Nos. 25-8056, 26-2337

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ELIZABETH MIRABELLI, ET AL.,

Plaintiffs-Appellees,

v.

ROB BONTA, ET AL.,

Defendants-Appellants.

On Appeal from the United States District Court for the Southern District of California, No. 23-cv-768-BAS-VET
Hon. Cynthia Bashant, Chief Judge

BRIEF OF THE BECKET FUND FOR RELIGIOUS LIBERTY AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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FRAP 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, The Becket Fund for Religious Liberty states that it has no parent corporation and that no publicly held corporation owns any part of it.

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INTEREST OF THE *AMICUS*[1]

The Becket Fund for Religious Liberty is a non-profit, nonpartisan law firm dedicated to protecting the free expression of all religious traditions. Becket has represented agnostics, Buddhists, Christians, Hindus, Jews, Muslims, Santeros, Sikhs, and Zoroastrians, among others. It regularly litigates religious freedom cases in the Supreme Court of the United States and in federal and state courts nationwide. Most recently, Becket represented Muslim, Eastern Orthodox, and Catholic parents who successfully sought notice and opt-out from public school instruction that contradicted their religious beliefs. *Mahmoud v. Taylor*, 606 U.S. 522 (2025).

Becket also defends the rights of religious individuals and institutions with respect to education, including in multiple cases arising in California. *See*, *e.g.*, *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732 (2020) (right of Catholic schools to control employment of ministerial employees); *St. Mary Catholic Parish v. Roy*, No. 25-581 (U.S.) (oral argument Nov. 3, 2026) (right of Catholic parents and preschools to equal access to universal preschool funding); *Fellowship of Christian Athletes v. S.J. Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664

[1] No counsel for a party authored this brief in whole or in part, and no one other than *Amicus* made any monetary contribution to fund the preparation or submission of this brief. Fed. R. App. P. 29(a)(4)(E). All parties have consented to the filing of this brief. *See id.* 29(a)(2).

(9th Cir. 2023) (en banc) (right of Christian student group to equal access at public high school); *Loffman v. Cal. Dep't of Educ.*, 119 F.4th 1147 (9th Cir. 2024) (right of parents of Orthodox Jewish students with disabilities to equal access to federal disability funds); *Frankel v. Regents of Univ. of Cal.*, 744 F. Supp. 3d 1015 (C.D. Cal. 2024), *appeal pending*, No. 25-5625 (9th Cir. Sep. 5, 2025) (right of Jewish students to access public university campus on equal terms). Amicus also filed an amicus brief before the Supreme Court in this case. Brief Amicus Curiae of the Becket Fund for Religious Liberty in Support of Applicants and Vacatur of Stay, *Mirabelli v. Bonta*, 607 U.S. 492 (2026) (No. 25A810).

Amicus offers this brief to provide historical evidence of the rights of parents to direct the upbringing of their children, to explain how California misstates the implications of *Mahmoud*, and to demonstrate how the law already protects the rights of parents and teachers.

INTRODUCTION

For years, California has required public schools to conceal children's expressed gender incongruence from parents and to actively facilitate children's gender transitions over their parents' (and their teachers') objections. When myriad parents objected, California fought them tooth and nail, invoking a generalized specter of abuse. When its own school districts objected, California sued the school districts, arguing that its evolved conceptions of nondiscrimination and student privacy requirements trump parents' rights. Throughout, California has claimed that its policy is necessary to protect students as young as two years old from having their "privacy" invaded by their own parents, saying that the parents have no "legitimate need for the information without the student's consent." 2-ER-236 (cleaned up). Despite longstanding legal protections for parental rights, a maturing medical landscape that casts doubt on California's hydraulic insistence on youth transitions, and a child suicide attempt in this very case, California still insists that it knows better. If California were Sparta, *cf. Meyer v. Nebraska*, 262 U.S. 390, 402 (1923), perhaps it could justify its diktat.

But California doesn't know better, and it's not Sparta. This year, the Supreme Court told California that it impermissibly intruded on parents' religious and traditional rights to direct "the upbringing and education of their children." California did so through its secret and "unconsented facilitation of a child's gender transition" "regardless of the[] parents'

wishes." Simply put, California's "policies cut out the primary protectors of children's best interests: their parents."

The Supreme Court therefore held that the district court's injunction appropriately "prevents the schools from 'misleading' parents about their children's gender presentation at school and their social transitioning efforts," mandates "notice" of the parental rights that California said were not "legitimate," and "requires the schools to follow parents' directions regarding their children's names and pronouns." Considering that teachers cannot be constitutionally conscripted into violating those parental rights, this should have ended the matter.

