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AURORA REGINO

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

AURORA REGINO,

Plaintiff,

vs.

**SUPERINTENDENT KELLY STALEY, in her
official capacity as Superintendent of the
Chico Unified School District,**

Defendant.

Case No.: 2:23-cv-00032-DJC-DMC

**PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS SECOND
AMENDED COMPLAINT**

Hearing Date: September 4, 2025

Time: 1:30 p.m.

Ctrm: 7

Judge: Hon. Daniel J. Calabretta

Complaint Filed: January 6, 2023

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1 Plaintiff Aurora Regino submits this Opposition to Defendant’s Motion to Dismiss her
2 Second Amended Complaint (“SAC”). ECF 88. The Court should deny the Motion.

3 **INTRODUCTION**

4 The law of parent and child reflects one enduring principle: the best way to protect
5 children from harm is to give their parents broad authority over them. Children are immature
6 and make rash decisions, while parents are presumed to be fit and to act in their children’s best
7 interests. Parents don’t always live up to this standard, of course, but the government must defer
8 to parents’ decisions in connection with significant choices in their children’s lives absent
9 narrowly tailored, compelling reasons not to.

10 Rather than defer to parents, the Chico Unified School District (the “District”) has given
11 children decision-making authority on matters of grave importance in their lives. Specifically, the
12 District has adopted a policy (the “Parental Secrecy Policy”) under which schools are required to
13 call children by a new name and pronouns associated with their asserted transgender identity
14 upon their request. This is called social transitioning, and it is a form of mental healthcare
15 treatment in youth. The purpose of social transitioning is to alleviate the psychological distress
16 that can accompany a transgender identity through the creation of a putatively therapeutic
17 environment in which that identity is affirmed. But social transitioning can change gender
18 outcomes, causing a child’s transgender identity to persist into adulthood when the child would
19 otherwise lose that identity. And considering that most children who undergo a social transition
20 go on to transition medically—through puberty blockers, cross-sex hormones, and, for some,
21 “gender affirming” surgeries—this is not a choice children can make without their parents.

22 Despite these impacts in the lives of children, the Parental Secrecy Policy does not require
23 schools to obtain parental consent before socially transitioning students. Instead, if students ask
24 to be socially transitioned, the District will transition them. And if students ask that their parents
25 not be told about the transition, the District generally will keep the parents in the dark. The Policy
26 thus separates children from their parents, putting children in the driver’s seat of their lives even
27 though they lack the maturity, judgment, and experience to reach the pedals.

1 This case arises out of the District’s social transition of Ms. Regino’s oldest daughter, A.S.
 2 When A.S. was an eleven-year-old fifth grader, a school counselor facilitated her social transition
 3 to a male gender identity without obtaining Ms. Regino’s consent or notifying her. But parents
 4 have the constitutional right to consent—or in the alternative, to notice—when the state seeks
 5 to socially transition their children at school. And while parents’ rights are subject to the state’s
 6 *parens patriae* interest in safeguarding children’s well-being, the Policy doesn’t satisfy that
 7 interest because the District isn’t required to show that children would be subject to harm unless
 8 they are transitioned. Moreover, contrary to the District’s assertions, the District has no interest
 9 in protecting children from discrimination if their parents don’t consent to the social transition,
 10 children don’t have a privacy right to undergo a transition without their parents’ consent or
 11 notice, and the District may not presume that parents will harm their children based solely on
 12 the fact that the children don’t want their parents to know about the transition. Further, the
 13 Parental Secrecy Policy wrongly assumes that a social transition is appropriate for every child
 14 who asks for it, regardless of the specific facts in each child’s case. This “one-size-fits-all”
 15 approach is harmful to children. Indeed, no professional association recommends it.

16 Ms. Regino seeks to enjoin the Policy. At this stage in the case, she is required only to
 17 state plausible claims. She has done so. The Court should therefore deny the District’s Motion.

18 **FACTUAL BACKGROUND**

19 **I. BACKGROUND ON GENDER DYSPHORIA AND SOCIAL TRANSITIONING**

20 Gender dysphoria is a psychiatric condition in which a transgender-identifying person’s
 21 transgender identity causes clinically significant psychological distress arising from the mismatch
 22 between the person’s gender identity and sex. SAC ¶ 22. Many transgender-identifying minors
 23 have gender dysphoria or sub-threshold gender-related psychological distress. *Id.* ¶ 23.

24 A person’s gender identity is not biologically determined, and minors’ gender identities
 25 can be fluid as the child develops. *Id.* ¶ 24. Nevertheless, the “affirmation” model of care—which
 26 is one of four models of care for treating gender dysphoria in minors, *id.* ¶ 27–31—holds that a
 27 minor’s assertion of a transgender identity should be accepted as decisive and that the minor’s
 28 psychological condition will improve with “affirmation” of that identity, *id.* ¶ 31.

1 A primary pillar of the “affirmation” model is social transitioning. *Id.* ¶ 32. In the school
 2 setting, social transitioning generally refers to calling a transgender-identifying student by a new
 3 name and/or pronouns associated with that identity. *Id.* ¶ 2 n.2. The purpose of social
 4 transitioning is to alleviate psychological distress by creating a putatively therapeutic
 5 environment in which the child’s transgender identity is affirmed. *Id.* ¶¶ 32–33.

6 Social transitioning is a form of psychological treatment. *Id.* ¶ 33. And like other forms of
 7 healthcare treatment, social transitioning has risks. Absent social transitioning, most
 8 transgender-identifying minors will lose their transgender identity—or “desist”—by adulthood.
 9 *Id.* ¶ 35. But when social transitioning occurs, the rate of desistence plummets. *Id.* ¶ 36. Thus,
 10 socially transitioning minors makes it more likely that their transgender identity will persist. *Id.*
 11 Moreover, most minors who are socially transitioned go on to receive future “affirmative” care
 12 in the form of puberty blockers, cross-sex hormones, and, for some, “affirming” surgeries. *Id.* ¶
 13 37. Accordingly, the risks associated with this graduated “affirmative” care must be considered
 14 before a social transition is undertaken. *Id.* These risks are significant, and include bone
 15 weakness, depression, decreased sexual response, and sterility. *Id.*

16 Before a social transition is undertaken, every minor should receive a professional
 17 evaluation that evaluates the likelihood of persistence, among other things. *Id.* ¶ 39. Socially
 18 transitioning every minor who asks for it is a “one-size-fits-all” approach that fails to account for
 19 the unique issues the minor may be facing. *Id.* ¶ 40. Instead of social transitioning, some minors
 20 simply need counseling to understand their feelings. *Id.* ¶ 38. For this reason, it can be
 21 permissible for parents to say “no” to a social transition. *Id.* ¶ 39.

22 Giving minors the authority to decide for themselves whether to undergo a social
 23 transition violates bedrock principles of informed consent and results in the ill-advised transition
 24 of some minors. *Id.* ¶¶ 43–44. Moreover, socially transitioning children without their parents’
 25 consent increases minors’ sense that their parents are “the enemy,” driving a wedge in the family
 26 just when children need their parents most. *Id.* ¶ 43. No medical or psychological association has
 27 endorsed school-facilitated social transitions of minors without parental consent, much less
 28 without parental notice. *Id.* ¶ 46.

