IN THE
Supreme Court of the United States

No. 25A810

ELIZABETH MIRABELLI, *et al.*,
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 *AMICUS CURIAE* OF AMERICA'S FUTURE, CITIZENS UNITED, PUBLIC ADVOCATE OF THE U.S., PUBLIC ADVOCATE FDN., U.S. CONSTITUTIONAL RIGHTS LEGAL DEFENSE FUND, ONE NATION UNDER GOD FOUNDATION, FITZGERALD GRIFFIN FOUNDATION, RESTORING LIBERTY ACTION COMMITTEE, AND CONSERVATIVE LEGAL DEFENSE AND EDUCATION FUND IN SUPPORT OF APPLICANTS

MICHAEL BOOS
Washington, D.C. 20005

JOSEPH W. MILLER
Fairbanks, AK 99708

JAMES N. CLYMER
Lancaster, PA 17603

J. MARK BREWER
Johnson City, TX 78636

RICK BOYER
Lynchburg, VA 78636

WILLIAM J. OLSON*
JEREMIAH L. MORGAN
WILLIAM J. OLSON, P.C.
370 Maple Avenue West, Suite 4
Vienna, VA 22180-5615
(703) 356-5070
Fax (703) 356-5085
wjo@mindspring.com
*Counsel of Record

Attorneys for *Amici Curiae*
January 21, 2026

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INTEREST OF THE *AMICI CURIAE*[1]

Amici curiae America's Future, Citizens United, Public Advocate of the United States, Public Advocate Foundation, U.S. Constitutional Rights Legal Defense Fund, One Nation Under God Foundation, Fitzgerald Griffin Foundation, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income tax under either section 501(c)(3) or 501(c)(4) of the Internal Revenue Code. Restoring Liberty Action Committee is an educational organization. These entities, *inter alia*, participate in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law. Some of these *amici* have filed *amicus* briefs in this Court in cases addressing similar issues. *See Parents Protecting v. Eau Claire Area School District, Wisconsin*, No. 23-1280, Brief *Amici Curiae* of America's Future, *et al*. (July 8, 2024); *Mahmoud v. Taylor*, No. 24-297, Brief *Amici Curiae* of America's Future, *et al*. (Oct. 16, 2024) and Brief *Amici Curiae* of America's Future, *et al.* (Mar. 10, 2025).

STATEMENT OF THE CASE

In January 2016, the California Department of Education ("CDE") promulgated a Legal Advisory together with an accompanying list of FAQs, instructing local school districts as to how California's anti-discrimination statutes

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[1] It is hereby certified that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

should be applied to schoolchildren identifying as "transgender." The FAQs page instructed that "schools *must* consult with a transgender student to determine who can or will be informed of the student's transgender status, if anyone, including the student's family." Further, that "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" except in the "very rare" situations where "there is a specific and compelling 'need to know.'"[2]

Teachers "were presented with a list of seven students transitioning genders, six of whose parents were unaware.... Their school required them to use one set of names and pronouns in class and another when calling parents." Application for Stay ("App.") at 2 (footnote omitted). California's actions were challenged by two teachers, Elizabeth Mirabelli and Lori Ann West, from the Escondido Union School District ("EUSD"). *Mirabelli v. Olson*, 691 F. Supp. 3d 1197 (S.D. Cal. 2023) ("*Mirabelli I*"). Believing "this constituted systematic deception [and] forced [them] to lie to parents," the teachers challenged the guidelines, raising both free speech and free exercise challenges. App. at 2.

The defendants are the president and members of the EUSD Board of Education, the president and members of the California State Board of Education,

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[2] "School Success and Opportunity Act (Assembly Bill 1266) Frequently Asked Questions," *California Department of Education* (last reviewed: Feb. 29, 2024).

the state superintendent of public instruction, and the California Attorney General. *Mirabelli v. Olson*, 761 F. Supp. 3d 1317, 1321 (S.D. Cal. 2025) ("*Mirabelli II*")

The district court granted a preliminary injunction against the guidelines on Free Exercise grounds. The court found that "EUSD has not demonstrated a narrowly tailored policy, tailored so as not to unnecessarily impinge on the plaintiffs' free exercise rights." Thus, the plaintiffs were likely to succeed on the merits. *Mirabelli I* at 1218. The court also found that the plaintiffs met the other factors for injunctive relief. *Id.* at 1219.