Instead, California pivots—just barely. It says that it will not lie to *wary* parents if they affirmatively *ask* about their children's gender expression at school. But beyond that, California claims the Supreme Court's ruling changes next to nothing. The reason? On California's cramped reading, the Supreme Court "had no opportunity to consider any challenge to a state law that … allows disclosure to parents" while *also* refusing their wishes regarding their children's "names and pronouns." So that's the new arrangement it seeks. Put differently, California thinks it has reached something of a constitutional twilight zone, wherein it undermines parental rights just enough to escape the Supreme Court's controlling analysis in this case. Acceptance of this gambit would be a boon to rights-violators everywhere: just adopt a *slightly less*

unconstitutional policy as a litigation position, assert nothing's really been resolved, and stay the course.

Fortunately for rights-holders, the law isn't so easily evaded. First, history, tradition, and precedent confirm that there are few rights older or more fundamental than the right of parents to raise their children in accordance with their beliefs. Second, California law is already enough to protect students, and so there is no need to strip rights from fit parents. And third, state and federal law already protect teachers by requiring them to do just what the injunction orders: share information with parents.

ARGUMENT

I. California's restriction on parental rights is contrary to history, tradition, and the Supreme Court's decision in *Mahmoud v. Taylor*.

California claims that it may require schools to facilitate child gender transitions, to conceal those efforts unless parents explicitly ask, and to disregard parents' requests that their children not be socially transitioned at school. Cal.Br.2-3, 18-19, 27. This position is untenable and unconstitutional. History, tradition, and precedent confirm that parents' robust right to knowledge and approval of their children's activities at school would be an empty promise if California has its way. California's self-serving limitations are not a means of complying with

Mahmoud and *Mirabelli* but rather a roadmap for evading them. Parental rights are not so feeble.

A. History supports parental rights to knowledge *and* approval of their children's activities at school.

The parental rights protected by *Mahmoud* and *Mirabelli* did not emerge out of thin air. California asserts that these rights have "no basis in our Nation's history or constitutional tradition." Cal.Br.30. But courts have long privileged parental rights over the schooling "preferences of civil authorities"; that tradition has a pedigree stretching at least from "early English cases from the Court of Chancery," then to Locke, on to Blackstone "writing in 1758," and onward—"remain[ing], essentially unchanged, as part of the English and American common law tradition for over three hundred years." Eric A. DeGroff, *Parental Rights and Public School Curricula: Revisiting* Mozert *after 20 Years*, 38 J.L. & Educ. 83, 110, 117 (2009). California must confront that history, not pretend it away.

1. English common law recognized near "absolute" parental authority over their children's education and upbringing.

"English common law historically gave parents both the responsibility and the authority to guide their children's development." DeGroff, 38 J.L. & Educ. at 108. Locke separated "political power" from "*parental power*," which he described as parents' sacred, ancient, and natural "obligation to preserve, nourish, and educate the[ir] children" and the "right" to fulfill those duties free from princely interference. John Locke, *Two Treatises*

of Government 238-41, 255, 261 (Thomas Hollis ed., 1764) (1689). And Blackstone—expounding as one of the "eminent common-law authorities," *Kahler v. Kansas*, 589 U.S. 271, 279 (2020)—explained that parental authority is rooted in "the most universal relation in nature." 1 William Blackstone, *Commentaries on the Laws of England* *446.[2] With parental "power" comes parental duty. *Id.* at *452 (explaining that the "power of parents over their children is derived from … their duty"). Of these, the "duty … of giving [their children] an *education*" carried "[by] far the greatest importance of any." *Id.* at *450.

This overarching parental control over children's religious education was reflected in caselaw. "[A] number of early English cases from the Court of Chancery established the right of parents to make educational choices for their children despite the wishes of the child or even the preferences of civil authorities." DeGroff, 38 J.L. & Educ. at 110 & n.178. Being first a moral duty—one that included religious formation—English courts would hold that for a father to direct his child's religious upbringing, he must do so "not merely by precept and instruction, but by the unconscious influence of everyday life and conduct." *F. v. F.* [1902] 1 Ch. 688. Thus, parents had authority over their children's religious

[2] Blackstone's *Commentaries* "not only provided a definitive summary of the common law but was also a primary legal authority for 18th- and 19th-century American lawyers." *Washington v. Glucksberg*, 521 U.S. 702, 712 (1997).

upbringing not merely in terms of what school their children attended, but "all matters" of that education, guiding the child through what the parents judged as proper and improper influences. W. Clarke Hall, *The Law Relating to Children: A Short Treatise on the Personal Status of Children* 3-4 (W. Clarke Hall & Cecil W. Lilley eds., 2d ed. 1905).

This right "was practically an absolute one" and "carried with it the right to determine all matters relating to the child's education[] [and] religious training." *Id.*; *see also* Robert Wolstenholme Holland, *The Law Relating to the Child: Its Protection, Education, and Employment* 60 (1914) (describing this right as so ingrained in the common law that it was "absolute against all the world"). And the absolute, indeed "sacred," nature of this right meant that "courts would not interfere" with its exercise, "except where by conduct the parent abdicated or forfeited that right." Daniel E. Witte, People v. Bennett: *Analytic Approaches to Recognizing a Fundamental Parental Right Under the Ninth Amendment*, 1996 BYU L. Rev. 183, 190-91 (1996).