II. THE PARENTAL SECRECY POLICY

The Parental Secrecy Policy applies at the District’s twenty-three schools. *Id.* ¶¶ 16, 48 and Ex. J. Under the Policy, if a student asks to be socially transitioned, the District requires everyone at school—administrators, teachers, and students—to refer to the student by his or her new name and pronouns so long as the request is not being made for an “improper purpose.” *Id.* ¶ 49 and Ex. J at 5, 6. Schools are not required to obtain parental consent to the transition. *Id.* ¶ 50. Moreover, if the student does not authorize parental notification, the Policy requires that the transition be concealed from the student’s parents, except when disclosure is either “required by law” or “compelling evidence” exists that disclosure is “necessary” for the student’s “well-being.” *Id.* ¶ 51 and Ex. J at 5–6. The prohibition on parental notification has no exception for when parents ask District personnel whether their child is being socially transitioned. *Id.* ¶ 53. Thus, the Parental Secrecy Policy not only precludes parental notification; it also requires District personnel to deceive parents in response to a direct question. *Id.*

The District disputes that parental consent or notice are required by the constitution.

III. THE DISTRICT SOCIALLY TRANSITIONS A.S.

During the 2021–22 school year, A.S. was in the fifth grade at a school in the District. *Id.* ¶ 55. In early 2022, she told a school counselor that she “felt like a boy.” *Id.* ¶ 63. The counselor asked A.S. whether she wanted to go by a boy’s name and pronouns. *Id.* A.S. said she would. *Id.* The counselor asked A.S. if she wanted her mother to know. *Id.* A.S. said she did not. *Id.* Pursuant to the Policy, the counselor and/or A.S.’s teacher arranged for others at school to begin referring to her by her boy’s name and male pronouns without informing Ms. Regino. *Id.* ¶ 65.

In April of 2022, Ms. Regino learned that the District had socially transitioned A.S. *Id.* ¶ 72. Ms. Regino is a fit parent, and she was supportive of her daughter. *Id.* ¶¶ 15, 74. Had Ms. Regino been consulted, however, she would not have consented to the transition without first seeking guidance from a mental health professional. *Id.* ¶ 75.

Over the spring of 2022, A.S. questioned whether she wanted to continue using a male name and pronouns at school, but she felt trapped in her new identity. *Id.* ¶ 76. At the beginning of the 2022–23 school year, A.S. detransitioned at school after significant counseling over the

1 previous summer. *Id.* ¶¶ 67–77. Today, both A.S. and her younger sister, C.S., are subject to the
 2 Parental Secrecy Policy, resulting in injury to Ms. Regino. *Id.* ¶¶ 78–92.

3 PROCEDURAL HISTORY

4 Ms. Regino filed this case on January 6, 2023. ECF 1. On July 11, 2023, the Court granted
 5 the District’s Rule 12(b)(6) Motion to Dismiss. ECF 58. Ms. Regino appealed, and on April 4, 2025,
 6 the Ninth Circuit vacated the dismissal. *Regino v. Staley*, 133 F.4th 951 (9th Cir. 2025). The Ninth
 7 Circuit remanded for the Court to reconsider Ms. Regino’s claims anew. *Id.* at 968.

8 On June 4, 2025, Ms. Regino filed the SAC. ECF 84. Ms. Regino seeks prospective relief
 9 against the Policy, both facially and as applied to her. SAC at 28–29. She does not seek damages.

10 ARGUMENT

11 To survive a Rule 12(b)(6) motion to dismiss, the complaint must only give rise to a
 12 “plausible inference” of a legal violation. *Ashcroft v. Iqbal*, 556 U.S. 662, 682 (2009); *OSU Student*
 13 *All. v. Ray*, 699 F.3d 1053, 1076 (9th Cir. 2012). The Court must “draw all reasonable inferences”
 14 in the plaintiff’s favor and “presume [her] factual allegations” are true. *Usher v. City of L.A.*, 828
 15 F.2d 556, 561 (9th Cir. 1987). This requirement applies to allegations of a scientific nature. *Jones*
 16 *v. Johnson*, 781 F.2d 769, 772 n.1 (9th Cir. 1986) (allegations regarding medical causation),
 17 *overruled on other grounds by Peralta v. Dillard*, 744 F.3d 1076 (9th Cir. 2014); *see also Ferrari v.*
 18 *Nat. Partners, Inc.*, No. 15-CV-04787, 2016 WL 4440242, at *5 (N.D. Cal. Aug. 23, 2016).

19 The Court may not consider facts “extrinsic” to the complaint or take “judicial notice of
 20 disputed . . . fact[s].” *Lee v. City of L.A.*, 250 F.3d 668, 690 (9th Cir. 2001). Thus, the Court must
 21 disregard the District’s citation to the California Department of Education’s FAQ on Assembly Bill
 22 1266, the California School Board Association’s Model Policy AR 5145.3, and the District’s
 23 declarations. Mot. at 10–12, 29. *See also* Pl.’s Opp’n to Def.’s RJN.

24 **I. THE SAC PLAUSIBLY ALLEGES THE PARENTAL SECRECY POLICY VIOLATES MS. REGINO’S** 25 **FIRST AMENDMENT RIGHTS AS APPLIED TO HER (COUNT II)**

26 Parents have a fundamental right under the substantive Due Process Clause to “make
 27 decisions concerning the care, custody, and control” of their children. *Troxel v. Granville*, 530
 28 U.S. 57, 65 (2000) (plurality op.); *Keates v. Koile*, 883 F.3d 1228, 1235–36 (9th Cir. 2018). This

right rests on the common-law presumptions that (1) “parents possess what a child lacks in maturity, experience, and capacity for judgment” and (2) the “natural bonds of affection lead parents to act in the best interests of their children.” *Parham v. J.R.*, 442 U.S. 584, 602 (1979). “Although the Supreme Court has largely grounded this right in the Due Process Clause, [the Ninth Circuit has] also found it to be protected by the First . . . Amendment[]” concept of “famil[y] association.” *Scanlon v. Cnty. of L.A.*, 92 F.4th 781, 797–98 (9th Cir. 2024) (quoting *Keates*, 883 F.3d at 1235–36). Ms. Regino plausibly alleges that the Parental Secrecy Policy violates her First Amendment right to family association for four reasons.

A. Ms. Regino has the right to consent when the state seeks to provide healthcare treatment to her children.

First, “the right of family association includes the right of parents to make important medical decisions for their children.” *Wallis v. Spencer*, 202 F.3d 1126, 1141–42 (9th Cir. 2000). “[I]t is in the interest of both parents and children that parents have ultimate authority to make medical decisions for their children unless [a] ‘neutral fact finder’ determines, through [a] due process hearing, that [the] parent is not acting in [the] child’s best interests.” *Id.* at 1141 (quoting *Parham*, 442 U.S. at 602). “[P]arental consent is critical in medical procedures involving children because children rely on parents . . . to provide informed permission.” *Mann v. Cnty. of San Diego*, 907 F.3d 1154, 1162 (9th Cir. 2018) (cleaned up)).

The SAC plausibly alleges that social transitioning is a significant form of healthcare treatment in minors that implicates the parental right:

- A child who asks to be socially transitioned should be seen by a mental health professional. SAC ¶ 39. The fact that a child is making such a request indicates that he or she has some measure of psychological distress. *Id.* ¶ 34.
- The purpose of social transitioning is to alleviate that psychological distress. *Id.* ¶ 32.
- Social transitioning is a “primary pillar” of the affirmation model of treatment. *Id.*
- When a child is socially transitioned at school, the school is creating a putatively therapeutic environment in which the child’s transgender identity is affirmed. *Id.*

- Like other forms of treatment, social transitioning has risks. It makes desistence less likely. *Id.* ¶ 36. In addition, it almost always leads to future “affirmative” medical care, the risks of which are significant. *Id.* ¶ 37.

