

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, 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
No. 3:23-cv-00768-BEN-VET
The Hon. Roger T. Benitez

**BRIEF OF UNITED STATES SENATORS TED CRUZ, MICHAEL
LEE, KEVIN CRAMER, ROGER MARSHALL, AND JAMES
BANKS AS AMICI CURIAE IN SUPPORT OF AFFIRMING THE
DISTRICT COURT'S INJUNCTION**

Abhishek Kambli
HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIAK PLLC
1325 Avenue of the Americas
Suite 2843
New York, NY 10019
646-792-9288
akambli@holtzmanvogel.com

Nicholas R. Barry
Ian D. Prior
America First Legal Foundation
611 Pennsylvania Ave SE #231
Washington, DC 20003
Phone: (202) 964-3721
nicholas.barry@aflegal.org
ian.prior@aflegal.org

*Attorneys for Amici Curiae United States Senators Ted Cruz, Michael
Lee, Kevin Cramer, Roger Marshall, and James Banks*

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
INTEREST OF AMICI CURIAE	1
SUMMARY OF ARGUMENT	2
ARGUMENT.....	5
I. The Common Law and Early America.....	6
A. William Blackstone.....	6
B. John Locke.	7
C. James Kent.....	8
II. Colonial and Early-American Laws Recognized Strong Parental Rights.	9
III. Early Cases Affirm Strong Parental Rights.	11
IV. Civil War Era Statements.	13
V. Modern Case Law.....	15
A. America’s history and tradition of strong parental rights continued after the Fourteenth Amendment....	15
B. Parents’ rights are rooted in the history of Western civilization.	17
C. Parents are presumed fit.....	18

D.	That <i>some</i> parents <i>may</i> be bad actors is insufficient justification for reducing parental rights.	18
E.	The 21st century.	19
F.	At the dawn of the 21st century, the Court reaffirmed that parental rights are ancient, powerful rights.	19
G.	The doctrine of <i>in loco parentis</i> is alive and well.	20
H.	Applying strict scrutiny, the Court ruled the parents' parental and religious rights include a right to notice.	20
VI.	The Supreme Court order in this case confirms parents have a right to notice.	21
VII.	The law unambiguously establishes that a parent's fundamental rights include, at minimum, a right to notice.	22
CONCLUSION		26
CORPORATE DISCLOSURE STATEMENT.....		27
STATEMENT OF RELATED CASES		28
CERTIFICATE OF COMPLIANCE		29
CERTIFICATE OF SERVICE.....		30

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Commonwealth v. Briggs</i> , 33 Mass. 203 (1834)	12
<i>Farrington v. Tokushige</i> , 273 U.S. 284 (1927)	16, 23
<i>Mahanoy Area Sch. Dist. v. B. L. by & through Levy</i> , 594 U.S. 180 (2021)	20
<i>Mahmoud v. Taylor</i> , 606 U.S. 522 (2025)	20, 21
<i>Meyer v. Nebraska</i> , 262 U.S. 390 (1923)	15, 16
<i>Mirabelli v. Bonta</i> , 607 U.S. 492 (2026) (per curiam)	3, 4, 21, 22
<i>Parham v. J.R.</i> , 442 U.S. 584 (1979)	2, 17, 18, 19, 24
<i>Pierce v. Society of Sisters</i> , 268 U.S. 510 (1925)	2, 16, 23
<i>Stanley v. Illinois</i> , 405 U.S. 645 (1972)	18, 23, 26
<i>State v. Pendergrass</i> , 19 N.C. 365 (1837)	12, 13
<i>Troxel v. Granville</i> , 530 U.S. 57 (2000)	2, 19, 20
<i>United States v. Green</i> , 26 F. Cas. 30 (C.C.D.R.I. 1824)	11, 12
<i>Van Valkinburgh v. Watson</i> , 13 Johns. 480 (N.Y. Sup. Ct. 1816) (per curiam)	11
<i>Wisconsin v. Yoder</i> , 406 U.S. 205 (1972)	2

Statutes

Act of Mar. 16, 1802, ch. 9, § 11, 2 Stat. 132	11
Act of Mar. 27, 1712–13, ch. 197, § VI, <i>Statutes at Large of Pennsylvania</i> (1896).....	10, 17
<i>Records of the Governor and Company of the Massachusetts Bay</i> (Nathaniel B. Shurtleff ed., 1853) (enactment of 1642)	9, 10

