact that makes it likely that her transgender identity will persist, Compl. ¶ 137. Indeed, A.D.’s transgender

identity was perpetuated in part by being affirmed through her social transition at school. *Id.* ¶ 127; see also A.D. Decl. ¶ 12.

- The social pressures on A.D. to re-identify as a boy are high. *Id.* ¶ 138. A.D.’s friend group includes many children who identify as LGBTQ+, and District personnel at A.D.’s school are supportive of students with a LGBTQ+ identification. *Id.* ¶¶ 139–40.

On these facts, there is a “realistic danger” A.D. will seek to re-transition under the Law and Policy “in the relatively near future.” *California*, 593 U.S. at 670; *Adarand Constructors*, 515 U.S. at 211; see also *Parents 1*, 78 F.4th at 626 (noting that case would have been different if parents had alleged their children were “struggling with issues of gender identity”). This danger puts the Does’ parental rights at risk. Indeed, because the District previously socially transitioned A.D., she—and by extension, her parents—are suffering “continuing, present adverse effects” from the District’s prior acts. *Ward*, 321 F.3d at 1269.

In addition, while the case for future harm in connection with B.D. is not as strong as with A.D., the same conclusion applies to B.D. The District is “encouraging” B.D. and other students in her class to “evaluate whether they feel like they might [have a transgender identification]” despite the fact B.D. is “too immature to process” that information. Compl. ¶¶ 145–47. Moreover, B.D., like her older sister, faces pressure from both her friend group and District personnel to identify as a boy. *Id.* ¶¶ 142–145. And as discussed, the Policy provides B.D. the authority to decide to socially transition and to do so in secret from her parents. On these facts, the District is laying the groundwork for B.D. to come to have a transgender identification, just like her sister.

The Commissioner argues the Does lack standing predicated on future harm because “A.D. stopped identifying as male before” the passage of the Law. Comm’r Opp’n

at 9. Similarly, the District argues the Does lack standing because the current version of its “policies regarding parental disclosure were enacted after [A.D.] had been allowed to use a chosen name and pronoun at school, without parental consent.” District Opp’n at 14. These arguments are meritless. The Does seek prospective relief preventing future implementation of the Law and the current version of the Policy against them. The Law and current version of the Policy are merely new and revised legal provisions that continue the Does’ constitutional injury caused by the prior version of the Policy. The mere passage of a new statute that embodies past practices or the minor revision of a preexisting police does not defeat standing. See *303 Creative LLC v. Elenis*, 600 U.S. 570, 583 (2023) (holding plaintiff has standing when the government “has a history of past enforcement against nearly identical conduct”).

Finally, the cases Defendants cite are distinguishable. In none of those cases had the school previously socially transitioned the child at issue, nor did the parents allege facts establishing the type of future harm that is present here. In *Parents 1*, as discussed, the parents limited their claim to the school’s failure to disclose a “gender support plan” that may or may not have existed. 78 F.4th at 630. In *Parents Protecting Our Children, UA v. Eau Claire Area School District*, the court concluded standing was lacking because the policy at issue had never been applied, and it was unclear how it would operate in practice. 95 F.4th 501, 505–06 (7th Cir. 2024) (“All we have before us is a policy on paper without concrete facts about its implementation”). Here, by contrast, the text of the Law and Policy are clear, and the District previously socially transitioned A.D. Similarly, in *Parents Defending Education v. Linn-Mar Community School District*, the children in question had not previously been socially transitioned, and the parents’ alleged only that

their children “could potentially” implicate the policy at issue. 629 F. Supp. 3d 891, 901, 903 (N.D. Iowa 2022), *opinion vacated, appeal dismissed*, 83 F.4th 658 (8th Cir. 2023)).

The Does’ allegations of future harm are far more compelling here.

B. The Does are likely to succeed on their substantive due process and First Amendment claims.

1. The Does allege straightforward application of parental rights case law.

The Supreme Court and Tenth Circuit have long held parents have the rights (1) to consent when the state seeks to provide their children healthcare treatment, (2) to consent when the state seeks to make important decisions in the lives of their children, and (3) to the integrity of their family. Pls.’ Mem. at 10–17. Defendants contend the Does are asking the Court to extend their rights in violation of *Washington v. Glucksberg*, 521 U.S. 702 (1997). But the Does are asking for nothing more than a straightforward application of the logic of Supreme Court and Tenth Circuit precedent to the facts here.

The Supreme Court first held the constitution protects parents’ right to the custody, care, and control of their children over a century ago. *Meyer v. Nebraska*, 262 U.S. 390, 402 (1923); *see also Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (noting that parental right is “established beyond debate as an enduring American tradition”). Parents are not required to demonstrate the existence of this right anew in every case. Instead, the question is whether the claims at issue *fall within* the logic of the previously recognized right. *See, e.g., Troxel v. Granville*, 530 U.S. 57, 65–66 (2000) (plurality op.) (evaluating whether statute violated parental right to control child visitation without considering historical analysis); *id.* at 77–78 (same) (Souter, J., concurring); *id.* at 80 (same) (Thomas, J., concurring); *Dubbs v. Head Start, Inc.*, 336 F.3d 1194, 1203 (10th Cir. 2003) (noting parental right to consent to healthcare treatment “fall[s] within” previously announced

right); *see also Obergefell v. Hodges*, 576 U.S. 644, 671 (2015) (noting that question under substantive due process was not whether the Court should create a “new . . . right to same-sex marriage” but whether the right to same-sex marriage *falls within* “the right to marry in its comprehensive sense”). The parental rights the Does seeks to vindicate here fall squarely within the scope of that previously announced right.⁴

Even if the Does were seeking an extension of their parental rights, such extension is warranted. Under the common law, parents had the right “to speak and act on . . . behalf” of their minor children. *Hodgson v. Minnesota*, 497 U.S. 417, 483 (1990) (Kennedy, J., concurring in part and dissenting in part); *see also* Blackstone, 1 COMMENTARIES at 447 (noting parental right to “sett[le] one’s children] properly in life, by preventing the ill consequence of too early and precipitate [decisions]”). And this concept of the “authority of parents in the lives of their children persisted in the decades leading up to the ratification of the Fourteenth Amendment.” *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 835 (2011) (Thomas, J., concurring). Based on these “deeply rooted” common-law principles and traditions, *Glucksberg*, 521 U.S. at 721, it beggars belief to think the

⁴ Moreover, the right to family integrity is also protected by the First Amendment. Pls. Mem. at 16. Because *Glucksberg* does not apply to First Amendment claims, 521 U.S. at 720–21, Defendants’ *Glucksberg* arguments have no impact on the Does’ family integrity claim.

The Does acknowledge that old Tenth Circuit authority houses the right to family integrity in substantive due process only. *Griffin v. Strong*, 983 F.2d 1544, 1547 (10th Cir. 1993). But Supreme Court precedent says otherwise, *Bd. of Dir. of Rotary Intern. v. Rotary Club*, 481 U.S. 537, 545 (1987), and more recent Tenth Circuit authority has been less certain that the right is a substantive due process right only. *Wirsching v. Colorado*, 360 F.3d 1191, 1198 (10th Cir. 2004) (evaluating First Amendment family integrity claim on its merits); *see also Reinhardt v. Kopcow*, 66 F. Supp. 3d 1348, 1359 (D. Colo. 2014) (noting that family integrity claim arises under “First and Fourteenth Amendment”). And regardless of where this right arises, for the reasons stated in the text, the Does’ family integrity claim falls within the scope of the previously announced right.

founding (or second founding) generation would have thought schools could deviate from parents' wishes regarding their children's gender identification. And in light of "Western civilization concepts of the family," which acknowledge "broad parental authority," *Parham*, 442 U.S. at 602, parents' right to consent when the state socially transitions their children is "implicit in the concept of ordered liberty," *Glucksberg*, 521 U.S. at 721.

2. The Does are likely to succeed on all three of their theories.

Under a straightforward application of precedent, the Does are likely to succeed on their claims that the Law and Policy violate their parental rights.

- a. Parents have the right to consent when the state seeks to perform healthcare treatment on their children.

Defendants argue social transitioning is not "medical treatment." District Opp'n at 19; Comm'r Opp'n at 3. The "example" expert affidavit the Commissioner submitted says the same thing. Affidavit of Dr. Scott Leibowitz (ECF 27-3) ¶ 30. But this argument is mere wordplay. The Does have never suggested social transitioning is "medical" treatment, like an injection or a drug would be. Instead, the Does' position is that social transitioning is "psychological" treatment, and that its impact on children is so significant the state must obtain parental consent before performing it. See Anderson Decl. ¶ 10. The parental right plainly applies to significant "psychological" treatment. *Parham*, 442 U.S. at 587 (discussing parental right to direct child's "mental health care"); *Colon v. Collazo*, 729 F.2d 32, 34 (1st Cir. 1984) (holding parents have right to make mental healthcare decisions for minor children). And contrary to Defendants' suggestion, it is irrelevant whether school officials have the subjective intent to provide children treatment when they socially transition them. Social transitioning is a form of psychological treatment in children regardless of the subjective beliefs of school officials.

Defendants also claim social transitioning is not a form of “treatment” at all, but rather that it merely “accords [children] the basic level of respect expected in a civilized society.” District Opp’n at 20 (cleaned up); see *also* Comm’r Opp’n at 14 (similar). But in making this argument, Defendants simply bury their heads in the sand to the contrary authorities the Does cite in their Memorandum, Pls.’ Mem. at 10–13, including: (1) *Lamb v. Norwood*, 899 F.3d 1159 (10th Cir. 2018); (2) Dr. Anderson’s declaration; (3) the *Final Cass Review*; (4) Dr. Zucker’s article; (5) the views of various medical associations, including the American Academy of Pediatrics, the Endocrine Society, and the American Medical Association; and (6) the United States Department of Health and Human Services. Together, these authorities establish social transitioning is a significant form of healthcare treatment, particularly in minors. *Id.*

Instead, Defendants rely on a handful of district court decisions concluding otherwise. But Defendants failed to inform the Court that *every one* of those cases is currently on appeal, has been vacated, or was a preliminary decision that is subject to further proceedings. See, e.g., *Doe v. Del. Valley Reg’l H.S. Bd. of Educ.*, No. 24-00107 (GC) (JBD), 2024 WL 706797, at *5-12 (D.N.J. Feb. 21, 2024) (temporary restraining order denied; case pending in district court); *Willey*, 680 F. Supp. 3d at 1274 (preliminary injunction partially granted/denied; case pending in district court); *Regino v. Staley*, No. 2:23-cv-00032-JAM-DMC, 2023 WL 4464845, at *2-5 (E.D. Cal. July 11, 2023), *appeal pending* (9th Cir.); *Foote v. Town of Ludlow*, No. CV 22-30041-MGM, 2022 WL 18356421, at *4 (D. Mass. Dec. 14, 2022), *appeal pending* (1st Cir.); *Littlejohn v. Sch. Bd. of Leon Cnty*, 647 F. Supp. 3d 1271, 1273 (N.D. Fla. 2022), *appeal pending* (11th Cir.); *John and Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 622 F. Supp. 3d 118, 128-30 (D. Md.

2022), *vacated by* 78 F.4th 622 (4th Cir. 2023). Moreover, all of those cases were decided before publication of the *Final Cass Review*, which concluded social transitioning is an “active intervention [that] may have significant effects on [youth] in terms of their psychological functioning and longer-term outcomes.” *Final Cass Review* at 158.

While the “example” expert affidavit the Commissioner submitted is over four years old—and is thus fatally unreliable—that affidavit *supports* the characterization of social transitioning as a form of psychological treatment. In it, Dr. Leibowitz previously alleged that social transitioning is “a useful and important tool used by clinicians” to “improve psychological and emotional functioning” of the child through the creation of a “therapeutic environment.” Leibowitz Aff. ¶¶ 22, 26. This is “treatment” by any other name. Further, Dr. Leibowitz acknowledged that a social transition can avoid “poor mental health outcomes” in *all* “gender nonconforming youth,” even those “who are not necessarily gender dysphoric.” *Id.* ¶ 46. While the record belies any suggestion that socially transitioning every child who asks for it is uniformly beneficial, it indisputably establishes that social transitioning is a form of psychological treatment. And as Dr. Cass advises, “parents should be actively involved in decision making [regarding whether to socially transition youth] unless there are strong grounds to believe that this may put the child or young person at risk.” *Final Cass Review* at 164.

