NO. 25A810

IN THE

Supreme Court of the United States

ELIZABETH MIRABELLI, ET AL.,

Applicants,

v.

ROB BONTA, ATTORNEY GENERAL OF CALIFORNIA, ET AL.,

Respondents.

BRIEF OF NC VALUES INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF EMERGENCY APPLICATION TO VACATE INTERLOCUTORY STAY ORDER ISSUED BY THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae respectfully urges this Court to grant the Emergency Application and vacate the interlocutory stay issued by the Ninth Circuit.

NC Values Institute, formerly known as the Institute for Faith and Family, is a North Carolina nonprofit corporation that works in various arenas of public policy to protect faith, family, and freedom, including parental rights. See https://ncvi.org.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The dangerous Parental Exclusion Policy ("PEP" or "Policy") devised by the California Department of Education ("CDE"), coupled with the Ninth Circuit's blind eye toward this Court's precedents, is a massive assault on core parental rights. As a dissenting Eleventh Circuit judge recently asked, "Does the Constitution still protect parents' fundamental right to direct the upbringing of their children when government actors intrude without their knowledge or consent?" *Littlejohn v. Sch. Bd. of Leon Cnty.*, 132 F.4th 1232, 1308 (11th Cir. 2025) (Tjoflat, J., dissenting). This Court's answer should be a resounding "yes!" after its ruling in *Mahmoud v. Taylor*, 606 U.S. 522 (2025), yet the Ninth Circuit evades *Mahmoud* by narrowly restricting it to "curricular requirements." *Mirabelli v. Olson*, 2026 U.S. App. LEXIS 403, *12 (9th Cir. 2026).

Transgender ideology has invaded American life at an alarming rate. The need for this Court's review is nowhere more urgent than in cases where public schools

[1] No counsel for any party has authored this brief in whole or in part, and no entity or person, aside from amicus curiae and its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

adopt policies to secretly transition young students from one sex to the other. The alarming proliferation of such policies, and the multitude of lawsuits filed by shocked parents, underscores the need for review. This case, like *Protecting Our Children v. Eau Claire Area Sch. Dist.*, "presents a question of great and growing importance." 145 S. Ct. 14, 14 (2024) (Alito, J., dissenting from denial of certiorari). Indeed, two other pending Petitions for Certiorari also cry out for review. See *Littlejohn v. Sch. Bd. of Leon Cty*., No. 25-259 (petition for cert. filed Sep. 3, 2025); *Foote v. Ludlow Sch. Comm*., No. 25-77) (petition for cert. filed July 18, 2025). This Court should grant the requested stay to stop the "bleeding" presented by this Emergency Application. Too much damage has already occurred.

Equally alarming is the focus of this *amicus curiae* brief—the State of California's demand that school personnel actively deceive parents about their own children's gender confusion. California's unconscionable Policy jeopardizes basic rights to free speech and religion. Pronouns are part of everyday speech and touch a matter of intense public concern. Not everyone accepts culturally popular "gender identity" concepts or believes that a person can transition from one sex to the other. The First Amendment safeguards the rights of students *and* teachers *and* parents to speak according to each one's own beliefs, even in public schools. The Policy's mandate generates one of the most pernicious constitutional violations imaginable—the combination of compelled speech and viewpoint discrimination. The Policy demands use of a child's preferred name and pronouns, not only without parental consent or knowledge—but under an official policy that directs school personnel to actively

deceive a child's parents, particularly if they do not affirm their *child*'s life-altering decision to transition. Public schools are required to surreptitiously facilitate a major life decision that is virtually guaranteed to cause irreparable harm. The Policy turns family structure on its head. As the Application explains, "schools *must* consult with a transgender student" and are "*required* to respect the limitations a student places on the disclosure of [his/her] transgender status." App. 9 n. 3; Cal. Educ. Code § 220, Cal. Code Regs. tit. 22, § 83001(g)(2). Instead of children requiring parental permission, parents require their *child*'s permission in this upside-down world of gender ideology. Teachers, placed in a straight-jacket and forced to comply with the scam, risk their livelihoods if they dare to speak the truth.