Other Authorities

1 William Blackstone, <i>Commentaries on the Laws of England</i> (1765)	6, 7
Cong. Globe, 36th Cong., 1st Sess. (1860)	13
Cong. Globe, 38th Cong., 1st Sess. (1864)	14
Cong. Globe, 38th Cong., 2d Sess. (1865)	14
Cong. Globe, 39th Cong., 1st Sess. (1866)	14
General Orders No. 46, Department of North Carolina (May 15, 1865), in <i>Report of the</i> <i>Superintendent of Negro Affairs in North Carolina</i>	15
James Kent, <i>Commentaries on American Law</i> (4th ed. 1840)	9
John Locke, <i>Two Treatises of Civil Government</i> (Thomas Hollis ed., 1764) (Second Treatise)	8

Rules

Fed. R. App. P. 29	1, 2
--------------------------	------

INTEREST OF AMICI CURIAE

Amici are United States Senators Ted Cruz, Michael Lee, Kevin Cramer, Roger Marshall, and James Banks.

Amici are Members of the United States Senate who have sworn to support and defend the Constitution. Consequently, amici have a significant interest in preserving the fundamental rights that the Constitution guarantees. One of the most sacred of these rights is the right of parents to direct the education and upbringing of their children. There are few aspects of a child's life more intimate than gender. When a state usurps parents' duty of informing and instructing their children on this subject, it does not aid parents but rather displaces them altogether on a matter of profound and lasting consequence. As constitutional officers, amici are called upon to defend the private realm of family life from state overreach. And entrusted with the representation of millions of American families, amici have a strong interest in ensuring that their constituents remain the principal stewards of their children's upbringing.

Pursuant to Federal Rule of Appellate Procedure 29, amici respectfully submit this brief in support of affirming the district court's

injunction in full.¹

SUMMARY OF ARGUMENT

America’s history and tradition affirm that parents bear the primary responsibility for their children’s upbringing and have “natural bonds of affection” with their children leading them to act in their children’s best interests. *Parham v. J.R.*, 442 U.S. 584, 602 (1979) (citing William Blackstone and James Kent). That history and tradition spanning nearly 300 years, together with “[t]he history and culture of Western civilization” over the course of at least three millennia, demonstrate that it is “beyond debate” that parents are responsible for raising their children and that a “child is not the mere creature of the state” *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972); *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925). Consistent with that history and tradition, the law has long recognized that parents possess a fundamental right to direct their children’s upbringing and education. *See, e.g., Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion)

¹ All parties have consented to the filing of this brief. No counsel for any party authored this brief in whole or in part and no person (including any party in the case or their counsel) other than amici or amici’s counsel contributed money that was intended to fund preparing or submitting this brief. Fed. R. App. P. 29(a)(4)(E).

(observing that “the interest of parents in the care, custody, and control of their children[] is perhaps the oldest of the fundamental liberty interests recognized by th[e] [Supreme] Court”). But that fundamental right cannot be exercised if parents are denied information about their children’s upbringing.

The state must *presume* that parents are fit to direct their children’s upbringing and education. It follows that parents are also in the best position to help their children with life’s struggles. That includes mental health struggles like gender dysphoria. When children engage with their school for help regarding their gender dysphoria, the school must tell the parents.

The parents are unquestionably the best equipped to help *their child*—not the state, not the Court, and not a school. *See Yoder*, 406 U.S. at 232 (noting “[t]his primary role of the parents in the upbringing of their children is now established beyond debate”); *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026) (per curiam) (granting application to vacate this Court’s stay and stating that “[u]nder long-established precedent, parents—not the State—have primary authority with respect to the upbringing and education of children. . . . The right protected by these

precedents includes the right not to be shut out of participation in decisions regarding their children's mental health" (citation modified)).

At school, history and tradition establish that the state sits *in loco parentis*. That means the school and its employees exercise power that is delegated to them *by the parents*. But power can only be knowingly delegated. Thus, at minimum, schools must *notify* parents regarding their children's upbringing.

