No. 23-1280

IN THE

Supreme Court of the United States

PARENTS PROTECTING OUR CHILDREN, UA,

Petitioner,

v.

EAU CLAIRE AREA SCHOOL DISTRICT, WISCONSIN, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF *AMICI CURIAE* ELIZABETH MIRABELLI AND LORI ANN WEST IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

In cases across the country, parents are challenging school policies requiring teachers and other staff to unhesitatingly accept a child's assertion of transgender status and facilitate a social transition by withholding information about the child from his or her parents. In California, the State has argued that these policies flow from the state constitution's guarantee of autonomy privacy, leading to no less than six lawsuits challenging the constitutionality of these policies. Oddly, however, the federal courts have generally chosen to dispose of these suits on standing grounds, finding that parents lack standing to seek prospective relief.

The question presented is:

When a school district adopts an explicit policy to usurp parental decisionmaking authority over a major health-related decision—and to conceal this from the parents—do parents who are subject to such a policy have standing to challenge it?

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INTEREST OF AMICI CURIAE[1]

Elizabeth Mirabelli and **Lori Ann West** are California public school teachers and plaintiffs in the action *Mirabelli, et al. v. Olson, et al.*, No. 3:23-cv-768 (S.D. Cal. Apr. 27, 2023). In February 2022, they were informed of California's new policies requiring teachers to facilitate a child's gender transition without parental involvement or notice. They initially sought a religious accommodation under Title VII, and when that was denied, sought and obtained a preliminary injunction. The District Court enjoined enforcement of the policies on the basis that they violated the teachers' First Amendment rights to freedom of speech and the free exercise of religion, and parents' Fourteenth Amendment rights to direct the upbringing of their children.

Most recently, Mrs. Mirabelli and Mrs. West moved for leave to file an amended complaint which would add parent-plaintiffs and recast their complaint as a Rule 23(b)(1)(A) and (b)(2) class action against the State of California. Mrs. Mirabelli and Mrs. West now wish to present their story to this Court in order to dispel the myth—implicitly endorsed by various courts—that standing is inappropriate in parental rights cases such as the present one because the policies cannot possibly be as bad as reported. They are indeed.

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1. Per Rule 37.2, *amici* provided 10 days advance notice of this brief to all parties. Per Rule 37.6, counsel affirms that no counsel for any party authored any portion of this brief and that nobody other than *amici* or counsel made a monetary contribution to fund this brief.

SUMMARY OF ARGUMENT

Nationwide, thousands of school districts have adopted Parental Exclusion Policies which require school staff to facilitate a child's gender transition by withholding information about it from the child's parents. These thousands of policies have resulted in approximately 30 lawsuits across the nation, in both state and federal courts. The vast majority of these, however, have been dismissed without reaching the merits of the legality of the policies. The implicit assumption underlying these dismissals is that Parental Exclusion Policies are not actually causing real harm—that the lawsuits are mere efforts at driving public policy.

This could hardly be farther from the truth. After being convinced (over its initial skepticism) that California's version of such policies were indeed being applied as written, the District Court in the lawsuit filed by Mrs. Mirabelli and Mrs. West enjoined them. In so doing, the Court concluded:

> The school's policy is a trifecta of harm: it harms the child who needs parental guidance and possibly mental health intervention to determine if the incongruence is organic or whether it is the result of bullying, peer pressure, or a fleeting impulse. It harms the parents by depriving them of the long recognized Fourteenth Amendment right to care, guide, and make health care decisions for their children. And finally, it harms plaintiffs who are compelled to violate the parent's rights by forcing plaintiffs to conceal information they

> feel is critical for the welfare of their students—violating plaintiffs' religious beliefs.

Mirabelli v. Olson, 691 F. Supp. 3d 1197, 1222 (S.D. Cal. 2023).

How the District Court reached that conclusion is addressed below, summarizing the history of California's mandate that school districts adopt Parental Exclusion Policies, the history of the *Mirabelli v. Olson* lawsuit, detailing the story of one set of parents joining that lawsuit, and ending with an appeal to this Court to reverse the Seventh Circuit here so that this issue can properly percolate in the lower courts.

