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.

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

BRIEF OF FLORIDA, MONTANA, AND WEST VIRGINIA AS *AMICI CURIAE* IN SUPPORT OF APPLICANTS

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INTEREST OF *AMICI CURIAE*

Amici are the States of Florida, Montana, and West Virginia ("*Amici States*"). *Amici States* seek to ensure that parents retain their fundamental right to direct the upbringing of their minor children—a right this Court has described as "essential" and "far more precious . . . than property rights." *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (first quoting *Meyer v. Nebraska*, 262 U.S. 390, 299 (1923); and then *May v. Anderson*, 345 U.S. 528, 533 (1953)).

SUMMARY OF ARGUMENT

This Court should vacate the stay order below and grant certiorari to restore a proper understanding of public schools' authority and its relationship to American families. Parental rights are fundamental and foundational. It is parents who are entrusted with ultimate responsibility for the care, formation, and well-being of their children.

Parental rights have taken on new focus as California's public schools are required to hide students' mistaken transgender status from their own parents, even over express parental objection. This unfortunate phenomenon also requires public schools support students' "social transition" at school—meaning, schools must treat a child as being of the opposite sex—while taking deliberate steps to hide it from parents. Intervention of this kind is highly destructive and can lead to permanent damage to the child's mental and

physical health. Yet the Ninth Circuit's order held that Applicants "will not be substantially injured from the issuance of a stay." App.13a. This view turns a blind eye to harm done nationwide by similar policies.[1] All of this is preventable. It only takes this Court holding that parental rights extend to this context.

That is a modest extension of precedent. As this Court has recognized, "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." *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion). Yet California circumvents these constitutional mandates, despite the Fourteenth Amendment existing "to enforce constitutionally declared rights against the States." *McDonald v. City of Chicago, Ill.*, 561 U.S. 742 833 (2010) (Thomas, J., concurring). And our Constitution places the burden on States to respect fundamental rights, not on citizens to claw back the right to parent their own children after their express demands for the same are flatly rejected. The decision below inverts this constitutional reality.

[1] *See* App.6a (describing attempted suicide and bodily warping).

ARGUMENT

Amici States offer two points below. First, lower courts need guidance in adjudicating a wave of parental-rights litigation. Second, parental rights are some of the oldest fundamental rights that this Court has recognized and play a bedrock role in American society.

I. LOWER COURTS NEED CLARITY TO RESOLVE THE INCREASING NUMBER OF PARENTAL-RIGHTS DISPUTES IN THIS CONTEXT.

Across the country, government officials are fundamentally altering the upbringing of children while keeping parents in the dark. Dizzying numbers of school districts and a growing number of states have passed similar "secret transition" laws and ordinances without any concerns for parental rights. A flood of litigation has followed.

Here, public school officials facilitated a secret "social transition" for a junior-high female. Only after her attempted suicide did her parents learn their daughter had been treated as a male for most of the prior year. Despite transferring their daughter to another public school and demanding notice of her daughter's gender presentation, the school still refused to honor the parents' request—citing the State's policies for justification. To this day, her parents remain in the dark regarding their daughter's gender at school.

This school district is one of many across the country that will happily hide and facilitate a child's social transition. Just over a year ago, "more than

1,000 districts [had] adopted such policies." *Parents Protecting Our Child., UA v. Eau Claire Area Sch. Dist.*, 145 S. Ct. 14, 14 (2024) (Alito, J., dissenting from denial of certiorari). That number has increased to more than 1,200 school districts today.[2] 12.3 million students, approximately one quarter of all public K-12 students nationwide, are subject to these policies.[3]

Newly enacted laws and policies at the state level have created increasing tension with parents' rights. In 2023, the New York State Education Department promulgated guidance to public school teachers on how to conceal a social transition from a child's parents.[4] "The key takeaway: if your child decides that he or she wants to socially transition to the opposite gender, it is

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[2] *See List of School District Transgender – Gender Nonconforming Student* Policies, Defending Educ. (Apr. 21, 2025), https://tinyurl.com/7rtmmv7r (last accessed Jan. 14, 2026).