This common law rule was so well established that Blackstone noted that in only "one case" were parents "under peculiar restrictions": Catholics (those of "the popish religion"). Blackstone, *Commentaries* *451. Specifically, Catholic parents were at times deprived of equal rights due to English *religious establishment*. This anti-Catholicism entered English law "while Protestants were consolidating power in the sixteenth and seventeenth centuries." DeGroff, 38 J.L. & Educ. at 111. As

Blackstone put it, English laws would fine parents for sending their children "to be instructed, persuaded, or strengthened in the popish religion." Blackstone, *Commentaries* *451. Thus, for a time, English "[c]ourts were unsympathetic to the educational and custodial preferences of Catholic or Jewish parents." DeGroff, 38 J.L. & Educ. at 111.

The (discriminatory) exception proves the (common law) rule. Blackstone described this denominational discrimination as a "peculiar" departure. Blackstone, *Commentaries* *451. But by the mid-1700s, "the rigorous insistence on anti-Catholic extremes in the courts began to relax," and the broader regard for parental religious authority again extended throughout English common law. Lee M. Friedman, *The Parental Right to Control the Religious Education of a Child*, 29 Harv. L. Rev. 485, 487 (1916); *see also* DeGroff, 38 J.L. & Educ. at 111 & nn.183-85 (observing that parental authority "became so firmly ingrained that the law required a child to be raised according to the traditions and wishes of the father even if the father had died"). Prominent American jurist James Schouler would later note that American law had improved on the English model in its "progress of religious toleration," removing the "popish" restrictions for parents exercising the right to direct the religious education of their children. *A Treatise on the Law of Domestic Relations* 317 (1870). Thus, a broad regard for parental authority would make its way across the pond.

2. American law and tradition enhanced protections for parental authority over children's education and upbringing.

"The English common law tradition was naturally extended into the colonies," and the "right of parents to exercise those duties largely unhindered by the state has also been part of the fabric of American common law from the outset." DeGroff, 38 J.L. & Educ. at 112. It has persisted from the Founding until today.

The right to raise one's child in accordance with the dictates of her parents' religion predates the American public-school system. Education in the early republic was understood to be the province of the family and religious community. *See* Ian C. Bartrum, *The Political Origins of Secular Public Education: The New York School Controversy, 1840-1842*, 3 NYU J.L. & Liberty 267, 271-73 (2008). "In the founding era and the early 19th century, governments provided financial support to private schools, including denominational ones." *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 480 (2020). As James Kent authoritatively summarized the state of the law, because parents "are bound to maintain and educate their children, the law has given them a right to such authority." 2 James Kent, *Commentaries on American Law* 169 (1827) (describing this parental duty as "the true foundation of parental power" in "discharge of their sacred trust").

Even as some members of the founding generation—like Thomas Jefferson and Benjamin Rush—aspired to more centralized, state-run

systems, Bartrum, 3 NYU J.L. & Liberty at 273-77, 275 n.6, they too agreed on the primacy of parental authority. Jefferson was "reluctant to directly force instruction of children 'in opposition to the will of the parent.'" *Wisconsin v. Yoder*, 406 U.S. 205, 226 n. 14 (1972) (quoting Letter from Thomas Jefferson to Joseph Cabell (Sep. 9, 1817)). Indeed, Jefferson stated that it would be "better to tolerate the rare instance of a parent refusing to let his child be educated, than to shock the common feelings [and] ideas by the forcible asportation [and] education of the infant against the will of the father." Thomas Jefferson, Bill for Establishing Elementary Schools (1817), in 12 *The Papers of Thomas Jefferson: Retirement Serie*s 14 (J. Jefferson Looney ed., 2016).

American education developed with respect for parental rights at its heart. Benjamin Rush, who signed the Declaration of Independence and was a key architect of the nascent American public-school system, understood these rights to be inalienable: "I only recommend to the persons entrusted with the education of youth, to inculcate upon them a strict conformity to that mode of worship which is most agreeable to their consciences, or the inclinations of their parents."[3]

Similarly, early American thinkers emphasized that schools must aid, not replace, parental authority. Joseph Story wrote that the state can

[3] Benjamin Rush, *A Plan for the Establishment of Public Schools and the Diffusion of Knowledge in Pennsylvania; to Which Are Added Thoughts Upon the Mode of Education, Proper in a Republic* 18 (1786).

interfere "with the ordinary rights of parents, as guardians by nature, or by nurture, in regard to the custody and care of their children" only in exceptional cases in which "the natural presumption, that the children will be properly taken care of" is overridden by proof of "gross ill treatment" on the part of the parent. 2 Joseph Story, *Commentaries on Equity Jurisprudence* 573-75 (2d ed. 1839).