These facts plausibly allege that social transitioning is a form of healthcare treatment. Indeed, the District candidly admits that a social transition “can be a form of treatment.” Mot. at 24. Moreover, the Ninth Circuit has observed that social transitioning is a form of “treatment” in the prison context. *Edmo v. Corizon, Inc.*, 935 F.3d 757, 770 (9th Cir. 2019); *see also Monroe v. Meeks*, 584 F. Supp. 3d 643, 678 (S.D. Ill. 2022). This conclusion is no less true in schools.

Further, experts in the field, the federal government, and medical associations consider social transitioning to be a form of healthcare treatment in minors. *The Cass Review*—an evidence review assessing the safety and efficacy of the “affirmation” model of care in minors—determined that social transitioning is “an active intervention” in children’s lives “because it may have significant effects . . . in terms of [the child’s] psychological functioning and longer-term outcomes.” *The Cass Review: Independent review of gender identity services for children and young people*, United Kingdom National Health Service (April 10, 2024) at 158, attached to SAC as Ex. F. The U.S. DHHS has echoed this finding. *See Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices* (May 1, 2025) at 84, attached to SAC as Ex. E. In addition, Dr. Ken Zucker, a leading clinician in the field, opines that social transitioning is a form of “psychosocial treatment that will increase the odds of long-term persistence.” Zucker, Ken J., *The myth of persistence: Response to “A Critical Commentary on Follow-Up Studies and Desistance Theories about Transgender and Gender Non-Conforming Children” by Temple Newhook et al.*, 19 *International Journal of Transgenderism* at 237, attached to SAC as Ex. G. And many leading medical associations—including the American Medical Association, the American Academy of Pediatrics, and the Endocrine Society—view social transitioning as “an important part of treatment” in transgender-identifying children. Br. of Amici Curiae in *Adams v. Sch. Bd. of St. Johns Cnty.*, Case No. 18-13592 at 15, attached to SAC as Ex. H.

The District cites *Foote v. Ludlow School Committee* in support of its argument that the SAC does not plausibly allege that social transitioning is a form of healthcare treatment, but

1 *Footnote* is distinguishable. There, while the complaint *asserted* that social transitioning was
 2 treatment, it did little more than “label[]” social transitioning as such with “bare contention[s]”
 3 and “conclusory allegations” not entitled to a presumption of truth. 128 F.4th 336, 349, 350 (1st
 4 Cir. 2025). Indeed, *Footnote* acknowledged that its conclusion was limited “[s]olely [to the facts] as
 5 pled” on the sparse record before it. *Id.* at 350. Here, by contrast, the SAC’s detailed allegations
 6 and exhibits plausibly allege that social transitioning is a form of healthcare treatment.

7 The District points out that the Policy does not require children to be diagnosed with
 8 gender dysphoria before they are socially transitioned. Mot. at 24. While true, the District cannot
 9 claim plausible deniability by burying its head in the sand. The Policy does not exclude students
 10 who have gender dysphoria, so some subset of children who are being socially transitioned at
 11 school necessarily will have it. Moreover, a child who asks to be socially transitioned is
 12 necessarily in psychological distress, and socially transitioning such a child is no less healthcare
 13 treatment than if the child does not have gender dysphoria. SAC ¶¶ 32–34. The District’s
 14 argument is like saying giving a child Adderall loses its character as “treatment” if the child does
 15 not have ADHD. That’s plainly wrong: Adderall has a physiological impact on the child’s body
 16 regardless of whether the child has ADHD, just as social transitioning has a psychological impact
 17 on the child’s mind regardless of whether the child has full-blown gender dysphoria. *Id.*

18 The District also argues that social transitioning is not healthcare treatment because
 19 school personnel are not health care providers, but this makes the District’s actions *worse*, not
 20 better. Like group therapy, social transitioning is the creation of a putatively therapeutic
 21 environment in which a child’s transgender identity is affirmed. SAC ¶¶ 32–33. Here, however,
 22 the District is creating this putatively therapeutic environment for children without involving a
 23 mental health provider to guide the way.

24 The District also attempts to analogize social transitioning to getting a child a pet, Mot.
 25 at 25, but the analogy fails. A social transition represents a significant change in a person’s self-
 26 identification. SAC ¶¶ 35–37. And in minors, it has the potential to change gender outcomes and
 27 is highly likely to lead to medicalization. *Id.* Getting a child a pet has neither the psychological
 28 impact nor the potential life-long risks associated with a social transition.

To be clear, Ms. Regino does not assert an unqualified right to consent to her children's social transition. While this right "reside[s] first" in parents, *Troxel*, 530 U.S. at 66, the state may exercise its *parens patriae* authority to override parents' consent when their children are "subject to . . . apparent danger or harm," *Mueller v. Aufer*, 700 F.3d 1180, 1187 (9th Cir. 2012) ("*Mueller II*"). Even then, however, parents have a "right to a judicial hearing" unless the state has "reasonable cause to believe that the child is in imminent danger of serious bodily injury." *Mueller v. Aufer*, 576 F.3d 979, 995 (9th Cir. 2009) ("*Mueller I*"). Here, the Policy does not require the District to find that children are in imminent danger of serious bodily injury before socially transitioning them, nor are parents entitled to a judicial hearing. Instead, the Policy generally authorizes the District to socially transition children and keep the transition secret from parents simply based solely on the child's request. See SAC Ex. J. Accordingly, the Policy is not a valid exercise of the state's *parens patriae* authority.¹

B. Ms. Regino has the right to consent when the state seeks to make important decisions in her children's lives.

Second, even if social transitioning were not healthcare treatment, the Policy violates Ms. Regino's right to consent when the state makes "important decisions" in her children's lives, *H.L. v. Matheson*, 450 U.S. 398, 410 (1981)—that is, those decisions that go to the "heart of parental decision-making," *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 184 (3d Cir. 2005). Parental decisions that courts have held are protected include: (1) child visitation, *Troxel*, 530 U.S. 57; (2) whether to send children to private school, *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925); (3) the subjects children can be taught at school, *Meyer v. Nebraska*, 262 U.S. 390 (1923); (4) whether children can go out in public at night, *Nunez by Nunez v. City of San Diego*, 114 F.3d 935, 952 (9th Cir. 1997); and (5) whether children have access to birth control at school, *Alfonso v. Fernandez*, 195 A.D.2d 46, 60 (N.Y. App. Div. 1993).

¹ Because Ms. Regino asserts only her *defensive* right to consent when the state seeks to provide her children healthcare treatment—and not her *affirmative* right to provide healthcare treatment to her children—her claims are not barred by the logic of those cases holding parents do not have the affirmative right to give their children healthcare treatment the state has deemed harmful. See, e.g., *L.W. v. Skrmetti*, 83 F.4th 460, 475 (6th Cir.), cert. denied, No. 23-466, 2025 WL 1787721, at *1 (U.S. June 30, 2025).

1 The decision to socially transition a child falls squarely within these precedents. As noted,
 2 that decision has significant consequences that are both immediate and that are likely to
 3 reverberate throughout the child’s life course. SAC ¶¶ 35–38. Because of the consequential
 4 nature of this decision, and because children are too immature to make it on their own, *id.* ¶ 44,
 5 the decision must “reside first” in parents, *Troxel*, 530 U.S. at 65; *see also Mirabelli v. Olson*, 761
 6 F. Supp. 3d 1317, 1332–33 (S.D. Cal. 2025) (“*Mirabelli II*”) (holding that socially transitioning a
 7 child at school without parental consent violates “the long-recognized federal constitutional
 8 rights of parents”); *Tennessee v. Cardona*, 737 F. Supp. 3d 510, 556 (E.D. Ky. June 17, 2024)
 9 (holding that “parents retain a constitutionally protected right to guide their own children on
 10 matters of identity, including the decision to adopt or reject various gender norms and
 11 behaviors”); *Ricard v. USD 475 Geary Cnty., KS Sch. Bd.*, No. 522CV04015, 2022 WL 1471372, at
 12 *8 (D. Kan. May 9, 2022) (noting that parents “have [the right to] have a say in what [their] minor
 13 child[ren are] called” by their school).