The Commissioner also claims that if the Court holds schools must obtain parental consent before socially transitioning children, there is no limiting principle that would keep such a holding from applying to school-based counseling. But unlike social transitioning, school-based counseling is not on its face a significant form of psychological treatment with potentially serious life-long consequences. Instead, most school-based counseling

involves routine, beneficial discussions with a trusted advisor, which are constitutionally permissible. See *Thomas v. Evansville-Vanderburgh Sch. Corp.*, 258 F. Appx. 50, *54 (7th Cir. 2007) (holding routine conversations between child and school counselor did not violate parental right). To be sure, if a school counselor were to perform a sustained course of experimental hypnotherapy on a student, for example, those actions might give rise to an as-applied constitutional challenge. *Gruenke v. Seip*, 225 F.3d 290, 307 (3d Cir. 2000) (noting that “school-sponsored counseling” can “overstep the boundaries of school authority and impermissibly usurp” the parental right). But this line between routine, beneficial discussions, on the one hand, and significant interventions like a social transition, on the other hand, is an easy one to apply. For the same reason, a school nurse may put a Band-Aid on a child’s paper cut but may not perform surgery on the child.

Defendants also contend the Law and Policy are permissible because they do “not stop the Does from pursuing the healthcare they deem appropriate.” Comm’r Opp’n at 17. But this argument fundamentally misunderstands the Does’ claim. The Does have the right to consent when the state seeks to provide healthcare treatment to their children; whether the Does can pursue *other* treatment is immaterial. Moreover, a social transition may interfere with parents’ right to pursue a different treatment paradigm they believe is best for their child. This is especially true in light of the Policy’s secrecy and deception provisions; parents cannot provide effective mental healthcare treatment for their children if schools are keeping secrets from and deceiving them.

Defendants point out that the Law and Policy do not require children to be diagnosed with gender dysphoria before schools socially transition them. While true, this fact does not help Defendants. As an initial matter, neither the Law nor Policy exclude

students who have gender dysphoria. Thus, some subset of the children who are being socially transitioned necessarily have gender dysphoria. Moreover, socially transitioning a transgender-identifying child whose psychological distress is sub-threshold for gender dysphoria—or even the hypothetical child who has no psychological distress—is no less treatment than if the child has full-blown gender dysphoria. Leibowitz Aff. ¶ 46 (noting alleged psychological benefit of social transition in children “who are not necessarily gender dysphoric”). Defendants’ argument is like saying giving a child Tylenol loses its character as “treatment” if the child does not actually have a severe headache. That is plainly wrong. And considering the serious psychological impact of social transitioning in children—an impact A.D. experienced, Compl. ¶ 127 (A.D.’s “transgender identity was perpetuated by being affirmed through her social transitioning”)—this practice must end.

Trying another tack, the District contends parents’ rights are violated only when the government “compel[s]” their children to take some act. Dist. Opp’n at 18. But this argument is inconsistent with binding authority. See *PJ ex rel. Jensen v. Wagner*, 603 F.3d 1182, 1197 (10th Cir. 2010) (noting the constitution protects “parents’ decisions regarding their children’s medical care”); *Dubbs*, 336 F.3d at 1203 (noting parents’ “right to control the upbringing, including the medical care, of a child”). The result in those cases would not have been different if the children had voluntarily sought healthcare treatment from the state.

Moreover, the cases the District cites—which involved state-run health clinics that distributed contraceptives to minors—are distinguishable. First, unlike social transitioning, children have a decisional privacy right to obtain contraceptives. *Anspach v. City of Phila.*, 503 F.3d 256, 262 (3d Cir. 2007) (citing *Carey v. Population Servs. Int’l*, 431 U.S. 678

(1977) (plurality op.)); *Doe v. Irwin*, 615 F.2d 1162, 1166 (6th Cir. 1980) (same). Second, unlike schools—where attendance is compulsory and where the state has plenary control over the child during the school day, Colo. Rev. Stat. Ann. § 22-33-104—health clinics “have no authority” over children seeking contraceptives. *Anspatch*, 503 F.3d at 265, 268; see also *Alfonso v. Fernandez*, 195 A.D.2d 46, 606 N.Y.S.2d 259 (N.Y. App. Div. 1993) (holding school-based condom distribution program violated parental rights). Third, unlike District schools, health clinics are not active participants with the child in the concealment of the child’s activities from parents. Fourth, unlike health clinics, schools have ongoing relationships with parents that require regular interactions with them in which disclosure can—and should—be made.

Further, a holding that compulsion is a necessary component of a parental rights claim would give the state far too much leeway to interfere with the family. Under such a holding, it would be constitutionally permissible for schools to employ doctors to provide medication to willing children. *But see Mario V. v. Armenta*, No. 18-CV-00041-BLF, 2021 WL 1907790 (N.D. Cal. May 12, 2021) (holding public school teacher violated parents’ rights by conducting blood-sugar tests on students despite the fact students willingly engaged in such tests). It would be constitutionally permissible for schools to hold a “Grandparent Visitation Day” for willing children. *But see Troxel*, 530 U.S. at 65–66 (plurality op.) (holding parents have right to determine persons with whom the child associates without mentioning wishes of child). And it would be constitutionally permissible for school personnel to retain custody of a child who ran away from home. *But see Gomes v. Wood*, 451 F.3d 1122, 1128 (10th Cir. 2006) (holding state may maintain temporary custody of child only “in an emergency situation” (cleaned up)). The Court

should thus reject the District's argument that compulsion is a necessary component of a parental rights claim.

b. Parents have the right to consent when the state makes the decision to socially transition their children.

Even if social transitioning were not healthcare treatment (and it is), parents have the right to consent when the state decides to socially transition their children. The District contends it is merely “honor[ing the child’s] choice” as to their gender identification. District Opp’n at 22. But again, compulsion is not a necessarily element of a parental rights claim. Regardless, Defendants may not so easily duck responsibility for their own actions. By actively participating with children, both in the transition and the parental deception, the District is enabling children to make a major life choice on their own. But “[m]ost children, even in adolescence, simply are not able to make sound judgments concerning many decisions.” *Parham*, 442 U.S. at 602 (emphasis added). And “[s]imply because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power . . . [away] from the parents.” *Id.* The Law and Policy authorize children to make major life decisions before they are competent to do so.

Defendants also invoke the line of cases holding parents do not have a right to dictate what schools teach their children, *see, e.g., Brown v. Hot, Sexy & Safer Prods., Inc.*, 68 F.3d 525, 534 (1st Cir. 1995), or how schools teach children, including things like “the hours of the school day,” “the timing and content of examinations,” and “the individuals hired to teach,” *Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381, 395–96 (6th Cir. 2005). But these cases are not remotely analogous to social transitioning. Whereas public schools’ core purpose is to “educat[e]” students, Colo. Const. art. IX sec.

2, schools have no special role—much less competence—in deciding whether a child should be socially transitioned.

Moreover, the rationale underlying the *Brown / Blau* line of cases is that giving parents the right to dictate what or how schools educate students would present intractable management problems for schools because different sets of parents would invariably want their children to be taught conflicting things or subject to different rules. *Brown*, 68 F.3d at 534 (noting that “[i]f all parents had a . . . constitutional right to dictate . . . what the schools teach their children, the schools would be forced to cater a curriculum for each student”). Social transitioning does not present this concern. Schools can defer to parents’ wishes regarding the transition of *their own children* without impacting *other parents’* rights. Indeed, the District already requires parental permission for a host of school-based activities, like field trips, the distribution of medication, and organized sports. See Field Trips and Excursions, attached as Ex. C; Administering Medication to Students, attached Ex. D; Constitution of the Colorado High School Activities Association § 1780, attached as Ex. E. Accordingly, the logic of *Brown / Blau* does not apply here.

The Commissioner contends parents do not have the right to “override a state’s nondiscrimination laws” as applied in schools, Comm’r Opp’n at 12, but the case she cites—*Runyon v. McCrary*—is inapposite. *Runyon* held that parents do not have the right to send their children to racially segregated schools in violation of the Equal Protection Clause and 42 U.S.C. § 1981. 427 U.S. 160, 178 (1976). That is not remotely analogous to the right the Does advance. The Does do not assert the right (nor do they want) to send their children to schools without transgender-identifying students. Rather, they assert only the right to parent their *own* children.

Defendants also suggest schools are required to enact policies prohibiting discrimination based on gender identity under the new regulations interpreting Title IX. District Opp'n at 3 n.2 (citing 34 C.F.R. § 106.31); Comm'r Opp'n at 17, 22 (citing 34 C.F.R. § 106.2). But courts in other jurisdictions have enjoined those regulations because they exceeded the Executive Branch's statutory authority, *see, e.g., State of Tennessee v. DOE*, 104 F.4th 577 (6th Cir. 2024), and the Supreme Court recently rejected the United States Department of Education's efforts to stay those rulings, *see DOE v. Louisiana*, No. 24A78, 2024 WL 3841071 (U.S. Aug. 16, 2024). In any event, those new regulations (like their predecessors) acknowledge "the right of parents to act on behalf of their minor child," which would include the right to determine the child's gender identity in the school setting. 34 C.F.R. 106.6(g); *see also Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 2024 WL 1833438, 89 FR 33474-01, *33822 (Apr. 29, 2024) (providing that "nothing in Title IX or the final regulations may be read in derogation of any legal right of a parent . . . to act on behalf of a minor child"). Accordingly, Title IX does not forbid schools from obtaining parental consent or notifying parents when socially transitioning their children. And even if it did, it would be unconstitutional for the same reasons the Law and Policy are unconstitutional.

c. Social transitioning children without parental consent constitutes an unwarranted intrusion in the family.

The District argues the Does' family integrity claim fails because they did not allege Defendants "intended" to interfere with the family. District Opp'n at 23. This argument is mystifying. The Complaint alleges the Law and Policy "are directed at the parent-child relationship with knowledge that schools' conduct will adversely affect that relationship." *See* Compl. ¶ 183. This is precisely the legal test for this claim. *Griffin v. Strong*, 983 F.2d

1544, 1548 (10th Cir. 1993). Moreover, Defendants' intent to override parental consent and forego parental notice is manifest on the face of the Law and Policy.

The Commissioner suggests school personnel have free speech rights to refer to children by a name other than the one chosen by parents, but this suggestion is absurd. Teachers do not have a right to override fit parents' choice of a name for their child. The Commissioner also contends the right to family integrity protects only "physical removal of the child from the parents' custody." Comm'r Opp'n at 18. But she does not cite a single case arriving at such a holding, and numerous courts have held the right is not so limited. *See, e.g., Patel v. Searles*, 305 F.3d 130, 134, 140 (2d Cir. 2002) (holding state action that created "mistrust among the members of [plaintiff's] family towards him" violated right to family integrity); *Gruenke*, 225 F.3d at 307 (holding school's interference with management of "family crises" violated right to family integrity); *Arnold v. Bd. of Educ. of Escambia Cnty.*, 880 F.2d 305, 313 (11th Cir. 1989) (holding "coerc[ing] a minor to refrain from discussing . . . an intimate decision" with parents violated right to family integrity). The right to family integrity encompasses parent's "right, when confronted with the state's attempt to make choices for them, to choose for themselves" what is best for their children. *Valdivieso Ortiz v. Burgos*, 807 F.2d 6, 8 (1st Cir. 1986). Defendants have violated that right here.