During the common school era, public sentiment turned against immigrant families with the "wrong" religious beliefs. Notoriously, in *Donahoe v. Richards*, the Maine Supreme Court endorsed a common school's expulsion of a Catholic student who objected to performing state-mandated readings from the "English Protestant version" of the Bible. 38 Me. 379, 398 (1854). In the court's view, "a common school education"—provided to "emigrants … intermingled with protestant children"—was essential to make true "citizens" from the "large" and "weak" "masses of foreign population [that] are among us." *Id.* at 390, 413. This reflected the "pervasive" "anti-Catholic bigotry" "of the 19th century," which has since been expressly disavowed by the Supreme Court as a source of Constitutional interpretation. *Espinoza*, 591 U.S. at 482 ("shameful pedigree" "hardly evince[s] a tradition that should inform our understanding").

Aberrations like *Donahoe* aside, courts continued the legal tradition of respect for parental rights. In *Meyer v. Nebraska*, for example, the Supreme Court wrote that liberty included "the right of the individual

to … establish a home and bring up children." 262 U.S. 390, 399 (1923). It thus invalidated a law that prevented parents from sending their children to a Lutheran parochial school where the children learned German. *Id.* at 397. Similarly, in *Pierce v. Society of Sisters*, the Supreme Court held that an Oregon law that compelled attendance at common schools "unreasonably interfere[d] with the liberty of parents and guardians to direct the upbringing and education of children under their control." 268 U.S. 510, 534-35 (1925).

Other courts of this era similarly recognized that a school's authority was subordinate to the natural authority of parents. That authority included the parental right to excuse their children from various school-mandated instruction, including geography lessons,[4] bookkeeping class,[5] grammar,[6] singing,[7] domestic science,[8] and dancing exercises.[9] Each yielded to the common law principle that the parent has the "paramount right … to make a reasonable choice from the studies in the prescribed course which his child shall pursue" as long as doing so does not interfere

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[4] *Morrow v. Wood*, 35 Wis. 59, 64-66 (1874).

[5] *Rulison v. Post*, 79 Ill. 567, 571-74 (1875).

[6] *Trs. of Schs. v. People ex rel. Van Allen*, 87 Ill. 303, 309 (1877).

[7] *Sch. Bd. Dist. No. 18, Garvin Cnty. v. Thompson*, 103 P. 578, 581-82 (Okla. 1909).

[8] *State ex rel. Kelley v. Ferguson*, 144 N.W. 1039, 1041-42 (Neb. 1914).

[9] *Hardwick v. Bd. of Sch. Trs. of Fruitridge*, 205 P. 49, 54 (Cal. Dist. Ct. App. 1921).

with "the equal rights of other pupils." *Morrow*, 35 Wis. at 65-66. While "[t]he State has provided the means … to acquire the benefits of a common school education," the law "leaves it to parents and guardians to determine the extent to which they will render it available to the children under their charge." *Rulison*, 79 Ill. at 573.

Thus, as a California court wrote, the state's authority may not deprive parents of "their natural as well as their constitutional right" to direct, "within the scope of just parental authority," an education "requir[ing] [their children] to live up to the teachings and the principles which are inculcated in them at home under the parental authority." *Hardwick*, 205 P. at 54.

These decisions also describe the doctrine of *in loco parentis*. "Schools in the common-law era were viewed as service providers whose authority stems from the delegation of parents." Noa Ben-Asher, *The Lawmaking Family*, 90 Wash. U. L. Rev. 363, 381 (2012) (discussing courts' reliance on Blackstone); *accord State v. Pendergrass,* 19 N.C. 365, 365 (1837) ("[T]he authority of the teacher is regarded as a delegation of parental authority."). The scope of delegation was set by the principal of that principal-agent relationship—the parent. *See* Blackstone, *Commentaries* *453 (explaining that a parent "may ... delegate part of his parental authority … to the tutor or schoolmaster of his child; who is then *in loco parentis*, and has such a portion of the power of the parent committed to

his charge … as may be necessary to answer the purposes for which he is employed").

In upholding the primacy of parental authority over common schools, courts rejected the ahistorical premise that "the parent, by the very act of sending his child to school, impliedly undertakes to submit all questions in regard to study to the judgment of the teacher." *Morrow*, 35 Wis. at 64 (rejecting "a great and fatal error"). Thus, "the mere act of sending the children to school" does not "amount[] to a delegation of the parental authority" that "impliedly clothes the teacher with that power." *Thompson*, 103 P. at 581.

This division of authority holds true to this day. "It is a dangerous fiction to pretend that parents simply delegate their authority—including their authority to determine what their children may say and hear—to public school authorities." *Morse v. Frederick*, 551 U.S. 393, 424 (2007) (Alito, J., concurring) (controlling opinion). "While the decision to enroll a student in a public school may be regarded as conferring the authority" over student behavior, "enrollment cannot be treated as a complete transfer of parental authority" over their children. *Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 201 (2021) (Alito, J., concurring). Therefore "[p]ublic schools must not forget that '*in loco parentis*' does not mean 'displace parents.'" *Gruenke v. Seip*, 225 F.3d 290, 307 (3d Cir. 2000).