14 Moreover, social transitioning does not fall within schools’ implied authority under the
 15 *in loco parentis* doctrine. Under that doctrine, schools have “inferred parental consent” that
 16 gives them “a degree of authority . . . commensurate with the task that the parents ask the
 17 school to perform”—namely, to educate their children. *Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S.
 18 180, 200 (2021) (Alito, J., concurring); *see also Vernonia Sch. Dist. 47 v. Acton*, 515 U.S. 646, 654–
 19 55 (1995). Under that authority, schools generally have the freedom to (1) control “the
 20 information to which [students]” are exposed as part of the curriculum and (2) decide “how”
 21 students are taught, including things like “the hours of the school day, school discipline, [and]
 22 the timing and content of examinations.” *Fields v. Palmdale Sch. Dist.*, 427 F.3d 1197, 1200, 1206
 23 (9th Cir. 2005) (“*Fields I*”), *opinion amended on denial of reh’g sub nom. Fields v. Palmdale Sch.*
 24 *Dist. (PSD)*, 447 F.3d 1187 (9th Cir. 2006) (“*Fields II*”). But socially transitioning students is not
 25 within the scope of that inferred delegation—parents do not hand children off to schools to
 26 facilitate changing their gender identity.

27 Instead, parents retain the right to decide whether their children are socially transitioned
 28 despite sending them to public school, just as parents retain the right to direct their children’s

religious upbringing despite sending them to public school. *Mahmoud v. Taylor*, 606 U.S. ---, 2025 WL 1773627, at *14 (U.S. June 27, 2025) (noting that this right “would be an empty promise if it did not follow . . . children into the public school classroom” (cleaned up)). As with Free Exercise rights, parents’ rights do not stop at “the threshold of the school door.” *C.N.*, 430 F.3d at 185 n.26; *Fields II*, 447 F.3d at 1190–91 (deleting language from opinion stating otherwise). “It is not educators, but parents who have primary rights in the upbringing of children,” *Gruenke v. Seip*, 225 F.3d 290, 307 (3d Cir. 2000), and the state’s authority to educate children does not turn them into “mere creature[s] of the state.” *Pierce*, 268 U.S. at 535.

Finally, *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 42 U.S.C. § 1981. 427 U.S. 160, 178 (1976). But Ms. Regino does not assert the right (nor does she want) to send her children to schools without transgender-identifying students. Instead, she asserts only the right to make significant decisions in the lives of *her own* children. The constitution guarantees her that right.

C. Ms. Regino has the right to maintain the integrity of her family.

Third, even if social transitioning were not healthcare treatment, the Policy violates Ms. Regino’s right to “family integrity.” *Marsh v. Cnty. of San Diego*, 680 F.3d 1148, 1154 (9th Cir. 2012); *see also Kelson v. City of Springfield*, 767 F.2d 651, 653–54 (9th Cir. 1985). This right protects against state action that constitutes an unwarranted interference with parents’ ability to “maintain[] a tight familial bond” with their children. *Smith v. City of Fontana*, 818 F.2d 1411, 1418 (9th Cir. 1987), *overruled on other grounds by Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999); *see also Lee*, 250 F.3d at 686.

The Policy infringes Ms. Regino’s right to family integrity. From the toys parents give their children, to the friends parents allow their children to have, to the clothes parents dress their children in, the parent-child relationship is deeply shaped by the child’s gender identity. By authorizing the District to socially transition Ms. Regino’s children without her consent, the Policy threatens to fundamentally alter the nature of her “familial bond” with them. *Smith*, 818 F.2d at 1418. In addition, the Policy deprives Ms. Regino “the opportunity to counter influences on” her children that she disagrees with, *Arnold v. Bd. of Educ. of Escambia Cnty.*, 880 F.2d 305, 313 (11th

1 Cir. 1989), “obstructs [her] right to choose the proper method of resolution” of the question of
 2 whether the child should undergo a social transition, *Gruenke*, 225 F.3d at 306, and creates
 3 “mistrust” in her children by causing them to view her as the enemy, *Patel v. Searles*, 305 F.3d
 4 130, 134, 140 (2d Cir. 2002).

5 To the extent the District suggests that the state only interferes with the right to family
 6 integrity when the state action is motivated by the “purpose[] of oppression,” Mot. at 15
 7 (cleaned up), that suggestion is wrong. While state action motivated by the purpose of
 8 oppression is *sufficient* to violate parents’ rights, it is not *necessary*. *Smith*, 818 F.2d at 1420 n.12.
 9 “As long as the state official’s action which deprived the plaintiffs of their liberty was more than
 10 merely negligent, the plaintiffs can state a section 1983 claim without further alleging that the
 11 official was trying to break up their family.” *Id.*

12 **D. Ms. Regino has the right to name her children.**

13 Fourth, even if social transitioning were not healthcare treatment, the Policy violates Ms.
 14 Regino’s right to name her children. *See Sydney v. Pingree*, 564 F. Supp. 412, 413 (S.D. Fla. 1982)
 15 (holding that parents have the right to name their children); *O’Brien v. Tilson*, 523 F. Supp. 494,
 16 496 (E.D.N.C. 1981) (same); *Jech v. Berch*, 466 F. Supp. 714, 718–19 (D. Haw. 1979) (same); *cf.*
 17 *Henne v. Wright*, 904 F.2d 1208, 1213 (8th Cir. 1990) (holding that parents have no right to give
 18 children a “*surname* . . . with which the child has no legally established parental connection”
 19 (emphasis added)). The name parents give their children is indisputably “an aspect of speech.”
 20 *Henne*, 904 F.2d at 1216 (Arnold, J., concurring); *see also Salaam v. Lockhart*, 905 F.2d 1168,
 21 1170 n.4 (8th Cir. 1990) (noting an individual’s name change is an exercise of “first amendment
 22 speech” (quoting *Felix v. Rolan*, 833 F.2d 517, 518 (5th Cir. 1987))). By authorizing children to
 23 change their names at school without parental consent—a change that is enforced by state
 24 action through the threat of punishment for non-compliance, SAC Ex. J at 5—the Policy violates
 25 Ms. Regino’s right to name her children.

26 * * *

27 To be clear, Ms. Regino does not assert that the District’s constitutional obligations are
 28 triggered if the District has a suspicion—or even direct knowledge—that her children are

1 asserting a transgender identity at school (or, for that matter, any identity or orientation). SAC
 2 ¶ 118. Rather, Ms. Regino asserts that the District may not take *affirmative steps* to socially
 3 transition her children by creating an environment where her children are called by a new name
 4 and/or pronouns without first obtaining her consent. *Id.*

5 Even if Ms. Regino does not have the right to *consent* when her children are socially
 6 transitioned, she at least has the right to *notice*. SAC ¶¶ 114–117, 129. Specifically, the District
 7 must inform her before socially transitioning her children, *see Mueller I*, 576 F.3d at 995, 997
 8 (holding that state must inform parents when it provides healthcare treatment to their children);
 9 *Mirabelli II*, 761 F. Supp. 3d at 1332 (concluding that parents “have a constitutional right to be .
 10 . . informed” about their children’s social transition), or, at the very least, the District must not
 11 deceive her in response to a direct question about whether her children are being transitioned,
 12 *Willey v. Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trs.*, 680 F. Supp. 3d 1250, 1277 (D. Wyo. 2023).
 13 The Policy fails even these modest commands. SAC ¶¶ 51, 53, 95.