ARGUMENT

I. THE POLICY COMPELS SPEECH ON A CONTENTIOUS TOPIC.

There is hardly a more "dramatic example of authoritarian government and compelled speech" than when King Henry commanded Sir Thomas More to sign a statement blessing the King's divorce and remarriage. Richard F. Duncan, *Article: Defense Against the Dark Arts: Justice Jackson, Justice Kennedy, and the No-Compelled Speech Doctrine*, 32 Regent U. L. Rev. 265, 292 (2019-2020). Thomas More, a faithful Catholic, could not sign.

Five centuries later, California has created a conundrum that is no less momentous than Thomas More's predicament. Its Policies reek of viewpoint-based compelled speech. As in *Barnette*, there is "probably no deeper division" than a conflict provoked by the choice of "what doctrine . . . public educational officials shall compel

youth to unite in embracing." Duncan, *Defense Against the Dark Arts*, 32 Regent U. L. Rev. at 292, citing *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 641 (1943). The "deep division" here impacts the speech of everyone involved in public education. The school goes beyond merely teaching transgender ideology to actively facilitate sex transitions over the explicit objections of a child's parents.

Compelled speech is abhorrent to the First Amendment, particularly where government mandates conformity to its preferred viewpoint. *Barnette, Wooley*, and *NIFLA* are "eloquent and powerful opinions" that stand as "landmarks of liberty and strong shields against an authoritarian government's tyrannical attempts to coerce ideological orthodoxy." Duncan, *Defense Against the Dark Arts*, 32 Regent U. L. Rev. at 266; *Barnette*, 319 U.S. 624; *Wooley v. Maynard*, 430 U.S. 705 (1977); *Nat'l Institute of Family & Life Advocates v. Becerra* ("*NIFLA*"), 585 U.S. 755 (2018).

A. Transgender ideology is a matter of intense public concern that merits heightened constitutional protection.

There is hardly a more contentious "matter of public concern" than gender identity, "a controversial [and] sensitive political topic[] . . . of profound value and concern to the public." *Janus v. AFSCME, Council 31*, 585 U.S. 878, 913 (2018) (cleaned up). The Policy mandates speech—names and pronouns—to "communicate a message" many believe is false—that "[p]eople can have a gender identity inconsistent with their sex at birth." *Meriwether v. Hartop*, 992 F.3d 492, 507 (6th Cir. 2021). "Pronouns can and do convey a powerful message implicating a sensitive

topic of public concern." *Id*. at 508. It is not the business of *any* government official to coerce *any* person's viewpoint on this matter.

B. Schools can affirm the dignity of every student without sacrificing any person's constitutional liberties.

It is a "critical part of a [teacher's] job" to "affirm[] the equal dignity of every student," so as to create the best learning environment. Erica Goldberg, *"Good Orthodoxy" and the Legacy of Barnette*, 13 FIU L. Rev. 639, 666 (2019). But "students need to tolerate views that upset them, or even disturb them to their core." *Id*. Students must endure speech that is offensive or even false as "part of learning how to live in a pluralistic society, a society which insists upon open discourse towards the end of a tolerant citizenry." *Lee v. Weisman*, 505 U.S. 577, 590 (1992).

Rigorous protection of constitutional liberties is essential to preparing young persons for citizenship, so as not to "strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." *Barnette*, 319 U.S. at 637. "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Shelton v. Tucker*, 364 U.S. 479, 487 (1960). That "community" includes students, parents, *and faculty*.

II. COMPELLED SPEECH AND VIEWPOINT DISCRIMINATION ARE UNIQUELY PERNICIOUS FREE SPEECH VIOLATIONS.

The Policy combines the worst of two worlds—compelled speech and viewpoint discrimination. Teacher-Plaintiffs are forced to say what they believe is false about a student's sex.

The "proudest boast" of America's free speech jurisprudence is that we safeguard "the freedom to express 'the thought that we hate.'" *Matal v. Tam*, 582 U.S. 218, 246 (2017) (plurality opinion) (quoting *United States v. Schwimmer*, 279 U.S. 644, 655 (1929) (Holmes, J., dissenting)). Gender identity may be "embraced and advocated by increasing numbers of people," but that is "all the more reason to protect the First Amendment rights of those who wish to voice a different view." *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 660 (2000). Our law protects the right to *not* express viewpoints a speaker hates. Compelled expression is even worse than compelled silence because it affirmatively associates the speaker with a viewpoint he does not hold.