This case presents a stark departure from undebatable principles. A child's struggle with gender dysphoria may be among the most consequential and difficult challenges a family can face in raising a child. Yet under California's policy, the Poes were kept in the dark about their own child's gender-dysphoria-related issues until after the child attempted suicide. *Id.* at 493–94. But that result is patently unlawful as America's history, tradition, and case law compel an end to California's policy. The law has unambiguously and consistently safeguarded strong parental rights, which necessarily include a right to notice. Accordingly, amici respectfully request that the Court affirm the district court's injunction.

ARGUMENT

Before American independence, strong parental rights were already deeply rooted in our tradition. Eighteenth-century thinkers Blackstone and Locke emphasized that parental authority derives from parents' duties to their children and is distinct from the state. The doctrine of *in loco parentis* was also well-established by the time of Blackstone. These principles were reflected in colonial laws, early-American laws, and early 19th-century case law. Before, during, and after the Civil War, those same traditions were invoked in condemning one of slavery's fundamental evils: the destruction and denial of the parent-child relationship.

After ratification of the Fourteenth Amendment, the 20th- and 21st-century cases, up to and including the United States Supreme Court's *per curiam* order in this case, repeatedly affirmed those bedrock principles of strong parental rights in the face of increased government intrusion into family life. While the precise borders between parents' rights, a child's rights, and the state's rights are nuanced, parents' right to important information concerning their children is "beyond debate." *Yoder*, 406 U.S. at 232.

I. The Common Law and Early America.

William Blackstone, John Locke, and James Kent established that parents possess strong rights rooted in their duty to their children.

A. William Blackstone.

In “Of Parent and Child,” William Blackstone asserts that parents have strong rights, grounded in the duty they owe to their children. 1 William Blackstone, *Commentaries on the Laws of England* 434–47 (1765). Specifically, he identifies “three particulars” of parental duty: their children’s maintenance, protection, and education. *Id.* at 434; *see also id.* at 438 (Education is “a duty pointed out by reason, and of far the greatest importance of any.”). Blackstone goes on to explain the link between a parent’s duty and authority: “The power of parents over their children is derived from the former consideration, their duty” *Id.* at 440. English common law had developed to give parents significant authority over their children “partly to enable the parent more effectually to perform his duty, and partly as a recompence for his care and trouble in the faithful discharge of it.” *Id.* For example, a child under 21 needed parental consent to get married. *Id.* at 440–41.

Regarding education, Blackstone asserts that a teacher’s power

derives from parents. Specifically, a parent “delegate[s] *part of* his parental authority,” to a teacher, “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.” *Id.* at 441 (emphases added); *see infra* Section III (Later case law “confirms that Blackstone’s view of teachers as delegated substitutes for parents persisted well into the 19th century.”).

Blackstone’s parental authority paradigm assumes parental notice. Power cannot be delegated for a specific purpose without knowing that specific purpose. School administrators and teachers exercising power regarding issues that parents know nothing about are not exercising “a portion of” a delegated power. *Id.* at 441. Especially in this case, where there was active concealment, they are exercising power that has not been delegated *at all*.

B. John Locke.

John Locke’s natural law theories of parenthood are consistent with Blackstone. Locke asserted that parents’ powers over their children “arise[] from th[e] duty . . . to take care of their off-spring,” while their children are young. John Locke, *Two Treatises of Civil Government* 243

(Thomas Hollis ed., 1764) (Second Treatise § 58). Parents must “inform [a child’s] mind[] and govern the actions of their yet ignorant nonage,” until they are fully matured. *Id.* Stewarding or guiding a child through mental health conditions, including gender dysphoria, clearly qualifies as informing a child’s mind. That theory of parental rights presupposes that parents cannot be excluded from important information regarding their children’s upbringing and education. And it, at minimum, entails a right to notice.

Locke goes on to explain in § 71 that parental rights are natural rights and that political and paternal power are separate and distinct. *Id.* at 255. “[P]arents,” he explains, “retain a *power over their children*, and have as much right . . . as those who are in the state of nature.” *Id.* (emphasis in original).