As the case progressed, other teachers and two sets of parents joined the suit as co-plaintiffs. *Mirabelli II* at 1321 n.1. After the additional plaintiffs joined, the defendants moved to dismiss under Rule 12(b)(6). With regard to the parents, the district court ruled that "the long-recognized federal constitutional rights of parents must preponderate and a claim that school policies trench on parents' rights states a plausible claim for relief." *Id.* at 1332-33. Regarding the teachers, the court ruled that "the non-disclosure policies substantially burden their First Amendment right to the free exercise of religion." *Id.* at 1333.

In October 2025, the district court permitted certification of a class consisting of all "employees who object to complying with Parental Exclusion Policies" and all "legal guardians who object to having Parental Exclusion Policies applied against them and have children who are attending California public schools." *Mirabelli v. Olson*, 350 F.R.D. 138, 143 (S.D. Cal. 2025) ("*Mirabelli III*").

Later that month, the district court granted summary judgment and entered a permanent injunction in favor of plaintiffs. The court ruled that "Such state education policies [as the Parent Exclusion Policy] substantially interfere with the First Amendment rights of parents to direct the religious upbringing of their children." *Mirabelli v. Olson*, 2025 U.S. Dist. LEXIS 264381, at *60 (S.D. Cal. 2025) ("*Mirabelli IV*").

The court further found that "religious teachers face an unlawful choice between sacrificing their faith and sacrificing their teaching position.... '[W]hen a regulated party cannot comply with both federal and state directives, the Supremacy Clause tells us the state law must yield.'" *Id.* at *78-79. Accordingly, the district court granted summary judgement to all plaintiffs.

The defendants then requested a stay pending appeal, which the court denied. *Mirabelli v. Olson*, 2025 U.S. Dist. LEXIS 269580 (S.D. Cal. 2025).

Days later, the Ninth Circuit granted an administrative stay. *Mirabelli v. Bonta*, 2025 U.S. App. LEXIS 33773 (9th Cir. 2025). The Ninth Circuit then converted the administrative stay into a stay pending appeal, ruling that the district court erred in finding in favor of the parents' substantive due process rights. *Mirabelli v. Bonta*, 2026 U.S. App. LEXIS 403 (9th Cir. 2026).

SUMMARY OF ARGUMENT

Only seven months ago, in *Mahmoud v Taylor*, 606 U.S. 522 (2025), this Court affirmed the authority of parents to decide whether their children would be

subjected to a LGBTQ curriculum. It was confirmed that parents are entitled to know what their children would be taught and given the right to "opt-out." Here, the Ninth Circuit has sanctioned a decision by the California State school system that strips parents of the right to know that their children are questioning their sexual identity, and authorizes the school system to deceive the parents of such children. As discussed below, the Ninth Circuit has entered an order that could be viewed as open defiance of *Mahmoud*; *Pierce v. Society of Sisters*, 268 U. S. 510 (1922); *Wisconsin v. Yoder*, 406 U.S. 205 (1972), as well as other decisions of this Court. California is in open violation of not just the Free Exercise rights of parents and their children, but violates the Establishment Clause as it actually establishes transgenderism, a doctrine with ancient pagan religious roots, requiring this Court's intervention.

ARGUMENT

I. THE PARENTAL EXCLUSION POLICY IS UNCONSTITUTIONAL UNDER *YODER* AND *MAHMOUD*.

California's attempt to seize control of the most intimate moral decisions of children from their parents, and not only transfer these decisions to the school but also conceal them from the parents, is an egregious assault on Free Exercise. As Judge Benitez explained in *Mirabelli IV*:

> Long before Horace Mann advocated in the 1840's for a system of common schools and compulsory education, parents have carried out their rights and responsibility to direct the general and medical care and religious upbringing of their child. "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." *Wisconsin v. Yoder*, 406 U.S. 205, 232 ... (1972). It is a right and a responsibility that parents still hold. [*Mirabelli IV* at *5.]