The Policy "[m]andates speech" many "would not otherwise make" and "exacts a penalty" for refusal to comply. *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988). If Teacher-Plaintiffs fail to comply with the Policy, they risk their jobs. "Under the policy at issue, accurate communication with parents is permitted *only if* the child first gives its consent to the school. A teacher who knowingly fails to comply is considered to have engaged in discriminatory harassment and is subject to adverse employment actions." *Mirabelli v. Olson*, 691 F. Supp. 3d 1197, 1203 (S.D. Cal. 2023). The Policy requires *male* pronouns for a biological *female* or *female* pronouns for a biological *male*, based entirely on a child's command. "When the law strikes at free speech it hits human dignity . . . *when the law compels a person to say that which he believes to be untrue, the blade cuts deeper* because it requires the person to be untrue to himself, perhaps even untrue to God." Richard F. Duncan,

Seeing the No-Compelled-Speech Doctrine Clearly Through the Lens of Telescope Media, 99 Neb. L. Rev. 58, 59 (2020) (emphasis added).

The Policy's mandatory speech is based not only on *content* but also *viewpoint*, demanding endorsement of transgender ideology. The Policy thus transgresses the freedom of thought that undergirds the First Amendment and merits "unqualified attachment." *Schneiderman v. United States*, 320 U.S. 118, 144 (1943).

A. The Policy violates liberties of religion and conscience.

The Policy forces teachers, students, and parents to become "instrument[s] for fostering . . . an ideological point of view" many find "morally objectionable." *Wooley*, 430 U.S. at 714-715. This glaring viewpoint discrimination assaults religious liberty and conscience. Convictions about sexuality are integrally intertwined with conscience and the teachings of many faith traditions. Compelled speech—that a boy is a girl or a girl is a boy—tramples these deeply held convictions. Religious speech is not only "as fully protected . . . as secular private expression," but historically, "government suppression of speech has so commonly been directed *precisely* at religious speech that a free-speech clause without religion would be Hamlet without the prince." *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995) (internal citations omitted).

B. The Policy is an Orwellian scheme that destroys liberty of thought.

"The possibility of enforcing not only complete obedience to the will of the State, but *complete uniformity of opinion* on all subjects, now existed for the first time." George Orwell, "1984" 206 (Penguin Group 1977) (1949) (emphasis added). As Justice

Kennedy cautioned, "[t]he right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought." *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 253 (2002); *see* Duncan, *Defense Against the Dark Arts*, 32 Regent U. L. Rev. at 265. The Policy imperils these liberties.

"[T]he history of authoritarian government . . . shows how relentless authoritarian regimes are in their attempts to stifle free speech." *NIFLA*, 585 U.S. at 780 (Kennedy, J., concurring). There is "no such thing as good orthodoxy" under a Constitution that safeguards thought, speech, conscience, and religion, even when the government pursues seemingly benign purposes like national allegiance (*Barnette*), equality, or tolerance. Goldberg, *"Good Orthodoxy"*, 13 FIU L. Rev. at 643. "Even commendable public values can furnish the spark for the dynamic that Jackson insists leads to the 'unanimity of the graveyard.'" Paul Horwitz, *A Close Reading of Barnette, in Honor of Vincent Blasi*, 13 FIU L. Rev. 689, 723 (2019).

Compelled speech "invades the private space of one's mind and beliefs." Duncan, *Defense Against the Dark Arts*, 32 Regent U. L. Rev. at 275. While "ordinary authoritarians" merely demand silence, prohibiting people from saying what they believe is true, "[t]otalitarians insist on forcing people to say things they know or believe to be untrue." *Id.*, quoting Robert P. George. The Policy adopts a totalitarian mode by demanding compliance with a distorted view of reality that aligns with whatever "gender identity" any child demands.

There is "no more certain antithesis" to the Free Speech Clause than a government mandate imposed to produce "orthodox expression." *Hurley v. Irish-*

American Gay, 515 U.S. 557 579 (1995). Such a restriction "grates on the First Amendment." *Id*. "Only a tyrannical government"—*or public school*—"requires one to say that which he believes is not true," e.g., that "two plus two make five." *Id*. Here, the Policy mandates false statements about the sex of school children.

