Court of Appeal No. **G064332**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION THREE

MAE M., THROUGH HER GUARDIAN AD LITEM ANTHONY M., et al.

Appellants-Plaintiffs

vs.

JOSEPH KOMROSKY, et al.

Respondents-Defendants

BRIEF IN SUPPORT OF APPLICATION TO FILE BRIEF AMICUS CURIAE

Appeal from Superior Court
of Riverside Case No.
CVSW2306224
The Honorable Eric
Keen Department 6

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STATEMENT OF INTEREST

CAL is a 501(c)(3) non-profit law firm dedicated to protecting free speech and civil liberties for all. CAL has filed amicus briefs and represented litigants in cases involving parental rights across the country, including California state and federal courts. CAL is currently counsel of record for the plaintiff in *Regino v. Staley* (E.D. Cal. 2023) Case No. 23-0032, *on appeal* (9th Cir. 2024), for the plaintiffs in *Doe v. School District 27J*, *et al.* (D. Colo. 2024) Case No. 24-2183, and for the parents-intervenors in *Bonta v. Chino Valley Unified School District, et al.* (Cal. Sup. Ct. 2023) Case No. CIVSB 2317301. CAL has an interest in ensuring that courts apply the correct legal standard in cases involving the constitutional right of parents to the care, custody, and control of their children.

INTRODUCTION

The law of parent and child reflects one enduring principle: the best way to protect children from harm is to give their parents broad authority over them. Left to their own devices, children are immature and make rash decisions, while parents are presumed to be fit and to act in their children's best interests. Parents' decisions are not always correct, of course, but the government must defer to those decisions in the absence of a narrowly tailored, compelling reason not to.

Temecula Valley Unified School District's Board Policy 5020.1 reflects the common-sense proposition that parents must be notified when a school begins treating their child according to a different gender identity. Parental notification is particularly important in the case of children who come to have a transgender identity. Treating a transgender-identifying child according to their gender identity—that is, by referring to the child by a name associated with their transgender identity, referring to the child by pronouns associated with their transgender identity, *etc.*—is called social transitioning. Social transitioning is a significant form of psychological treatment, especially

in children. Indeed, the very purpose of social transitioning is to alleviate the distress that can be caused by having a transgender identity.

But social transitioning is no mere benign act in a child's life. Instead, socially transitioning a child makes it more likely that a child's transgender identity will persist into adulthood. Absent social transitioning, the odds that a child's transgender identity will persist is very low. In most children with a transgender identity, that identity simply goes away as the child matures. Socially transitioning a child, however, can change gender outcomes, making it more likely that a child's transgender identity persists beyond puberty. And because most children who undergo a social transition go on to transition medically—through puberty blockers, cross-sex hormones, and even surgical procedures—starting down the road toward a medical transition is not a choice children should make alone.

School policies that bypass parental notification and consent before socially transitioning children violate the United States Constitution for three reasons. First, socially transitioning children without parental notification and consent violates parents' right to consent to healthcare treatment the government provides their children. Second, socially transitioning children without parental consent and notification violates parents' right to consent when the government makes important decisions in their children's lives. And third, socially transitioning children without parental notification and consent unduly interferes with parents' right to family integrity. Accordingly, contrary to Appellant's argument, Board Policy 5020.1 is not invalid because it requires schools to notify parents that their children are being socially transitioned.

Finally, AB 1955 does not change this result. As an initial matter, AB 1955 has an express textual exception for disclosures that are required by federal law. Because schools are required under the constitution—a source of federal law—to obtain parents' consent before socially

transitioning their children, this exception applies. And even if it didn't, AB 1955 would be invalid under the Supremacy Clause. Either way, AB 1955 does not affect this litigation.

For these reasons, which are explained in more detail below, the Court should affirm.

