No. 25A810

In the Supreme Court of the United States

ELIZABETH MIRABELLI , LORI ANN WEST , JANE ROE, JANE BOE, JOHN POE, JANE POE, JOHN DOE, and JANE DOE,

***Applicants*,**

v.

ROB BONTA, in his official capacity as Attorney General of California, *et al.*,

Respondents.

ON EMERGENCY APPLICATION TO VACATE INTERLOCUTORY STAY ORDER ISSUED BY THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF *AMICI CURIAE* OF THE NATIONAL LEGAL FOUNDATION and THE PACIFIC JUSTICE INSTITUTE, in support of Applicant

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Statement of Interests[1]

Your *Amici* are non-profit organizations that have represented parents in challenging policies that keep secret from parents that the school is helping their minor children transition genders ("Parental Preclusion Policies"). They have expert knowledge in this field.

Argument

In support of the motion to vacate the stay, your *Amici* state as follows:

1. The constitutionality of Parental Preclusion Policies (called a Parental Exclusion Policy by the courts below) is currently before this Court in the school context in *Foote v. Ludlow School Committee* (No. 25-77) and *Littlejohn v. School Board of Leon County* (No. 25-259). The constitutional issues involved, as mirrored in *Mirabelli*, are of the highest importance.

2. The argument of the Ninth Circuit casting doubt on the District Court's certification of all California parents of public schoolchildren is based on the patently false proposition that parents do not have standing to complain of Parental Preclusion Policies until they have been harmed by them. It is not only common sense that militates against that conclusion. *See Parents Protecting Our Children, UA v. Eau Claire Area Sch. Dist.,* 145 S. Ct. 14, 14 (2024) (parents "are merely taking the

[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus or its counsel made a monetary contribution to its preparation or submission.

school district at its word") (Alito, J., dissenting from denial of pet. for cert.). This Court's precedent, both old and new, does, too. As this Court held in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992), those who are targeted by a policy invariably have standing to challenge it. *Accord Diamond Alternative Energy, LLC* v. *EPA*, 606 U.S. 100, 111 (2025). *See also Deanda v. Becerra*, 96 F.4th 750, 755-60 (5th Cir. 2024) (finding all parents potentially affected have standing to challenge parental preclusion policy). And paraphrasing this Court's latest standing decision, in which it held that a candidate has standing to challenge vote counting even without a showing that he might have lost the election, "[Parents] have a concrete and particularized interest in the rules that govern the [treatment of their children at school], regardless whether those rules harm their [children]. Their interest extends to the integrity of the [parent-child relationship]—and the [fundamental] process by which they [fulfill their duties to act in the best interest of those entrusted to their care]." *Bost v. Ill. State Bd. of Elections*, slip op. at 9-10 (No. 24-568, Jan. 14, 2026).

3. The Ninth Circuit also egregiously erred in dismissing the holding in *Mahmoud v. Taylor*, 606 U.S. 522 (2025), as pertaining only to curricular matters. Schools have repeatedly justified their shutting parents out of the decision on whether a child exhibits as transgender at school on the "curricular exception" to parental control. That exception recognizes that, when parents send their child to a public school with other children of various backgrounds, they impliedly delegate to the school authority to set a common curriculum, within bounds. The curricular exception was of no avail in *Mahmoud* because what was being taught by the school

system there was so outside the school's lane that the parents could not reasonably be understood to have given up their authority over that subject matter, especially when it implicated free exercise of religion. Here, the Ninth Circuit concedes that curriculum is not involved in Parental Preclusion Policies. (App'x 10A-11A.) How much more, then, does the holding in *Mahmoud* pertain that the schools usurped the authority of parents.

4. Indeed, the naming of children, which is central to this dispute, is a parental responsibility, not a school one. It is parents who give children their names and who instruct the school what name to use with their child and what sex their child is. Schools are not free to take over that responsibility at the child's request.

5. A child announcing to a school a desire to adopt a new, transgender name does not convert that renaming by the child into the act or instruction of the school. It is not something initiated by the school, and it is not a classroom course of study or part of the curriculum. As Judge Niemeyer stated regarding another school's Parental Preclusion Policy,

> While the science and medicine related to gender identification, gender dysphoria, and gender transitioning are, these days, being actively debated, it is clear that developing and implementing a gender transition plan for minor children without their parents' knowledge and consent do not simply implicate a school's curricular decisions but go much further to implicate the very personal decision making about children's health, nurture, welfare, and upbringing, which are fundamental rights of the Parents.

Parents 1 v. Montgomery Cnty. Bd. of Educ., 78 F.4th 622, 646 (4th Cir. 2023) (Niemeyer, J., dissenting) (citations omitted); *see also United States v. Skrmetti*, 145

S. Ct. 1816, 1836-37 (2025) (noting scientific debate); *id.* at 1841-45 (Thomas, J., concurring) (reciting details of scientific debate).

6. It is unreasonable, even foolish, to expect a child to make difficult and critically important decisions, especially ones that will have repercussions for the rest of the child's life, and social transitioning does not constitute any sort of an exception. It is well established that *parents* are to make such decisions for their minor children. As this Court explained in *Parham,* children lack the "maturity, experience, and capacity for judgment required for making life's difficult decisions." 442 U.S. at 602; *see also Skrmetti*, 145 S. Ct. at 1835-36 (finding reasonable a state's determination that minors lack the maturity to understand the consequences of medically transitioning); *id.* at 1846-47 (Thomas, J., concurring) (same). And in *Troxel,* this Court repeated that parents have a "fundamental right to make decisions concerning the care" of their minor children. 530 U.S. at 72 (plurality op.).

7. This Court elucidated in *Parham* that, even if the decision of the parents "is not agreeable to a child or . . . involves risks," it "does not diminish the parents' authority to decide what is best for the child." 442 U.S. at 603-04. This Court continued that a child's disagreement with the parents does not "automatically transfer the power to make that decision from the parents to some agency or officer of the state." *Id.* at 603. That is true even when the "agency or officer of the state" is a school district or its employee.

8. Properly understood, the curricular carve-out to parental control deals only with internal school choices that must be applied uniformly to allow a school to

function, such as the substance of classroom instruction (*e.g.*, what textbooks to use) and hours of operation. Transgenderism, like other medical or psychological conditions, may need to be addressed while the child is in school. But treatment of a student's medical or psychological condition is, at most, ancillary to the primary mission of public schools. Parents entrust their children to the public schools not to name them, clothe them, or diagnose and medically treat them, but to *educate* them. Within its proper sphere, the school has considerable discretion, particularly within the area of what, when, and how subjects are taught. Outside its proper sphere, schools must defer to parents for the care, nurturing, and upbringing of children.

Conclusion

The District Court was absolutely right to halt the ongoing deprivations of parental and free exercise rights in the California schools engendered by Parental Preclusion Policies, deprivations that have gone on way too long. Schools are equipped neither legally nor practically to take over the primary responsibility of making decisions about what is in the best interests of the parents' minor children. The application should be granted and the Ninth Circuit's stay lifted.

Respectfully submitted this
20th day of January 2026,

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