Thus, neither history nor tradition supports California's claim that its schools must defy parental instructions regarding social transitions. Cal.Br.29-30. Since the founding era, American courts have consistently recognized the right to oversee a child's religious and educational development. *See Troxel v. Granville*, 530 U.S. 57, 58, 68-69 (2000) (plurality opinion) ("[T]here is normally no reason for the State to inject itself into the private realm of the family to further question fit parents' ability to make the best decisions regarding their children.").

This is especially true with "novel" issues around gender and sexuality, which "relate to 'the very architecture' of many faiths" and are "uniquely likely to interfere with children's religious development" on matters "firmly … belong[ing] to parents' constitutional authority respecting their children.'" *Mahmoud*, 606 U.S. at 583, 591 n.7 (Thomas, J., concurring) (cleaned up). "[T]he intrusion on parents' free exercise rights here—unconsented facilitation of a child's gender transition—is greater than the introduction of LGBTQ storybooks [the Court] considered sufficient to trigger strict scrutiny in *Mahmoud*." *Mirabelli*, 607 U.S. at 496. California demands to go beyond storybooks and arrogate the power to disregard the express wishes of parents. Parents have not delegated away that right.

B. History does not support the opt-in restriction that California suggests.

California's request to narrow the injunction flies in the face of this history. California asks to "inform[] parents … about how [schools] are addressing a child at school" only if parents make an affirmative "request." Cal.Br.35. But California otherwise *prohibits* "school employees from disclosing a student's gender identity to … their parents … without the student's consent" and remains free to conceal gender transition efforts from unsuspecting parents. Cal.Br.1. Either way, California still "require[s] school employees to refer to students using the name and pronouns that reflect the student's gender identity." Cal.Br.29. Parents have notice, if they ask for it, but no rights over their child's continued social transition.

The state's supposed safeguard for parental rights? "[P]arents who object can counsel their children not to" avail themselves of the policy that their social transition be continued at school. Cal.Br.37. This is cold comfort. "The outcome is effectively predetermined" whether parents register a futile objection or remain none the wiser: "they possess little more freedom than to elect the manner in which to be skewered upon Morton's Fork." *United States v. Gross*, 784 F.3d 784, 791 (D.C. Cir. 2015) (Brown, J., concurring).

This scheme flips parental rights on their head. The historical, traditional, and constitutional default is "broad parental authority over

minor children." *Parham v. J.R.*, 442 U.S. 584, 602 (1979). "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," and "historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children." *Id.* (citing Blackstone, *Commentaries* *447; Kent, *Commentaries on American Law* *190). Rebutting this presumption of parental fitness and authority must rest on *individualized* proof. *Stanley v. Illinois*, 405 U.S. 645, 649-51, 656-57 (1972). "The statist notion that governmental power should supersede parental authority in *all* cases because *some* parents abuse and neglect children is repugnant to American tradition." *Parham*, 442 U.S. at 603.

But here, abandoning that tradition, California seeks to delay parental notification and interfere with a parent's decision about social transition. The Supreme Court has already explained that delayed notice is no protection at all: "[I]t is not realistic to expect parents to rely on after-the-fact reports by their young children to determine whether the parents' free exercise rights have been burdened." *Mahmoud*, 606 U.S. at 560. California's opt-in standard disadvantages parents who may not have the foresight or sophistication to pursue a state permission slip but nonetheless have strong religious convictions.

California's argument that parents can to "try to counteract" its actions "at home" fares no better. *Id.* at 563. This inversion of

constitutional rights is the same ploy that the Supreme Court recently rejected in *Wolford v. Lopez*, reversing a decision of this Court and invalidating a law that required individuals to obtain express, affirmative consent before exercising a constitutional right, thereby "impos[ing] a new and significant burden on [its] exercise." 146 S. Ct. 2032, 2047 (2026). Here too, California's "shift from the old common-law rule"—and established constitutional rule—"unquestionably impose[s] a new and significant burden on the exercise of" those parental rights. *Id.*

California next strains to distinguish its own Supreme Court loss: when the Supreme Court resolved the parents' emergency application some six months ago, says California, it "had no opportunity to consider any challenge to a state law that … allows disclosure to parents" and *then* nevertheless refuses "parents' wishes" regarding their children's "names and pronouns." Cal.Br.36-37.