3. The Law and Policy do not satisfy any standard of review.

Because the parental right is fundamental, strict scrutiny applies. Yet the Law and Policy violate any standard of review, including rational basis review. Defendants articulate their alleged interests in various ways, but they all boil down to Defendants' assertion that the Law and Policy (1) promote student "safe[ty]" and (2) prevent "discrimination" against transgender-identifying students. District Opp'n at 24; Comm'r

Opp'n at 15. To the extent Defendants' invocation of student "safe[ty]" is meant to suggest the Law and Policy are designed to protect children from parental abuse, the Does have already explained why that alleged purpose fails. Pls.' Mem. at 20–21. Laws that presume parents will harm their children are *categorically* unconstitutional. *Id.*

Further, the prevention of discrimination fails rational basis review. While this may be a legitimate interest in cases involving transgender-identifying *adults*, it is not a legitimate interest with respect to transgender-identifying *minors*, at least absent parental consent. Gender identity is mutable, especially in minors, and transgender-identifying minors may have acquired their transgender identity due to any number of "cultural and/or social factors" indicating the child is likely to desist. Anderson Decl. ¶¶ 9, 26. A minor's request to be socially transitioned should *begin* an individualized evaluation process— involving the minors' parents—designed to determine whether the child's identity is likely to be permanent and whether it would benefit the child to be socially transitioned. *Id.* ¶¶ 29–35. Considering (1) the likely transitory nature of minors' transgender identity, *id.* ¶ 27, (2) the possibility that social transitioning will cause that identity to persist, *id.* ¶¶ 37–42, and (3) the serious ramifications of persistence on the remainder of the child's life course, *id.* ¶¶ 60–62, it is irrational for Defendants to rely solely on minors' self-attestation of their gender identity in determining whether to socially transition them. And if parents say "no" to their child's transition, then—absent a finding of parental unfitness—that decision controls, and Defendants lack any anti-discriminatory interest with respect to that child.

Moreover, and for the same reasons, socially transitioning every child who asks for it is not rationally related to the prevention of discrimination. As noted, most children with a transgender identity will desist. *Id.* ¶ 27. Socially transitioning a child who otherwise

would desist is psychologically harmful to them. Indeed, “[s]ocially transitioning every young person who . . . asks . . . without further evaluation is a ‘one-size-fits-all’ treatment approach that fails to account for the broader and unique issues the young person may be facing.” *Id.* ¶ 53. This type of categorical decision-making is the antithesis of the means-end fit required by rational basis review, *Dias v. City & Cnty. of Denver*, 567 F.3d 1169, 1183 (10th Cir. 2009), much less the narrow tailoring required by strict scrutiny.

The District also argues the Policy’s secrecy and deception requirements prevent discrimination, but that argument fares no better. The District fails to explain how keeping secrets from or deceiving “unsupportive” parents prevents discrimination against transgender-identifying children. Under the Law and Policy, “unsupportive” parents have no power to halt the social transition. Accordingly, keeping parents in the dark does not protect the child from discrimination at school in any way. *See Mirabelli v. Olson*, No. 3:23-cv-00768-BEN-WVG, 2023 WL 5976992, at *14 (S.D. Cal. Sept. 14, 2023) (“The reasons proffered by the defendants [for parental secrecy do not] pass . . . the rational basis test[.]”); *Willey*, 680 F. Supp. 3d at 1277 (holding that “preclude[ing] . . . school district personnel . . . from answering . . . a parent’s or guardian’s inquiry as to whether their child is being called by other than their legally given name . . . creates a likely constitutional problem”); *Ricard v. USD 475 Geary Cnty., KS Sch. Bd.*, No. 522CV04015HLTGE, 2022 WL 1471372, at *8 n.12 (D. Kan. May 9, 2022) (noting that “there are real questions” whether parental secrecy “would satisfy even the rational basis standard”).

Finally, the District points out the Policy “encourage[s]” children to involve their parents. District Opp’n at 4. But that’s not good enough. The *District* is socially transitioning children. The *District* thus has the obligation to tell parents what it is doing.

C. The Does are likely to prevail on their procedural due process claim.

The Does are also likely to prevail on their procedural due process claim. Defendants contend the Does have no procedural due process rights because they have not identified a constitutionally protected liberty interest. But as the Does have demonstrated, the Law and Policy infringe their substantive due process and First Amendment rights. These rights constitute liberty interests, the infringement of which gives rise to a procedural due process claim. *J.B.*, 127 F.3d at 925; *see also Hollingsworth v. Hill*, 110 F.3d 733, 739 (10th Cir. 1997) (holding parental right is “a constitutionally protected liberty interest which could not be deprived without due process”).

The District claims the Does have not specified the process to which they were entitled, but as the Does previously explained, Pls.’ Mem. at 22–23, they have the right to notice and an opportunity to be heard on the fact questions that serve as the basis for socially transitioning their children and keeping that fact secret from them—namely, (1) whether the child’s chosen name “reflect[s his or her] gender identity,” Colo. Rev. Stat. Ann. § 22-1-145(2), and (2) whether the child’s parents are “supportive.” The Does are entitled to notice and an opportunity to be heard on whether these conditions exist.⁵

The District claims *Lee v. Poudre School District* stands for the proposition that parents lack the right to notice of their children’s schools actions. But *Lee* involved claims alleging the right to certain information not at issue here under the *substantive* component of the Due Process Clause. No. 23-CV-01117-NYW-STV, 2024 WL 2212261, at *7 n.7 (D.

⁵ Basing their argument on the language of the Policy, the Does previously argued they were entitled to be heard on “the health, well-being, and safety” of the child. Pls.’ Mem. at 22 (quoting LGBTQ+ Toolkit at 5). Because the District has admitted it conducts social transitions in secret when parents are “unsupportive,” that is the issue on which parents are entitled to be heard.

Colo. May 16, 2024), *appeal filed* (10th Cir.). Here, unlike the situation in *Lee*, because the Law and Policy implicate the Does' *substantive* due process right to consent, the Law and Policy give rise to the *procedural* due process right to notice and an opportunity to be heard. And because the Law and Policy do not require these procedures, they violate procedural the Does' due process rights.

II. THE DOES' HARM IS IMMINENT AND IRREPARABLE

Defendants argue the Does' harm is not sufficiently imminent to justify preliminary relief, but as the Does have shown, Section I.A., *supra*, they are suffering both ongoing harm and a realistic danger of harm in the relatively near future. Indeed, considering A.D. only recently started feeling like a girl again and is still not comfortable in her body, now is an especially precarious time for her. On these facts, the Does have established a "clear and present need for equitable relief." *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003) (cleaned up); *see also Awad v. Zirrax*, 670 F.3d 1111, 1131 (10th Cir. 2012) (holding plaintiff's showing of standing demonstrated imminence sufficient to justify preliminary relief); *Missouri v. Biden*, No. 4:24-CV-00520-JAR, 2024 WL 3104514, at *27 (E.D. Mo. June 24, 2024) (noting that the "analysis of irreparable harm largely overlaps with [the] analysis of injury . . . for Plaintiffs' standing").

The Commissioner also argues the Does' injury is not irreparable, contending that a deprivation of constitutional rights does not *per se* establish irreparable harm. This argument also falls short. The case the Commissioner cites involved an alleged violation of the separation of powers. *Leachco, Inc. v. Consumer Prod. Safety Comm'n*, 103 F.4th 748, 755 (10th Cir. 2024), *petition for cert. filed* (U.S. Aug. 8, 2024) (No. 24-156). While violations of the separation of powers may not give rise to irreparable harm, this

conclusion is not applicable to cases involving deprivations of individual constitutional rights, including the parental right. *Free the Nipple-Fort Collins*, 916 F.3d at 806 (concluding that “[a]ny deprivation of any constitutional right” gives rise to irreparable harm); *see also Willey*, 680 F. Supp. 3d at 1288 (holding deprivation of parental right constituted irreparable harm). Accordingly, the Does’ harm here is irreparable.

III. THE OTHER PRELIMINARY INJUNCTION FACTORS FAVOR THE DOES

The last two preliminary injunction factors—the balance of harms and the public interest—also tilt decidedly in the Does’ favor. The District argues a preliminary injunction would be harmful to all students in the District, but the Does seek preliminary relief as applied *to their children only*. And because the Does have the right to consent when the state attempts to socially transition their children, other children in the District do not suffer any cognizable harm when the Does say “no.”

IV. THE ATTORNEY GENERAL IS A PROPER DEFENDANT

Finally, the Attorney General argues he is not a proper defendant, but he has not made a sufficient showing to warrant such a conclusion. The Name Change law provides, among other things, that school districts must enact policies implementing the Law’s “chosen name” requirements. Colo Rev. Stat. § 22-1-145(5). By statute, the Attorney General has the authority to bring an enforcement action against “any government authority” for violating state law. Colo Rev. Stat. § 24-31-113. Thus, the Attorney General has the authority to enforce the Name Change Law by filing enforcement actions against non-compliant school districts. *See Chamber of Com. of U.S. v. Edmondson*, 594 F.3d 742, 758, 760 (10th Cir. 2010) (holding similarly worded statute authorized *Ex Parte Young* suit against Oklahoma attorney general). In addition, the Attorney General is

empowered, “at the request of the governor, secretary of state, state treasurer, . . . or commissioner of education,” to “prosecute . . . all suits relating to matters connected with their departments.” Colo. Rev. Stat. Ann. § 24-31-101(h). The Attorney General has not demonstrated he lacks authority to bring an enforcement action against a school district under this provision. Nor has the Attorney General identified reason to think any other state officer is empowered to bring such an action.

The Attorney General also has not demonstrated he is unwilling to bring such an action. In *Regino v. Staley*, the Attorney General filed an amicus brief in the Ninth Circuit defending a California school district’s parental secrecy policy that, like the Law, required schools to socially transition students upon their request without regard to parental consent. Amicus Brief of Colorado, *et al.* in Support of Appellee (Case No. 23-16031, Dkt. 46), attached as Ex. F. In that brief, the Attorney General touted Colorado’s alleged “compelling interest in providing public schools where [transgender-identifying] students are included and can thrive.” *Id.* at 1. Based on this asserted interest, it is likely the Attorney General would bring an enforcement action against a school district that violated the Law. Indeed, the attorneys general of at least two other states who joined that brief—California and New Jersey—have brought enforcement actions asserting similar claims against school districts.⁶ Accordingly, the Attorney General should be required affirmatively to disclaim enforcement of the Law to demonstrate he is not a property party.

⁶ See *Bonta v. Chino Valley Unified Sch. Dist.*, CIV-SB-2317301 (Cal. Sup. Ct. 2023), available online at <https://oag.ca.gov/system/files/attachments/press-docs/Stamped%20-%20CVUSD%20Complaint.pdf> (last visited on Sept. 3, 2024); *Platkin v. Middletown Twp Bd. of Educ.*, No. A-000037-23 (N.J. Sup. Ct. 2023), available online at https://www.nj.gov/oag/newsreleases23/2023-0622_NJ-v-Middletown-Sup-Ct-Complaint.pdf (last visited on Sept. 3, 2024).

The Attorney General points out that the District is not currently violating the Law, but that is irrelevant. On the merits, the Does seek an injunction against the Law on its face, so the interests at stake extend beyond the one school district implicated here. To afford the Does complete relief on this record, the Attorney General must remain a party.

CONCLUSION

For the foregoing reasons, the Court should grant the Does' Motion for Preliminary Injunction.

Respectfully submitted,

Dated: September 3, 2024.

by:

/s/Josh W. Dixon

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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2024, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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EXHIBIT A

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<https://www.wsj.com/articles/most-transgender-kids-turn-out-to-be-gay-gender-affirming-care-conversion-therapy-58111b2e>

OPINION

COMMENTARY

Follow

Most 'Transgender' Kids Turn Out to Be Gay

Subjecting them to medical interventions is the modern-day version of 'conversion therapy.'

By Roy Eappen

Dec. 14, 2023 at 5:48 pm ET



A transgender pride march in Atlanta, Oct. 14. PHOTO: ROBIN RAYNE/ZUMA PRESS

As a medical professional who happens to be gay, I'll be celebrating Dec. 15, the 50th anniversary of the American Psychiatric Association's decision to remove homosexuality from its list of mental illnesses. The longstanding designation was based on prejudice, not medical research, and the revision marked the beginning of the end for so-called conversion therapy, which sought to "cure" gays and lesbians of a nonexistent malady.