C. James Kent.

Consistent with Blackstone and Locke, James Kent agreed that parents have strong, duty-based rights that the state may infringe only in rare circumstances. He noted that parents have strong rights and powers grounded in the duty they owed to their children. *See* James Kent, *Commentaries on American Law* 202 (4th ed. 1840) (“The rights of

parents result from their duties. As they are bound to maintain and educate their children, the law has given them a right to such authority”). The state could only supervise or curtail those rights if a parent was unfit. *Id.* at 204–05.

II. Colonial and Early-American Laws Recognized Strong Parental Rights.

For nearly one hundred years, colonial American laws reflected the same principles that Blackstone and Locke articulated. Capable parents exercised significant control over their children. The Continental and United States Congresses’ laws maintained that longstanding history and tradition. And for centuries, parental and political power over children coexisted as distinct powers. Parents had the primary duty and power; the state intervened only in cases involving serious concerns about parental fitness or abuse.

In 1642 Massachusetts, the colonists noted that “many parents & masters” had neglected to “train[] up their children in learning, & labo[r], & other imphyments which may be profitable to the common wealth” *Records of the Governor and Company of the Massachusetts Bay* 6 (Nathaniel B. Shurtleff ed., 1853) (enactment of 1642). The law allowed town officials to “take account from time to time of all parents and

masters, and of their children,” including children’s “ability to read & understand the principles of religion & the capitall lawes of this country” *Id.* at 6. Neglectful parents were fined; harsher penalties required court intervention. *Id.* at 6–7. But even in this framework, parents had the primary duty and power. The state could investigate and regulate, but any diminishment in parental power was directly tied to parental unfitness and required due process.

Another example is early-18th century Pennsylvania, where parents’ religious preferences continued to be honored even after their passing and bound court custody decisions:

[N]one of the said Orphans’ courts shall have any power to order or commit the tuition or guardianship of any orphans or minors, or bind them apprentices to any person or persons, whose religious persuasion shall be different from what the parents of such orphan or minor professed at the time of their decease, or against the minor’s own mind or inclination, so far as he or she has discretion and capacity to express or signify the same

Act of Mar. 27, 1712–13, ch. 197, § VI, *Statutes at Large of Pennsylvania* 19 (1896).

Congress also recognized the need for parental consent (and notice) before consequential state actions were taken. As early as 1802, Congress adopted a broader parental-consent requirement in the Army Act of 1802.

No one under twenty-one could “be enlisted by any officer, or held in the service of the United States, *without the consent of his parent*, guardian or master first had and obtained, if any he have” Act of Mar. 16, 1802, ch. 9, § 11, 2 Stat. 132, 135 (emphasis added).

III. Early Cases Affirm Strong Parental Rights.

The centuries of American legislation regarding parental rights are reinforced by several early 19th-century cases which also articulate a strong, duty-based view of parental rights. In *Van Valkinburgh v. Watson*, the court found that “[a] parent is under a natural obligation to furnish necessities for his infant children” 13 Johns. 480 (N.Y. Sup. Ct. 1816) (per curiam). The court went on to affirm that parents are uniquely endowed with the power and duty to care for their children and that only an unfit parent loses that power: “No man shall . . . dictate to a parent what clothing the child shall wear there must be a clear and palpable omission of duty [by the parent] . . . to authorize any other person to” take the parent’s place. *Id.*

United States v. Green adopted a similar rationale to Blackstone. See 26 F. Cas. 30, 31 (C.C.D.R.I. 1824) (Fathers generally have a right to custody of their children.). Specifically, *Green* notes parental authority is

“for the benefit of the [child] . . . both for maintenance and education” because the law presumes it is in children’s best interest to be raised by their parents. *Id.*

Commonwealth v. Briggs states an essentially identical standard:

In the case of a child of tender years, the good of the child is to be regarded as the predominant consideration. . . . But in general, as the father is by law clearly entitled to the custody of his child, . . . the Court will feel bound to restore the custody, where the law has placed it, with the father, unless in a clear and strong case of unfitness on his part to have such custody.