ARGUMENT

I. California Adopts and Enforces Parental Exclusion Policies

In February 2013, the California Legislature introduced AB 1266, a bill which provided that "[a] pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records." Assem. Bill 1266, 2013-2014 Reg. Sess. (Cal. Feb. 22, 2013). The next month, March 2013, the National Center for Lesbian Rights ("NCLR") reached out to the California Department of Education to provide them with a draft legal advisory on the rights of transgender students and model school policy to implement that bill, should it pass. *See* Email from Asaf Orr, Esq., to Stephanie Papas and Alejandro Espinoza (Mar. 18, 2013, 4:32 p.m.) (on file with the author as CDE000160-61).

The NCLR's draft legal advisory was meant to replace a prior legal advisory, issued by the Department of Education in 2004, and so surveyed the breadth of law concerning transgender students. As relevant here, the draft legal advisory stated that, in light of a child's privacy rights under Cal. Const. art. I, § 1, "schools are required to respect the limitations that a student places on the disclosure of their transgender status, including not sharing that information with the student's parents." Draft Legal Advisory p.4 (Mar. 18, 2013) (CDE000165). *See also* Draft Model Policy p.3 (Mar. 18, 2013) (CDE000171).

In August 2013, AB 1266 was signed into law, *see* Cal. Stats. 2013, ch. 85 (AB 1266) (eff. Jan. 1, 2014) (amending Cal. Educ. Code § 221.5(f)), and the California Department of Education began in earnest to review the NCLR's draft legal advisory. The legal advisory was ultimately divided into two parts: a legal advisory and a frequently asked questions page, and published in January 2016. *See* Cal. Dep't of Educ., *Legal Advisory regarding application of California's antidiscrimination statutes to transgender youth in schools* (Jan. 29, 2016), https://www.cde.ca.gov/re/di/eo/legaladvisory.asp.

The FAQ page retained the draft legal advisory's reference to privacy rights, including the above quote, but expanded upon it, explaining that minors have both "autonomy privacy" rights as well as "informational privacy" rights—even as against their parents. The FAQ page also hyperlinked to model policies BP 5145.3 and AR 5145.3[2] issued by the California School Boards Association

2. In California, a Board Policy ("BP") is considered and passed by a school board; an Administrative Regulation ("AR") is enacted by a school superintendent.

("CSBA"). *See* Cal. Dep't of Educ., *School Success and Opportunity Act (Assembly Bill 1266) Frequently Asked Questions* (Jan. 29, 2016), https://www.cde.ca.gov/re/di/eo/faqs.asp. These model policies were based on the NCLR's model policy provided to the California Department of Education. As explained in an internal Department email, although the CSBA is an independent trade organization for California school districts, the Department of Education often works closely with them and writes their guidance documents. *See* Email from Stephanie Papas to Giorgos Kazanis (Oct. 4, 2013) (CDE000181).

Later, when one school district rejected the California Department of Education's legal advisory, which mandates Parental Exclusion Policies, and instead passed a Parental *Notification* Policy should a student request a social transition, the Department ordered them to rescind the policy and sued for enforcement of its order. As explained in that lawsuit, the Department has ultimate authority to order school districts to comply. *See* Compl., *Cal. Dep't of Educ. v. Rocklin Unified Sch. Dist.*, No. S-CV-52605 (Cal. Super. Ct., Placer Cnty., Apr. 10, 2024).

Similarly, when another school district rejected the legal advisory, the California Attorney General sued them. The Attorney General did not seek to enforce the legal advisory itself, but rather the Privacy Clause of the California Constitution. *See* Compl., *Bonta v. Chino Valley Unified Sch. Dist.*, No. CIV SB 2317301 (Cal. Super. Ct., S.B. Cnty., Aug. 28, 2023). In his briefing, Attorney General Bonta explained that "[m]inors have a legally protected and reasonable expectation of privacy in their gender identity, a core aspect of their autonomy." Ex Parte Appl. for TRO, p.23, *Bonta v. Chino Valley Unified Sch.*

Dist., No. CIV SB 2317301 (Cal. Super. Ct., S.B. Cnty., Aug. 29, 2023). He continued, analogizing gender identity to reproductive rights: "[a] student's gender identity will likewise implicate the student's 'control over their personal bodily integrity,' 'serious long-term consequences in determining their life choices,' and an aspect of their identity 'so central' to a student's 'ability to define' their life." *Id.* at p.23 (quoting *Am. Academy of Pediatrics v. Lungren*, 16 Cal. 4th 307, 337 (1997)).