Half a century later, the medical establishment is pushing a new kind of conversion therapy

under the guise of transgender identity. No one is suffering more than gay kids. In Canada, where I practice, and in the U.S., physicians provide what's euphemistically known as "gender-affirming care" to patients as young as 8, and the leading transgender health association has opened the door to interventions at even earlier ages. Under this framework, those who feel uncomfortable with their bodies may receive a medical regimen including puberty blockers, cross-sex hormones and sex-change surgeries. These interventions typically stunt, remove or irreversibly modify a patient's sexual development, genitals and secondary sex characteristics. Any endocrinologist or other physician who rejects this approach is alleged to be endangering the health and even the life of his patients.

But are these patients really "transgender"? Research shows that some 80% of children with "gender dysphoria" eventually come to terms with their sex without surgical or pharmaceutical intervention. Multiple studies have found that most kids who are confused or distressed about their sex end up realizing they're gay—nearly two-thirds in a 2021 study of boys. This makes sense: Gay kids often don't conform to traditional sex roles. But gender ideology holds that feminine boys and masculine girls may be "born in the wrong body."

In this light, "gender-affirming care" looks a lot like conversion therapy. In the past, it took the form of electroshock therapy, chemical castration and even lobotomy. Now it takes the form of rendering teenagers sterile and sexually dysfunctional for life. Clinicians from the main U.K. transgender service referred to prescribing puberty blockers as "transing the gay away"—a play on the description of old-fashioned conversion-therapy as "praying the gay away." A clinician who resigned from the U.K. service accused it of "institutional homophobia." Clinicians at the service had a "dark joke" that "there would be no gay people left at the rate Gids"—the Gender Identity Service—"was going."

Consistent with conversion therapy, physicians are telling young gays and lesbians that something is wrong with them, based on a regressive view of what it is to be male or female. Also consistent with previous efforts to cure homosexuality: The resulting interventions often create lifelong medical problems, both physical and mental. Contrary

to advocates' claims, there's no evidence that puberty blockers, cross-sex hormones, or surgeries reduce the risk of suicide.

Children who take this road face a lifetime of pain, infertility and anguish. They deserve real mental-health care to address common underlying comorbidities, not mind- and body-altering medical interventions that try to make them into something they aren't.

Fifty years ago, the medical assault on homosexuals began to end. Now society has been told that accepting transgender identity is the same as accepting gays and lesbians. But it isn't. Even well-intentioned acceptance of transgender identity disproportionately harms them. One day perhaps professional organizations like the Endocrine Society and the American Academy of Pediatrics will follow the evidence, as the APA did in 1973. Until then, gay kids will continue to suffer from an injustice that was supposed to end 50 years ago.

Dr. Eappen is a practicing endocrinologist in Montreal and a senior fellow at Do No Harm.

Appeared in the December 15, 2023, print edition as 'Most 'Transgender' Kids Turn Out to Be Gay'.

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

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

JOHN AND JANE DOE,
Plaintiffs,
v.

PHILIP WEISER, in his official capacity as Attorney General of the State of Colorado;
SUSANA CÓRDOVA, in her official capacity as Commissioner of the Colorado
Department of Education; and
SCHOOL DISTRICT 27J a/k/a 27J SCHOOLS, in its official and personal capacities,

Defendants.

DECLARATION OF A.D.

I am the individual referred to as "A.D." in this lawsuit. I hereby declare as follows:

1. I am the oldest daughter of the plaintiffs in this lawsuit.
2. I am a minor child. I am of sound mind and have personal knowledge of the matters set forth herein.
3. When I met with my high school counselor (the person identified in the Complaint as the "Counselor") during my freshman year in high school, I informed her I felt like a boy and that I would like to be known as "Z.D." She offered to change my records in Infinite Campus. I asked her not to change my name in Infinite Campus because I knew my parents would be able to see the change and I did not want them to know I was being socially transitioned at school.
4. In March 2023, I showed the Counselor an email my mom had sent me. At that time, my mom had learned that I ordered a breast binder from a company that offered

free breast binders to girls who identified as boys. My mom's email forwarded me a copy of the breast-binder order form. While I do not recall the exact words my mom used, it was a short email that said something like "We need to talk about this when you get home from school."

5. I was upset by my mom's email because I knew my parents wouldn't approve of me ordering the breast binder and I thought I would be in trouble. My parents had previously taken my phone away when I had done something wrong, and I was scared they would do that again.

6. At the time my mom sent the email, my parents did not know I was being socially transitioned at school.

7. In May 2024, near the end of my sophomore year, I asked a school counselor to remove the "pronoun flag" in Infinite Campus. I did not ask my teachers to stop calling me "Z.D." or to stop referring to me with non-female pronouns. Through the end of my sophomore year, my teachers continued referring to me as "Z.D." and with non-female pronouns.

8. In August 2024, at the beginning of my junior year, my new teachers started calling me "A.D." and referring to me with female pronouns, presumably because that is what my Infinite Campus profile said.

9. I currently have several teachers/advisors who were also my teachers/advisors during my freshman and sophomore year. While these teachers/advisors initially referred to me as "Z.D." and with non-female pronouns at the beginning of my junior year, I have informed these teachers/advisors that I now go by "A.D." and use female pronouns.

10. When I have told my prior teachers/advisors from my freshman and sophomore year that I now go by "A.D." and use female pronouns, some of them were skeptical. They asked me questions like "Are you sure?" and "Is this your parents?"

11. I have not told all my prior teachers/advisors from my freshman and sophomore year that I now go by "A.D." and use female pronouns. I intend to do that when I feel the time is right.

12. While I currently feel like a girl, there is a part of me that does not yet feel comfortable in a female body. I am trying to understand those feelings and get back to my prior self but I have not yet figured out how to do that. I believe living as a boy at school for two years has made that process more difficult for me.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing
is true and correct to the best of my knowledge.

Executed on September 3, 2024

A.D.

A.D.

EXHIBIT C

Field Trips and Excursions: IHOA-R1



INSTRUCTION: I

The following procedures shall be followed with regard to field trips:

A. Field Trip--School Time

Skip To Main Content

1. The sponsor-teacher of the trip will review the educational value of the field trip with the building principal and receive the principal's approval at least one week prior to making arrangement and definite plans for the field trip.
2. The principal will approve the trip only when satisfied that it is of educational value, is well planned and is within budget considerations.
3. The principal or his designee will arrange for bus transportation with the transportation supervisor.
4. No student shall be denied the opportunity to attend a field trip because of financial considerations.
5. A field trip is an extension of the classroom and therefore classroom policies shall be in effect where practical.
6. Normal bus regulations shall apply and all students on the bus shall be made aware of the regulations prior to the trip.
7. A minimum of one certificated staff member will be present on each bus with a recommended ratio of one adult per class where possible. Recommendations for selection, briefing and duties of chaperone are included in Procedure IJOA-2-R.
8. Students shall obtain permission from parents to participate.
9. Permission may be obtained on a school-devised form.
10. A student who is not allowed to participate because of parental objection will not be penalized in any way.
11. Non-participating students will remain at school engaged in purposeful activities under staff supervision.
12. The sponsor-teacher shall be responsible for making meal arrangements when necessary.
13. The sponsor-teacher will be responsible for each student's safety and will take roll each time the students Superintendent the bus.

B. Field Trip--Evenings and Weekends

All policies and regulations applying to field trips conducted during school time shall also apply to those held in the evenings or on weekends except that a minimum of two weeks' notice must be given to the principal.

In addition, the following will be observed:

1. Arrangements must be made with the parents to ensure that each student will have transportation home after the bus returns to the school.
2. Departure and return locations shall be given to parents as well as departure and return times.
3. After returning from the field trip, the sponsor will remain at the pick-up location until each student's ride has arrived.

C. Field Trip--Extended

The sponsor-teacher must obtain the principal's permission to make preliminary plans for the trip at least six weeks prior to the trip itself. The principal will approve the trip only after being satisfied that it is well planned, of educational value and will conform to Superintendent Policy and administrative procedures. The principal and the sponsor teacher shall discuss the trip with the superintendent and obtain his/her permission

Before the plan for the trip is presented to the Superintendent, a written presentation will be given to the Superintendent. No commitments will be made to students or parents until the Superintendent has approved the trip.

After receiving Superintendent approval, final arrangements may be made. The sponsor must keep the principal well informed of the progress of the plans. The principal may cancel the trip at any time if, in his opinion, the procedures of the district are not being properly followed or for other good and valid reasons.

General organization and implementation procedures must include the following:

1. No student will be denied the opportunity to participate because of financial considerations.
2. Parent permission slips will be obtained for each student and must include information to the parent necessary for the parent to fully understand all aspects of the trip.
3. A meeting will be held with the parents to discuss and review the trip. Parents unable to attend the meeting will be contacted in an effort to keep them fully informed. The meeting agenda will include the following:
 1. Time and activity schedule
 2. Clothes to take
 3. Meal information
 4. Cost to the student
 5. Luggage arrangements
 6. Sleeping accommodations
 7. Emergency telephone numbers
 8. Spending money suggestions
4. An overnight field trip for high school students must have a minimum of one adult chaperone for each 15 students. Overnight field trips for middle school students must have a minimum of one adult chaperone for each five students. At least one certificated sponsor will be present and in charge of the trip. Parent volunteers may be used as chaperones.
5. Specific regulations concerning student responsibilities while on the trip must be clearly understood and agreed to by all prior to the trip.
6. Insurance, if necessary, will be obtained by the director of finance when requested to do so by the sponsor.

RETURN TO DISTRICT POLICIES

EXHIBIT D

Administering Medication to Students: JLCD



STUDENTS: J

Prescription and non-prescription medication which must be administered during the school day shall be given by the school nurse or other school personnel designated by the principal and school nurse. This medication shall be kept in a locked cabinet or safe. The medication must be provided by the parent in an individual pharmacy labeled bottle for the student who is to receive it. The label must include the name of the student, name of the medication, the dosage, and the time for administering the medication.

Written parental permission and written authorization of the physician or other health care provider or dentist for giving medication at school shall be provided by the parent and filed in the office for the student who is to receive medicine. Secondary level students on prescribed drugs may be allowed to take their medication and thus relieve adult school personnel of this responsibility. If such is the case, the written parental permission and physician's authorization shall verify that the student is responsible for administering his own medication thus releasing liability against the district.

[Skip to Main Content](#)

The school nurse shall organize a practical plan for the administration of medications and maintain accurate recording according to the Nurse Delegation Act. Medication may be given legally only by school personnel whom a registered nurse has trained and delegated the task of giving such medication.

Self-administration of medication for asthma, allergies, anaphylaxis

A student with asthma, a food allergy, other severe allergies, or a related, life-threatening condition, or who is prescribed medication by a licensed health care practitioner may possess and self-administer medication to treat the student's asthma, food or other allergy, anaphylaxis or related, life-threatening condition, or other condition for which the medication is prescribed. Self-administration of such medication may occur during school hours, at school-sponsored activities, or while in transit to and from school or a school-sponsored activity. Student possession and self-administration of such medication must be in accordance with the regulation accompanying this policy.

Authorization for a student to possess and self-administer medication to treat the student's asthma, food or other allergy, anaphylaxis or other related, life-threatening condition, or other condition for which the medication is prescribed may be limited or revoked by the school principal after consultation with the school nurse and the student's parent/guardian if the student demonstrates an inability to responsibly possess and self-administer such medication.

Use of stock epinephrine auto-injectors in emergency situations

The district will have a stock supply of epinephrine auto-injectors for use in emergency anaphylaxis events that occur on school grounds. Any administration of a stock epinephrine auto-injector to a student by a district employee must be in accordance with applicable state law, including applicable State Board of Education rules.

The district's stock supply of epinephrine auto-injectors is not intended to replace student-specific orders or medication provided by the student's parent/guardian to treat the student's asthma, food or other allergy, anaphylaxis or related, life-threatening condition.

The district will have a stock supply of opiate antagonists to assist a student who is at risk of experiencing an opiate-related drug overdose event. For purposes of this policy, an opiate antagonist means naloxone hydrochloride or any similarly acting drug that is not a controlled substance and that is approved by the federal Food and Drug Administration (FDA) for the treatment of a drug overdose.