33 Mass. 203, 205 (1834).

State v. Pendergrass confirms that Blackstone’s view of teachers as delegated substitutes for parents persisted well into the 19th century. 19 N.C. 365, 365–66 (1837). There, just like Blackstone, the court stated that “the power which the law grants to schoolmasters and teachers, with respect to the correction of their pupils . . . is analogous to that which belongs to parents, and the authority of the teacher is regarded as a delegation of parental authority.” *Id.* at 365. *Pendergrass* also reiterated the duty-based nature of parental rights, “[o]ne of the most sacred duties of parents, is to train up and qualify their children, for becoming useful and virtuous members of society” *Id.* And, regarding teachers, the

Court explained that “[t]he teacher is the substitute of the parent; is charged in part with the performance of his duties, and in the exercise of these delegated duties, is invested with his power.” *Id.* at 366. Teachers or school administrators had no independent authority to train up a pupil in their care without the parent’s consent.

IV. Civil War Era Statements.

Congressional and military statements before, during, and after the Civil War affirm that strong parental rights are key to freedom. For example, several Congressional statements in the 1860s asserted that parental rights are fundamental rights, deeply rooted in America’s history and traditions, and implied in the concept of ordered liberty. In 1860, Senator Charles Sumner asserted that “Slavery paints itself again in its complete abrogation of the parental relation, which God in his benevolence has provided for the nurture and education of the human family, and which constitutes an essential part of Civilization itself. And yet, by the law of Slavery . . . this relation is set at naught Sir, is not Slavery barbarous?” Cong. Globe, 36th Cong., 1st Sess. 2592 (1860).

In 1864, Representative Ebon C. Ingersoll asserted “I am in favor in the fullest sense of personal liberty. . . . I am in favor of the adoption

of this amendment because it will secure to the oppressed slave his natural and God-given rights. I believe that the black man has certain inalienable rights he has a right to the endearments and enjoyment of family ties” Cong. Globe, 38th Cong., 1st Sess. 2990 (1864).

That same year, Senator Henry Wilson noted that abolition protects “the sacred rights of human nature, the hallowed family relations of . . . parent and child, will be protected by the guardian spirit of that law which makes sacred alike the proud homes and lowly cabins of freedom.” *Id.* at 1324. Similarly, Senator James Harlan stated that a necessary incident of slavery is “the abolition practically of the parental relation, robbing the offspring of the care and attention of his parents” *Id.* at 1439.

In 1865, Representative John Kasson asserted one of the “three great fundamental natural rights of human society which you cannot take away without striking a vital blow at the rights of white men as well as black” is the right of the parental relationship. Cong. Globe, 38th Cong., 2d Sess. 193 (1865). Finally, in 1866, Senator Jacob Howard stated that enslaved people “had not the right to become a husband or a father in the eye of law” Cong. Globe, 39th Cong., 1st Sess. 504 (1866).

Reports during the military occupation of the South have similar statements. General Orders No. 46 noted that emancipation restored a parent’s authority and obligations. General Orders No. 46 ¶ I, Department of North Carolina (May 15, 1865), in *Report of the Superintendent of Negro Affairs in North Carolina* 60. Under slavery, the master acted without the parent’s knowledge or consent because the parent was not a legal person. Freedom meant the parent’s existence and authority were legally recognized, and substitution required the parent’s absence or incapacity. *See id.* ¶ II (Former masters could act as guardians only “in the absence of parents . . . capable of supporting them.”).

V. Modern Case Law.

Modern case law has consistently recognized the history and tradition of parents’ strong, fundamental right to direct the upbringing and education of their children.

A. America’s history and tradition of strong parental rights continued after the Fourteenth Amendment.

Meyer v. Nebraska confirms parents have a duty-based, strong right to raise their children. 262 U.S. 390 (1923). In *Meyer*, the Court reversed a criminal conviction of a parochial-school teacher who taught German to a ten-year-old in violation of a state statute. *Id.* at 396–99, 403. The

Court also tied parental rights to their duty to their children. *See id.* at 400 (“Corresponding to the right of control, it is the natural *duty of the parent* to give his children education” (emphasis added)).

Pierce cemented parental rights and separated the state from a child’s formation in the modern case law—consistent with the country’s history and traditions. 268 U.S. at 534–35. The state can set educational standards, but it cannot supersede fit parents’ decisions regarding their children’s formation. That is because “[t]he fundamental theory of liberty . . . excludes any general power of the state to standardize its children” *Id.* at 535. “*The child is not the mere creature of the state*” *Id.* (emphasis added).

