

No. 25-8056, 26-2337

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

ELIZABETH MIRABELLI, et al.,

Plaintiffs-Appellees,

v.

ROB BONTA, in his official capacity
as Attorney General of California, et al.,

Defendants-Appellants,

On Appeal from the United States District Court
for the Southern District Of California
Honorable Roger T. Benitez
No. 3:23-Cv-00768-Ben-Vet

**BRIEF OF AMICUS CURIAE CENTER FOR AMERICAN LIBERTY IN
SUPPORT OF APPELLEES**

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STATEMENT OF INTEREST

The Center for American Liberty (CAL) is a 501(c)(3) non-profit law firm dedicated to protecting free speech and civil liberties. CAL has represented litigants across the country, including in this Court, in cases seeking to vindicate individuals' parental rights, among other things, against oppressive state action. *See, e.g., Regino v. Staley*, 133 F.4th 951 (9th Cir. 2025); *Regino v. Blake*, No. 2:2023-cv-00032-DJC-DMC, 2026 WL 121667 (E.D. Cal. Jan. 15, 2026), *appeal docketed* No. 26-475 (9th Cir. Jan. 22, 2026); *Doe v. Weiser*, No. 1:24-CV-2185-CNS-SBP, 2025 WL 295015 (D. Colo. Jan. 24, 2025), *appeal docketed* No. 25-1057 (10th Cir. Jan. 31, 2025); *Konen v. Caldeira*, No. 5:22-cv-05195 (N.D. Cal. June 14, 2022). CAL has an interest in ensuring that this Court applies the correct legal standard in parental rights cases.¹

¹ No party or party's counsel has authored this brief either in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting the brief. No person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief. Pursuant to Fed. R. App. P. 29(a)(2), all parties have consented to the filing of this amicus brief.

SUMMARY OF THE ARGUMENT

After years of digging into its entrenched position that schools do not violate parents' rights when they facilitate the social transition of children while concealing their actions from parents, California now admits that it was wrong. Considering the Supreme Court's decision in this case, California had little choice. As the Supreme Court concluded, the Parental Exclusion Policies at issue here likely violate parents' rights. *Mirabelli v. Bonta*, 607 U.S. 492, 496–97 (2026).

But California is not taking *Mirabelli* lying down. Despite its belated concession, California argues that *Mirabelli* must be read extremely narrowly. California admits only that *Mirabelli* means that schools may no longer prohibit their employees from telling the truth to parents who ask whether the school is facilitating the social transition of their child. But it argues that schools may continue to hide this information from parents if (1) the parents do not ask or (2) the school concludes that the parents are a risk to engage in child abuse. California also argues that parents have no right to stop the school from facilitating a social transition their child requests. If a child wants to undergo a social transition at school but the parents disagree, California says the child gets to break the tie.

California is wrong all over again. At bottom, the parental right is a decisional right—that is, the Due Process Clause gives parents the right to make decisions regarding matters of great importance in their children's lives. Children lack the

maturity, experience, and judgment necessary to make those decisions, so their parents must be able to decide for them. Parents—even non-religious parents—thus have the right, not only to be notified when schools facilitate their child’s social transition, but also to put a stop to a transition the parents believe is not in the child’s best interests. California’s position otherwise not only displaces parents from their rightful place at the apex of the family, but it also puts children—who could be as young as five years old—in charge of their own mental healthcare. That is profoundly wrong.

California’s contention that schools get to decide whether parents are a risk to engage in child abuse—and thus, that schools may continue to conceal their actions from these parents—fares no better. To be sure, California has an important interest in preventing child abuse. But allowing schools to make this decision on their own does not comply with procedural due process. Absent an emergency, to overcome parents’ decisions regarding their children’s mental health, a judicial officer must find, at a hearing where the parents have the right to notice and an opportunity to be heard, that the parents are abusive. Allowing schools to make this decision on their own violates parents’ due process rights, and it also leaves children vulnerable to harms that a judicial officer would have the power to prevent.

These conclusions are clear on *Mirabelli*’s face, and they are also buttressed by over a century of due process jurisprudence. Under that jurisprudence, parents—

not schools, and not children—have the right, coupled with the high duty, to make the important decisions in their children’s lives, including decisions regarding their children’s mental health. That includes the decision whether a child undergoes a social transition at school. If California wants its schools to continue facilitating children’s social transitions, it thus must provide parents notice and the right to opt out.

Like any other right, the parental right is not absolute, but the state may only override parents’ decisions regarding their children’s mental health if it can satisfy strict scrutiny. The Parental Exclusion Policies do not come close to meeting that standard. California invokes its generalized interest in eradicating discrimination against transgender-identifying minors, but that interest is far too abstract to satisfy strict scrutiny. Children’s transgender identities are often fleeting, and socially transitioning a child can solidify an identity state that would otherwise dissipate on its own. Every child is unique, but one thing is universal: children are unable to make life’s difficult decisions on their own. Deferring to children’s wishes in every case not only violates their parents’ rights but risks irreparable harm to the very people California purports to protect—the children.