[3] *See id.*; *Public School Enrollment*, Nat'l Ctr. for Educ. Stat., (last accessed Jan. 14, 2026), https://tinyurl.com/5d2vvwcs (estimating public K-12 public school enrollment at 48.2 million students in 2025).

[4] *See* N.Y. State Dep't of Educ., *Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices* 16–17 (2023), https://tinyurl.com/3685jcjd.

now a 'best practice' for the school to lie to you about it."[5] New York follows New Jersey, which has had near-identical policies on the books since 2018.[6]

In 2024, California took a step further by enacting protections for all school officials who refuse to disclose any information concerning a child's gender expression to any other person. *See* Cal. Educ. Code § 220.3. California also provides robust anti-retaliation protections for school officials that feel the need to shape a child's sexual identity away from parental supervision. *See id*. § 220.1. And it further bars school districts from requiring parental disclosures concerning efforts to socially transition children. *See id*. § 220.5(a).[7]

These radical policies have revealed a blind spot in the Court's jurisprudence. As the district court below lamented, "[t]here are no controlling decisions" in this context. *Mirabelli v. Olson*, 761 F. Supp. 3d 1317, 1332 (S.D. Cal. 2025). This case presents an opportunity to resolve that confusion.

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[5] Max Eden, *New York State's Directive to Schools: Lie to Parents*, City J. (June 16, 2023), https://tinyurl.com/mr44mdnd.

[6] *See* Dana DiFilippo, *State, School District Defend NJ Guidance on Transgender Students from Court Challenge*, N.J. Monitor (Sept. 5, 2025, at 6:35 AM), https://tinyurl.com/bdezkcdt; *see also* N.J. Dep't of Educ., *Transgender Student Guidance for School Districts* 3 (2018), https://tinyurl.com/mr47m2hm.

[7] *See also* Diana Lambert & Monica Velez, *Newsom Signs Bill to End Parental Notification Policies at Schools; Opponents Say Fight is Not Over*, EdSource (July 17, 2024), https://tinyurl.com/4fcavsrb.

II. PARENTAL RIGHTS ARE AMONG THE OLDEST AND MOST ESTABLISHED RIGHTS IN OUR LEGAL TRADITION.

Courts have long acknowledged the importance of empowering parents to manage their child's care. Such rights are "perhaps the oldest of the fundamental liberty interests recognized." *Troxel*, 530 U.S. at 65 (plurality opinion). Because children are unable "to make sound judgments concerning many decisions," the Court has understood our Constitution to incorporate "broad parental authority over minor children." *Parham v. J.R.*, 442 U.S. 584, 602–03 (1979). Accordingly, the Court has recognized a parent's right to direct their child's education, *see Meyer v. Nebraska*, 262 U.S. at 400; *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534–35 (1925) (religious upbringing); *see Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972) (and their own relationship); *see Stanley*, 405 U.S. at 651.

This Court has also heralded a parent's right "to make decisions concerning the care, custody, and control of their children." *Troxel*, 530 U.S. at 66 (plurality); *see Mahmoud v. Taylor*, 145 S. Ct. 2332, 2358 (2025) ("We reject 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."). As relevant here, that right "include[s] their need for medical care or treatment." *Parham*, 442 U.S. at 603. Whereas a "child may balk at hospitalization or complain about a parental refusal to provide cosmetic surgery," a parent typi-

cally will know better and should have the "authority to decide what is best for the child." *Id*. at 604. That basic right is only more pressing when the ideology pushed by the schools ignores basic reality about the two sexes and further confuses innocent and impressionable children.

History and tradition undergird those precedents. As early commentators recognized, children do not understand "how to govern themselves." 2 Samuel Pufendorf, *The Whole Duty of Man According to the Law of Nature 202* (1735). Their "wants and weaknesses" thus "render it necessary that some person maintains them" until adulthood. 2 James Kent, *Commentaries on American Law* 190 (1873); 1 William Blackstone, *Commentaries on the Laws of England* 447 (1753); Pufendorf, *Whole Duty of Man* at 202; *see also Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 828–29 (2011) (Thomas, J., dissenting). Parents have traditionally been entrusted as "the most fit and proper person[s]" for that task. Kent, *American Law* at 190. And so, the common law equipped parents with equally robust parental rights. "[H]ousehold heads" were empowered to "speak for their dependents in dealings with the larger world," Toby L. Ditz, *Ownership and Obligation: Inheritance and Patriarchal Households in Connecticut, 1750-1820*, 47 Wm. & Mary Q. 235, 236 (1990), and parents enjoyed the "right . . . to govern their children's growth," *Brown*, 564 U.S. at 828 (Thomas, J., dissenting).