The stock supply of opiate antagonists may also be used to assist a district employee or any other person who is at risk of experiencing an opiate-related drug overdose event.

Administration of an opiate antagonist by a district employee to a student or any other person must be in accordance with applicable state law.

Adopted October 14, 1975

Revised 1978

Revised to conform with practice: date of manual adoption

Revised November 13, 1984

Revised September 22, 1987

Revised December 10, 1991

Revised March 12, 1996

Updated May 2009

Updated April 2022

LEGAL REFS.: C.R.S. 12-38-132 (delegation of nursing tasks)

C.R.S. 12-38-132.3 (school nurses - over-the-counter medication)

C.R.S. 22-1-119 (no liability for adverse drug reactions/side effects)

C.R.S. 22-1-119.1 (Board may adopt policy to acquire a stock supply of opiate antagonists) C.R.S. 22-1-119.3 (3)(c), (d) (no student possession or self-administration of medical marijuana, but school districts must permit the student's primary caregiver to administer medical marijuana to the student on school grounds, on a school bus or at a school-sponsored event)

C.R.S. 22-1-119.5 (Colorado Schoolchildren's Asthma, Food Allergy, and Anaphylaxis Health Management Act)

C.R.S. 22-2-135 (Colorado School Children's Food Allergy and Anaphylaxis Management Act)

C.R.S. 24-10-101 et seq. (Colorado Governmental Immunity Act)

1 CCR 301-68 (State Board of Education rules regarding student possession and

administration of asthma, allergy and anaphylaxis management medications or other prescription medications)

6 CCR 1010-6, Rule 6.13 (requirements for health services in schools)

CROSS REFS.: JICH, Drug and Alcohol Involvement by Students

JKD/JKE, Suspension/Expulsion of Students (and Other Disciplinary Interventions) JLCDA*, Students with Food Allergies

JLCDB*, Administration of Medical Marijuana to Qualified Students

JLCE, First Aid and Emergency Medical Care

RETURN TO DISTRICT POLICIES

EXHIBIT E

CONSTITUTION OF THE COLORADO HIGH SCHOOL ACTIVITIES ASSOCIATION

ARTICLE 1

100.	NAME
	The name of this organization shall be THE COLORADO HIGH SCHOOL ACTIVITIES ASSOCIATION.

ARTICLE 2

200.	MISSION STATEMENT
	<p>In pursuit of educational excellence, the Colorado High School Activities Association strives to create a positive and equitable environment in which all qualified student participants are challenged and inspired to meet their greatest potential.</p> <p>To fulfill this mission, the Colorado High School Activities Association will:</p> <ul style="list-style-type: none">• Act as an integral component of the educational process.• Administrate, interpret, and seek compliance with the CHSAA Bylaws as needed to promote competitive equity within Colorado activities and athletics.• Provide diverse and equitable opportunities for participation that encourages all qualified students to take part in the activity/athletic experience.• Provide an environment that enhances personal development through sporting behavior, character education, teamwork, leadership, and citizenship while increasing values that partner with the educational standards of the State of Colorado.• Recognize the outstanding accomplishments of Colorado athletes, participants, teams, coaches, and administrators through our academic and activity awards programs. <p>Involvement in interscholastic activities is a privilege. All member schools and their school communities are expected to adhere to the CHSAA standards for the enhancement of interscholastic activities in Colorado.</p>

ARTICLE 3

300.	EQUITY CODE
	<ol style="list-style-type: none">1. The Colorado High School Activities Association is committed to ensuring that all students have equal access and opportunities to participate in activities and athletics under the Title IX Education Amendment.2. Member schools shall ensure that all students have equal access and opportunities to participate in activities and athletics without unlawful discrimination based on disability, race, creed, color, gender identity, sexual orientation, religion, age, national origin, or ancestry.

student will be eligible for a maximum of five seasons and may play two seasons in a school year only once.

Students who transfer from another state may complete a season currently in progress in Colorado.

A student who has competed in a sport in Colorado may not gain an additional season of competition by moving out of state and returning to Colorado.

EXCEPTION: Esports students have two competitive seasons each year, so they will be allowed a total of eight seasons of participation. They will still need to adhere to bylaw 1770.2, semesters of attendance.

Q1: A school district which specifies that it is a four-year high school houses its 10th, 11th and 12th grades in one building, and its 9th grade high school students in another building along with 7th and 8th graders. Are the 9th graders, even though housed in another building, subject to all CHSAA, league and district eligibility standards?

A1: Yes.

Q2: A student competes in Colorado softball for the first time in the fall of her junior year, then moves to Texas and competes in their spring softball season. She and her family return to Colorado in the fall of her senior year. Is she eligible to compete in softball?

Q2: No.

1780. PHYSICAL EXAMINATION AND PARENTAL CONSENT

1780.1 No pupil shall participate in formal practice or represent his/her/their school in interscholastic athletics until there is a statement on file with the principal or athletic director signed by his/her/their parents or legal guardian and a practitioner licensed in the United States to perform sports physicals certifying that: (a) he/she/they has passed an adequate physical examination within the past 365 calendar days; (b) that in the opinion of the examining licensed practitioner, he/she/they is physically fit to participate in high school athletics; and (c) that he/she/they has the consent of his/her/their parents or legal guardian to participate.

NOTE: Beginning in the 2025-2026 school year, the CHSAA PPE form will be the only accepted physical form for student-athletes. The 2024-2025 school year will be viewed as a transition year.

Q1: Who are some people licensed to perform physicals?

A1: MD's, DO's, Nurse Practitioners, Physician Assistants and Doctors of Chiropractic who are School Physical Certified (DC, Spc.).

It is recommended that the CHSAA "Physical Examination & Parental Consent for Athletic Participation" be used for this process.

PENALTY — Schools which violate this regulation will be immediately placed on a minimum of probation until the school has provided the Commissioner with a detailed report of the incident(s) and administrative procedures have been put in place to ensure no repeat of the

EXHIBIT F

No. 23-16031

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

AURORA REGINO,
Appellant,

v.

KELLY STALEY,
Appellee.

**On Appeal from the United States District Court
for the Eastern District of California**

No. 23-cv-00032

Hon. John A. Mendez, District Judge

**BRIEF OF AMICI CURIAE CALIFORNIA, COLORADO,
CONNECTICUT, DISTRICT OF COLUMBIA, HAWAII, ILLINOIS,
MAINE, MARYLAND, MASSACHUSETTS, MINNESOTA, NEW
JERSEY, NEW YORK, OREGON, RHODE ISLAND, VERMONT,
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January 9, 2023

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INTERESTS OF AMICI CURIAE

Amici Curiae States of California, Colorado, Connecticut, District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington (“*Amici States*”) submit this brief pursuant to Federal Rule of Appellate Procedure 29(a)(2) to defend school policies that make schools safe and supportive environments for transgender and gender nonconforming students who may otherwise have no place to express who they are.¹

The *Amici States* share a sovereign and compelling interest in providing public schools where all students are included and can thrive. Like other state and local school authorities around the country, Defendant-Appellee Chico Unified School District (CUSD) Superintendent Kelly Staley and the CUSD Board are charged with one of the most important functions of government—nurturing successive generations of children into capable citizens of a diverse and unified nation. Consistent with the paramount importance of this responsibility, the Constitution affords States significant authority to ensure a safe and supportive learning environment for all students.

¹ By gender nonconforming students, the *Amici States* refer to students including, but not limited to, those who identify as gender non-binary (*i.e.* neither male nor female).

The *Amici* States respectfully submit this brief to explain: (1) how CUSD’s regulation—like similar policies enacted by the *Amici* States—has crafted a careful balance, consistent with due process, to support transgender and gender nonconforming students and their families; (2) how transgender and gender nonconforming students are particularly vulnerable to abuse, suicide, and other concrete harms caused by familial rejection and environments hostile to their gender identity; (3) the legitimate and compelling interest that States have in protecting these students by ensuring a safe and supportive school environment; and (4) how Appellant’s proposed framework undermines these efforts to protect transgender and gender nonconforming students.

Consistent with the policies endorsed by the *Amici* States, CUSD’s Administrative Regulation 5145.3 (AR 5145.3) is a flexible, case-by-case policy that seeks to include families in creating plans to meet the needs of transgender and gender nonconforming students at school; provides support and counseling to encourage students to have these conversations with their families; only withholds parental notice when a student expressly does not consent; and includes an exception so that parents are notified if needed to protect a student’s “physical and mental well-being.” 1-ER-98-99.

But CUSD’s policy recognizes that not all transgender and gender nonconforming youth have supportive families, and that such students may face

serious harms if they are prematurely forced to reveal their gender identity. One in ten transgender individuals experience overt violence from a household member; 15% are forced to leave their home because of their transgender identity; “coming out” to adverse parents has been shown to increase the risks of major depressive symptoms, suicide, homelessness, and drug use; and fewer than one in three transgender youth identified their home as supportive of their identity.² Thus, where the student expressly asks the school not to disclose the student’s transgender status, CUSD’s regulation takes appropriate steps to protect the student’s physical and emotional safety, well-being, and privacy.

The *Amici* States therefore join CUSD in supporting affirmance of the decision below.

ARGUMENT

I. POLICIES LIKE AR 5145.3 PROVIDE FLEXIBLE, CASE-BY-CASE FRAMEWORKS TO PROTECT TRANSGENDER STUDENTS WHILE INVOLVING PARENTS WHERE POSSIBLE

In 2014, the California Department of Education (CDE) issued a “Frequently Asked Questions” (“FAQ”) document explaining that because a transgender student “may not express their gender identity openly in all contexts” and “[r]evealing a student’s gender identity . . . may compromise the student’s safety,” CDE recommends that schools “consult with a transgender student” and “respect

² *Infra* pp. 17-18.

the limitations that a student places on the disclosure of their transgender status,” including with respect to the student’s family.³

CUSD adopted Administrative Regulation 5145.3 to protect transgender students by providing many ways for schools to partner with parents, while limiting unnecessary disclosures of student gender identity that could place students at risk. 1-ER-98-99. To begin, AR 5145.3 encourages CUSD schools to partner with parents wherever possible, instructing schools to “meet[] with the student and, if appropriate, the student’s parents/guardians to identify and develop strategies” to maintain “the student’s access to educational programs and activities.” 1-ER-99. AR 5145.3 further permits school personnel to disclose a student’s gender identity to a student’s parents or guardians “with the student’s prior written consent.” 1-ER-98.

Additionally, even where the student does not consent to disclosure, AR 5145.3 permits schools to disclose a student’s gender identity to a student’s parents or guardians where there is “compelling evidence that disclosure is necessary to preserve the student’s physical or mental well-being.” 1-ER-98-99. Moreover, AR 5145.3 requires schools to “offer support services, such as counseling,” to help and

³ Cal. Dep’t of Educ., Frequently Asked Questions, <https://tinyurl.com/y54447xf>.

encourage “students who wish to inform their parents/guardians of their status and desire assistance in doing so.” 1-ER-99.

Thus, AR 5145.3: includes parents when safe to do so or necessary to protect the student’s physical or mental well-being; allows students or parents to initiate these conversations about student identity in the time and manner they choose; and provides support services—like counseling—to encourage and facilitate such conversations in a way that respects the emotional, physical, and psychological safety of students.