The Court should AFFIRM.

ARGUMENT

I. SCHOOLS MUST PROVIDE PARENTS NOTICE AND THE RIGHT TO OPT OUT BEFORE FACILITATING CHILDREN’S SOCIAL TRANSITION

A. Parents have the right to make the important decisions in their children’s lives.

Under the Due Process Clause, parents have the fundamental right to “make decisions concerning the care, custody, and control of their children.” *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (plurality op.); *Keates v. Koile*, 883 F.3d 1228, 1235–36 (9th Cir. 2018). This parental decision-making authority protects children against unwarranted governmental regulation of the family. *See, e.g., Troxel*, 530 U.S. at 75 (rejecting visitation order requiring mother to allow child visitation with paternal grandparents); *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925) (rejecting law requiring parents to send their children to public school); *Meyer v. Nebraska*, 262 U.S. 390, 399–400 (1923) (rejecting law prohibiting parents from teaching children foreign language); *Nunez v. City of San Diego*, 114 F.3d 935, 952 (9th Cir. 1997) (rejecting law precluding parents from allowing their children to go out at night); *see also Mann v. Cnty. of San Diego*, 907 F.3d 1154, 1161–62 (9th Cir. 2018) (holding that parents have the right to “consent” when the state seeks to provide healthcare treatment to children).

The parental right also protects children from suffering the consequences of their own immature decisions. “The law’s concept of the family rests on a

presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions.” *Parham v. J.R.*, 442 U.S. 584, 602 (1979); *see also Roper v. Simmons*, 543 U.S. 551, 569 (2005) (noting that children are “vulnerable . . . to negative influences and outside pressures” and often make “impetuous and ill-considered . . . decisions”). And because the “natural bonds of affection” between parent and child typically “lead parents to act in the best interests of their children,” *Parham*, 442 U.S. at 602, parents have the “authority to decide what is best for [their children]” regarding significant life choices, including decisions regarding children’s mental health, *id.* at 604; *see also Troxel*, 530 U.S. at 66 (concluding that parents have the right to “make decisions” regarding their children’s “care, custody, and control”); *Mann*, 907 F.3d at 1161–62 (noting parental right to “consent” to healthcare treatment the state seeks to provide).

While decision-making authority over children thus “reside[s] first” in their parents, *Troxel*, 530 U.S. at 65, that authority is “not absolute,” *Nunez*, 114 F.3d at 952. The state may, exercising its *parens patriae* power, override parental decisions so long as it satisfies strict scrutiny. *Nunez*, 114 F.3d at 952. But the mere fact that a child disagrees with his or her parents’ decisions is insufficient to override the parental right. As *Parham* teaches, “[s]imply because the decision of a parent is not agreeable to a child . . . does not automatically transfer the power to make that

decision [away] from the parents.” 442 U.S. at 603. Indeed, “[t]he fact that a child may balk at hospitalization . . . does not diminish the parents’ authority to decide what is best for the child.” *Id.*; *see also id.* at 603–04 (“We cannot assume that the result in [*Meyer*] and [*Pierce*] would have been different if the children there had announced a preference to learn only English or a preference to go to a public, rather than a church, school.”). For this reason, deferring to children’s decisions regarding their mental health—and not the decisions of their parents—does not satisfy strict scrutiny as a matter of law. Concluding otherwise would not only contradict years of precedent, history, and tradition, but it would also saddle children with the potentially lifelong consequences of their own immature choices.²

California’s belated concession that schools may not prohibit their employees from telling the truth to parents who ask, CA Br. at 23–24, construes the parental right far too narrowly. As an initial matter, California does not even concede that schools are required to be truthful to inquiring parents. Instead, California concedes only that schools may not “prohibit[] . . . employees” from telling them the truth. CA Br. at 24. California does not say whether parents have any recourse if school

² California argues that parents do not have “an unqualified right to unilaterally dictate the outcome of decisions regarding their children’s mental health.” CA Br. at 32. This is a strawman. No one argues the parental right is “unqualified.” Instead, the Parental Exclusion Policies do not validly override parents’ decisions because they do not satisfy strict scrutiny.

employees continue to lie to them or how parents can even confirm that the employees are telling the truth. Nor does California cite a single case holding that the parental right means only that the state may not prohibit its employees from telling the truth if asked.

Regardless, California's concession falls far short of what the Due Process Clause requires. Parents have the primary right to "decide what is best for [their children's]" mental health, *Parham*, 442 U.S. at 604, which includes the right to "consent" when their children seek to undergo a social transition at school, *Mann*, 907 F.3d at 1161–62. This means that schools must provide parents notice and the right to opt out before honoring a child's request to undergo a social transition, unless the state can override the lack of parental consent under strict scrutiny.