Medical and social-science literature only confirms the wisdom of our tradition. Longstanding research shows that children are unable to "deliberate maturely" towards their own best interests. Ferdinand Schoeman, *Parental Discretion and Children's Rights: Background and Implications for Medical-Decision-Making*, 10 J. Med. & Phil. 45, 46 (1985). As any parent knows, children often make poor decisions because they lack life experience. Medical science also tells us that children make these poor decisions because a child's prefrontal cortex, the portion of the brain that deals with reasoning and long-term consequences, is underdeveloped.[8]

Those deficiencies also make parental involvement critical in the context of gender dysphoria, a condition characterized as "distress that may accompany the incongruence between one's experienced or expressed gender and one's assigned gender." *Keohane v. Fla. Dep't of Corr. Sec'y*, 952 F.3d 1257, 1262 (11th Cir. 2020). One nefarious treatment for that ailment—the treatment school officials secretly provided the parent-plaintiffs' child—is social transitioning: the practice of treating a person in line with their imagined proper gender. *See id*. at 1263. But recent reports reveal that social

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[8] *See* Adele Diamond, *Normal Development of Prefrontal Cortex from Birth to Young Adulthood: Cognitive Functions, Anatomy, and Biochemistry, in Principles of Frontal Lobe Function* 466 (D. Stuss & R. Knight eds., 2002) (noting that the pre-frontal cortex takes "over two decades to reach full maturity"), https://tinyurl.com/4fb7ss7s.

transitioning "can concretize gender dysphoria" and may not "improve[] mental health status in the short term."[9] Worse still, "de-transition and/or regret could be more frequent than previously reported" for individuals suffering from adolescent-onset gender dysphoria, and continuing down these types of treatment paths may lead to "irreversible effects."[10] *Id.* Indeed, social transitions are serious psychosocial interventions that have shown long-term negative consequences on mental health.[11]

The stay order below discounts this authority. It dismisses parental rights at issue here by citing general concerns over "expand[ing] the concept

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[9] Sarah C. J. Jorgensen, *Transition Regret and Detransition: Meanings and Uncertainties*, 52 Arch Sex Behav., 2173, 2173–84 (2023), https://doi.org/10.1007/s10508-023-02626-2.

[10] Officials encouraging children to transition—whether socially or medically—heavily relied on position statements published by medical associations like the World Professional Association for Transgender Health ("WPATH"). *See* Chloe K. Jones, *The Façade of Medical Consensus: How Medical Associations Prioritize Politics Over Science*, 2025 Harv. J.L. & Pub. Pol'y Per Curiam 4–6 (2025). There is, however, compelling evidence to suggest these medical associations "often [choose] their positions . . . to advance policy objectives rather than scientific principles." *Id.* at 6. Indeed, "[r]ecent revelations suggest that WPATH, long considered a standard bearer in treating pediatric gender dysphoria . . . bases its guidance on insufficient evidence and allows politics to influence its medical conclusions." *United States v. Skrmetti*, 145 S. Ct. 1816, 1847 (2025) (Thomas, J., concurring).

[11] *See* Hilary Cass, *Independent review of gender identity services for children and young people* 158–64 (2024), https://tinyurl.com/cytx5spn. "Clinical involvement in the decision-making process should include advising on the risks and benefits of social transition as a planned intervention, referencing best available evidence. This is *not* a role that can be taken by staff without appropriate clinical training." *Id.* at 164 (emphasis added).

of substantive due process." App.9a–10a (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997)). That general statement of law ignores the wealth of history and precedent affirming parental rights over their children in analogous contexts. The order therefore "presents a question of great and growing . . . importance" that the Court should answer. *Parents Protecting*, 145 S. Ct. at 14 (Alito, J., dissenting from denial of certiorari).

CONCLUSION

The Court should vacate the stay order below and grant certiorari on the merits.

Respectfully submitted,

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