Recognizing the need to protect transgender students while including families where possible, *Amici* States have adopted policies or nonbinding guidelines similar to AR 5145.3.⁴ For example, New York’s Education Department guidelines provide that “[t]he student is in charge of their gender transition” and that, with the student’s permission, “[s]chools will want to work closely with the students and their parents/guardians,” to devise an appropriate plan mindful of “each student’s

⁴ See, e.g., *Equality Maps: Safe Schools Laws*, Movement Advancement Project (2022), <https://tinyurl.com/28j7mhjn> (“nondiscrimination” tab compiling laws of all states); N.J. Dep’t of Educ., *Transgender Student Guidance for School Districts* 4-5, <http://tinyurl.com/ypb5jwa3>; N.J. Stat. Ann. § 18A:36-41; Susanne Beauchaine et al., *Prohibiting Discrimination in Washington Public Schools* 29-30 (Wash. Off. of Superintendent of Pub. Instruction 2012), <http://tinyurl.com/j2axsu4u>.

sense of safety.”⁵ Hawaii’s Department of Education has issued guidance similar to AR 5145.3, recommending that schools not disclose a student’s transgender status to others unless legally required or with the student’s consent.⁶ And the Massachusetts Board of Elementary and Secondary Education provides guidance to school districts to ensure safe and gender-inclusive schools, stating that the best practice is to speak with the student about their name and pronoun usage before discussing a student’s gender nonconformity with that student’s guardians to ascertain whether a student is not open about their gender identity at home, for example, due to safety concerns.⁷

Policies like AR 5145.3 thus reflect approaches within *Amici* States and other jurisdictions supported by research (and experience) that show that providing an inclusive, supportive educational environment benefits all students, including and especially transgender and gender nonconforming youth. *See* Section III.C. *infra*.

⁵ New York State Educ. Dep’t, *Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices* (June 2023), <https://tinyurl.com/4z7muwtx>.

⁶ Hawaii Dep’t of Educ., *Guidance on Supports for Transgender Students*, <http://tinyurl.com/356enp57>.

⁷ *See* Mass. Dep’t of Elementary and Secondary Educ., *Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment* (2022), <https://tinyurl.com/jx9a8nsf>.

II. SUBSTANTIVE DUE PROCESS DOES NOT EMPOWER PARENTS TO UNDERMINE PROTECTIVE SCHOOL POLICIES LIKE AR 5145.3

A. The District Court Correctly Held that Appellant’s Challenge is Subject to Rational Basis Review and that AR 5145.3 Reasonably Relates to a Legitimate Interest in Protecting Students

The Fourteenth Amendment’s Due Process Clause protects substantive “fundamental rights and liberties” which are “deeply rooted in this Nation’s history and tradition.” *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997) (citation omitted). And while the Supreme Court has expanded the doctrine to protect “certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs,” *Obergefell v. Hodges*, 576 U.S. 644, 663 (2015), it has also made clear courts should be “reluctant to expand the concept of substantive due process.” *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992). Thus, “[s]ubstantive due process’ analysis must begin with a careful description of the asserted right” and its context. *Reno v. Flores*, 507 U.S. 292, 302 (1993) (citation omitted).⁸

⁸ Appellant also claims a First Amendment right of familial association, Opening Br. 17, but the claim duplicates her Fourteenth Amendment claim, underscoring the need for judicial caution. *See, e.g., Keates v. Koile*, 883 F.3d 1228, 1235 (9th Cir. 2018) (“the constitutional right to familial association . . . does not appear in the text of the Constitution itself” and courts have not “been entirely clear regarding the source of the right,” relying “on the Fourteenth, First, and Fourth Amendments”).

In the context of education in particular, the Supreme Court has recognized and applied parental substantive due process sparingly. In *Meyer v. Nebraska*, 262 U.S. 390, 399-400 (1923), the Court observed that the Fourteenth Amendment’s substantive Due Process Clause includes the right to “establish a home and bring up children,” including the “right of parents to engage [a teacher] to instruct their children [in foreign languages].” *Id.* In *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535 (1925), the Court affirmed this parental right when striking down a law that required parents to enroll their children in public school, as opposed to private school. Even in these early decisions, the Court recognized that policies that allegedly infringed on such rights must only bear a “reasonable relation” to a legitimate government purpose. *Meyer*, 262 U.S. at 400; *id.* at 402 (“The power of the state to . . . make reasonable regulations for all schools . . . is not questioned.”); *Pierce*, 268 U.S. at 534-535 (same).

Since *Pierce* and *Meyer*, the Supreme Court and this Court have repeatedly declined attempts to expand the scope of parental substantive due process in the educational setting, instead affirming that such rights have “limited scope” when schools enact regulations to ensure the well-being of children. *Norwood v. Harrison*, 413 U.S. 455, 461 (1973); *see also Runyon v. McCrary*, 427 U.S. 160, 177 (1976) (same).

In *Runyon*, the Court rejected the claim that parental rights permitted private schools to refuse admission to students based on race, stating that parental rights to direct the upbringing of their children—in the school context—are limited to the facts of *Pierce*, 268 U.S. at 510 (right to send child to private school) and *Meyer v. Nebraska*, 262 U.S. 390 (1923) (right to provide instruction in non-English languages at private school), and that “*Meyer* and its progeny entitle [plaintiffs] to no more.” *Runyon*, 427 U.S. at 177. Indeed, the Court has consistently upheld policies that protect youth where, as here, parental decisions may “jeopardize the health or safety of the child, or have a potential for significant social burdens.” *Wisconsin v. Yoder*, 406 U.S. 205, 233-234 (1972); *see also H.L. v. Matheson*, 450 U.S. 398, 449 (1981) (“[L]egal protection for parental rights is frequently tempered if not replaced by concern for the child’s interest”); *Prince v. Massachusetts*, 321 U.S. 158, 166-167 (1944) (parental rights do “not include liberty to expose the community or the child to . . . ill health or death”).

Consequently, this Court has held that while substantive due process may afford certain parents “a fundamental right to decide *whether* to send their child to a public school,” they “lack [substantive due process] rights to direct school administration more generally,” whether it is “the hours of the school day, school discipline, the timing and content of examinations, the individuals hired to teach at the school, the extracurricular activities offered at the school or . . . a dress code.”

Parents for Privacy v. Barr, 949 F.3d 1210, 1226 (9th Cir. 2020) (citation omitted), *cert. denied* 141 S. Ct. 894 (2020); *see also Parker v. Hurley*, 514 F.3d 87, 102 (1st Cir. 2008) (collecting cases for this “well recognized” principle that parents do not have a substantive due process right to direct school administration more generally).

In *Parents for Privacy*, 949 F.3d at 1210, this Court specifically rejected claims by parents that a school district’s policy—of allowing transgender students to use school bathrooms, locker rooms, and showers that match their gender identity—violated parents’ substantive due process rights to control whom their children may be exposed to in such settings. In doing so, this Court rejected many of the same arguments raised by Appellant here. There, as here, appellants relied on *Troxel v. Granville*, 530 U.S. 57 (2000). *See* Opening Br. at 16, 18, 23, 28, 40. But this Court recognized that “*Troxel* concerned a state government’s interference with a mother’s decision about the amount of visitation” rights and “did not address the extent of parents’ rights to direct the policies of the public schools that their children attend.” *Parents for Privacy*, 949 F.3d at 1230. There, as here, appellants claimed that parental rights are limited only with respect to decisions about school curricula. *See* Opening Br. at 20. But this Court held that as a matter of substantive due process, “parents not only lack a constitutional right to direct the curriculum that is taught to their children . . . they also lack constitutionally

protected rights to direct school administration more generally.” *Parents for Privacy*, 949 F.3d at 1230.

The only other federal cases in the school context that Appellant cites to are unavailing.⁹ Though *Mirabelli v. Olson*, No. 323CV00768BENWVG, 2023 WL 5976992, at *11 (S.D. Cal. Sept. 14, 2023) addressed a challenge to a similar school district policy, it involved two teachers bringing First Amendment free speech and free exercise claims, claims not raised here.¹⁰ To the extent *Mirabelli* discussed parental rights, it did so through dicta, not once addressing *Runyon*, 427 U.S. at 177; *Norwood*, 413 U.S. at 461; *Fields*, 427 F.3d at 1204; or *Parents for Privacy*, 949 F.3d at 1231. *Mirabelli*, 2023 WL 5976992 at **8-9, 11 (“However, no parents have joined as plaintiffs at this time. . . . Consequently, the issue is not resolved here.”). Similarly, *Ricard v. USD 475 Geary County, Kansas School Board*, No. 522CV04015HLTGE, 2022 WL 1471372, at *4 (D. Kan. May 9, 2022), addressed a similar challenge based solely on a teacher’s “free exercise

⁹ Appellant also cites *T.F. v. Kettle Moraine School District*, No. 2021CV1650, 2023 WL 6544917, at *5 (Wis. Cir. Oct. 03, 2023), but the court there erroneously concluded that respecting a student’s pronouns amounted to a “medical” decision because that claim went “uncontested.” Here, Appellee and the district court correctly observed that this policy involves no medical decisions. *Infra* Section II.B.

¹⁰ *Amici* States disagree with the *Mirabelli* court’s First Amendment analysis, which is neither relevant to the facts of this case nor binding upon this Court.

rights.” In contrast, federal courts addressing due process parental rights challenges to policies similar to AR 5145.3 have dismissed those claims, as the district court properly did here. *See Foote v. Town of Ludlow*, 2022 WL 18356421, *9 (D. Mass. 2022); *Littlejohn v. Sch. Bd. of Leon Cnty.*, 2022 WL 18670372, *9 (N.D. Fla. 2022).

Furthermore, there is no limiting principle to Appellant’s argument that the First and Fourteenth Amendments force schools to notify parents of a child’s gender status. Appellant’s argument would extend to a parental demand to be notified of a student’s inclusion in or association with *any* protected rights or characteristics, *e.g.*, a student’s decision to pray during lunch, two male students hugging, or Black and white students becoming friends. As with Appellant’s request here, any mandate requiring school staff to provide notification because of a parent’s potential bias against a protected class would raise serious constitutional concerns. *Cf. Loving v. Virginia*, 388 U.S. 1, 2, 11-12 (1967) (ban on interracial marriage violates equal protection); *cf. also Holcomb v. Iona College*, 521 F.3d 130, 139 (2d Cir. 2008) (holding that employer who “disapproves of interracial association” violates Title VII by “taking adverse action”). “[T]he Constitution cannot control [private] prejudices, but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.” *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984).

Thus, the district court properly determined that Appellant advocates “for an expansion of” parental substantive due process rights “not supported by precedent.” *Regino*, 2023 WL 4464845 at *3; *see also Parents for Privacy*, 949 F.3d at 1230 (“Supreme Court and Ninth Circuit case law not only have not recognized the specific rights asserted by Plaintiffs, but further forecloses recognizing such rights as being encompassed by the fundamental parental rights protected by the Fourteenth Amendment’s Due Process Clause.”).

Accordingly, Appellant’s claims are subject to rational basis review, and the district court correctly held that AR 5145.3 bears a rational relationship to the legitimate state interest in protecting transgender and gender nonconforming students “from adverse hostile reactions, including but not limited to, domestic abuse and bullying.” *Regino v. Staley*, No. 2:23-cv-00032-JAM-DMC, 2023 WL 4464845 at *4 (E.D. Cal. Jul. 11, 2023); *see Fields*, 427 F.3d at 1208 (applying rational basis review to parental substantive due process claim in school context); *Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381, 396 (6th Cir. 2005) (same); *Immediato v. Rye Neck Sch. Dist.*, 73 F.3d 454, 461 (2d Cir. 1996) (same).

B. Respecting a Person’s Pronouns Does Not Constitute Professional Medical or Psychological Treatment Requiring Parental Involvement Under Substantive Due Process

The District Court also correctly rejected Appellant’s conclusory allegations that respecting a student’s pronouns or name amounts to a medical or

psychological decision that requires parental involvement pursuant to substantive due process. In reasserting these allegations, Appellant cites and misrepresents extrinsic evidence—in particular, expert declarations from *People of the State of California v. Chino Valley Unified School District*, No. CIVSB2317301 (San Bernardino Cnty. Super. Ct.). Opening Br. at 34. Contrary to Appellant’s claims, social transition is not a medical intervention, as the expert testimony in that case demonstrates. California’s expert in *Chino Valley*, Dr. Christine Brady, unequivocally states that “social transition is non-medical.” Mot. for Jud. Notice, Ex. C, ¶ 36. Defendant’s expert in *Chino Valley*, Dr. Erica Anderson, agrees: “[s]ocial transition’ is used *as a contrast to medical transition*,” since social transition does not encompass “various medical interventions . . . such as puberty blockers, cross-sex hormone therapy, and various surgical interventions.” Mot. for Jud. Notice, Ex. D, ¶ 9 (emphasis added).