And the Court in *Farrington v. Tokushige* reaffirmed that the state may regulate but cannot “give affirmative direction concerning the intimate and essential details of” a child’s private schooling because it “deprive[s] parents of fair opportunity to procure for their children instruction which they think important and [courts] cannot say is harmful.” 273 U.S. 284, 298 (1927).

In the 1970s, the Court reaffirmed that the history and tradition of strong parental rights extends beyond America to the very foundation of

Western civilization. *Yoder*, 406 U.S. at 232–34. It also explained that parents are presumed fit and that anything to the contrary is “repugnant to American tradition.” *Parham*, 442 U.S. at 603.

B. Parents’ rights are rooted in the history of Western civilization.

Yoder reaffirms strong parental rights while analyzing the religious argument that arose in the case of compulsory secondary schooling for the Amish. 406 U.S. 205. “[T]he values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society.” *Id.* at 213–14.

Consistent with tradition going back to at least the early 1700s, it asserted that, unlike the state, parents have a “*fundamental interest . . . [in] guid[ing] the religious future and education of their children.*” *Id.* at 232 (emphasis added); *see supra* Section II (Act of Mar. 27, 1712–13, ch. 197, § VI, *Statutes at Large of Pennsylvania* 19 (1896)).

But the Court went further. Drawing on the deep American tradition sampled above, it declared: “The *history and culture of Western civilization* reflect a *strong tradition* of parental concern for the nurture and upbringing of their children. This *primary role of the parents* in the upbringing of their children is now *established beyond debate* as an

enduring American tradition.” *Yoder*, 406 U.S. at 232 (emphases added).

C. Parents are presumed fit.

Stanley v. Illinois carried forward the American (and Western) tradition when ruling that the state cannot *presume* a parent is unfit or abusive. 405 U.S. 645 (1972); *see id.* at 651 (Parental rights are afforded strong deference “and, absent a powerful countervailing interest, protection.”). And “[p]rocedure by presumption” is prohibited. *Id.* at 656. “[I]t needlessly risks running roughshod over the important interests of both parent and child” when the state’s interests are de minimis if a child’s parents are fit. *Id.* at 657–58.

D. That *some* parents *may* be bad actors is insufficient justification for reducing parental rights.

Parham concerned Georgia’s procedures for parents seeking admission of a child into a state mental hospital. 442 U.S. 584. Rooted in deep American tradition, it fully rejects the notion that state action can presumptively limit parental rights because *some* parents may be bad actors. *Id.* at 602–03.

Regarding a child’s mental health, *Parham* notes that parents are entrusted with the “‘high duty’ to recognize symptoms of illness and to seek and follow medical advice.” *Id.* at 602; *see id.* (the law “recognize[s]

that natural bonds of affection lead parents to act in the best interests of their children.” (citing Blackstone)). This is true even when parents make hard decisions that children cannot understand. *Id.* at 602–03. This certainly applies to conditions such as gender dysphoria.

E. The 21st century.

This century, the Court has once again restated that strong parental rights are a bedrock principle of the American tradition when challenged by state encroachment. It maintained historical and traditional continuity with pre-founding America when it explained that the doctrine of *in loco parentis* is still the law of the land. And it applied strict scrutiny when parents invoked their religious rights and parental rights together when opposing government action.

F. At the dawn of the 21st century, the Court reaffirmed that parental rights are ancient, powerful rights.

The plurality in *Troxel* states that “the interest of parents in the care, custody, and control of their children—is perhaps the *oldest of the fundamental liberty interests recognized by this Court.*” 530 U.S. at 65 (emphasis added); *see supra* Section I.B (Locke’s natural law theory of parental rights). Given “this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment

protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.” *Id.* at 66; *see id.* at 68–69 (also affirming that, so long as a parent is fit, there is “*no reason for the State to inject itself into the private realm of the family*” (emphasis added)).

G. The doctrine of *in loco parentis* is alive and well.

Mahanoy Area Sch. Dist. v. B. L. by & through Levy picks up an aspect of the school environment that dates back to Blackstone, “schools at times stand *in loco parentis*, *i.e.*, in the place of parents.” 594 U.S. 180, 187 (2021); *see id.* at 189 (“The doctrine of *in loco parentis* treats school administrators as standing in the place of students’ parents under circumstances where the children’s actual parents cannot protect, guide, and discipline them.”); *supra* Section I.A. *Mahanoy* even reaffirmed that parents *delegate* authority to schools and teachers when sending their children to school. *See id.* at 192.