14 **E. Compulsion is not a necessary element of a parental rights claim.**

15 The District argues that Ms. Regino’s parental rights do not extend to the “voluntary
 16 decisions” her children make. Mot. at 22; *see also* Mot. at 15, 17 (arguing that parental right is
 17 not violated absent government “coercion”). This argument is profoundly wrong.

18 The parental right is the right of parents to “*make decisions* concerning the care, custody,
 19 and control of their children.” *Troxel*, 530 U.S. at 66 (emphasis added). Unlike parents, children
 20 lack the “maturity, experience, and capacity for judgment” needed to “make sound judgments.”
 21 *Parham*, 442 U.S. at 603; *see also Roper v. Simmons*, 543 U.S. 551, 569 (2005) (noting that
 22 children are “vulnerable . . . to negative influences and outside pressures, including peer
 23 pressure” and often make “impetuous and ill-considered . . . decisions”). Allocating decisional
 24 authority to parents protects children from their own immature choices, and this allocation of
 25 authority is not altered “[s]imply because the decision of the parent is not agreeable to [the]
 26 child.” *Parham*, 442 U.S. at 603. By authorizing Ms. Regino’s children to decide for themselves
 27 whether to undergo a social transition, the District is infringing her decisional rights as a parent.
 28

Contrary to the District’s argument, *Anspatch v. City of Philadelphia* does not say otherwise. In *Anspatch*, parents alleged that they had the right to be notified when a state health clinic provided contraceptives to their children. 503 F.3d 256, 261–62 (3d Cir. 2007). The Third Circuit disagreed, concluding that parents did not have the right to be notified of their children’s “voluntary decisions” to obtain contraceptives from a state health clinic. *Id.* at 268.

Anspatch is distinguishable. First, unlike social transitioning, minors have a privacy right to obtain contraceptives without parental consent. *Anspatch*, 503 F.3d at 263 (discussing *Carey v. Population Servs. Int’l*, 431 U.S. 678 (1977) (plurality op.)). As discussed in more detail below, minors do not have a privacy right to undergo a social transition without parental consent. *Infra* at 20-22. Second, unlike schools—where attendance is compulsory and where the state has plenary control over the child, Cal. Educ. Code § 48200—state health clinics “ha[ve] no authority” over children seeking contraceptives. *Anspatch*, 503 F.3d at 265–66; *see also Edwards v. Aguillard*, 482 U.S. 578, 584 (1987) (noting that the state “exerts great authority and coercive power” over children at public schools); *Alfonso*, 195 A.D.2d at 60 (holding *school-based* condom distribution program violated parental rights). Third, unlike schools, health clinics do not have ongoing relationships with parents in which consent can be obtained. Indeed, the District already requires parental consent for a host of school-based activities for their children, like sports, field trips, the distribution of medication, and health screenings, to name a few. *See* Cal. Educ. Code §§ 33479.3, 49475, 49476; District Administrative Regulation #6153.2, Ex. A to Pl.’s RJN; District Administrative Regulation #5141.21, Ex. B to Pl.’s RJN; District Administrative Regulation #5141.32, Ex. C to Pl.’s RJN. Fourth, unlike District schools, health clinics are not active participants in the concealment of the child’s activities. *See Foote*, 128 F.4th at 353 (noting that school’s deception of parents regarding their child’s transition is an unlawful “restraining act”).

A holding that coercion is required to state a parental rights claim would not only give children authority to direct their own upbringing, it would give far too much power to schools. Under such a holding, it would be constitutionally permissible for schools to employ doctors to provide Adderall to children who wanted help focusing before class, to hold a “Relative Visitation Day” so children could see their estranged grandparents, or to retain custody of a child who ran

away from home because he didn't want to eat peas for dinner. Of course, none of this is the law. *Mario V. v. Armenta*, No. 18-CV-00041, 2021 WL 1907790 (N.D. Cal. May 12, 2021) (holding giving willing students blood-sugar tests violates parental right); *Troxel*, 530 U.S. at 65–66 (holding parents have right to determine persons with whom the child associates); *Ram v. Rubin*, 118 F.3d 1306, 1310 (9th Cir. 1997) (holding that the state may maintain custody of child only where the child is in “imminent danger”).

Even if coercion were required, it exists here. True, the District doesn't compel children to undergo a social transition. But once a child makes that decision, the transition has the psychological effect of causing the child's transgender identity to persist, an effect A.S. experienced. SAC ¶¶ 35, 76. The constitution guards against even “subtle coercive pressure in . . . public schools.” *Lee v. Weisman*, 505 U.S. 577, 592 (1992). By creating an environment in which the child's transgender identity is affirmed—including by teacher “role models,” *Edwards*, 482 U.S. at 584—the District's actions necessarily involve “coercion.” *Landerer v. Dover Area Sch. District*, No. 1:24-CV-00566, 2025 WL 492002, at *10 (M.D. Pa. Feb. 13, 2025).

The District's related contention that the parental right “only bars state action, not inaction” is also meritless. Mot. at 25. Ms. Regino seeks to enjoin the District from transitioning her children without her consent. There is nothing unique about this form of relief. Absent exigent circumstances, the state may not, for example: (1) perform healthcare treatment on children without “parental consent,” *Mann*, 907 F.3d at 1162; (2) separate children from their parents without “notice and a hearing,” *Ram*, 118 F.3d at 1310; or (3) take a child into custody without notifying parents with legal custody, *James v. Rowlands*, 606 F.3d 646, 654–56 (9th Cir. 2010). Absent exigent circumstances, the state also may not socially transition students at school without parental consent or notice.

II. THE SAC PLAUSIBLY ALLEGES THE PARENTAL SECRECY POLICY VIOLATES MS. REGINO'S SUBSTANTIVE DUE PROCESS RIGHTS AS APPLIED TO HER (COUNT IV)

For all the same reasons, the SAC plausibly alleges that the Policy violates Ms. Regino's substantive due process right to consent—or in the alternative to notice—when her children's school seeks to socially transition them.

1 The District argues that Ms. Regino has not satisfied the test set forth in *Washington v.*
2 *Glucksberg*, 521 U.S. 702 (1997), for determining whether to create a “new” substantive due
3 process right. Mot. at 21. But this argument suffers from a failed premise—the parental right is
4 not *new*. Indeed, the Supreme Court first held the substantive Due Process Clause protects
5 parents’ rights to the care, custody, and control of their children over a century ago. *See Meyer*,
6 262 U.S. at 402; *see also Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (noting that the parental
7 right is “established beyond debate as an enduring American tradition”).

8 Accordingly, Ms. Regino is not required to satisfy the *Glucksberg* test for every new type
9 of healthcare treatment or new significant life event, be it a cochlear implant, the administration
10 of ADHD medication, hypnotherapy, or any other new type of new treatment or event developed
11 in the future. Indeed, requiring Ms. Regino to make such a showing would impermissibly “trap[
12 the constitution] in amber.” *United States v. Rahimi*, 602 U.S. 680, 691 (2024). Rather, as the
13 Ninth Circuit acknowledged in this very case, the question is whether the right Ms. Regino
14 invokes is sufficiently significant in children’s lives that it is “encompassed” within the scope of
15 the pre-existing parental right. *Regino*, 133 F.4th at 965; *see also Obergefell v. Hodges*, 576 U.S.
16 644, 671 (2015) (observing that question was not whether the Court should create a “new . . .
17 right to same-sex marriage” but whether the right to same-sex marriage falls within “the right to
18 marry in its comprehensive sense”); *Troxel*, 530 U.S. at 65–66 (concluding that statute impairing
19 parental decision to determine child visitation infringed parental right without conducting
20 *Glucksberg* analysis); *Marsh*, 680 F.3d at 1154 (asking whether asserted right “flows from”
21 preexisting parental right); *Fields I*, 427 F.3d at 1204 (asking whether asserted right was
22 “encompassed within” preexisting parental right). *Cf. Khachatryan v. Blinken*, 4 F.4th 841, 856
23 (9th Cir. 2021) (declining to create new substantive due process right vis-à-vis parents and their
24 “adult child”). Indeed, in *Foote*, the First Circuit’s mode of analysis was to ask whether the
25 parents’ claim “fell within the broader, well-established parental right.” 128 F.4th at 348. Here,
26 because the right Ms. Regino invokes falls within the scope of the pre-existing parental right, she
27 has stated a plausible substantive due process claim.