This Court has *never* upheld a viewpoint-based mandate compelling "an unwilling speaker to express a message that takes a particular ideological position on a particular subject." Duncan, *Seeing the No-Compelled-Speech Doctrine Clearly*, 99 Neb. L. Rev. at 78. But that is precisely what the Policy requires, darkening the "fixed star in our constitutional constellation" that forbids any government official, "high or petty," from prescribing "what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *Barnette*, 319 U.S. at 642. Regardless of how acceptable transgender ideology is in the current culture, California's interest in disseminating that ideology "cannot outweigh [a student's or teacher's] First Amendment right to avoid becoming the courier for such message." *Wooley*, 430 U.S. at 717.

C. Viewpoint-based compelled speech stifles debate and attacks the dignity of those who disagree with the prevailing state orthodoxy.

Viewpoint discrimination is "an egregious form of content discrimination." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). It creates a "substantial risk of excising certain ideas or viewpoints from the public dialogue." *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 642 (1994). This is "poison to a free society." *Iancu v. Brunetti*, 588 U.S. 388, 399 (2019) (Alito, J., concurring).

The government may not regulate speech "when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Rosenberger*, 515 U.S. at 829. The Policy is "a paradigmatic example of the serious threat presented when government seeks to impose its own message in the place of individual speech, thought, and expression." *NIFLA*, 585 U.S. at 779 (Kennedy, J., concurring). The Policy not only controls content (names and pronouns) but also promotes an ideology unacceptable to many families and faculty. "Freedom of thought, belief, and speech are fundamental to the dignity of the human person." Duncan, *Seeing the No-Compelled-Speech Doctrine Clearly*, 99 Neb. L. Rev. at 59.

The Policy contravenes "[t]he very purpose of the First Amendment . . . to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion." *Thomas v. Collins,* 323 U.S. 516, 545 (1945) (Jackson, J., concurring). This is dangerous to a free society where the government must respect a wide range of viewpoints. The government itself may adopt a viewpoint but may never "interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government." *Hurley*, 515 U.S. at 579.

The Policy censors protected expression and compels public school personnel to regurgitate the State's preferred message. This wars against the First Amendment, which guards a speaker's autonomy to favor viewpoints he wishes to express and reject other viewpoints.

D. The prohibition of viewpoint discrimination, now firmly established by this Court's precedent, is a necessary component of the Free Speech Clause.

A century ago, this Court affirmed a conviction under the Espionage Act, which criminalized publication of "disloyal, scurrilous and abusive language" about the United States when the country was at war. *Abrams v. United States*, 250 U.S. 616, 624 (1919). If that case came before the Court today, no doubt "the statute itself would be invalidated as patent viewpoint discrimination." Lackland H. Bloom, Jr., *The Rise of the Viewpoint-Discrimination Principle*, 72 SMU L. Rev. F. 20, 21 (2019). The Court shifted gears in *Barnette*, "a forerunner of the more recent viewpoint-discrimination principle." *Id*. *Barnette*'s often-quoted "fixed star" passage was informed by "the fear of government manipulation of the marketplace of ideas." *Id*. Justice Kennedy echoed the thought: "To permit viewpoint discrimination . . . is to permit Government censorship." *Matal*, 582 U.S. at 252 (Kennedy, J., concurring).

Since *Barnette*, courts have further refined the principle of viewpoint discrimination. In *Cohen v. California*, Justice Harlan warned that "governments might soon seize upon the censorship of particular words as a convenient guise for banning the expression of unpopular views." 403 U.S. 15, 26 (1971); *see* Bloom, *The Rise of the Viewpoint-Discrimination Principle*, 72 SMU L. Rev. F. at 22.

Viewpoint discrimination "is censorship in its purest form and government regulation that discriminates among viewpoints threatens the continued vitality of 'free speech.'" *Perry Education Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 62

(1983) (Brennan, J., dissenting). This Court eventually considered viewpoint regulation an "even more serious threat" to speech than "mere content discrimination." Bloom, *The Rise of the Viewpoint-Discrimination Principle*, 72 SMU L. Rev. F. at 23. The "bedrock principle underlying the First Amendment" is that "government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