Contrary to California's assertion, *Mirabelli*'s statement that the parental right "includes the right not to be shut out of participation in decisions regarding their children's mental health," 607 U.S. at 497, does not announce a new ceiling on parental rights. Instead, *Mirabelli* recognizes that the Parental Exclusion Policies not only violate parents' rights because they "facilitate a degree of gender transitioning during school hours" without parental consent but—even worse—the Policies also "conceal" the school's actions from parents. *Id.* Indeed, *Mirabelli* supported its due process holding with a citation to *Parham*, 607 U.S. at 497, which, as noted, concluded that "parents[]" have the primary "authority to *decide* what is best for

[their children’s]” mental health, 442 U.S. at 604 (emphasis added). And of course, *Mirabelli* reinstated the district court’s injunction, which specifically enjoined California from “permit[ting] . . . any [school employee] to use a name or pronoun to refer to [a] child . . . where a child’s parent or legal guardian has communicated their objection to such use.” 1-ER-75:9–12.

Indeed, *Mirabelli* specifically concluded that the Parental Exclusion Policies likely violate the Free Exercise Clause precisely because they authorize the “*unconsented* facilitation of a child’s gender transition.” *Id.* at 496 (emphasis added); *see also Mahmoud v. Taylor*, 606 U.S. 522, 545 (2025) (holding that “notice and opt outs” are required before schools teach “‘LGBTQ+ inclusive’ storybooks”). There is no reason to think that parents’ free exercise rights are any different from parents’ substantive due process rights, at least when it comes to schools’ actions that directly impact children’s mental health. Thus, the fact that parents have the free exercise right to notice and opt out when their children undergo a social transition at school confirms that parents have the same right under the Due Process Clause. *See, e.g., Wisconsin v. Yoder*, 406 U.S. 205, 232–34 (1972) (noting close connection between parents’ free exercise rights and due process rights).

California also hypothesizes that there may be some subset of parents who “may not want to” know their children are undergoing a social transition at school. CA Br. at 32. But California does not identify any such parents, nor is it likely that

any exist or that the law should be concerned about them. After all, whether a child undergoes a social transition has “an important bearing on [the] child’s mental health.” *Mirabelli*, 607 U.S. at 497. In any event, parents have no right *not* to be told about their child’s social transition. Requiring schools to notify parents and obtain their consent before facilitating their child’s social transition thus does not violate these hypothetical parents’ rights in any way.

Even if *Mirabelli* had upended years of parental rights precedent to hold that parents are only entitled to some lesser right of mere participation in their children’s lives, schools that fail to inform parents that they are facilitating the social transition of their children violate that right, even if the parents do not ask. The right to participate in a decision necessarily includes the right to be told that the decision is occurring; parents cannot participate in a decision that they do not know is being made. In various settings, this Court has repeatedly held that the state must at least inform parents—even if they do not ask—when its actions significantly impact their children’s lives. *See, e.g., James v. Rowlands*, 606 F.3d 646, 654–55 (9th Cir. 2010) (concluding that the state must notify non-custodial parent when it places child in new home); *Burke v. Cnty. of Alameda*, 586 F.3d 725, 733 (9th Cir. 2009) (concluding that the state must notify non-custodial parent when state removes child from custodial parent’s custody); *Mueller v. Aufer*, 576 F.3d 979, 995 (9th Cir. 2009) (“*Mueller I*”) (concluding that the state must notify parents when it provides

emergency healthcare treatment to child); *Ram v. Rubin*, 118 F.3d 1306, 1310 (9th Cir. 1997) (concluding that the state must notify custodial parents when it takes custody of child). Because the Parental Exclusion Policies do not require schools to notify parents that they are facilitating the social transition of their children, the Policies would violate parents' rights even if *Mirabelli* had limited parents' rights to the right of mere participation in their children's lives.

B. California's cases are distinguishable.

California argues that *Anspach v. City of Philadelphia* and *DeShaney v. Winnebago County Department of Social Services* support its position that schools need not obtain parental consent or provide parental notice before facilitating children's social transition. CA Br. at 32. California is wrong on both counts.

In *Anspach*, the Third Circuit held that parents have no right to notice when their children obtain contraceptives from a state-run health clinic. 503 F.3d 256, 268 (3d Cir. 2007). Even if *Anspach* were correctly decided, it is distinguishable for at least four reasons.

First, this case arises in the school setting, where student attendance is compulsory and where the state has physical custody and control over children. *See* Cal. Educ. Code § 48200. State-run health clinics, by contrast, do not "require attendance or exercise authority over [their] visitors." *Anspach*, 503 F.3d at 271. Schools' mandatory nature and plenary authority over children creates heightened

requirements vis-à-vis parents that might not apply to other government agencies, like the department of motor vehicles, the department of revenue, or a state-run health clinic that provides contraceptives on an outpatient basis. *See Alfonso v. Fernandez*, 195 A.D.2d 46, 57–59 (N.Y. App. Div. 1993) (holding that school-based condom distribution program that did not require parental consent was invalid).