Even if Ms. Regino were required to demonstrate anew that the parental right exists, she has done so. Under the common law, parents had the right “not merely to be notified of their children’s actions, but to speak and act on their behalf.” *Hodgson v. Minnesota*, 497 U.S. 417, 483 (1990) (Kennedy, J., concurring in part and dissenting in part); see also Blackstone, 1 COMMENTARIES ON THE LAWS OF ENGLAND 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 “[i]n the decades leading up to and following” the founding. *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 835 (2011) (Thomas, J., dissenting on other grounds); see also Kent, 2 COMMENTARIES ON AMERICAN LAW at 207 (noting that children’s duties to their parents include “obedience”). And from time immemorial, parents—not children, and not the state—have had the power to name their children as a component of their general parental authority. See Carlton F.W. Larson, *Naming Baby: The Constitutional Dimensions of Parental Naming Rights*, 80 Geo. Wash. L. Rev. 159, 178 (2011) (observing that there are “no circumstances in American history, other than slavery, in which [the right to name children] has been exercised by anyone other than parents”).

Based on these “deeply rooted” principles and traditions, *Glucksberg*, 521 U.S. at 721, it beggars belief to think the founding (or second founding) generation would have thought the state could socially transition children without parental consent or notice. And in light of “Western civilization concepts of the family,” which acknowledge “broad parental authority” over their children, *Parham*, 442 U.S. at 602, parents’ right to consent (or notice) when the state socially transitions their children is “implicit in the concept of ordered liberty,” *Glucksberg*, 521 U.S. at 721; see also *Carlton*, *supra*, at 180 (“[I]t is hard to imagine a functional, democratic society in which parents lack such a basic right as the right to name their own children.”).

III. THE PARENTAL SECRECY POLICY FAILS ANY SUBSTANTIVE STANDARD OF REVIEW

The applicable “level of scrutiny” and whether the Policy “can withstand such scrutiny” are both “fact-dependent inquiries that are unsuitable for resolution at the pleading stage.” *Duronslet v. Cnty. of L.A.*, 266 F. Supp. 3d 1213, 1223 (C.D. Cal. 2017). Accordingly, the Court should defer these questions until summary judgment. *Id.* If the Court proceeds, strict scrutiny

1 applies, and the Policy does not satisfy it. In fact, the Policy does not satisfy rational basis review.

2 **A. Strict Scrutiny Applies**

3 Strict scrutiny plainly applies to Ms. Regino’s First Amendment claims. *See Roberts v. U.S.*
 4 *Jaycees*, 468 U.S. 609, 623 (1984). Moreover, strict scrutiny also applies to Ms. Regino’s
 5 substantive due process claims. Parental rights are “fundamental,” which requires the
 6 application of strict scrutiny. *Glucksberg*, 521 U.S. at 720–21; *Nunez*, 114 F.3d at 952 (applying
 7 strict scrutiny); *see also Kanuszewski v. Mich. Dep’t of Health & Hum. Servs.*, 927 F.3d 396, 420
 8 (6th Cir. 2019); *Gruenke*, 225 F.3d at 305–07; *Arnold*, 880 F.2d at 313; *Franz v. United States*, 707
 9 F.2d 582, 602–03 (D.C. Cir. 1983); *L.A. All. for Hum. Rts. v. City of L.A.*, No. LACV2002291, 2021
 10 WL 4713179, at *4 (C.D. Cal. Apr. 26, 2021).

11 The District contends that the “shocks the conscience” test applies to Ms. Regino’s as-
 12 applied substantive due process claim, Mot. at 27–29, but that test applies only to arbitrary
 13 “executive” action, like high-speed police chases, *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846
 14 (1998), or aggressive police investigations, *Brittain v. Hansen*, 451 F.3d 982, 987 (9th Cir. 2006).
 15 *See also Hawkins v. Freeman*, 195 F.3d 732, 738–39 (4th Cir. 1999) (explaining difference
 16 between legislative and executive action); *McKinney v. Pate*, 20 F.3d 1550, 1557 n.9 (11th Cir.
 17 1994) (same). Here, Ms. Regino seeks prospective relief against a school policy—which is a
 18 “legislat[ive]” enactment—that infringes on her fundamental rights. *Lewis*, 523 U.S. at 846. The
 19 “shocks the conscience” test is inapplicable to challenges to “legisla[tive]” enactments like the
 20 Policy. *Id.*; *Mann*, 907 F.3d at 1163–64 (holding that “deliberate adoption of [a] policy”
 21 establishes municipal culpability). Indeed, in *Foote*, the First Circuit specifically rejected the
 22 “shocks the conscience” test in a challenge to a similar school policy.²

23 The District cites *Littlejohn v. School Board of Leon County* in support of its argument, but
 24 the parents there sought damages against a school that socially transitioned their child, and they
 25

26
 27 ² The District admits that Ms. Regino’s *facial* substantive due process claim challenges “legislative” action. Mot. at
 28 18–19. But the only difference in facial and as-applied claims is “the extent to which the invalidity of a statute need
 be demonstrated.” *Legal Aid Servs. of Or. v. Legal Servs. Corp.*, 608 F.3d 1084, 1096 (9th Cir. 2010) (cleaned up).
 Accordingly, the District’s admission that Ms. Regino’s facial challenge is to “legislative” action is an implicit
 admission that her as-applied challenge is to “legislative” action as well.

expressly “waived any general challenge” to the policy under which the child was transitioned. 132 F. 4th 1232, 1242 (11th Cir. 2025). Here, by contrast Ms. Regino challenges *only* the Policy itself. *See* SAC 28–29. Accordingly, the “shocks the conscience” test is inapplicable. *See Regino*, 133 F.4th at 960 n.5 (noting that Ms. Regino “asserts a violation of her substantive due process rights *solely* under a fundamental rights theory” (emphasis added)).

Even if the “shocks the conscience” test applied, the facts here “shock the conscience.” Where deliberation is practical, state action “shocks the conscience” where the state acts with “deliberate indifference or reckless disregard” to the rights of those affected. *Gantt v. City of Los Angeles*, 717 F.3d 702, 707 (9th Cir. 2013) (cleaned up). Here, by adopting and maintaining the Policy despite its plain infringement of parents’ rights—which the District knew Ms. Regino was asserting when it adopted the current version of the Policy on September 11, 2023, *See* SAC ¶ 131, Ex. J—the District was deliberately indifferent to those rights, *id.* ¶ 108.

B. The Policy Does Not Satisfy Strict Scrutiny.

The District attempts to justify the Policy on three grounds: (1) it prevents discrimination against transgender-identifying students; (2) it acknowledges minor children’s privacy rights; and (3) it prevents child abuse. Mot. at 11, 27. These arguments fail.