BACKGROUND ON GENDER DYSPHORIA AND ITS TREATMENT

Earlier this year, Dr. Hilary Cass, former president of the United Kingdom's Royal College of Pediatrics and Child Health, released the final version of her long-awaited evidence review assessing the safety and efficacy of "gender affirming care." (*The Cass Review*: *Independent review of gender identity services for children and young people*, Dr. Hilary Cass, United Kingdom National Health Service (April 10, 2024) ("*The Cass Review*"), available online at https://cass.independent-review.uk/home/publications/final-report/ (last visited Oct. 1, 2024).) "Gender affirming care" is a paradigm for the treatment of psychological distress in transgender-identifying youth under which the young person's transgender identity is "affirmed," whether through psychological interventions like social transitioning or medical interventions like puberty blockers, cross-sex hormones, and surgeries like mastectomies and genital removal. This background section represents a short summary of *The Cass Review*'s findings as they pertain to social transitioning.

Scientists do not know precisely why some people come to have a transgender identity, but broad agreement exists that such an identity is the result of a complex interplay of biological, psychological, and cultural factors. (*The Cass Review* at 26 ¶ 34.) It also commonly accepted in the scientific community that a child's gender identity can change as the child matures. (*Id.* at 21 ¶ 13.)

While having a transgender identity is not a psychological condition, gender dysphoria is. Gender dysphoria is defined as a condition in which the mismatch in a person's gender identity and sex causes clinically significant psychological distress. (*Id.* at 18, 83, 93 ¶ 5.39, 241.) Many transgender-identifying minors have gender dysphoria or sub-threshold psychological distress.

Many also have other developmental and psychiatric conditions such as autism, depression, and anxiety. (*Id.* at 91 ¶ 5.26, 93 ¶ 5.41, 185 ¶ 15.27.)

There are two general approaches to treating gender dysphoria in minors. Generally speaking, under the "watchful waiting" model, the mental health professional allows the minor's gender identity to evolve while treating any other co-morbidities without a focus on gender. (*Id.* at 158 ¶ 12.8, 246; *see also* 150 ¶ 11.4.) Under the "affirmation" model, by contrast, the mental health professional considers a minor's expression of a transgender identity as decisive and assumes that the minor's psychological condition will improve with "affirmation" of that identity. (*Id.* at 70 ¶¶ 2.14–15, 194 ¶ 16.12–13.)

A primary pillar of the "affirmation" model is social transitioning. (*Id*. at 158–65.) Social transitioning refers to the active affirmation of a person's transgender identity. (*Id.* at 31 ¶ 71.) It includes calling someone by a new name and pronouns associated with their transgender identity. (*Ibid.*) The purpose of social transitioning is to alleviate the psychological distress that can be caused by the mismatch between a person's gender identity and sex, whether that distress rises to level of that associated with gender dysphoria or is sub-threshold for a gender dysphoria diagnosis. (*Id.* at 31 ¶ 74.)

Social transitioning in children is not a mere harmless exploration of the minor's gender identity. (*Id.* at 41 ¶ 144, 158 ¶ 12.5.) Absent social transitioning, a large majority of transgender-identifying minors will desist by adulthood; that is, they will lose their transgender identity. (*Id.* at 41 ¶ 144; 163 ¶ 12.32 (noting study finding desistence rate of 85%).) But when social transitioning occurs, the rate of desistence plummets. (*Id.* at 162 ¶ 12.25 (noting study finding persistence rate of 7%).) Thus, social transitioning in minors may make it more likely their transgender identity will persist due to the psychological effect of inhabiting that identity during their development. (*Id.*; *see also id.* at 32 ¶ 77, 158 ¶ 12.5, 164 ¶ 12.36 (noting that "sex of rearing seems to have some influence

on eventual gender outcome, and it is possible that social transition in childhood may change the trajectory of gender identity").)

Moreover, minors who are socially transitioned frequently go on to receive graduated medical interventions, (*id.* at 31 ¶ 76, 162 ¶ 12.25), which include puberty blockers and cross-sex hormones, and, for some, surgeries, like mastectomies and genital removal. Accordingly, before social transitioning is considered, the risks associated with these graduated forms of "affirmative" care must be considered. (*Id.* at 164 ¶ 12.36.) These risks are significant, and include the possibility of bone weakness, cardiovascular harm, brain development, and sterility. (*Id.* at 32 ¶ 81, 178 ¶ 14.38, 184 ¶ 15.20, 184 ¶ 15.25, 196 ¶ 16.39.)