II. California's Parental Exclusion Policies Are Adopted by Mrs. Mirabelli's and Mrs. West's School District

Over the next several years, California school districts slowly began adopting the State's model BP 5145.3 and AR 5145.3. But practical issues did not arise for parents or teachers until after California students were forced into remote learning due to the COVID-19 pandemic. At that time, California saw an explosion of elementary and middle-school students identifying as transgender. This led Mrs. Mirabelli's and Mrs. West's school district to hold a district-wide staff training in February 2022 to explain its adoption of the State's model BP 5145.3 and AR 5145.3. *See* 2d Amend. Compl., *Mirabelli, et al. v. Olson, et al.*, No. 3:23-cv-768, ECF No. 118-3 (S.D. Cal. June 7, 2024).

As stated above, Mrs. Elizabeth Mirabelli and Mrs. Lori Ann West have had exemplary, decades-long teaching careers in K-8 public schools. They are both devout adherents of their religious traditions—Roman Catholic and Christian respectively—and have been a boon to the students they have taught.

Mrs. Mirabelli has taught middle-school English for more than 25 years. She received her Master's Degree of Education from the University of California at San Diego. She also received two certifications as a National Board Certified Teacher by the National Board for Professional Teaching Standards, which is the highest level of teacher certification available, and has become a Master Teacher as understood by federal law. *See* 20 U.S.C. § 9905(3). Mrs. Mirabelli also became a District Trainer for her school district and served for five years as the Department Chair for her middle school's English Language Arts Department. She has consistently received outstanding evaluations, has been named Teacher of the Year, and remains a respected member of the faculty.

Mrs. Lori Ann West's contributions to education have been no less commendable. For 30 years, she has taught Physical Education and Adapted Physical Education to elementary, middle, and high school students in San Diego County. She is a two-time Escondido Elementary Educators Association ("EEEA") Teacher of the Year. Mrs. West has served her community with distinction as Department Chair in the Physical Education Department and was named Teacher of The Year for her innovative program for adaptive P.E. She also won the California Teachers Association WHO Award for her contributions to advance the teaching profession.

In accordance with their Catholic and Christian faiths, Mrs. Mirabelli and Mrs. West sincerely hold the religious belief that God created the human race male and female, each with an innate, purposeful, and complementary nature. Mrs. Mirabelli and Mrs. West believe that the human species is binary and that a person's physical

and biological characteristics cannot be rejected without significant harm. Mrs. Mirabelli and Mrs. West also hold the belief that the parent-child relationship is ordained by God, and as such, holds a place of pre-eminence within the context of society. Further, they regard the family as the fundamental social unit of society, where children are nurtured in their development to adulthood.

These beliefs are quintessentially Christian. Mrs. Mirabelli and Mrs. West's views on the role of the family in society and the inherent nature of humans as male and female extends to their professional duties. This is particularly relevant regarding honesty, whether that be with parents, or in the example they set for students. They seek to partner with parents in the education of students, not replace them. As Christian educators in public schools, Mrs. Mirabelli and Mrs. West follow guidance from religious leaders.

As example, the Catholic Church firmly recognizes that issues of gender confusion are complex and troubling: "To be sure, many people are sincerely looking for ways to respond to real problems and real suffering," and "[t]he search for solutions to problems of human suffering must continue."[3] But, as stated by the Vatican, "the concept of human dignity" should not be "misused to justify an arbitrary proliferation of new rights," and "[d]esiring a personal self-determination, as gender theory prescribes, . . . amounts to a concession to the age-old temptation to

3. Committee on Doctrine, *Doctrinal Note on the Moral Limits to Technological Manipulation of the Human Body*, U.S. Conf. of Cath. Bishops 12-13 (Mar. 20, 2023), https://www.usccb.org/resources/Doctrinal%20Note%202023-03-20.pdf.

make oneself God, entering into competition with the true God of love revealed to us in the Gospel."[4]

Most importantly, as stated by the Vatican, primary responsibility for dealing with the complex issues of gender confusion must rest with parents. Under the "principle of subsidiarity," it is very important that educators do not preempt the role of parents: "Across th[e] educational alliance, pedagogical activity should be informed by the principle of subsidiarity: 'All other participants in the process of education are only able to carry out their responsibilities in the name of the parents, with their consent and, to a certain degree, with their authorization.'"[5]

As a result of their faith, Mrs. Mirabelli and Mrs. West fully support efforts to ensure that transgender or gender diverse students are treated kindly, with respect, and are not discriminated against. But their religious beliefs preclude them from facilitating any student's transgender or gender diverse social transition by withholding information about it from the student's parents or guardians.