In the early 1990's this Court struck down an ordinance that criminalized placing a symbol on private property that "arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender." *R.A.V. v. City of St. Paul*, 505 U.S. 377, 380 (1992) (burning cross). The Court considered "the anti-viewpoint-discrimination principle . . . so important to free speech jurisprudence that it applied even to speech that was otherwise excluded from First Amendment protection." Bloom, *The Rise of the Viewpoint-Discrimination Principle*, 72 SMU L. Rev. F. at 25, citing *R.A.V.*, 505 U.S. at 384-385. The ruling defined viewpoint discrimination as "hostility—or favoritism—towards the underlying message expressed." *R.A.V.*, 505 U.S. at 385 (citing *Carey v. Brown*, 447 U.S. 455 (1980)). The government may not "license one side of a debate to fight free style, while requiring the other to follow Marquis of Queensberry rules." *R.A.V.*, 505 U.S. at 392.

Government mandates may exhibit viewpoint discrimination by compelling a speaker to express either the government's viewpoint (*Wooley*, *NIFLA*) (transgender ideology) or a third party's viewpoint (*Hurley*) (student's unilateral declaration of gender identity). Duncan, *Defense Against the Dark Arts*, 32 Regent U. L. Rev. at 283.

The Policy does both, mandating compliance with the State's transgender ideology and a gender-confused child's viewpoint about his/her sex.

Matal, a landmark viewpoint discrimination case, explains that "[g]iving offense [to a transgender child] is a viewpoint." *Matal*, 582 U.S. at 243. After *Matal*, this Court struck down a ban on "immoral or scandalous" trademarks because it "disfavor[ed] certain ideas." *Iancu v. Brunetti*, 588 U.S. at 390. The Court's approach "indicated that governmental viewpoint discrimination"—like the Policy at issue here—"is a per se violation of the First Amendment." Bloom, *The Rise of the Viewpoint-Discrimination Principle*, 72 SMU L. Rev. F. at 33.

III. THE POLICY'S VIEWPOINT-BASED SPEECH MANDATE IS NOT JUSTIFIED AS APPLIED TO ANYONE IN PUBLIC EDUCATION.

Public schools are not a haven where administrators can ignore the First Amendment with impunity. Neither students nor teachers "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). The Policy impermissibly infringes the protected speech of faculty, students, and parents.

Pronouns are an integral part of everyday speech based on objective biological reality and often coupled with the belief that each person is created immutably male or female. The State may not regulate this aspect of speech. Many do not accept transgender ideology, but the Constitution safeguards the right to speak about it, even in public schools.

A. Government employees are citizens—not robots.

Even as an employer, *the government is still the government*, subject to constitutional constraints. Even as government employees, *citizens are still citizens* who "do not surrender all their First Amendment rights by reason of their employment." *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006). The Constitution does not permit a State to "leverage the employment relationship to restrict, incidentally or intentionally, the liberties employees enjoy in their capacities as private citizens." *Id*. at 419; see *Perry v. Sindermann,* 408 U.S. 593, 597 (1972); *Connick v. Myers*, 461 U.S. 138, 147 (1983) ("Our responsibility is to ensure that citizens are not deprived of fundamental rights by virtue of working for the government").

In *Pickering*, this Court crafted a test that balances "between the [free speech] interests of [a] teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Pickering v. Bd. of Educ. of Township High School District 205*, 391 U.S. 563, 568 (1968). *Pickering*'s balancing test does not warrant compelled expression of any employee's *personal* agreement on a controversial public issue. *Janus*, 585 U.S. at 905 ("prominent members of the founding generation condemned laws requiring public employees to affirm or support beliefs with which they disagreed").

The Policy imposes unconstitutional conditions on public employment by infringing employees' "constitutionally protected interest in freedom of expression." *Garcetti*, 547 U.S. at 413; *see Connick*, 461 U.S. at 142; *Keyishian v. Bd. of Regents*,

385 U.S. 589, 605-606 (1967); *Pickering*, 391 U.S. 563; *Perry v. Sindermann*, 408 U.S. at 597. There was a time when "a public employee had no right to object to conditions placed upon the terms of employment," even restrictions on constitutional rights. *Garcetti*, 547 U.S. at 417, quoting *Connick,* 461 U.S. at 143. That theory has been "uniformly rejected." *Pickering*, 391 U.S. at 568; *Keyishian*, 385 U.S. at 605-606; *Lane v. Franks*, 573 U.S. 228, 236 (2014).