Given the implausibility of alleging that social transition is a medical intervention, Appellant pivots, seizing on the words “treatment” or “psychological treatment”—referenced by Dr. Brady or court decisions—to claim that honoring a student’s request to use their pronoun or name in school requires a psychiatrist’s pre-approval or prescription. Opening Br. at 32-34. Again, Dr. Brady expressly refutes this, explaining that describing an act as “treatment” does not mean it requires professional consultation or prescription:

Prospective Intervenor misinterpret paragraph 19.C. of my initial declaration, where I state that “social transition is psychologically beneficial and is a medically recognized treatment for gender dysphoria.” In that statement, I referred to the medically recognized benefits of transgender and gender non-conforming youth being able to socially transition. For example, while aerobic exercise is not a “medical intervention,” medical professionals might recognize research documenting its physical and psychological benefits for certain health conditions. Likewise, social transition, though not requiring or constituting medical intervention, does provide numerous important and well-documented psychological and physical benefits¹¹

Put simply, no professional consultation, prescription, or psychological license is required to respect a person’s pronouns. As another court concluded, “[a]ddressing a person using their preferred name and pronouns simply accords the person the basic level of respect expected in a civil society generally,” meaning that “Plaintiffs have failed to adequately allege that Defendants provided medical or mental health treatment . . . simply by honoring their requests to use preferred names and pronouns at school.” *Foote v. Town of Ludlow*, No. CV 22-30041-MGM, 2022 WL 18356421, at *5 (D. Mass. Dec. 14, 2022).¹²

¹¹ Suppl. Decl. of Dr. Christine Brady, ¶ 12, *People of the State of Cal. v. Chino Valley Unified Sch. Dist.*, No. CIVSB2317301 (San Bernardino Cnty. Superior Ct.) (citations omitted); *see also, e.g.*, Marc-André Cornier, *A Review of Current Guidelines for the Treatment of Obesity*, 28 Am. J. Mgmt. Care S288 (2022) (describing “aerobic exercise” as a “treatment” and a “healthy meal plan” as a “therapy”).

¹² Appellant’s discussion of “additional” medical interventions, Opening Br. at 31, is irrelevant, as any parent right to decide whether minors receive specific surgical or hormonal treatment is not implicated by AR 5145.3. *See, e.g.*, S.B. 107, 2021-2022 Reg. Sess. (Cal. 2022).

III. STATES HAVE A LEGITIMATE AND COMPELLING INTEREST IN MAKING SCHOOLS A SAFE AND SUPPORTIVE ENVIRONMENT FOR ALL STUDENTS, INCLUDING TRANSGENDER AND GENDER NONCONFORMING STUDENTS

“[E]ducation is not merely about teaching the basics of reading, writing, and arithmetic. Education serves higher civic and social functions, including the rearing of children into healthy, productive, and responsible adults and the cultivation of talented and qualified leaders of diverse backgrounds.” *Fields v. Palmdale Sch. Dist.*, 427 F.3d 1197, 1209 (9th Cir. 2005). Thus, States have a compelling interest in guaranteeing safe and supportive school environments for all students, including transgender students, to enable them to learn and thrive.¹³ *New York v. Ferber*, 458 U.S. 747, 756-757 (1982); *cf. Serrano v. Priest*, 5 Cal.3d 584, 608-609, 616-617 (Cal. 1971) (fundamental right to education); Cal. Const., Art. I, § 28(a)(7) (“students . . . have the right to be safe and secure in their persons”); Cal. Educ. Code § 35183(a)(1) (“[R]ight to an effective public school education. . . [and] to be safe and secure in their persons at school.”).¹⁴

¹³ While rational basis review should apply, *see supra* Section II.A, given these compelling interests, CUSD’s policy should withstand any level of scrutiny.

¹⁴ Numerous states also expressly prohibit discrimination based on gender identity in education. *E.g.*, Cal. Educ. Code § 220; 775 Ill. Comp. Stat. 5/5/-102; *id.* 5/5A-102(A)-(B); Iowa Code §§ 216.2(10), 216.9; Mass. Gen. Laws ch. 76, § 5; Me. Rev. Stat. Ann. tit. 5, §§ 4553(9-C), 5601; Minn. Stat. § 363A.13; N.H. Rev. Stat. Ann. § 354-A:27; N.J. Stat. Ann. § 10:5-12(f)(1); N.Y. Educ. Law § 3201-a; N.Y. Exec. Law §§ 291, 296; Or. Rev. Stat. § 659.850; Wash. Rev. Code Ann. § 28A.642.010.

Safe and supportive school environments that nurture the whole student, foster trusting relationships, and promote a sense of belonging are critical to student success, in terms of both academics and social and emotional well-being. Conversely, discriminatory, unsafe, or unsupportive environments that place students at risk of harm at school, at home, or in the community adversely impact academic performance and student health. The experiences of *Amici* States and other jurisdictions show that policies and practices that support all students' gender identities facilitate trusting school relationships that yield benefits for all students.

A. Transgender and Gender Nonconforming Students Face Unique Risks of Harms at Home and Policies Like AR 5145.3 Mitigate These Risks While Providing Support for Conversations Between Students and Families

Although many transgender youth have supportive families, some face serious harms within the home, especially when prematurely forced to reveal their transgender identity. One in ten transgender individuals experience overt violence from a household member, and 15% are forced to leave their home because of their transgender identity.¹⁵ Transgender youth rejected by parents or subjected to non-affirming environments have “increased anxiety, depression, suicidal ideation,

¹⁵ Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, Nat'l Ctr. for Transgender Equal. 65 (2016), <https://tinyurl.com/bdcpb8hr>.

suicide attempts, and health care avoidance.”¹⁶ For example, lesbian, gay, and bisexual young adults who experience parental rejection are more than eight times more likely to attempt suicide and six times more likely to report major depressive symptoms.¹⁷

These risks of household rejection are substantial: according to the Trevor Project’s 2022 LGBTQ survey, fewer than one in three transgender and nonbinary youth found their home to be gender-affirming.¹⁸ Thus, contrary to Appellant’s arguments, policies like AR 5145.3 make no presumption about parents, *see, e.g.*, Opening Br. at 14—societies place rails by the sides of roads, not because they presume that all drivers will drive off the edge, but because they cannot risk the severe harm when it happens. Where transgender youth face hostility or rejection in the home, supportive and affirming environments at school can significantly lessen the risks of severe harm, especially concerning physical safety.

¹⁶ World Professional Ass’n of Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* S53 (Version 8, 2022), <https://tinyurl.com/mswz6phz> (WPATH SOC8) (“disaffirming behaviors” intended “to change gender identity/expression have been associated with negative psychological functioning that endures into adulthood”).

¹⁷ Caitlin Ryan et al., *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 *Pediatrics* 346 (2009), <https://tinyurl.com/4hscxv6f>.

¹⁸ The Trevor Project, *2022 National Survey on LGBTQ Youth Mental Health* 4, <https://tinyurl.com/4y6psfjs>.

B. Transgender Youth Also Face Unique Struggles That Policies Like AR 5145.3 Ameliorate by Maintaining a Safe and Supportive School Environment

In addition to addressing the risks transgender youth may face at home, policies like AR 5145.3 are especially important for creating supportive and affirming school environments for transgender students who without such policies suffer higher levels of discrimination and violence than their cisgender peers. According to a 2022 mental health survey, 71% of transgender and nonbinary youth respondents reported being discriminated against because of their gender identity.¹⁹ As many as 75% of transgender students surveyed in 2017 felt unsafe at school as a result of their gender identity or gender expression.²⁰

In California, specifically, a study found that in 2015-16 more than 40% of transgender students reported being bullied because of their gender identity, as opposed to only 7.3% of non-transgender students who reported gender-based bullying.²¹ This same study also reported that more than half (55.6%) of the State's

¹⁹ The Trevor Project, *2022 National Survey on LGBTQ Youth Mental Health*, *supra*, at 4.

²⁰ *Separation and Stigma: Transgender Youth and School Facilities*, Movement Advancement Project & GLSEN 4 (2017), <https://tinyurl.com/ukvkv8tf>.

²¹ De Pedro et al., *Exploring Physical, Nonphysical, and Discrimination-Based Victimization Among Transgender Youth in California Public Schools*, 1 Int'l J. of Bullying Prevention 218, 222 (2019).

transgender students reported physical victimization (such as being threatened with a weapon, threatened with harm, or in a physical fight).²² Due to such bullying and harassment, California transgender students reported negative mental health outcomes and school experiences “at higher rates” than any other subgroup.²³

Such discriminatory harassment and bullying undermines students’ sense of connection to their schools and their own sense of belonging, which in turn undermines academic achievement.²⁴ Transgender students who experience higher levels of gender-based victimization in school, including bullying and harassment, are less likely to plan to graduate high school, have lower grade point averages, and are three times more likely to have missed school in a given month.²⁵

Nationwide, 17% of transgender students reported that they left a K-12 school due to the severity of the harassment they experienced at school.²⁶ And nearly 46% of

²² *Id.*

²³ Hanson et al., *Understanding the Experiences of LGBTQ Students in California*, The California Endowment 9, 52 (Oct. 2019) <https://tinyurl.com/v452ty7s>.

²⁴ Joseph G. Kosciw et al., *The 2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation’s Schools*, GLSEN at xix-xx (2019), <http://tinyurl.com/52s5x3vu>.

²⁵ Movement Advancement Project & GLSEN, *supra*, at 4; Kosciw et al., *supra*, at xix, 35.

²⁶ Sandy E. James et al., *supra*, at 132-135.

transgender students reported missing at least one school day in the preceding month because they felt unsafe or uncomfortable at school.²⁷

When transgender youth experience both a lack of school belonging and familial rejection, they are significantly more likely to attempt suicide or experience suicidal thoughts.²⁸

However, because the harm experienced by transgender and gender nonconforming students relates to the way they are treated at school and at home, policies like AR 5145.3 that provide an affirming and supportive space have been proven to counteract such harm. When transgender youth have their gender identity affirmed in any or all settings, their mental health outcomes mirror those of their cisgender peers, experiencing reduced gender dysphoria/incongruence, depression, anxiety, self-harm ideation and behavior, suicidal ideation and attempts, and enhanced well-being and functioning.²⁹

²⁷ Emily A. Greytak et al., *Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools*, GLSEN 14 (2009).

²⁸ Ashley Austin et al., *Suicidality Among Transgender Youth: Elucidating the Role of Interpersonal Risk Factors*, 37 J. Interpersonal Violence 2696 (2022), <https://tinyurl.com/y8jwhktb>.

²⁹ Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, Pediatrics, Mar. 2016, at 5-7; see also WPATH SOC8, *supra*, at S107.

Studies specifically demonstrate the benefits of creating these affirming spaces at school. A recent study found that transgender youth who have their gender identity consistently affirmed in a single context (*e.g.*, school) had their risk of suicidal behavior lessened by 56%.³⁰ Gender-affirming school environments, specifically, had the strongest association with reduced odds of reporting a suicide attempt within the past year of all the spaces studied.³¹

Similarly, evidence shows that policies like AR 5145.3 that allow educators to be gender-affirming and supportive help mitigate other academic and emotional harms that transgender and gender nonconforming students face due to discrimination. One study confirms that LGBTQ+ students with support from many (11 or more) staff at their school were less likely to feel unsafe, miss school, or say they might not graduate high school because of their gender expression and sexual orientation; had higher GPAs; and felt greater belonging to their school community.³² Another study found that transgender and gender-nonconforming youth who had a relationship with a supportive educator were less likely to miss

³⁰ Stephen Russell et al., *Chosen Name Use is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, J. of Adolescent Health 503 (2018).

³¹ *The Trevor Project Research Brief: LGBTQ & Gender-Affirming Spaces*, The Trevor Project (Dec. 2020), <https://tinyurl.com/2c2p7zkf>.

³² Kosciw et al., *supra*, at xiii.

school or drop out, even if they experienced harassment from others in the school environment.³³

Thus, because transgender or gender nonconforming youth may face serious physical, emotional, or psychological harms from non-affirming households and environments, policies like AR 5145.3—which honor a student’s names and pronouns, prioritize student safety and well-being, and support students’ efforts to share their gender identity with their parents in the manner they choose—are vital to address these harms and ensure the safety and success of these students.