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4. Víctor Manuel Cardinal Fernández, *Declaration "Dignitas Infinita" on Human Dignity, Dicastery for the Doctrine of the Faith* §§ 25, 57 (Apr. 8, 2024), https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2024/04/08/240408c.html.

5. Giuseppe Cardinal Versaldi, "*Male and Female He Created Them*": *Towards a Path of Dialogue on the Question of Gender Theory in Education*, Congregation Cath. Educ. (Feb. 2, 2019), http://www.educatio.va/content/dam/cec/Documenti/19_0997_INGLESE.pdf.

In light of this conflict, their first action was to ask how the school district would inform parents about these new policies. However, their school district confirmed via email that "[t]here have been conversations about using the training as part of mandated trainings at the start of each year. *At this time, parents/guardians will not receive it*." Email from Trent Smith to All EUSD Staff (Apr. 7, 2022, 8:05 p.m.) (emphasis added).

The next semester, Fall 2023, Mrs. Mirabelli received the below email:

> Hi All,
>
> Here is a full list with one addition highlighted below. I have also added a few updates to our team doc based on the meetings I had with students. View the doc here.
>
> [Student ID #]: Preferred name is [redacted] (pronouns are he/it). The parents are NOT aware so please use [name] and she/her when calling home.
>
> [Student ID #]: Preferred name is [name] (pronouns are he/him). Mom is aware but dad is NOT aware, but student is okay with you using [name] (she/her) with both parents to make it as easy for you as possible when communicating home.
>
> [Student ID #]: Preferred name is [redacted] (pronouns are they/them). Parents are NOT aware so please use [name] and she/her when calling home.

> [Student ID #]: Preferred name is [redacted] (pronouns are he/him). Adults at home NOT aware, please use [name] and she/her when calling home.
>
> [Student ID #]: Preferred name is [redacted] (pronouns are they/she). Mom is NOT aware so please use [name] and she/her when calling home.
>
> [Student ID #]: Preferred name is [redacted] (pronouns are he/him). Dad and stepmom are NOT aware, please use [name] and she/her when calling home.
>
> [Student ID #]: Preferred name is [redacted] (pronouns they/them). Mom IS aware and supportive :)

Email from Gloria Torres to All Rincon Staff (Aug. 15, 2022, 2:40 p.m.) (redactions in original).

Upon receipt of the email Mrs. Mirabelli experienced shock and dismay. She even doubted the validity of the directive because it was sent by a colleague. So she decided to ask her supervisor who confirmed that the email was to be regarded as a directive from the administration.

III. Mrs. Mirabelli and Mrs. West Seek Judicial Relief

As a result of the above email, in October 2022, Mrs. Mirabelli and Mrs. West requested a Title VII religious accommodation from their school district, which was denied in February 2023. Then, in April 2023, they initiated a 42 U.S.C. § 1983 lawsuit for violations of their

right to freedom of speech and free exercise of religion, and which sought declaratory relief that California's Parental Exclusion Policies violated parents' Fourteenth Amendment rights to direct the upbringing of their children.

Because of retaliation at their school district, they were immediately placed on administrative leave. The retaliation started when Mrs. Mirabelli discovered sixteen malicious posters placed in her classroom. Two days later, the band teacher filmed and distributed a protest video of students waving transgender flags and singing "This is Me!" The video was blasted out via e-mail to all staff including teachers, administration, clerks, and custodians.