H. Applying strict scrutiny, the Court ruled the parents’ parental and religious rights include a right to notice.

Mahmoud v. Taylor concerned an intersection of religious and parental rights. 606 U.S. 522 (2025). A school board had mandated the use of LGBTQ+-inclusive materials without providing parental notice or

opt-outs. *Id.* at 529–30. Applying strict scrutiny, the Court rejected “this chilling vision of the power of the state to strip away the critical right of parents to guide the religious development of their children.” *Id.* at 559, 564–65; *see also id.* at 556.

VI. The Supreme Court order in this case confirms parents have a right to notice.

The stay order in this case was not issued in a vacuum and did not articulate a novel legal theory. It performed “a straightforward application” of modern case law built on the foundation of centuries of American tradition. *Mirabelli*, 607 U.S. at 499 (Barrett, J., concurring).

For religious parents, there is no ambiguity: “the intrusion on parents’ free exercise rights here—unconsented facilitation of a child’s gender transition—is greater than the introduction of LGBTQ storybooks we considered sufficient to trigger strict scrutiny in *Mahmoud*.” *Id.* at 496.

For non-religious parents, the Court determined that California’s policy still likely violated their rights. As has been the case for centuries, parents are the primary authority regarding “the upbringing and education of children.” *Id.* at 497 (citation modified). Accordingly, parents’ rights “include[] the right not to be shut out of participation in

decisions regarding their children’s mental health.” *Id.* (citing *Parham*). That includes when a child shows signs of gender dysphoria. *Id.*

The emphasis on parents’ “right not to be shut out of participation” is key; it highlights the critical role that notice plays. *Id.* (citing *Parham*). The “right not to be shut out of participation” is for all intents and purposes identical to a right to notice. *Id.* Indeed, “[u]nder California’s policy, parents will be excluded—perhaps for years—from participating in consequential decisions about their child’s mental health and wellbeing.” *Id.* at 501 (Barrett, J., concurring).

VII. The law unambiguously establishes that a parent’s fundamental rights include, at minimum, a right to notice.

American history, traditions, and case law affirm across three centuries that parents have a fundamental right to not be excluded from important decisions regarding a child’s upbringing or education. The lowest common denominator of that fundamental right is the right to notice.

Consistent with the historic tradition, modern courts have treated the parents’ duty to their children as the source of their authority because they are the primary, dominant authority concerning their children’s upbringing and education. But parents’ right to direct their children’s

formation necessarily involves *knowing* what is happening to them at school.

State policies, like California’s, that *conceal* information from parents regarding the formation of their children are intentionally shutting parents out from “intimate and essential details” of their children’s upbringing. *Farrington*, 273 U.S. at 298. Hiding what is happening regarding a child’s upbringing excludes parents from those decisions. Without notice, parents are deprived “of [a] fair opportunity to procure” the psychological, social, religious, and medical support they believe their children need. *Id.* That lack of notice to parents and exclusion from key decisions regarding their child effectively converts the child into a “creature of the state” *Pierce*, 268 U.S. at 535. That is wrong.

California’s enjoined policy—refusing to notify *any* parent (even the ones who explicitly asked to be notified) because there is the potential for abuse—categorically excludes all parents. That is improper “[p]rocedure by presumption” *Stanley*, 405 U.S. at 656. Presumptively withholding important information because a parent *could* be unfit is antithetical to the American ethos. *Supra* Sections V.C–D. America’s

longstanding tradition and history *presumes* that parents are fit. *Supra* Sections I–V. Thus, the clear rule of law since 1642 has been that the state must perform a child-specific and parent-specific analysis. *Id.*

And for hundreds of years, parents have been—and are still—*presumed* fit until proven otherwise. *Briggs, Stanley, Parham, and Troxel* all reject systems that displaced parents without analyzing the parents’ fitness on a case-by-case basis. *Supra* Sections III, V. That is because “[t]he 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 (italics in original). Implicit in that is that every parent is entitled to notice regarding their children’s upbringing, unless and until they are proven to be unfit.