Second, *Anspach* concluded that children have a constitutionally protected privacy right to obtain contraceptives without parental consent or notice. 503 F.3d at 263, 271 (discussing *Carey v. Population Servs. Int’l*, 431 U.S. 678 (1977) (plurality op.)). No court has ever held that children have a constitutionally protected right to undergo a social transition at school without parental consent or notice, nor does California ask the Court to arrive at that holding here.

Third, unlike schools, health clinics do not have ongoing relationships with parents in which it is practical to obtain parental consent or provide parental notice. Indeed, California schools already require parental consent and / or notice for a host of school-based activities, like organized sports, physical examinations, sexual health education, and the distribution of medication. *See* Cal. Educ. Code §§ 33479.3, 48980, 49423, 49451, 49475–76, 51938. Requiring schools to obtain parental consent or provide parental notice before facilitating children’s social transition thus does not create the same practical impediments inherent in imposing a consent or notice requirement on a state-run health clinic.

And fourth, unlike a child’s decision to obtain contraceptives, a child’s decision to undergo a social transition at school is not free from coercion. *See Arnold v. Bd. of Educ. of Escambia Cnty.*, 880 F.2d 305, 312–14 (11th Cir. 1989) (holding schools violate parental right by coercing children), *overruled on other grounds by Swann v. S. Health Partners*, 388 F.3d 834 (11th Cir. 2004). True, the Parental Exclusion Policies do not coerce children to undergo a social transition. Once a transition is undertaken, however, it exerts reinforcing psychological pressure on children to maintain their transgender identity. By creating an environment in which a child’s transgender identity is affirmed—including by teacher “role models” and “pressure” from the child’s peers, *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987)—the Parental Exclusion Policies are inherently coercive, *see Landerer v. Dover Area Sch. Dist.*, No. 1:24-CV-00566, 2025 WL 492002, at *10 (M.D. Pa. Feb. 13, 2025).

Turning to *DeShaney*, 489 U.S. 189, 195 (1989), California argues that *DeShaney* means that “the Constitution does not require the Government to assist the holder of a constitutional right in the exercise of that right.” CA Br. at 32. That principle is true, but it is also irrelevant here. Appellees do not argue that their children’s school must help them raise their children. Rather, they contend that the school may not interfere with their parental rights by facilitating the social transition of their children without obtaining their consent.

For this reason, it does not matter that children initiate the request to undergo a social transition. Under the Parental Exclusion Policies, while children *request* to undergo a transition, it is the school that is *effectuating* that request by requiring everyone in the school environment to refer to the child by a new name and pronouns. That decision is the school's, not the child's. But parents—not the school, and not the child—have the right to make this decision, and just as the state may not directly interfere with this right, it may not facilitate allowing children to assume the primary role in their own upbringing. *See Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (noting that the state may not “produce a result which it could not command directly” (cleaned up)); *see also Alfonso*, 195 A.D.2d at 56–57 (holding that in-school condom distribution program violated parental rights—even though students voluntarily participated in it—because it lacked parental notice and opt-out).

California's view that the child's request is dispositive would lead to disastrous consequences. Schools could provide Zoloft to a child over her parents' objections because she wanted to stop her sad thoughts. Schools could allow a child's estranged grandmother to have lunch with him over his parents' objections because he wanted to see his Nana. And schools could retain custody of a child who ran away from home because she did not want to eat her peas for dinner. Of course, none of this is the law. *See Mario V. v. Armenta*, No. 18-CV-00041-BLF, 2021 WL 1907790 (N.D. Cal. May 12, 2021) (holding that public school teacher violated

parents’ rights by conducting blood-sugar tests on students without parental consent even though students were willing participants); *Troxel*, 530 U.S. at 66–70 (holding that parents have right to determine child visitation without mentioning wishes of child); *Wallis v. Spencer*, 202 F.3d 1126, 1138 (9th Cir. 2000) (holding that the state may maintain custody of child without judicial authorization only where the child is in “imminent danger”).

California’s logic would put children—and not their parents—at the apex of the family and enable children—and not their parents—to make life-altering decisions before they are mature enough to do so. That is not just bad policy. It is legal error. Parents have the right to notice and opt out when schools seek to facilitate the social transition of their children.

II. SCHOOLS MAY NOT SECRETLY FACILITATE CHILDREN’S SOCIAL TRANSITION BASED ON THE SCHOOL’S OWN CONCLUSION THAT PARENTS PRESENT A RISK OF ABUSE

California also argues that schools may continue to conceal the fact that they are facilitating children’s social transitions from parents the school determines present a “risk of abuse” to their children. CA Br. at 42–43. That is also wrong.