B. A school employee's use of pronouns is not *government* speech.

Government (public) speech occurs where a public employee speaks in an official capacity and "there is no relevant analogue to speech by citizens who are not government employees." *Garcetti*, 547 U.S. at 424. Here, there is an obvious analogue because pronouns are a nearly unavoidable feature of everyday language. Under *Garcetti*, the "critical question" is whether a public employee's speech is "ordinarily within the scope of [his] duties." *Lane*, 573 U.S. at 240 (2014). Even when public officials deliver speeches, "their words are not exclusively a transmission from *the* government because those oratories have embedded within them the inherently personal views of the speaker as an individual member of the polity." *Van Orden v. Perry,* 545 U.S. 677, 723 (2005) (Stevens, J., dissenting). A teacher's view of biological sex is "embedded within" the pronouns used. As *Garcetti* acknowledged, "expression related to . . . classroom instruction" might not fall within "customary employee-speech jurisprudence." *Garcetti*, 547 U.S. at 425; *see Meriwether*, 992 F.3d at 506.

C. The Policy's mandated pronouns are not "professional" speech.

California cannot salvage its mandate by characterizing employee speech as "professional." With narrow exceptions not relevant here, this Court has explicitly declined to recognize "professional speech" as a separate category entitled to diminished protection. *NIFLA*, 585 U.S. at 768. "The dangers associated with content-based regulations of speech are also present in the context of professional speech" (*id.* at 771), including "the inherent risk" that the government seeks "to suppress unpopular ideas or information." *Turner Broad. Sys.,* 512 U.S. at 641.

The First Amendment embraces not only the freedom to believe but also "the right to express those beliefs and to establish one's religious (or nonreligious) self-definition in the political, civic, and economic life of our larger community." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 62, 736-737 (2014) (Kennedy, J., concurring). The "larger community" includes a citizen's place of employment.

D. The Policy serves no legitimate pedagogical purpose.

It would be impossible to orchestrate the Policy's massive deception without imposing it on a gender-confused student's classmates. But that would infringe on the free speech rights of those students, who do not sacrifice their constitutional rights as a condition of attending public school. There is nothing "legitimate" or "pedagogical" about forcibly altering student speech about the sex of other students. Such speech compulsion cannot be salvaged by appealing to cases that allow narrowly crafted student speech restrictions. *See, e.g., Morse v. Frederick*, 551 U.S. 393, 409 (2007) (speech promoting illegal drug use); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484

U.S. 260, 273 (1988) (school-sponsored speech); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 685 (1986) (sexually explicit speech). These narrow exceptions do not warrant a demand that students set aside personal convictions and make statements they believe are false. Public schools are not "enclaves of totalitarianism" and "students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate." *Bd. of Educ., Island Trees Union Free Sch. Dist. v. Pico*, 457 U.S. 853, 877 (1982) (Blackmun, J., concurring), quoting *Tinker*, 393 U.S. at 511. Nor may students be punished "merely for expressing their personal views on the school premises." *Hazelwood*, 484 U.S. at 266.

The State may not demand compliance with its ideology or shut down further inquiry. The Constitution protects unpopular minority viewpoints, particularly in a changing social environment. *Dale,* 530 U.S. at 660; *Texas v. Johnson*, 491 U.S. 397. "Mere unorthodoxy or dissent from the prevailing mores is not to be condemned. The absence of such voices would be a symptom of grave illness in our society." *Sweezy v. New Hampshire*, 354 U.S. 234, 251 (1957). Even elementary schools may not prohibit speech merely "to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." *Tinker*, 393 U.S. at 509.

The Policy compels all public school participants to either dishonestly affirm a belief they do not hold or alter their beliefs under state compulsion. Both alternatives gut the First Amendment. Decades of precedent drive the conclusion that State cannot compel faculty, students, or parents to affirm the morality of conduct that collides with their own convictions. *Wooley*, 430 U.S. at 715 ("The First Amendment

protects the right of individuals . . . to refuse to foster . . . an idea they find morally objectionable."); *Hurley,* 515 U.S. at 575 ("[T]he choice of a speaker not to propound a particular point of view . . . is presumed to lie beyond the government's power to control.")

CONCLUSION

This Court should grant the Emergency Application and vacate the interlocutory stay order issued by the Ninth Circuit.

Respectfully submitted,

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