The same week a group of teachers coordinated a T-shirt protest and held classroom discussions about the lawsuit. An anonymous person also subscribed Mrs. Mirabelli's and Mrs. West's work email accounts to various LGBT organizations, resulting in over 150 emails being sent to the teachers' email accounts. Soon after, a school clerk filed a frivolous complaint against Mrs. West, and it was later uncovered that the same person facilitated a protest in front of school grounds, and circulated a flier stating that Mrs. Mirabelli and Mrs. West were responsible for "slaughtering students."

Two weeks after initiating their action, Mrs. Mirabelli and Mrs. West moved for a preliminary injunction. Although that motion was initially set for hearing on June 26, 2023, the hearing was repeatedly continued and ultimately held on August 30, 2023. *See* Transcript of Mot. Hearing, *Mirabelli, et al., v. Olson, et al.*, No. 3:23-cv-768, ECF No. 39 (S.D. Cal. Aug. 30, 2023). At the hearing, the District Judge explained that he had initially been

skeptical of Mrs. Mirabelli's and Mrs. West's recitation of the facts:

> I was basically tentatively leaning in [the school district's] direction because . . . it struck me that what the school district was doing was limiting the teachers' discussion with the parents, saying "this is beyond your purview, you're not to talk to the parents about this, leave that to some other administrator," and then the administrator would talk to the parents and let the parents know what was going on. Then the parents could exercise their parental rights and go and say, "okay, here is how we're going to deal with it."

Id. at 100 (cleaned up).

But when the government confirmed that there is no process for the parents to ever learn, the District Judge was amazed, and concluded he had to rule for Mrs. Mirabelli and Mrs. West:

> I thought you were going to tell me, "Well, if the teacher can't talk to the parent, then the parent can talk to the administrator and then the administrator will go talk to the parent and explain what's going on." But you're telling me that a five-year-old that says, "I don't want my parents to know," that's it, that's the end of the process. The only thing that changes is that if the child says to you, "I don't want my parents to know because they might spank me or worse," then your next step is to go to CPS. But there's no escape valve for the parents to

> ever know that this is what their child is doing at school, right?

Id. at 101 (cleaned up).

Two weeks later, the District Court issued a preliminary injunction in favor of Mrs. Mirabelli and Mrs. West. *Mirabelli v. Olson*, 691 F. Supp. 3d 1197 (S.D. Cal. 2023). The District Court began by detailing the expert declaration submitted by Dr. Erica Anderson, Ph.D., a transgender woman and expert in child gender incongruence, who explained that "[c]oncealing from a parent the fact of a student's transitioning at school is not in the best medical interests of a student." *Id.* at 1209.

The District Court then surveyed this Court's precedents regarding youthful impetuosity and the rights of parents to direct the upbringing of their children, as well as case law regarding application of the California constitutional right to privacy in the context of minors asserting privacy interests as against their parents. *Id.* at 1209-13.

Finally, the District Court analyzed Mrs. Mirabelli's and Mrs. West's likelihood of success on the merits, primarily concluding that they would be likely to succeed because "[t]he reasons proffered by the defendants for the policy pass neither the strict scrutiny *nor the rational basis tests*." *Id.* at 1217 (emphasis added). In sum, the District Court concluded, California lacks any legitimate state interest in violating parents' rights to direct the upbringing of their children, and so cannot order teachers to do so.

Instead of appealing, as indicated above, California has filed two enforcement actions against school districts in state court, which inspired a legal nonprofit to also file their own action. *See Bonta v. Chino Valley Unified Sch. Dist.*, No. CIV SB 2317301 (Cal. Super. Ct., S.B. Cnty., Aug. 28, 2023); *Mae M. v. Komrosky*, No. CVSW2306224 (Cal. Super. Ct., Riverside Cnty., Oct. 13, 2023); *Cal. Dep't of Educ. v. Rocklin Unified Sch. Dist.*, No. S-CV-52605 (Cal. Super. Ct., Placer Cnty., Apr. 10, 2024). Three other actions have been brought by teachers and parents, two of which settled and one of which was dismissed. *See Konen v. Caldeira*, No. 22-cv-1813 (Cal. Super. Ct., Monterey Cnty., June 27, 2022), *removed*, No. 5:22-cv-5195 (N.D. Cal. Sep. 12, 2022); *Regino v. Staley*, No. 2:23-cv-32 (E.D. Cal. Jan. 6, 2023), *appeal filed*, No. 23-16031 (9th Cir. July 28, 2023); *Tapia v. Jurupa Unified Sch. Dist.*, No. 5:23-cv-789 (C.D. Cal. May 3, 2023).