The state obviously has a legitimate interest in protecting children from abusive parents. *See, e.g., Parham*, 442 U.S. at 604. Under the Due Process Clause, however, the state must presume, “in the first instance,” that all parents are fit and will look out for the best interests of their children. *Troxel*, 530 U.S. at 70; *see also*

Parham, 442 U.S. at 604; *Stanley v. Illinois*, 405 U.S. 645, 652 (1972). Thus, for the state to have a legitimate “interest . . . in protecting children from their parents,” it must have specific “evidence that [specific parents are] unfit and the child is in imminent danger.” *Wallis*, 202 F.3d at 1142 n.14.

California claims that schools may facilitate children’s social transition in secret from their parents based on its own determination of abusiveness, without a judicial hearing and without giving the parents notice or an opportunity to be heard. CA Br. at 42–43. That is incorrect. Absent an emergency, the state must make an adequate showing to a judicial officer before the state may override parents’ rights. *See Stanley*, 405 U.S. at 652 (holding that the state has no interest in depriving a parent of custody “without a hearing designed to determine whether the [parent] is unfit”); *see also Mueller I*, 576 F.3d at 995 (concluding that, absent an emergency, parents “have a procedural right to a judicial hearing if the State seeks to compel their minor child to undergo a medical treatment over their objection”); *Wallis*, 202 F.3d at 1141 (similar). And at that hearing, parents are at least entitled to the baseline requirements of procedural due process—notice and an opportunity to be heard. *See Mathews v. Eldridge*, 424 U.S. 319, 348 (1976); *see also Mullane v. Cent. Hanover Bank & Tr.*, 339 U.S. 306, 313 (1950); *Wallis*, 202 F.3d at 1141. Allowing schools to facilitate the social transition of children in secret from their parents based on the school’s own determination of abusiveness—without going before a judicial officer

and without giving parents notice and an opportunity to be heard—violates parents’ procedural due process rights.

The fact that California must provide these procedural protections to parents does not preclude it from protecting children from abuse. School personnel may report parents who they suspect are abusive to Child Protective Services and other state and local agencies. Indeed, many school employees are already mandated reporters under the Child Abuse and Neglect Reporting Act, Cal. Penal Code § 11164, *et seq.* And unlike schools, Child Protective Services and other state and local agencies have the power and resources to address suspicions of child abuse while respecting parents’ procedural rights, through individualized investigations, making individualized showings to judicial officers, and, if necessary, advocating for the removal of children from abusive homes. California’s proposed solution—allowing schools to handle the threat of child abuse on their own—inadequately protects both parents’ due process rights and children’s physical safety.

California suggests that *Mirabelli* endorses its view that schools may continue to facilitate children’s social transition in secret from their parents upon the school’s determination that the parents are abusive, CA Br. at 51–52, but *Mirabelli* says nothing of the kind. *Mirabelli* countenances policies that allow parents to “exempt[]” their children from the requirement that schools will facilitate children’s request to undergo a social transition, “while precluding gender-identity disclosure to parents

who would engage in abuse.” 607 U.S. at 497. But if parents “exempt[]” their children from the policy, then they may not be transitioned. And if a child is not transitioned, then the Constitution does not require schools to provide parents affirmative notice of anything. *Id.* at 496–97 (prohibiting the “unconsented facilitation of a child’s gender transition” and “gender transitioning during school hours”). Moreover, if the school has reason to believe the parents are abusive, it may—and sometimes must—report the parents to the state to allow it to make a determination of abusiveness. Upon that determination—and only upon that determination—schools may very well be entitled to facilitate the child’s transition without notifying the parents in certain situations. *See id.* at 498 (noting that that the state may “remov[e] [the child] from parental custody” upon the appropriate showing). Schools may not, however, override parents’ failure to consent to their child’s social transition without providing them these procedural protections.

To the extent California suggests that parents necessarily engage in abuse by failing to consent when their child asks to undergo a social transition, that suggestion stretches the meaning of the term “abuse” far beyond what it reasonably can bear. Indeed, *Mirabelli*’s foundational premise is that a parent’s decision to say “no” to a child’s request to undergo a social transition can be a permissible parental decision. *See also Chiles v. Salazar*, 146 S. Ct. 1010, 1029 (2026) (observing that “the question [of] how best to help minors struggling with issues of gender identity . . . is

presently a subject of fierce public debate” (cleaned up)); *Lee v. Poudre Sch. Dist. R-1*, 135 F.4th 924, 937 (10th Cir. 2025) (noting that a school “may not seize control of a child’s upbringing based on a simple disagreement about what is in the child’s best interests” (cleaned up)) (McHugh, J., concurring). California may think it appropriate to take children from loving parents in that case, but the Constitution prohibits that unwarranted state interference with the family.