For these reasons, social transitioning must be viewed as "an active intervention" in the lives of children. (*Id.* at 158 ¶ 12.5.) And while the potential benefits of social transitioning are often touted by those who support the "affirmational" model of care, there is no clear evidence that social transitioning has any positive mental health outcomes in pre-pubertal children, and there is only weak evidence of positive mental health outcomes in adolescents. (*Id.* at 164 ¶ 12.36; *see also id.* at 162 § 12.22.) Indeed, socially transitioning every minor who asks for it is a "one-size-fits-all" treatment approach that fails to consider the unique issues the minor may be facing. (*Id.* at 146 ¶ 10.74–83 (discussing need for individualized care plan).) What is more, parental involvement is almost always necessary when minors are socially transitioned. (*Id.* at 164 ¶ 12.36 (noting that "parents should be actively involved in decision making unless there are strong grounds to believe that this may put the [youth] at risk").) Schools that socially transition minors without their parents' consent interfere with the parents' ability to take a more cautious approach before allowing children to make significant changes to their identity. (*Id.* at 165 ¶ 12.37 (noting that a "clinician should help families to . . . [a]void premature decisions").) By socially transitioning minors in secret from their parents, schools are making decisions regarding the minor's healthcare treatment—treatment that

can have serious, life-long consequences—that the minor's parents should make with assistance from a mental health professional. (*Id.* at 164 ¶ 12.36–37.) Indeed, no medical or psychological association in the world has endorsed school-facilitated social transitions of minors without parental consent.

ARGUMENT

I. UNDER THE UNITED STATES CONSTITUTION, SCHOOLS ARE REQUIRED TO OBTAIN PARENTS' CONSENT WHEN SOCIALLY TRANSITIONING THEIR MINOR CHILDREN

Under the First and Fourteenth Amendments to the United States Constitution, parents have a fundamental right to direct the "care, custody, and control" of their minor children. (*Troxel v. Granville* (2000) 530 U.S. 57, 65 (plurality op.) (noting that the parental right arises under the Due Process Clause of the Fourteenth Amendment); *Keates v. Koile* (9th Cir. 2018) 883 F.3d 1228, 1235 (noting that the parental right arises under both the First Amendment and the Due Process Clause of the Fourteenth Amendment).) 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 [between parent and child] lead parents to act in the best interests of their children." (*Parham v. J.R.* (1979) 442 U.S. 584, 602 (citing 1 W. Blackstone, COMMENTARIES *447; 2 J. Kent, COMMENTARIES ON AMERICAN LAW *190); *see also Brown v. Entertainment Merchants Ass'n* (2011) 564 U.S. 786, 822–23, 835 (noting that "the founding generation believed parents had absolute authority over their minor children," a concept that "persisted in the decades leading up to the ratification of the Fourteenth Amendment") (Thomas, J., concurring); *Hodgson v. Minnesota* (1990) 497 U.S. 417, 483 ("Under the common law, parents had the right . . . to speak and act on their [children's] behalf.") (Kennedy, J., concurring in part and dissenting in part).)

Under the constitution, parents have the right to consent when a school seeks to socially transition their children. Three separate lines of cases compel this conclusion.

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

First, social transitioning is a form of psychological treatment for gender dysphoria, and parents have the right to consent when the State performs psychological treatment on their children. (*Parham*, *supra*, 442 U.S. at 602 (holding that parents have the right to direct the psychological care of their children); *Mann v. Cnty. of San Diego* (9th Cir. 2018) 907 F.3d 1154, 1161 (holding that the state must "obtain[] . . . the parents' consent" before performing healthcare treatment on children without "judicial authorization").) As the Supreme Court has observed, "[m]ost children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment." (*Parham*, *supra*, 442 U.S. at 602.)

The conclusion that social transitioning is a form of healthcare treatment for gender dysphoria is not in serious dispute. As noted, *The Cass Review* concluded that social transitioning is "an active intervention" in the life of children, in part "because it may have significant effects on the [minor] in terms of their psychological functioning and longer-term outcomes." *Id.* at 158 ¶ 12.5; *see also id.* at 164 ¶ 12.36 (noting that "sex of rearing seems to have some influence on eventual gender outcome"). Dr. Ken Zucker, a leading clinician in the field, has opined 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 7 (2018), available online at https://www.hbrs.no/wp-content/uploads/2017/05/The-myth-of-persistence-0ZUCKER.IJT_.2018.pdf (last visited Oct. 1, 2024).) And Dr. Erica Anderson, a transgender-

identifying clinician who treats children with gender dysphoria and related conditions, holds the view that social transitioning "is a form of psychological treatment."[1]