California's pettifoggery defies law and logic. The parental rights protected in *Mahmoud* and *Mirabelli* encompassed both notice *and* the authority to use the information gained through notice to direct their children's upbringing and education. *Mahmoud*, 606 U.S. at 550; *Mirabelli*, 607 U.S. at 493, 496-97. California knows this. *E.g.*, Cal.Br.41 (acknowledging that the "und[ue] interfere[nce]" in *Mahmoud* involved schools "denying parents information about the [religiously burdensome] instruction and the ability to opt out"). Under these decisions, notice is a *necessary* condition for exercising the constitutional right of parental

direction—not a *sufficient* condition. California's solution is not consistent with *Mahmoud*, which applies to school actions that pose "'a very real threat of undermining' the religious beliefs and *practices* that parents wish to instill in their children." 606 U.S. at 530 (emphasis added).

Parents must also be able to control the application of gender transition policies to their children. That is why the Supreme Court has already held that California's policies—both as to "conceal[ment]" and "facilit[ation]" of gender transitions—are likely unconstitutional. *Mirabelli*, 607 U.S. at 497. Nothing in these decisions licenses California's half-a-loaf gambit.

C. California invites this Court to misunderstand and mischaracterize the Supreme Court's decision in *Mahmoud*.

California offers several other purported distinctions between *Mahmoud* and the burden on religious parents here. In doing so, it reprises several arguments already rejected by the Supreme Court.

First, on California's telling, *Mahmoud* applies only when teachers lead "normative" lessons about gender and sexuality through storybooks. Cal.Br.41. The Supreme Court has already rejected this reading. *Mirabelli*, 607 U.S. at 495 (criticizing the Ninth Circuit for "brush[ing] aside *Mahmoud* as 'a narrow decision focused on uniquely coercive "curricular requirements.""). Instead, *Mahmoud* stressed that parental religious control over their public-school children does not only apply to

"a discrete educational requirement or element of the curriculum" or other "specific educational requirements." 606 U.S. at 558. Rather, parents' rights extend to a public school's "rules and standards of conduct on its students" as well as the school's disciplinary power. *Id.* at 557 (citing *Mahanoy*, 594 U.S. at 187-88). This is why the "government's operation of the public schools is not a matter of 'internal affairs.'" *Id.* Any "direct, coercive interaction[] between the State and its young residents" via the public schools can burden parental free exercise rights. *Id.*

Second, California claims that its policies escape *Mahmoud* because they go beyond a "particular educational requirement" and instead "pervade[] every action of the school day." Cal.Br.47. Once again, this distinction hurts, not helps, California's position. The *Mahmoud* defendants made a similar argument, claiming that opt-outs were unworkable because the instruction pervaded the school day. Transcript of Oral Argument at 128-46, *Mahmoud v. Taylor*, 606 U.S. 522 (2025) (No. 24-297). The Supreme Court rejected that argument: there is "no *de maximis* exception to the Free Exercise Clause." *Mahmoud*, 606 U.S. at 567; *see also id.* at 592 (Thomas, J., concurring) (schools cannot "insulate [themselves] from First Amendment liability by … significantly increas[ing] the difficulty and complexity of remedying parents' constitutional injuries"); *Troxel,* 530 U.S. at 67 (invalidating a

"breathtakingly broad" statute authorizing state interference with parental decisions "at any time").

Third, California attempts to distinguish its uniform gender transition policy from the LGBTQ+ instruction in *Mahmoud*, which was subject to various exceptions. *See* Cal.Br.47. That makes no difference either. When parental rights are burdened, "we need not ask whether the [policy] at issue is neutral or generally applicable before proceeding to strict scrutiny." *Mahmoud*, 606 U.S. at 564.

Fourth, California suggests that treating children's gender in accordance with parental direction would cause "administrati[ve]" difficulty. Cal.Br.30, 44-45. But this was the norm everywhere until recently; it is California that seeks to disrupt established practices. Indeed, California went out of its way in 2023 to sue Chino Valley Unified School District for adopting a policy that "categorically required school officials to notify a student's parents within three days—regardless of whether the parents requested disclosure … whenever the student requested to be identified or treated as a [different] gender." Cal.Br.6 (cleaned up). California points to no administrative difficulty in Chino Valley's application of the policy. And it concedes the *Chino Valley* case held that "minors do not have a reasonable expectation of privacy in a request they make to school officials or in actions they take openly at school." Cal.Br.7. This is a far cry from California's claim that the law forbids "revealing a student's transgender status to individuals who do

not have a legitimate need for the information without the student's consent, and this includes parents or caretakers." 2-ER-240.

Yet California, in a breathtaking assertion of government power, warns that respecting parental rights would "transform[] public schools into agents of parents by requiring them to impose parenting choices on students over the objections of both the student and the school." Cal.Br.30. Under the limits of *in loco parentis*, where "the teacher [is] promptly and fully advised of [a] wish of the parent, and also kn[ows] that the [child] had been forbidden by his parent from taking [certain action at school]," the teacher who proceeds anyway exceeds the limits of his delegated authority. *Morrow*, 35 Wis. at 62.