III. SCHOOLS DO NOT HAVE IMPLIED AUTHORITY UNDER *IN LOCO PARENTIS* TO FACILITATE CHILDREN’S SOCIAL TRANSITION WITHOUT PARENTAL CONSENT

It is settled that parents’ rights are not “shed at the schoolhouse gate.” *Mahmoud*, 606 U.S. at 545 (cleaned up); *see also Fields v. Palmdale Sch. Dist.*, 427 F.3d 1197 (9th Cir. 2005), *opinion amended on denial of reh’g by Fields v. Palmdale Sch. Dist. (PSD)*, 447 F.3d 1187, 1190–91 (9th Cir. 2006) (deleting language from opinion stating otherwise); *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 185 n.26 (3d Cir. 2005) (concluding similar). Children who attend public school do not become “mere creature[s] of the state.” *Pierce*, 268 U.S. at 535.

Instead, the scope of public schools’ authority over children is determined by the *in loco parentis* doctrine. *Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 189 (2021); *see also Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 655 (1995). Under that doctrine, public schools have “inferred parental consent” that gives them “a degree of authority [over children] commensurate with . . . their . . . educational

mission.” *Mahanoy*, 594 U.S. at 200 (Alito, J., concurring). In other words, public schools have the authority to educate children. *Id.* And under that authority, public schools generally may decide (1) *what* students are taught and (2) *how* students are taught, including things like “the hours of the school day, school discipline, [and] the timing and content of examinations.” *Fields*, 427 F.3d at 1200, 1206; *see also Parents for Priv. v. Barr*, 949 F.3d 1210, 1232–33 (9th Cir. 2020) (similar).

Public schools’ authority to educate children under the *in loco parentis* doctrine does not include the power to facilitate their social transition absent parental consent. Socially transitioning students is not educational. Instead, it is a significant decision in a child’s life that directly impacts the child’s mental health. Parents hand their children off to public schools to be taught, not for schools to facilitate their social transition. *See C.N.*, 430 F.3d at 183 (noting that “‘*in loco parentis*’ does not mean ‘displace parents’”); *see also* S. Ernie Walton, *In Loco Parentis, the First Amendment, and Parental Rights-Can They Coexist in Public Schools?*, 55 Tex. Tech L. Rev. 461, 476 (2023) (noting that under the common law, “the teacher stands in place of the parents only to the extent authority is delegated”); Blackstone, 1 COMMENTARIES ON THE LAWS OF ENGLAND at 441 (1765) (noting that a father “delegate[s] [only] a part of his parental . . . authority to the . . . schoolmaster”); Kent, 2 COMMENTARIES ON AMERICAN LAW at 88 (1827) (noting that parental authority “may be delegated to a tutor . . . [for the] purposes of education”).

Indeed, childhood social transitions did not occur in meaningful numbers in the United States until the last two decades. *See The Cass Review: Independent review of gender identity services for children and young people* (2024) at 67–70, available online at <https://bit.ly/4yiq2SF> (last visited Sept. 2, 2026). And school-based social transitions without parental consent are even more recent. Indeed, California did not adopt the Parental Exclusion Policies until 2014. *See Appellees’ Br.* at 18. There is no basis in our Nation’s history and traditions to conclude that public schools have the implied authority to facilitate children’s social transition without parental consent. *See Yoder*, 406 U.S. at 226–27 (concluding that the “relatively recent development” of “compulsory education beyond the eighth grade” confirmed Amish parents’ right to direct their children’s religious upbringing).

California also suggests that schools do not trigger the parental right every time they facilitate a child’s social transition. *CA Br.* at 33. According to California, the parental right “will not be implicated every time a student expresses a transgender identity” but only when that expression is a “symptom[] of gender dysphoria” *Id.* (quoting *Mirabelli*, 607 U.S. at 497). This argument is meritless. Whether or not a child has gender dysphoria, his or her request to undergo a social transition is necessarily a “symptom[]” of that condition. *Mirabelli*, 607 U.S. at 497. What is more, this important limitation on the parental right at issue in this case stops California’s parade of horrors in its tracks. *CA Br.* at 34–35. This case involves

parents’ right to make decisions that have a direct bearing on their children’s mental health, not questions regarding religious dress, school dances, or other ordinary activities that occur in the school environment. Those questions can—and should—be left for another day.

IV. APPELLEES’ SUBSTANTIVE DUE PROCESS CLAIMS SATISFY *GLUCKSBERG*

California argues that the Court must conduct a full analysis of Appellees’ substantive due process claims under *Washington v. Glucksberg*, 521 U.S. 702 (1997), including beginning with a “careful description” of the asserted right at the appropriate level of generality. CA Br. at 30 (quoting *Regino*, 133 F.4th at 960). Not so.