In light of this multiplicity of actions, Mrs. Mirabelli and Mrs. West decided to move for leave to amend their complaint, add new plaintiffs—more teachers, some parents, and a school district—and recast their complaint as a Rule 23(b)(1)(A) and (b)(2) class action. *See* 2 Newberg and Rubenstein on Class Actions § 4:6 (6th ed. 2024) (a 23(b)(1)(A) class action is appropriate when "at the time of class certification, multiple cases have already been filed, each seeking some form of injunctive relief, all of which threaten to put the defendant under conflicting commands"). In due course, Mrs. Mirabelli and Mrs. West seek to obtain state-wide injunctive relief.

IV. Parental Exclusion Policies Hurt Real Families, Such as the Poe Family, and Are Not Going Away

The District Court's skepticism that California public schools had no "escape valve" by which parents would

ultimately be informed of their child's gender transition was perfectly reasonable. Indeed, two years before this Court decided *Meyer v. Nebraska*, 262 U.S. 390 (1923), California courts had already ruled that "it would be distinctly revolutionary and possibly subversive of that home life so essential to the safety and security of society and the government which regulates it, the very opposite effect of what the public school system is designed to accomplish," to hold that parents may "be eliminated in any measure from consideration in the matter of the discipline and education of their children." *Hardwick v. Bd. of Sch. Trustees of Fruitridge Sch. Dist.*, 54 Cal. App. 696, 714 (1921), *review den.*, 205 P. 49, 56 (Cal. 1921).

In light of this skepticism, courts across the country seem to be bending over backwards to dispose of requests for prospective injunctive relief. Both the Fourth and now Seventh Circuits have denied standing to parents whose children have not yet socially transitioned. *See John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 78 F.4th 622, 629-30 (4th Cir. 2023); *Parents Protecting Our Child., UA v. Eau Claire Area Sch. Dist., Wisconsin*, 95 F.4th 501, 505-06 (7th Cir. 2024).

On the flip side, if a child has already socially transitioned and desisted, some courts have found no standing:

> Defendants also note that A.S. has returned to identifying as a girl despite the continuance of the Regulation so there can be no clear showing of a likelihood of irreparable harm. Defendants also contend that Plaintiff has

> failed to establish an immediate threat; it is not enough that A.S. has been harmed in the past or that Plaintiff's daughters continue to reside in the school district for Plaintiff to meet her burden of showing that injury is likely and immediate. The Court find's Defendants' argument persuasive.

Regino v. Staley, No. 2:23-cv-32, 2023 WL 2432920, at *4 (E.D. Cal. Mar. 9, 2023).

It would thus appear that the only parents who have standing are those who can assert that their child is *currently* transitioning, and can assert that their school districts are *currently* lying to them. It is through this strange rule—driven by lower courts' adamant desire to dispose of these cases—that has led to the "[o]dd[ ]" situation where *all* "of the successful cases so far were brought by *teachers*." Pet., 14-15. But the nationwide prevalence of Parental Exclusion Policies means that these cases will not go away, no matter how narrowly the lower courts parse standing.

Joining Mrs. Mirabelli and Mrs. West in their lawsuit are John and Jane Poe, a married couple and the parents of Child Poe, a fourteen-year-old girl. Mr. Poe is an engineer and Mrs. Poe is a stay-at-home mom. They are a devout Catholic family with several children, of which Child Poe is the oldest. The Poe Family moved to their city specifically because of its reputation for having high-quality public schools. For the 2023-2024 school year, Child Poe was in eighth grade and will move to high school for the 2024-2025 school year.

When she began Seventh Grade, Child Poe started attending a public middle school (7-8th grades) within her public school district. During that year, Child Poe began identifying as transgender. She identified a male name and male pronouns for her teachers to use. Mr. and Mrs. Poe had no knowledge of this. Child Poe even became the President of her school's LGBT club, "PRISM," without their knowledge.