Moreover, federal courts throughout the country, including the Ninth Circuit, have held that social transitioning is a form of healthcare treatment. (*Edmo v. Corizon, Inc.*, 935 F.3d 757, 770 (9th Cir. 2019) (noting that "[t]reatment options for individuals with gender dysphoria" include "changes in gender expression and role (which may involve living . . . in another gender role, consistent with one's gender identity"); *see also Kadel v. Folwell* (4th Cir. 2024) 100 F.4th 122, 136–37 ("To treat gender dysphoria,. . . social transition" is recommended); *Lamb v. Norwood* (10th Cir. 2018) 899 F.3d 1159, 1161 (noting that "[t]reatment forms [for gender dysphoria] currently include . . . [c]hanges in gender expression and role (which may involve living . . . in another gender role, consistent with one's gender identity)"); *Tirrell v. Edelblut* (D.N.H. Sept. 10, 2024) No. 24-CV-251-LM-TSM, 2024 WL 4132435, at *2 (noting that "treatment for gender dysphoria generally involves . . . a social transition"); *Clark v. Quiros* (D. Conn. July 26, 2024) No. 3:19-CV-575 (VAB), 2024 WL 3552472, at *6 (noting that "treatment for gender dysphoria [includes] social transition"); *Koe v. Noggle* (N.D. Ga. Aug. 20, 2023) No. 1:23-CV-2904-SEG, 2023 WL 5339281, at *6 (noting that "gender dysphoria treatment plans include . . . a social transition"); *Doe v. Horne* (D. Ariz. July 20, 2023) No. CV-23-00185-TUC-JGZ, 2023 WL 4661831, at *3 ("Undergoing treatment to alleviate gender dysphoria . . . includes . . . social transition . . ."); *Monroe v. Meeks* (S.D. Ill. 2022) 584 F. Supp. 3d 643, 678 (holding that "[s]ocial transition . . . is a medically necessary component of treatment for some . . . with gender dysphoria"); *Pinson v. Hadaway* (D. Minn. July 13, 2020) No. 18-CV-3420-NEB-KMM, 2020 WL

[1] Dr. Anderson is the retained expert of the defendant school district and the intervenor parents in *Bonta v. Chino Valley Unified School District* (Cal. Sup. Ct. 2023) Case No. CIVSB 2317301. CAL represents the intervenor parents. Dr. Anderson's declaration is available on the online docket in that case at https://cap.sb-court.org/case/ODUzMjc4Mg== (last visited Oct. 1, 2024).

6121357, at *1 (noting that "[g]ender dysphoria treatment can involve . . . social transition"); *Porter v. Allbaugh* (N.D. Okla. May 17, 2019) No. 18-CV-0472-JED-FHM, 2019 WL 2167415, at *2 n.3 (noting that "[c]urrent treatments for gender dysphoria include . . . social transition").)

Further, many medical associations—including, but not limited to, the American Medical Association, the American Academy of Pediatrics, and the Endocrine Society—hold the view that one "treatment" for gender dysphoria "is to assist the patient to live in accordance with his or her gender identity, ... [through] . . . social transition." Br. of Amici Curiae Medical, Nursing, Mental Health, and other Health Care Organizations in Support of Appellee *in Adams v. The School Board of St. Johns County*, Case No. 18-13592, at 3, available online at https://lambdalegal.org/wp-content/uploads/2019/10/adams_fl_20190228_brief-of-amici-curiae-medical-etc-orgs.pdf (last visited Oct. 1, 2024).) Similarly, the World Professional Association for Transgender Health ("WPATH") takes the view that a social transition can be an important tool in "reducing gender dysphoria and enhancing psychosocial adjustment and well-being." (Coleman, et al., *Standards of Care for the Health of Transgender and Gender Diverse People*, Version 8 (September 15, 2022) ("WPATH SOC8"), available online at https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644 (last visited Oct. 1, 2024).) And the United States Department of Health and Human Services also views social transitioning as a form of treatment. (*Nondiscrimination in Health Programs and Activities*, Proposed Rule, 87 FR 47,824-01, *47,867 (August 4, 2022) (observing that social transitioning can be the "clinically indicated next step for [a gender non-conforming] child").)