Finally, California contends that parents' constitutional rights are outweighed by the state's preferred approach toward children's mental health. Cal.Br.46. Not so. "It is cardinal … that the custody, care and nurture of the child reside first in the parents." *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944). The authorities that California cites recognize a state's right to intervene where a specific child is demonstrably endangered. *See* Cal.Br.46 (citing *Prince*, 321 U.S. at 167, and *Yoder*, 406 U.S. at 230). They do not permit California to *presume* that parents endanger a child.

The constitutional "presumption" is "that fit parents act in their children's best interests." *Troxel*, 530 U.S. at 58. This extends to decisions concerning a child's mental health "absent a finding of neglect or abuse."

Parham, 442 U.S. at 604. "Simply because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state." *Id.* at 603. Thus, "[t]he right protected by these precedents includes the right not to be shut out of participation in decisions regarding their children's mental health." *Mirabelli*, 607 U.S. at 497. And here, "unconsented facilitation of a child's gender transition" "violate[s]" the parents' "sincere religious beliefs about sex and gender" and their "religious obligation to raise their children in accordance with those beliefs"—including as to "parents' directions regarding their children's names and pronouns." *Id.* at 495-96.

II. California's proposed limitation of the injunction is contrary to history and existing law.

Neither history, nor *Mahmoud*, nor the Supreme Court's order in this very case support California's argument that the injunction should be limited. The state attempts to arrogate power to keep parents in the dark, and does so by attacking the scope of the district court's order and injunction. But those efforts fail for good reason—protections in state and federal law already carefully balance the safety of children and the constitutional rights of parents.

A. California law is already calibrated to balance the rights of parents while shielding children from abuse.

The Supreme Court held that California's restrictions on disclosure to fit parents failed narrow tailoring because "[t]he State's interest in safety

could be served by a policy that allows religious exemptions while precluding gender-identity disclosure to parents who would engage in abuse." *Mirabelli*, 607 U.S. at 497. This was not a criticism of the district court's injunction, but recognition of the startling overbreadth of California's existing scheme. In the course of an extensive discussion with the State, the district court made clear that if a teacher suspected risk of harm to the child from disclosure, nothing in its order or the injunction would require disclosure before Child Protective Services was brought in. *See* 1-ER-17. California simply refuses to take this yes for an answer.

1. California law already has safeguards in cases of abuse.

California proposed that a school official could refuse disclosure before engaging in the CPS process if she "reasonably suspects" a parent will engage in abuse. Appl. to Modify Injunction at 9, Case No. 23-cv-768, ECF No. 358. But that sort of discretion is neither necessary for protecting children nor consistent with California's normal processes.

California law already provides procedures and processes for officials to follow when abuse is observed. These procedures are carefully crafted to protect the well-being of children while respecting the special status of parental rights. Those procedures are adequate, and indeed necessary, to properly balance child protection and parental rights.

Both the Free Exercise and Due Process Clauses protect the rights of fit parents to control the upbringing of their children. And the Supreme

Court has repeatedly affirmed that heightened *process* protections are implicated when a state displaces parental control of children. *See*, *e.g.*, *Santosky v. Kramer*, 455 U.S. 745, 753-54, 757-58, 769 (1982) (interference with parents' "fundamental liberty interest … in the care, custody, and management of their child" is of such gravity that the state must provide "fundamentally fair procedures" and meet a heightened standard of proof); *Stanley*, 405 U.S. at 649 (state could not "circumvent" process due to parent in determination of fitness by using a presumption rather than a hearing on parental fitness or proof of neglect). Given these deeply rooted constitutional protections and the gravity of interposing the state between the parent-child relationship, states have detailed procedures to address allegations of parental unfitness.

This includes California. California's Child Abuse and Neglect Reporting Act imposes a mandatory, criminally enforced duty on teachers and school staff to report suspected abuse. *See* Cal. Penal Code §§ 11165.7(a)(1), 11166(a). Such reports are investigated, and if substantiated, the law requires the abuse or neglect reports to be reported to the State's Department of Justice. *Id.* § 11169(a). The agency may then file a petition in dependency court to limit a parent's access to the child. Cal. Welf. & Inst. Code § 325. If the court finds "a substantial risk that the child will suffer" future harm, *id.* § 300(a), (b)(1), the *court* can "limit the control to be exercised over the dependent child by any

parent," *id.* § 361(a)(1), even keeping "the child's address confidential" "[t]o protect the safety of the child," *id.* § 362.1(a)(1)(B).

A dependency court, not a teacher, is tasked with identifying a "parent who would engage in abuse." *Mirabelli*, 607 U.S. at 496-97. The district court has been clear that its injunction and order here do not displace longstanding procedures, 1-ER-17, and the Supreme Court agreed, *Mirabelli*, 607 U.S. at 497-98. California has not explained why its own procedures for child protection are insufficient to protect children.

California asks this Court to let any teacher withhold information from a parent based solely on the teacher's supposition that disclosure might lead to abuse—without a report, an investigation, or a court order. When pressed, the State could not name any analogue to this startling level of discretion. 1-ER-10-11. Why replace a scalpel with a sledgehammer?