At the beginning of the 2023-2024 school year (eighth grade for Child Poe), things quickly escalated. In early August, before the first day of school, Child Poe cut her hair short—which confused her parents. Then, on August 29, 2023, Mr. and Mrs. Poe attended her middle school's "back-to-school" night. During that event, they met with several of Child Poe's teachers in the classroom of her "GATE" teacher. None of the teachers mentioned to Mr. and Mrs. Poe that Child Poe was presenting as a different gender at school, had requested a preferred name and preferred pronouns, or was the President of the PRISM club. The teachers all referred to Child Poe using her legal name and biological pronouns.

On September 6, 2023, Child Poe attempted suicide. She was admitted to a local medical center and held there as a danger to herself. *See* Cal. Welf. & Inst. Code § 5150. The next day, she was transferred hundreds of miles away to Fremont Hospital in the Bay Area, with its inpatient psychiatric program for adolescents. For the next week, Mr. and Mrs. Poe were distraught as they tried to figure out what had been going on, and made the three-hour drive to and from the hospital while they cared for their other children. A doctor at Fremont Hospital told Mr. and Mrs. Poe that Child Poe was identifying as a boy, which is the first time anyone had told them.

On September 13, 2023, Child Poe was discharged from Fremont Hospital and came home. In the next week, she slowly opened up to her parents, and soon revealed to them that her teachers at her middle school had been using her preferred name and pronouns since the seventh grade.

Upon learning about this, Mr. and Mrs. Poe contacted that school to ask if they were calling Child Poe by a different name or using different pronouns. The school said, "no." However, Mr. and Mrs. Poe learned that this was a lie, as hand written letters and emails from teachers to Child Poe stated otherwise.

In the next few weeks, because Child Poe wanted to return to school, Mr. and Mrs. Poe engaged in a serious search for a new school. They absolutely knew they could not send her back to her prior middle school, but based on their zip code, that was the only school available to them within their school district. Mr. and Mrs. Poe began, in October, by enrolling Child Poe in an online homeschooling program offered by their public school district.

However, starting on December 1, 2023, they decided to enroll Child Poe at a public charter school. They did this, in part, because the school included a middle school and a high school on the same campus. Mr. and Mrs. Poe hoped they would be able to find a safe place to send Child Poe to school for the rest of her education—away from their public school district.

During the first week, things seemed to be going well, but on December 7, 2023, Child Poe was re-admitted to the same local medical center and held again under Cal. Welf. & Inst. Code § 5150. She went back to school again

on December 15, and Mr. and Mrs. Poe had been doing everything they can to carefully monitor her to ensure she is doing well.

After the Christmas break, in January 2024, Mrs. Poe repeatedly reached out to Child Poe's teachers at the charter school to ask about how she was doing. One of her specific questions was whether Child Poe was presenting as male at school. In response, an administrator sent Mrs. Poe a lengthy email. In that email, the administrator block-quoted large portions of the California Department of Education's FAQ page on the rights of transgender students, and summed up her response with the following statement: "We cannot share the gender identity of the student with the parent even if that gender identity is expressed openly in class."

Immediately thereafter, Mr. and Mrs. Poe took Child Poe out of that charter school and re-enrolled her in the online home-schooling program. Child Poe has repeatedly expressed her frustration and dislike of homeschooling and her desire to return to in-person schooling. But Mr. and Mrs. Poe cannot afford any private school tuition and have decided that they cannot risk putting her in a public school where teachers withhold any information about their daughter from them.

Mr. and Mrs. Poe's story is not unique to them. It is happening across California—and indeed another family, the Doe Family, is also joining Mrs. Mirabelli's and Mrs. West's lawsuit. These cases are not going away. They are only getting started and will eventually need to be addressed by this Court.

The question presented by this petition is whether this Court wants to become "the first to address the questions presented." *Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring). Or, before the issue of parental rights in the context of minor gender transition reaches this Court, would it be better to have "the gradual accretion of thoughtful precedent at the circuit level"? *Labrador v. Poe*, 144 S. Ct. 921, 927 (2024) (Gorsuch, J., concurring). Mrs. Mirabelli and Mrs. West assert that the latter is preferable. They do not want their case to become the only one that survives the lower courts' aggressive culling of parental rights cases. This Court should grant the petition, and reverse and remand with instructions to the lower court to address these issues on the merits.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition and reverse the Seventh Circuit's ruling.

Respectfully submitted,

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