Because social transitioning is a form of healthcare treatment, parents generally must have the right to consent from a *treatment* standpoint when their children are socially transitioned. *The Cass Review* at 164 ("[P]arents should be actively involved in decision making [when their children are socially transitioned] unless there are strong grounds to believe this may put [them] at risk.").

And from a *legal* standpoint, parents have the right to consent when their children's school seeks to socially transition them unless there is reason to think the parents will be abusive. (*T.F. v. Kettle Moraine School Dist.* (Wis. Cir. Oct. 03, 2023) No. 2021CV1650, 2023 WL 6544917, at *5 (holding socially transitioning child without parental consent "directly implicates an infringement against the parental . . . right to direct the care for their child"); *Mueller v. Auker* (9th Cir. 2012) 700 F.3d 1180, 1187 (holding that the state may exercise its *parens patriae* authority to override parents' right to consent to healthcare treatment only when the child is "subject to . . . apparent danger or harm.""").)

It does not matter that it is students—and not the school—who are initiating the request to be socially transitioned. As a matter of constitutional law, minors lack the "maturity, experience, and capacity for judgment" needed to "make sound judgments concerning many decisions, including their [own] need for medical care." (*Parham*, *supra*, 442 U.S. at 603; *see also Roper v. Simmons* (2005) 543 U.S. 551, 569 (noting that children are "vulnerable . . . to negative influences and outside pressures, including peer pressure" and often make "impetuous and ill-considered . . . decisions")). Parents—not the State and not the child—have the "primary role" in raising their children. (*Wisconsin v. Yoder* (1972) 406 U.S. 205, 232.) This rule, which contemplates parental direction over children's healthcare decisions, protects children from their own imprudent decisions. (*See Parham*, *supra*, 442 U.S. at 603.) If the rule were otherwise, it would be permissible for a school to employ doctors to, for example, distribute Adderall to students before class to help them focus without informing their parents, so long as the students voluntarily sought the medication. That is not the law. (*See, e.g.*, *Mario V. v. Armenta* (N.D. Cal. May 12, 2021) 2021 WL 1907790 (holding parents' rights violated when school secretly conducted blood-sugar tests on willing students).)

It also does not matter that schools that adopt policies requiring social transitioning of children without informing their parents do not require children to be diagnosed with gender dysphoria. As an initial matter, these schools generally do not *exclude* students who have received a gender dysphoria diagnosis. Thus, some subset of the children who are being socially transitioned necessarily have gender dysphoria. Moreover, socially transitioning a transgender-identifying child whose psychological distress is sub-threshold for gender dysphoria—or even the hypothetical child who has no psychological distress—is no less treatment than if the child has full-blown gender dysphoria. The argument otherwise is like saying giving a child Tylenol loses its character as "treatment" if the child does not actually have a severe headache. That is plainly wrong. Accordingly, parents have the right to consent when their children's school seek to socially transition them.

B. Parents have the right to consent when the government makes important decisions in the lives of their children.

Second, even if social transitioning were not healthcare treatment (and it is), parents have the right to make the "important decisions" in their children's lives (*H.L. v. Matheson* (1981) 450 U.S. 398, 411; *C.N. v. Ridgewood Bd. of Educ.* (3d Cir. 2005) 430 F.3d 159, 179 (quotations omitted).) Parents have the "primary role" in raising their children, (*Wisconsin v. Yoder* (1972) 406 U.S. 205, 232), and the constitution protects those decisions that go to the "heart of parental decision-making," (*C.N.*, *supra*, 430 F.3d at 184). The U.S. Supreme Court and the Ninth Circuit have held, for example, that the state may not unduly interfere with parents' involvement in decisions regarding child visitation (*Troxel*, *supra*, 530 U.S. 57), whether to send their children to private school (*Pierce*, *supra*, 268 U.S. 510), the subjects children can be taught at private school (*Meyer*, *supra*, 262 U.S. 390), and whether their children can go out in public at night (*Nunez by Nunez v. City of San Diego* (9th Cir. 1997) 114 F.3d 935, 952).