While *Glucksberg* applies to “new” substantive due process rights, 521 U.S. at 720 (quotations omitted), the parental right is not “new.” Indeed, it “is perhaps the oldest of the fundamental liberty interests” recognized by the Supreme Court. *Troxel*, 530 U.S. at 65; *see also Yoder*, 406 U.S. at 232 (noting that parental rights are “established beyond debate as an enduring American tradition”). Parents alleging a substantive due process parental rights violation are thus not required to demonstrate anew that the parental right exists in every case. Rather, they are required only to demonstrate that the right they assert is “encompassed within” the broader, preexisting parental right. *Fields*, 427 F.3d at 1204; *see also Marsh v. Cnty. of San Diego*, 680 F.3d 1148, 1154 (9th Cir. 2012) (asking whether asserted right

“flows from” the preexisting parental right); *Foote v. Town of Ludlow*, 128 F.4th 336, 348 (1st Cir. 2025) (asking whether asserted right “fell within the broader, well-established parental right”).

In *Troxel*, for example, the Supreme Court held that parents’ right to decide their children’s associates fell within the parental right without conducting a full *Glucksberg* analysis. 530 U.S. at 65–73; *id.* at 76–78 (Souter, J., concurring); *id.* at 80 (Thomas, J., concurring). And in *Mirabelli* itself, the Supreme Court did not conduct a full *Glucksberg* analysis. Instead, the Court simply held that the Parental Exclusion Policies likely violated its “long-established [parental rights] precedents.” 607 U.S. at 497 (citing *Parham*, 442 U.S. 584; *Pierce*, 268 U.S. 510; *Meyer*, 262 U.S. 390); *see also id.* at 499 (concluding that Appellees are likely to prevail “under a straightforward application” of the Supreme Court’s preexisting parental rights precedent) (Barrett, J., concurring).

Because the Supreme Court has already concluded that the Due Process Clause protects parents’ rights, parents do not have to satisfy *Glucksberg* every time the state devises some new way to infringe their rights. If that were the law, parental rights could not apply to the state’s decisions to give children a cochlear implant, to allow children to participate in organized contact sports at school, or to require private schoolchildren to attend school via Zoom, for example, because those things are recent innovations. The Court must take care that its rulings do not “trap[]” the

Constitution “in amber.” *United States v. Rahimi*, 602 U.S. 680, 691 (2024). And because the right the parents assert here is encompassed within the broader, preexisting parental right, the Parental Exclusion Policies violate the Due Process Clause.³

To be sure, lower courts must exercise caution when interpreting broad formulations of substantive due process rights, like the rights to “privacy,” to “make intimate and personal choices,” and to “define one’s concept of existence.” *Dobbs v. Jackson Women’s Health*, 597 U.S. 215, 255 (2022) (quotations omitted). Allowing courts to interpolate general principles within these broad formulations gives judges too much discretion to engage in “freewheeling judicial policymaking.” *Id.* at 240. Here, however, parents’ right to consent when the state seeks to facilitate the social transition of their children at school is encompassed within parents’ “authority to decide what is best for [their children’s]” mental health. *Parham*, 442 U.S. at 604; *see also Mirabelli*, 607 U.S. at 497 (concluding schools violate parental right when they “facilitate [a child’s] gender transitioning”). This right is sufficiently narrow to cabin judicial discretion while avoiding overly formalistic granularity that

³ In *Regino*, the panel confusingly stated both that parents bringing substantive due process claims must satisfy *Glucksberg* and that the question in such cases was whether the asserted right in question was “encompassed” within the broader, preexisting parental right. 133 F.4th at 964, 965. In addition to contradicting *Troxel*, *Mirabelli*, *Marsh*, *Fields*, and *Foote*, that discussion in *Regino* was dicta.

would deny courts the flexibility to respond to new ways in which the state may unlawfully interfere with the family.

Even if a full *Glucksberg* analysis were required, Appellees satisfy *Glucksberg*. See *Mirabelli*, 607 U.S. at 497. At common law, parents had the right “to speak and act on their [children’s] behalf.” *Hodgson v. Minnesota*, 497 U.S. 417, 483 (1990) (Kennedy, J., concurring in part and dissenting in part). This expansive view of parental rights persisted in 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). And under our Nation’s history and tradition, public schools’ implied authority under the *in loco parentis* doctrine has always been limited to the purpose for which schools were established: to educate children. The decision to facilitate a child’s social transition is not within the scope of that implied delegation of parental power. Based on this history and tradition, it beggars belief to think that the Fourteenth Amendment’s framers would have thought public schools could socially transition children without parental consent or notice.