California’s policy to exclude parents from important decisions regarding their child’s struggle with gender dysphoria also gives the parents’ interests zero weight. Keeping parents in the dark replaces their critical, dominant right to decide what to do for the child with the state’s unilateral decision. Concealing information prevents a parent from deciding what to do when they find out such information, such as

transferring them to a private school. Parents cannot direct public curriculum, but they can object to the moral and educational formation the child receives at public school—and change schools accordingly.

In addition to being instinctually wrong, California’s policy cuts against centuries of American tradition involving parental rights. Schools exercise a *delegated* authority from parents. Delegation is an intentional act. Notice is a necessary part of that delegation. Parents cannot unwittingly delegate authority regarding matters they know nothing about because they received no notice or were denied notice. They have a right to know, and be included in, major decisions regarding their children’s upbringing.

Not every school policy that implicates parental rights automatically fails strict scrutiny—but California’s policy to presumptively, and indefinitely, shut out all parents does. California has no legitimate state interest in categorically and completely excluding every parent. Moreover, total exclusion is far from a narrowly tailored solution. Such a policy is just an end-around for the state to decide it is morally, politically, or religiously superior, and therefore better equipped to manage a child’s gender identity crisis, *without any evidence of*

parental unfitness or abuse. That is manifestly unconstitutional.

The default, constitutional standard is that California *must presume* parents are fit. If California is worried about the possibility of abuse, it must investigate and prove a parent is unfit on a case-by-case basis. The Constitution values the parents’ right to notice far more than the burden that requirement imposes on California. *See Stanley*, 405 U.S. at 656 (“[T]he Constitution recognizes higher values than speed and efficiency.”). The district court’s injunction is therefore proper.

CONCLUSION

Strong parental rights have been part of Western civilization for millennia. America’s history and traditions for nearly 300 years have reflected that duty-based, fundamental right. The district court’s injunction preserves and protects that right. Accordingly, amici respectfully request that the Court fully affirm the district court.

Respectfully Submitted: September 2, 2026.

Abhishek Kambli
HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIK PLLC
1325 Avenue of the Americas
Suite 2843
New York, NY 10019
646-792-9288
akambli@holtzmanvogel.com

Nicholas R. Barry
Ian D. Prior
America First Legal Foundation
611 Pennsylvania Ave SE #231
Washington, DC 20003
Phone: (202) 964-3721
nicholas.barry@aflegal.org
ian.prior@aflegal.org

Attorneys for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Amici curiae certify that they are individuals for whom no corporate disclosure is required under Federal Rule of Appellate Procedure 26.1.

STATEMENT OF RELATED CASES

The following related cases are pending: *City of Huntington Beach v. Newsom*, No. 25-3826; *Chino Valley Unified Sch. Dist. v. Newsom*, No. 25-3686; *Regino v. Blake*, No. 26-475; *Ramirez v. Oakland Unified Sch. Dist.*, No. 25-7232; *Mirabelli v. Bonta*, No. 26-2334.

CERTIFICATE OF COMPLIANCE

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form08instructions.pdf>

9th Cir. Case Number(s)

25-8056; 26-2337

I am the attorney or self-represented party.

This brief contains

5,222

words, including

0

words

manually counted in any visual images, and excluding the items exempted by FRAP

32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief (*select only one*):

- ☐ complies with the word limit of Cir. R. 32-1.
- ☐ is a cross-appeal brief and complies with the word limit of Cir. R. 28.1-1.
- ☒ is an amicus brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- ☐ is for a death penalty case and complies with the word limit of Cir. R. 32-4.
- ☐ complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):
- ☐ it is a joint brief submitted by separately represented parties.
- ☐ a party or parties are filing a single brief in response to multiple briefs.
- ☐ a party or parties are filing a single brief in response to a longer joint brief.
- ☐ complies with the length limit designated by court order dated .
- ☐ is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature

s/Abhishek Kambli

Date

September 2, 2026

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Form 8

Rev. 12/01/22

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2026, I electronically filed the foregoing Brief of United States Senators Ted Cruz, Michael Lee, Kevin Cramer, Roger Marshall, and James Banks as Amici Curiae in Support of Affirming the District Court's Injunction with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: September 2, 2026

/s/ Abhishek Kambli
Abhishek Kambli