1. The prevention of discrimination is insufficient.

While the prevention of discrimination against transgender-identifying children may be a compelling state interest when the child’s parents consent to a social transition, it is not compelling in the absence of parental consent. Considering the transitory nature of minors’ transgender identities, the possibility that social transitioning will cause that identity to persist, and the serious ramifications of persistence on the child’s life course, SAC ¶¶ 35–37, it is unreasonable for the District to rely solely on minors’ self-attestation of their gender identity in determining whether to socially transition them. Instead, the District must seek the parents’ consent, and if parents say “no,” then—absent a finding of parental unfitness—that decision controls, and Defendants lack any anti-discriminatory interest with respect to the child. *Id.* ¶¶ 38–39. *See Green v. Miss USA, LLC*, 52 F.4th 773, 791–92 (9th Cir. 2022) (noting that issue as “not

whether [the government] has a compelling interest in enforcing its non-discrimination policies generally, but whether it has such an interest” specific to *the plaintiff*).

Moreover, socially transitioning every child who asks for it irrespective of parental consent is not narrowly tailored to the prevention of discrimination. Most children with a transgender identity will desist, and instead of transitioning, some children simply need counseling to understand the source of their feelings. SAC ¶¶ 35, 38. Socially transitioning every child who asks for it is a “one-size-fits-all” approach that fails to account for the broader issues the minor may be facing. *Id.* ¶¶ 40–44. This is the antithesis of narrow tailoring.

Further, the Policy’s secrecy provisions are entirely unrelated to the prevention of discrimination. Under the Policy, parents have no power to halt a social transition their child wants. Accordingly, keeping parents in the dark does not protect the child from discrimination in any way. *See Mirabelli v. Olson*, 691 F. Supp. 3d 1197, 1218 (S.D. Cal. Sept. 14, 2023) (“*Mirabelli I*”) (noting that “keeping parents uninformed” of their child’s social transition does not serve any state purpose); *Ricard*, 2022 WL 1471372, at *8 n.12 (noting that failure to notify parents is unlikely to “satisfy . . . rational basis”). Instead, it further separates children from their parents just when the parents are needed most. SAC ¶ 45.

2. Children have no right to keep their social transition secret from their parents.

Children do not have either decisional or informational privacy rights to undergo a social transition without parental consent or notice. Accordingly, privacy is not a compelling interest.

The District tries to shoehorn this case into the line of cases holding that minors have the decisional privacy right to obtain an abortion absent parental consent, Mot. at 22 (citing *Planned Parenthood v. Danforth*, 428 U.S. 52, 74 (1976) but the logic of those cases cannot be stretched to apply here. Even if those cases survived *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022)—which is doubtful—the Supreme Court has never held that children have decisional privacy rights that override their parents’ right to consent outside the abortion context. Indeed, central to the *Danforth* line of case was the fact that a pregnant minor will necessarily give birth “in a matter of weeks,” at which point the minor’s ability to have an abortion would be lost forever. *Bellotti v. Baird*, 443 U.S. 622, 642 (1979). The same is not true with social transitioning,

1 which—like most life decisions—minor children can choose when they reach the age of majority.
 2 *Id.* (observing that no judicial bypass is required for marriage laws because “[a] minor not
 3 permitted to marry before the age of majority is required simply to postpone her decision”).
 4 Adults, for example, have the constitutional right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967),
 5 to engage in consensual sexual relations, *Lawrence v. Texas*, 539 U.S. 558 (2003), and to view
 6 indecent material, *Pope v. Illinois*, 481 U.S. 497 (1987), yet almost every state in the union,
 7 including California, has laws restricting children from engaging in these activities, *see, e.g.*, Cal.
 8 Family Code § 302 (requiring parental consent and court order for minor to marry); Cal. Penal
 9 Code § 261.5 (restricting sexual intercourse with minor); Cal. Penal Code § 313.1 (prohibiting
 10 distribution of indecent material to minors).

11 Moreover, under the *Danforth* line of cases, a minor has the right to bypass parental
 12 consent only when she can demonstrate to a court either (1) that “she possesses the maturity
 13 and information to make her abortion decision” or (2) that the abortion would be “in her best
 14 interests.” *Planned Parenthood of S. Ariz. v. Lawall*, 307 F.3d 783, 789–890 (9th Cir. 2002); *see*
 15 *also H.L.*, 450 U.S. at 398 (upholding parental notice statute where child made no showing as to
 16 maturity). The Policy does not require either of these preconditions vis-à-vis transitioning.

17 To the extent the District invokes minors’ informational privacy rights, no court has ever
 18 held that minors have informational privacy rights to be socially transitioned in secret from their
 19 parents. The District cites *Sterling v. Borough of Minersville*, but that case held only that an *adult*
 20 had a privacy right to keep his sexual orientation secret from his family. 232 F.3d 190, 192 (3d
 21 Cir. 2000). Neither *Sterling* nor any other case can be stretched to mean that minors have an
 22 informational privacy right to be transitioned in secret from their parents.

23 In addition, a right to informational privacy arises only when an individual has a legitimate
 24 “expectation of privacy” in the information at issue. *Mangum v. Action Collection Serv., Inc.*, 575
 25 F.3d 935, 944 (9th Cir. 2009), *abrogated on other grounds by Rotkiske v. Klemm*, 140 S. Ct. 355
 26 (2019). But a school-based social transition is apparent to everyone in the school environment—
 27 administrators, teachers, and other students. Thus, children “can hardly be said to have a
 28 reasonable expectation of privacy” in their social transition at school. *Mirabelli I*, 691 F. Supp. 3d

at 1212. This is particularly true considering parents have a statutory right to “observe [their children’s] classroom activities.” 20 U.S.C. § 6318; *see also* Cal. Educ. Code § 49091.10(b).

Finally, informational privacy rights must always yield to a “proper governmental interest.” *In re Crawford*, 194 F.3d 954, 959 (9th Cir. 1999). Here, Ms. Regino is a fit parent who will do what is in her children’s best interests. SAC ¶¶ 17, 73–74. Her parental rights thus outweigh any privacy right her children might otherwise have against her.³

3. The prevention of child abuse is wholly speculative.

The District does not explain how the Policy prevents child abuse. Presumably, the District’s argument is that some parents might abuse their children if they knew their children were asserting a transgender identity at school. But while the prevention of child abuse is a compelling government purpose in the abstract, the state “has no interest . . . in protecting children from their parents unless it has some reasonable evidence that the parent is unfit and the child is in imminent danger.” *Wallis*, 202 F.3d at 1142 n.14.

The Policy does not require such evidence. Rather, to the extent the Policy is predicated on the prevention of abuse, it simply presumes that parents will harm their children based solely on the fact that the child has asked to be transitioned in secret. This impermissibly reverses the constitutionally mandated presumptions of parental fitness and affinity that underlie the parental right. *See Parham*, 442 U.S. at 603. Indeed, the Supreme Court has rejected the “statist notion that governmental power should supersede parental authority in *all* cases because *some* parents abuse . . . [their] children.” *Id.* (emphasis in original); *see also Troxel*, 530 U.S. at 68 (rejecting visitation order that contravened presumption of parental fitness); *Stanley v. Illinois*, 405 U.S. 645, 652 (1972) (holding dependency proceeding must provide “a hearing designed to determine whether the father is unfit”). Because the Policy does not require the District to make

³ The District does not argue that children have a right to privacy under California law. Even if it had, as relevant here, the right to privacy under California law is similar to the right under federal law as described in the text. *See Am. Acad. of Pediatrics v. Lungren*, 16 Cal. 4th 307 (1997); *Hill v. Nat’l Collegiate Athletic Assn.*, 7 Cal. 4th 1, 36 (1994). More importantly, Ms. Regino’s federal parental rights would trump any state-law privacy right her children may have. *303 Creative LLC v. Elenis*, 600 U.S. 570, 592 (2023) (“[W]hen [state] law and the Constitution collide, there can be no question which must prevail.”).

an individualized showing that parents are likely to harm their children, the prevention of child abuse does not satisfy strict scrutiny.