2. The default in California law is parent access to information.

Parents have "an absolute right to access to any and all pupil records related to their children." Cal. Educ. Code § 49069.7(a). And "[t]he editing or withholding of any of those records, except as provided for in this chapter, is prohibited." *Id.* Limitations on these rights come only after adjudication by a court. *See id.* § 51101(d) (disclosure right limited if it "conflicts with a valid restraining order, protective order, or order for custody or visitation issued by a court of competent jurisdiction."); *see*

also id. § 48906 (imposing time limit and court review for limiting disclosure of a child's location when child is removed from school premises by a peace officer upon belief of endangerment).

And California's existing protections are considered adequate for all sorts of other issues that could create heightened parent-child conflict. California provides no good reason why those same procedures—which balance child safety with the presumption that fit parents can make decisions about their children—should be flipped on their head in cases involving gender dysphoria. At bottom, California seeks to supersede the role of fit parents at its own discretion. That's not an option that the Constitution leaves open.

B. For similar reasons, state and federal law protect the rights of teachers.

California also challenges the portion of the injunction protecting teachers who object to hiding information from the parents. The state relies on *Garcetti* and related cases to argue that the teacher plaintiffs' speech is hired by the school and therefore belongs to the school (or, if the school sides with the parents, Sacramento). Cal.Br.49. But the state is missing the first step: it can only hire lawful speech, and the speech compelled here is unlawful.

This fact is illustrated by the parties' previous agreement that the injunction for teachers here turns on the rights of parents. Cal. Stay Reply at 7-8, ECF 12 (No. 25-8056). The injunction is tailored to cover

only those circumstances where a teacher is lying to parents, concealing facts from parents, or contravening the express direction of parents. *See* 1-ER-74-75. Such speech is already prohibited by the Supreme Court's decision in this case, federal statutes, and the California statutes discussed above. Thus, the injunction prohibits only what the law already proscribes.

Garcetti does not supplant federal and state statutory restrictions on government employers. The Supreme Court cautioned in *Garcetti* that state laws, federal laws, professional rules of conduct, and other constitutional guarantees "protect employees and provide checks on supervisors who would order unlawful or otherwise inappropriate actions." *Garcetti v. Ceballos*, 547 U.S. 410, 426 (2006). California is attempting to order unlawful or otherwise inappropriate action, and therefore *Garcetti* is no shield.

This is true under the terms of the injunction upheld by the Supreme Court as to the parents, but it was already true under state law. As discussed above, California law prohibits school personnel from giving dishonest information to parents. *Supra* § II.A.2. California law on student privacy gives parents "an absolute right to access to any and all pupil records related to their children," and prohibits "[t]he editing or withholding of any of those records." Cal. Educ. Code § 49069.7(a). California has not identified any relevant statutory exception to these rules.

Nor has California identified a binding interpretation of state law that would override this requirement. *See, generally,* Cal.Br.9, 49-50. California instead points to the Attorney General's own, non-binding interpretations of privacy laws. *See* 2-ER-327-28 (AG memo analogizing to other circumstances). But that analysis has been superseded by federal law under FERPA and Title IX. The interpretation of Title IX that the AG relied upon in that memo has since been abrogated. Earlier this year, the Supreme Court definitively interpreted Title IX not to extend protections based upon gender identity: "The term 'sex' in the 1972 Title IX statute, the 1974 Javits Amendment, and the 1975 Title IX regulations cannot plausibly be interpreted to refer to anything other than biological sex." *West Virginia v. B.P.J.*, 146 S. Ct. 2356, 2371 (2026).

California also points to a new state statute, AB 1955, which put some nondisclosure requirements into state law; but this Court has already enjoined that statute. *City of Huntington Beach v. Newsom*, No. 25-cv-3826, 2026 WL 1785110 (9th Cir. June 18, 2026). And in any case, AB 1955 cannot displace federal law.

That's a problem for California because the AG's outdated analysis also runs afoul of FERPA. Federal law denies funding to a school district "which has a policy of denying, or which effectively prevents, the parents of students … the right to inspect and review the education records of their children." 20 U.S.C. § 1232g(a)(1)(A). California continues to accept federal funds and thus submits itself to FERPA. Therefore, federal

statutory law does not support and in fact *prohibits* California's attempt to compel teachers to lie to parents. California cannot ask for a modification of an injunction that would itself run afoul of governing law.

* * *

California's attempt to limit parents' access to information about their children is contrary to longstanding precedents and traditions underpinning Constitutional protections for parental rights. The same is true for the state's insistence that it disregard the directives of fit parents. California's arguments to limit the injunction are contrary to both federal law and to the state's own procedural and substantive safeguards for parental rights.

CONCLUSION

For all the foregoing reasons, the judgment below should be affirmed and the permanent injunction upheld in full.

September 2, 2026

Respectfully submitted,

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