C. Policies like AR 5145.3 Benefit All Students Because They Provide Students With Safety and a Sense of Belonging

Moreover, peer-reviewed research shows that all students need to feel safe and a sense of belonging at school in order to learn. Students who experience safe and supportive school climates see improvements in academic achievement, school success, and healthy development, and such schools are more effective at preventing violence and retaining teachers.³⁴ “School connectedness, which is the

³³ Michelle Marie Johns et al., *Protective Factors Among Transgender and Gender Variant Youth: A Systematic Review by Socioecological Level*, 39 J. Primary Prevention 263-301 (2018), <https://tinyurl.com/44eek2ss>.

³⁴ See, e.g., Jenna Howard Terrell et al., *Conceptualizing and Measuring Safe and Supportive Schools*, 24 Contemporary Sch. Psychology 3 (Aug. 2020), <https://tinyurl.com/2kapyb4d>; Linda Darling-Hammond et al., *Implications for Educational Practice of the Science of Learning and Development*, 24 Applied Developmental Sci. 97-98 (Feb. 17, 2019), <https://tinyurl.com/944szuvh>.

feeling among adolescents that people at their school care about them, their well-being, and success, has long-lasting protective effects for adolescents. Youth who feel connected at school are less likely to experience risks related to substance use, mental health, violence, and sexual behavior.”³⁵

Students feel safe when they can trust that school staff and teachers support them. When trust is established, it results in better student engagement, self-esteem, attendance, graduation rates, and overall academic success.³⁶ Such trust is fostered for all students when school policies and practices—like AR 5145.3—are supportive of a student’s identity and designed to prevent harm. For example, in school districts with LGBTQ-supportive policies and practices, all students experience improved psychosocial health outcomes.³⁷

IV. APPELLANT’S PROPOSED FRAMEWORK UNDERMINES STATES’ ABILITY TO MAKE SCHOOLS A SAFE AND SUPPORTIVE ENVIRONMENT FOR TRANSGENDER STUDENTS

³⁵ Centers for Disease Control, Youth Risk Behavior Survey: Data Summary & Trends Report 2011-2021 at 72 (2023), <https://tinyurl.com/2p6w6yrv>.

³⁶ Laurie Kincade et al., *Meta-Analysis and Common Practice Elements of Universal Approaches to Improving Student-Teacher Relationships*, 90 Rev. of Educ. Rsch. 712 (Aug. 4, 2020), <https://tinyurl.com/3ant56ta>; Megan Tschannen-Moran et al., *Student Academic Optimism: A Confirmatory Factor Analysis*, 51 J. Educ. Admin. 150-154, 157-158, 167-171 (Mar. 2013), <https://tinyurl.com/3r3cuawt>; Isabel Brito et al., *Do You Trust Me? A Systematic Literature Review on Student-teacher Trust and School Identification*, The European Conference on Ed. 2021 (Sept. 2021), <https://tinyurl.com/5crrjxx>.

³⁷ Centers for Disease Control, LGBTQ-Supportive School Policies and Practices Help All Students Thrive (June 2022), <https://tinyurl.com/3nmn36ef>.

Policies like AR 5145.3 represent a flexible approach that protects the interests of both students and parents by encouraging parent involvement wherever possible without putting transgender students at risk. As discussed *supra*, *Amici* States have used this case-by-case approach for years to protect students across the country. Appellant’s proposed constitutional framework would undermine these protections, exposing students to physical, emotional, and psychological harm, injecting staff into deeply-personal family decisions, depriving students of the ability to learn in a safe and affirming environment, and frustrating schools’ fundamental ability to educate students.

First, Appellant’s framework would expose students to those who harbor animus toward transgender or gender nonconforming individuals. In this appeal alone, Appellant and amici supporting them have made arguments reiterating the false and invidious stereotypes that transgender or gender nonconforming status is a mental illness or illusion. *See* Opening Br. at 30-31 (alleging that every “child who asks to be socially transitioned should be seen by a mental health professional” to “diagnose the child” and correct “children who are mistaken about whether they have a transgender identity”); Amicus Br. of Foundation for Moral Law at 9 (“[T]hese laws are premised on a falsehood because gender identity is a faith-based ideology”); Mot. for Leave to File Amicus Br. of Our Duty at 4 (explaining *Amicus*’s goal of “counter[ing]” the idea “that transgenderism is . . .

acceptable”). Such pathologizing stereotypes echo those long used to discriminate against other marginalized groups. *See, e.g., SmithKline Beecham Corp. v. Abbott Lab’ys*, 740 F.3d 471, 484–85 (9th Cir. 2014) (“[G]ays and lesbians were [once] . . . made inadmissible under a provision of our immigration laws . . . [as] individuals ‘afflicted with psychopathic personality.’”).

Other cases have documented similar animus motivating efforts to disclose students’ transgender identity. For example, when the Chino Valley Unified School District recently enacted a policy forcing school personnel to “out” transgender students to their parents or guardians, its school board members described transgender students as suffering from a “mental illness” or “perversion,” and as a threat to the family and to humanity.³⁸ The Board President, stated that transgender individuals would benefit from “non-affirming” parental actions so that they could “get better.”³⁹ Another Chino Valley school board member stated, “there’s always been man, woman; and then you have this transgender [identity] . . . it is an illusion; it is mental illness.”⁴⁰ This board member further claimed that forced disclosures were needed because “women are

³⁸ Chino Valley Unified Sch. Dist. Bd., *CVUSD Meeting of the Board of Education - July 20th, 2023*, YouTube at 3:26:10-3:26:44, 3:33:08-3:33:38 (Jul. 20, 2023) (hereafter *CVUSD Board Meeting*), <http://tinyurl.com/mudrucp9>.

³⁹ *Id.* at 3:53:02-3:53:23.

⁴⁰ *Id.* at 3:26:08-3:26:25.

being erased,” and that “[i]t’s not going to end with transgenderism. . . . You got to put a stop to it.”⁴¹

While Appellant may not share such animus, policies like AR 5145.3 are vital to protect students from any who do. *See Palmore*, 466 U.S. at 433; *Hecox v. Little*, 79 F.4th 1009, 1029 (9th Cir. 2023) (“There is no denying that transgender individuals face discrimination, harassment, and violence because of their gender identity.” (citation omitted)). Appellant’s proposed framework would erase protective policies like AR 5145.3, exposing students to overt discrimination—like that expressed by parties in this case or in Chino Valley—and the related harms that follow. *See supra* Section III.A-B.

Second, Appellant’s proposed framework would force school staff to inject themselves into sensitive family dynamics by requiring school staff to “out” children before they are ready, intruding into the private affairs of the parent-child relationship and dictating sensitive family conversations that should occur in the time and manner chosen by the student and their family. *Cf. SmithKline Beecham Corp.*, 740 F.3d at 486–87. Research shows the clear physical, emotional, mental, and psychological harms for children who are outed and forced to have this

⁴¹ *Id.* at 3:26:40-3:26:45, 3:29:55-3:30:00, 3:33:13-3:33:20.

discussion with their families before they are ready, especially for children who fear their parents' negative reactions or for their own safety.⁴²

A now-college student, Dahlia Bekong, shared with teachers and school staff in high school that they were transgender and it was unsafe to use their chosen name and pronouns around their family.⁴³ After Dahlia's teacher outed them by using their chosen name in a phone call to their home, Dahlia stated: "my parents were really angry and confrontational. They accused me of destroying our family. I didn't feel safe in my own home . . . I don't think the teacher meant to cause harm—she made a mistake. But one inadvertent mistake can have catastrophic consequences . . . my home went from unsupportive to a war zone."⁴⁴

Third, Appellant's proposed framework would impair trust between students and their teachers, counselors, and other school staff, chilling communication and depriving students of the benefits of a gender-affirming school environment. As explained above, transgender students who have gender-affirming environments

⁴² See *supra* Section III.A; Harper Seldin, *Trans Students Should Be Treated With Dignity, Not Outed By Their Schools*, ACLU (Jan. 26, 2023), <https://tinyurl.com/3yuy4jkz> ("Trans people are much more likely to be abused by their immediate family based on their gender identity, and high risks of abuse and family rejection mean trans youth are overrepresented in foster care homes, juvenile detention centers, and homeless shelters." (citing studies)).

⁴³ Misha Valencia, *Why We Need to Stop Outing LGBTQIA Students*, Parents (Aug. 29, 2023), <https://tinyurl.com/p62xj5ae>.

⁴⁴ *Id.*

have mental health outcomes that mirror their cisgender peers, and gender-affirming and supportive relationships between students and school staff lead to increased student engagement, self-esteem, attendance, graduation rates, and academic success. *See supra* Section III.C. But without the protection of policies like AR 5145.3, schools cannot provide safe and supportive environments for transgender students, depriving students of those benefits and compounding the harms these students experience due to non-affirming environments at home and school.

Such harms were documented in *People of the State of California v. Chino Valley Unified School District*, No. CIVSB2317301 (Bernardino Cnty. Super. Ct.). There, teachers, parents, and current students explained how a policy requiring school staff to out transgender students to their parents terrorized students, inflicting significant emotional, psychological, and mental harm. A teacher reported that the prospect of being outed undermined teacher-student trust, prompting students to discuss which teachers are “safe” and which teachers “might report them.”⁴⁵ Multiple students reported contemplating the deletion of their gender accommodation plans at school, to avoid the even greater harms from being

⁴⁵ McFarland Decl. ¶ 46, *Chino Valley Unified Sch. Dist.*, No. CIVSB2317301.

outed, with at least one student reporting that he “did not feel safe.”⁴⁶ As one transgender student explained, the threat of being outed caused them to withdraw from participating at school, caused a transgender friend to suffer depression and anxiety, and shoved students like them “back into the closet, forever afraid to express who we are.”⁴⁷

Thus, Appellant’s position would undermine the supportive and trusting environment that transgender or gender nonconforming students need. *See, e.g., Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 968 (9th Cir. 2011) (noting teachers’ “position of trust and authority”); *Damiano v. Grants Pass Sch. Dist. No. 7*, No. 1:21-cv-00859-CL, 2023 WL 2687259, at *6 (D. Or. Mar. 29, 2023) (“[A] public-school teacher must maintain a classroom that is conducive to learning where the student is comfortable and feels safe when interacting with the teacher.” (citations omitted)). Rather than facilitating conversations about student identity, Appellant’s framework would close off the school as a place where students could express themselves, resulting in lasting emotional, psychological, academic, or physical harm. *See supra* Section III.A-B.

⁴⁶ *Id.* ¶ 27.

⁴⁷ Declaration of Chris R. ¶¶ 11-15, 32-35, 47, *Chino Valley Unified Sch. Dist.*, No. CIVSB2317301.

Finally, Appellant’s proposed framework would frustrate schools’ ability to carry out their fundamental mission educating students. “Schools cannot be expected to accommodate the personal, moral or religious concerns of every parent” as “[s]uch an obligation would not only contravene the educational mission of public schools, but also would be impossible to satisfy.” *Fields*, 427 F.3d at 1206. If a court were to hold that school staff had a constitutional obligation to provide any school-related information beyond that necessary to ensure students’ health and safety, then staff could be unduly burdened by having to make time-consuming and case-specific determinations of what kinds of information must be disclosed, along with the additional administrative hurdles of tracking whether the necessary disclosures have been made. *See, e.g., supra* p. 12.

Teachers and school personnel seek to help their students succeed, and they know that success often involves the family. But school policies like AR 5145.3 are important to protect transgender students when family involvement is not possible. Appellant’s interpretation of the First and Fourteenth Amendments, which would require schools to “out” students to their parents against the students’ wishes, could compromise students’ safety by increasing students’ vulnerability to harassment, violence, or other forms of abuse at school or at home. “It is the interest of youth itself, and of the whole community, that children be both

safeguarded from abuses and given opportunities for growth into free and independent well-developed . . . citizens.” *Prince*, 321 U.S. at 165.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment below.

Dated: January 9, 2024

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