The decision whether to socially transition a child falls squarely within these precedents. Changing a child's gender identification is an important decision in the life of the child. It is a decision that is likely to have both immediate impact and send reverberations throughout the child's life course. Moreover, when done by schools behind parents' backs—it results in the child being without the parental guidance they desperately need. Because of the consequential nature of this decision, parents' "have [the right to] have a say in what [their] minor child[ren are] called" by their school. (*Ricard v. USD 475 Geary Cnty., KS Sch. Bd.* (D. Kan. May 9, 2022) No. 522CV04015HLTGEB, 2022 WL 1471372, at *8; *see also Mirabelli v. Olson* (S.D. Cal. Sept. 14, 2023) No. 3:23-cv-00768-BEN-WVG, 2023 WL 5976992, at *9 (concluding school district's "policy of elevating a child's gender-related choices to that of paramount importance, while excluding a parent from knowing of, or participating in, that kind of choice" violates the constitution).)

Further, socially transitioning students at school without parental consent does not fall within the scope of schools' implied authority under the *in loco parentis* doctrine. Under that doctrine, schools have "inferred parental consent" that gives them "a degree of authority . . . commensurate with the task that the parents ask the school to perform"—namely, to educate their children. (*Mahanoy Area Sch. Dist. v. B.L.* (2021) 141 S. Ct. 2038, 2052 (Alito, J., concurring).) Consistent with that authority, schools must have the freedom to (1) control "the information to which [students]" are exposed as part of the curriculum and (2) decide "how" students are taught, including things like "the hours of the school day, school discipline, [and] the timing and content of examinations." (*Fields v. Palmdale Sch. Dist.* (9th Cir. 2005) 427 F.3d 1197, 1200, 1206 ("*Fields I*"), *opinion amended on denial of reh'g sub nom. Fields v. Palmdale Sch. Dist. (PSD)* (9th Cir. 2006) 447 F.3d 1187 ("*Fields II*").) But socially transitioning students without parental consent is

not within the scope of that inferred delegation—parents do not hand children off to schools so they may facilitate changing the child's gender identity.

In short, parents' rights do not stop at "the threshold to the schoolhouse door." (*C.N.*, *supra*, 430 F.3d at 185 n.6; *see also Fields II*, *supra*, 447 F.3d at 1190–91 (deleting language from *Fields I* stating otherwise). "It is not educators, but parents who have primary rights in the upbringing of children," (*Gruenke v. Seip*, (3d Cir. 2000) 225 F.3d 290, 307), and parents cannot play this crucial role in the lives of their children if schools are facilitating children's social transition without obtaining parental consent. "In the end," school policies that "exclude[] a parent from knowing of, or participating in, that kind of choice, is as foreign to federal constitutional and statutory law as it is medically unwise." (*Mirabelli*, *supra*, 2023 WL 5976992, at *9; *see also Ricard*, *supra*, 2022 WL 1471372, at *8; *T.F.*, *supra*, 2023 WL 6544917, at *5.)

C. Parents have the right to the integrity of their family

Third, parents have the right to be free from "unwarranted state interference" in the integrity of their family, including their relationships with their children. (*Keates*, *supra*, 883 F.3d at 1235 (cleaned up)); *Lee v. City of Los Angeles* (9th Cir. 2001) 250 F.3d 668, 686; *see also Marsh v. Cnty. of San Diego* (9th Cir. 2012) 680 F.3d 1148, 1152 (holding that parents have the right to determine how photographs of their deceased children's bodily remains are disseminated).) Socially transitioning children without obtaining parental consent constitutes "undue state interference" with the family.