V. THE PARENTAL EXCLUSION POLICIES DO NOT SATISFY STRICT SCRUTINY

A. Strict scrutiny applies

California points out that “the Supreme Court has not generally applied” strict scrutiny to parental rights claims under the Due Process Clause. CA Br. at 31 n.8. But the parental right is a “fundamental right,” and infringements of fundamental

rights are subject to strict scrutiny. *Glucksberg*, 521 U.S. at 720–21; *see also Troxel*, 530 U.S. at 80 (concluding that strict scrutiny applies) (Thomas, J., concurring). True, *Mirabelli* did not expressly state that it was applying strict scrutiny to the parents’ due process claims. But it applied strict scrutiny to the parents’ free exercise claim, 607 U.S. at 496, and it arrived at “[t]he same” ultimate conclusion under their due process claim, *id.* at 497. There is no reason to think the Supreme Court applied different standards to the two claims. *Id.*; *see also id.* at 499 (noting that violations of the parental right are subject to “heightened scrutiny”) (Barrett, J., concurring).

In any event, as California acknowledges, this Court has already concluded that strict scrutiny applies to infringements of the parental right. CA Br. at 31 n.8 (citing *Regino*, 133 F.4th at 962); *see also Nunez*, 114 F.3d at 952. Other Circuits agree. *See Kanuszewski v. Mich. Dep’t of Health & Hum. Servs.*, 927 F.3d 396, 420 (6th Cir. 2019); *Gruenke v. Seip*, 225 F.3d 290, 305 (3d Cir. 2000); *Arnold*, 880 F.2d at 313; *Franz v. United States*, 707 F.2d 582, 602 (D.C. Cir. 1983). This Court has also explained how strict scrutiny works when the state seeks to override parents’ right to make decisions that directly impact children’s mental health. Absent an emergency, the state must prove to a judicial officer that the child is subject to “danger or harm” due to the parents’ decisions. *Mueller v. Auken*, 700 F.3d 1180, 1186 (9th Cir. 2012) (“*Mueller II*”); *see also Parham*, 442 U.S. at 603 (noting that the state may override parents’ decisions when the child’s “health is jeopardized” by

parental neglect or abuse); *Jensen v. Wagner*, 603 F.3d 1182, 1198 (10th Cir. 2010) (similar). Circuit precedent requires that standard be applied here.

B. The Parental Exclusion Policies do not satisfy strict scrutiny.

1. The Parental Exclusion Policies impermissibly rely on a generalized anti-discrimination interest.

California argues that the Parental Exclusion Policies advance its general interest in “eradicating discrimination.” CA Br. at 37 (internal quotations omitted).⁴ But under strict scrutiny, the issue is not the state’s asserted interest in “enforcing its non-discrimination policies *generally*.” *Green v. Miss USA, LLC*, 52 F.4th 773, 791–92 (9th Cir. 2022) (emphasis added). Rather, the Court must ask “whether [the state] has . . . an interest” in preventing discrimination with respect to *each child* whose transition it facilitates. *Id.*; *see also Mueller II*, 700 F.3d at 1187. Because the Parental Exclusion Policies impose a blanket obligation requiring schools to facilitate the social transition of every child who asks to undergo a transition without requiring a case-by-case showing to a judicial officer that the child is subject to harm and that the transition is beneficial and appropriate for that child, they fail strict scrutiny.

⁴ California also argues that the Policies “safeguard[] the physical and psychological well-being” of minors. CA Br. at 37. But in *Mirabelli*, the Supreme Court rejected this asserted interest, concluding that “parents”—not schools—“are the primary protectors of children’s best interests.” 607 U.S. at 496–97.

It is no answer for California to say that it is merely honoring the child's request. As discussed, children are too immature to make this decision on their own. California must therefore obtain parental consent before socially transitioning their children. And if the parents say "no," then—absent some showing that the parents' decision falls outside the bounds of permissible parenting that child—California has no legitimate interest in facilitating the child's transition. *See Lee*, 135 F.4th at 937 (concluding that a school "may not seize control of a child's upbringing based on a simple disagreement about what is in the child's best interests") (McHugh, J., concurring). Because the Parental Exclusion Policies wrongly assume that a social transition is appropriate for all children who ask to undergo one, they fail strict scrutiny.

2. The Parental Exclusion Policies impermissibly deprive parents of their procedural due process rights.

As discussed, California argues that schools may continue to conceal their efforts at facilitating children's social transitions from parents who allegedly present a risk of abuse to their children. Preventing child abuse is a compelling interest in the abstract, but allowing schools to make this decision on their own—without going before a judicial officer and without providing parents notice and an opportunity to be heard—violates parents' procedural due process rights. This interest, too, thus fails strict scrutiny. *See Wallis*, 202 F.3d at 1142 n.14 (concluding that the state has

“no interest” in protecting children from their parents absent appropriate judicial findings).

CONCLUSION

The Court should AFFIRM.

September 3, 2026

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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**UNITED STATES COURT OF APPEALS
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I hereby certify that on September 3, 2026, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using ACMS, which will accomplish service on counsel for all parties through the Court's electronic filing system.

/s/ Joshua W. Dixon
Joshua W. Dixon