Moreover, if the District has reason to believe that a student who wants to be socially transitioned is at threat of child abuse, California law already provides a way for the District to address that concern: the District may report the parents to Child Protective Services, which is better able than schools to evaluate and address that risk. Indeed, many District personnel are already mandated reporters under the Child Abuse and Neglect Reporting Act. *See* Cal. Penal Code § 11164, *et seq.* The District may not, however, keep parents in the dark regarding their children’s social transition simply because of speculative concerns of child abuse.

C. The Policy Does Not Satisfy Rational Basis Review

The Policy lacks a rational basis for the same reasons. It is irrational to base a child’s social transition solely on the child’s own attestation of his or her gender identity. It is irrational to keep parents in the dark regarding the transition based solely on the child’s request that his or her parents not be told. Children have no privacy right to undergo a social transition without parental consent and notice. Presuming parents are child abusers based solely on the child’s request for secrecy flips the presumptions of parental fitness and affection on their head. Moreover, the Policy’s “one-size-fits-all” approach harms children. Accordingly, the Policy lacks a rational basis.

IV. THE SAC PLAUSIBLY ALLEGES THAT THE PARENTAL SECRECY POLICY VIOLATES MS. REGINO’S PROCEDURAL RIGHTS AS APPLIED TO HER (COUNT VI)

The District argues that the Parental Secrecy Policy does not trigger the protections of the procedural Due Process Clause because (1) the Policy does not implicate Ms. Regino’s liberty interests and (2) the Policy is a general rule that applies to every parent whose children attend school in the District. *Mot.* at 29–30. These arguments are wrong.

A. The Policy Infringes Ms. Regino’s Protected Liberty Interests

The Policy implicates Ms. Regino’s fundamental rights under the First Amendment and substantive Due Process Clause. *Supra* at 5-17. This triggers her procedural due process rights, *Mullins v. State of Or.*, 57 F.3d 789, 795 (9th Cir. 1995), even if the Policy satisfied substantive review, *United States v. Salerno*, 481 U.S. 739, 746 (1987) (noting that when a statute “survives

substantive due process scrutiny, it must still be implemented in a fair manner”). Moreover, “the procedural . . . Due Process Clause protects more than just fundamental rights.” *Regino*, 133 F.4th at 967 (cleaned up). Accordingly, even if Ms. Regino’s substantive rights were not “fundamental,” they are still liberty interests that trigger procedural due process protections. *Id.*; see also *Kerry v. Din*, 576 U.S. 86, 109–10 (2015) (collecting cases) (Breyer, J., dissenting).

B. The Policy Creates a Deficient Adjudicatory Process

It is true, as the District asserts, that the state is not required to provide procedural protections to individuals before “adopt[ing]” generally applicable laws through the normal legislative process. *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 445–46 (1915); see also *Halverson v. Skagit Cnty.*, 42 F.3d 1257, 1261 (9th Cir. 1994), *as amended on denial of reh’g* (Feb. 9, 1995) (noting that “governmental decisions which affect large areas and are not directed at one or a few individuals do not give rise to the constitutional procedural due process”). But when a law creates an adjudicatory procedure governing case-by-case determinations that can result in the deprivation of liberty interests, individuals are entitled to procedural due process when the fact questions at issue in the adjudication are determined. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 432 (1982); see also *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 544–45 (1985). Moreover, when the state seeks to deprive individuals of their parental rights, the state must bear the burden of proving to a judicial officer that the deprivation is proper. See *Stanley*, 405 U.S. at 657–58; see also *Santosky v. Kramer*, 455 U.S. 745, 756 (1982) (holding state’s burden is by “clear and convincing” evidence).

Here, the Policy creates an adjudicative procedure that applies when a child seeks to be socially transitioned at school. Under the Policy, the facts to be determined are: (1) whether the child’s request is being made for an “improper purpose;” and (2) if the child wants the transition to occur in secret from his or her parents, whether there is “compelling evidence” that parental disclosure is “necessary” for the child’s “well-being.” SAC Ex. J at 5, 6. This adjudicative procedure violates procedural due process for three reasons. First, it does not provide Ms. Regino notice and an opportunity to be heard. *Logan*, 455 U.S. at 432; *Loudermill*, 470 U.S. at 544–45. Second, it fails to require the District to prove either that the transition or parental secrecy is appropriate

1 in each individual case. Instead, it improperly presumes these facts. *Stanley*, 405 U.S. at 657–58;
 2 *Santosky*, 455 U.S. at 756. And third, it does not require the District to make these showings to
 3 a judicial officer. *Stanley*, 405 U.S. at 657–58; *Santosky*, 455 U.S. at 756. Instead, the Policy
 4 impermissibly assigns the District the role of witness, prosecutor, and judge. Accordingly, the
 5 Policy does not comport with procedural due process.⁴

6 **V. THE POLICY IS FACIALLY INVALID (COUNTS I, III, & V)**

7 A law is facially invalid under the First Amendment when “a substantial number of [its]
 8 applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.”
 9 *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024). Outside the First Amendment context, a law
 10 is facially invalid when it “lacks a plainly legitimate sweep” or there “no set of circumstances . . .
 11 under which the law would be valid.” *Id.* (cleaned up).

12 The “underlying constitutional standard . . . is no different” in an as-applied challenge and
 13 a facial challenge. *Legal Aid Servs.*, 608 F.3d at 1096. Here, the Policy is unconstitutional as
 14 applied to every parent of children in the District in the same way it is unconstitutional as applied
 15 to Ms. Regino. Accordingly, the Policy is unconstitutional all its applications. *Stanley*, 405 U.S. at
 16 654 (holding statute invalid that presumed all unwed fathers were unfit despite the fact some
 17 unwed fathers are unfit); *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 789 (9th Cir. 2014) (holding
 18 statute precluding pre-trial release facially invalid despite the existence of “persons who could be
 19 detained consistent with due process under a different categorical statute”). Moreover, the fact
 20 that some students in the District may be adults or emancipated is irrelevant. Ms. Regino’s facial
 21 challenge extends only to parents of children covered by the parental right. *Doe v. Reed*, 561 U.S.
 22 186, 194 (2010) (noting plaintiffs must demonstrate facial invalidity only “to the extent of [the]
 23 reach” of the facial challenge). Accordingly, Ms. Regino states valid facial claims.

24 **CONCLUSION**

25 For the foregoing reasons, the Court should deny the District’s Motion to Dismiss.

26
 27
 28 ⁴ Ms. Regino acknowledges the conceptual difficulty with her argument that she has a right to notice and an
 opportunity to be heard regarding the determination of fact questions designed to evaluate whether the social
 transition remains a secret from her. This difficulty highlights the extreme nature of the Policy. Ms. Regino is unaware
 of another situation in which the state has claimed the power to *secretly* deprive individuals of their liberty interests.

Respectfully submitted,

Dated: July 11, 2025

**CENTER FOR AMERICAN LIBERTY
DHILLON LAW GROUP INC.**

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PROOF OF SERVICE

I, Joshua W. Dixon hereby certify that on July 11, 2025, I electronically filed the above documents with the Clerk of the Court using CM/ECF, which will send electronic notification of such filing to all registered counsel.

By: /s/ Joshua W. Dixon
Joshua W. Dixon