From the clothing and toys parents give their children, to the friends parents allow their children to have, to the sports parents allow their children to play, the parent-child relationship is deeply shaped by the child's gender identification. School policies that recognize a child's asserted gender identity while keeping parents in the dark necessarily impact the "deep attachments" and "emotional bond[s]" between parents and their children. (*Bd. of Dir. of Rotary Intern. v. Rotary*

Club (1987) 481 U.S. 537, 545; *Ovando v. City of Los Angeles* (C.D. Cal. 2000) 92 F. Supp. 2d 1011, 1021.) Moreover, socially transitioning children behind their parents' backs treat parents as the enemy, impermissibly driving a wedge into the parent-child relationship that lies at the heart of the family just when the child needs parental care and guidance most. (*Patel v. Searles* (2d Cir. 2002) 305 F.3d 130, 134, 140 (holding that state's acts that created "mistrust among the members of [plaintiff's] family towards him" violated right to family association).) Further, socially transitioning students without parental consent "deprives . . . parents the opportunity to counter influences on" their children with which they disagree, (*Arnold v. Bd. of Educ. of Escambia Cnty.* (11th Cir. 1989) 880 F.2d 305, 312), and impermissibly "obstructs the parental right to choose the proper method of resolution" of a family matter, (*Gruenke*, *supra*, 225 F.3d at 306.)

* * *

To be clear, the constitution does not require that a school must notify parents if administrators or teachers merely have a suspicion—or even direct knowledge—that a child has a transgender identity. Nor does the constitution require that a school must notify parents if they have a suspicion—or even direct knowledge—that their child is gay, lesbian, or bisexual. For this reason, Board Policy 5020.1 is not a "forced outing" policy as Appellant wrongly claims. (Appellant's Op. Br. at 39 n.19.) Rather, the constitution requires schools to obtain parental consent when schools take the *affirmative step* of socially transitioning their children at school. Doing so constitutes the provision of psychological treatment, makes an important decision in the life of the child, and constitutes unwarranted state interference in the family. The school's *act* of socially transitioning a child, not mere knowledge, triggers the parental right to consent.

II. AB 1955 DOES NOT AUTHORIZE SCHOOLS TO VIOLATE THE UNITED STATES CONSTITUTION

Contrary to Appellant's assertions, AB 1955 does not change the above conclusions. As relevant here, AB 1955 prohibits school districts from "requir[ing]" school personnel, through

formal policies or otherwise, "to disclose any information related to a pupil's . . . gender expression to any other person without the pupil's consent." (AB 1955 § 5 (codified at Cal. Educ. Code. § 220.3); *see also id.* § 6 (codified at Cal. Educ. Code. § 220.5).) But AB 1955 contains an express exemption for disclosures that are "*required by state or federal law*." (*Ibid.*)

This exemption for disclosures that are required by federal law applies to parental disclosure when schools socially transition students. As explained in Section I above, the United States Constitution requires schools to obtain parents' consent before socially transitioning their children at school. And because the federal constitution obviously is a form of "federal law," (*Elgharib v. Napolitano* (6th Cir. 2010) 600 F.3d 597, 602–04 (holding that statutory reference to "law" included the federal constitution)), school district policies and practices mandating that school personnel must provide notice to parents when their children are being socially transitioned at school fall within the scope of AB 1955's exemption. Accordingly, Board Policy 5020.1 is consistent with AB 1955.

And even if Board Policy 5020.1 were inconsistent with AB 1955, AB 1955 would violate the Supremacy Clause of the United States Constitution. Again, a public school's failure to obtain parents' consent before socially transitioning their children violates parents' federal constitutional rights. If, as a matter of statutory text, AB 1955 meant that schools were prohibited from providing such notice, it would be unconstitutional. And under the Supremacy Clause, AB 1955 must yield to the demands of the Constitution. (*303 Creative LLC v. Elenis* (2023) 600 U.S. 570, 592 ("[W]hen [state] law and the Constitution collide, there can be no question which must prevail.").) Accordingly, AB 1955 does not affect the outcome of this case.

CONCLUSION

For these reasons, the Court should affirm.

Dated: October 2, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I am employed in the county of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is 177 Post Street, Suite 700, San Francisco, California 94108.

I hereby certify that I electronically filed the foregoing with the California Court of Appeals, Fourth Appellate District, by using the Court's Electronic Filing System operated by TrueFiling on October 2, 2024.

On the date set forth below, I served a true copy of the following document(s) described as **CENTER FOR AMERICAN LIBERTY'S APPLICATION TO FILE BRIEF AMICUS CURIAE** on the interested parties by using the Court's Electronic Filing System operated by TrueFiling.

I declare that I am a member of the Bar of this Court at whose direction the service was made.

DATED: October 2, 2024.

/s/Harmeet K. Dhillon
Harmeet K. Dhillon