Last year in *Mahmoud*, this Court reaffirmed its view in *Pierce v. Society of Sisters*, 268 U.S. 510 (1922), where this Court had enunciated the historic "liberty of parents and guardians to direct the upbringing and education of children under their control." *Id*. at 534-35.

> "The fundamental theory of liberty upon which all governments in this Union repose," the Court explained, "excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only." ... The Court rejected the premise that the child was merely a "creature of the State"; rather, "those who nurture him and direct his destiny have the **right**, coupled with the high **duty**, to recognize and prepare him for additional obligations." [*Mahmoud* at 586 (quoting *Pierce* at 535) (Thomas, J., concurring) (emphasis added)].

California's Parental Exclusion Policy constitutes a direct frontal assault by the state on that fundamental liberty of parents. And the Ninth Circuit's decision is a rejection of this Court's warning in *Mahmoud*. Perhaps when this Court recently declined certiorari in *Parents Protecting Our Children v. Eau Claire Area Sch. Dist.*, 145 S. Ct. 14 (2024), the Ninth Circuit felt emboldened to restrict *Mahmoud* to its facts, just as the Fourth Circuit in *Mahmoud* tried to do to this Court's *Yoder* decision. This Court should go beyond vacating the stay, and should instead grant certiorari before judgment, vacate, and remand with directions to strike down California's Parental Exclusion Policy.

A. Principles Drawn from *Mahmoud v. Taylor*.

Last year, this Court recognized the Free Exercise rights of parents against contrary transgender teachings in schools:

> The practice of educating one's children in one's religious beliefs, like all religious acts and practices, receives a generous measure of protection from our Constitution.... And this is not merely a right to teach religion in the confines of one's own home. Rather, it extends to the choices that parents wish to make for their children outside the home.... [T]he right of parents "to direct the religious upbringing of their" children would be an empty promise if it did not follow those children into the public school classroom. [*Mahmoud* at 547.]

Mahmoud broke no new ground, as this Court noted that:

> "[w]e have long recognized the rights of parents to direct 'the religious upbringing' of their children." *Espinoza v. Mont. Dept. of Revenue*, 591 U.S. 464, 486 ... (2020) ... And we have held that those rights are violated by government policies that "substantially interfer[e] with the religious development" of children. *Id.* at 218.... Such interference, we have observed, "carries with it precisely the kind of objective danger to the free exercise of religion that **the First Amendment was designed to prevent**." [*Mahmoud* at 546 (emphasis added).]

The Ninth Circuit paid no attention to this Court's warning against an "alarmingly narrow rule" that sees "the Free Exercise Clause's guarantee as nothing more than protection against compulsion or coercion to renounce or abandon one's religion." *Id.* at 558.

In the district court, "[t]he State Defendants argue[d] that their policies do not amount to government coercive ... or restraining conduct, so they do not offend the Constitution." *Mirabelli IV* at *25. The Circuit Court seemed to agree, despite this Court having instructed in *Mahmoud*:

> [w]e 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**. *Yoder* and *Barnette*[3] embody a very different view of religious liberty, one that comports with the fundamental values of the American people. [*Mahmoud* at 559 (emphasis added).]

By denying parents information as to what the child does while in the care of the state, the Ninth Circuit removed the power of choice from parents. The state arrogantly assumes that it cares more about children than their parents do, but then leaves the consequences for the parents to live with, as teachers and counselors come and go while parents remain. As Applicants point out, "the schools' facilitation of a secret gender transition for young children, which may have permanent and life-altering consequences, is orders of magnitude worse than the burdens imposed in *Mahmoud* and *Yoder*." App. at 19.

As this Court made clear: "[a] classroom environment that is welcoming to all students is something to be commended, but such an environment cannot be achieved through hostility toward the religious beliefs of students and their parents." *Mahmoud* at 568.

B. Principles Drawn from *Wisconsin v. Yoder*.

Applicants have amply demonstrated that the challenged policy violates the Free Exercise Clause, based on the application here of the following principles drawn from *Yoder*:

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[3] *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).

- Parents have special authority to control the education of their children, even when attending government schools, on matters which violate religious beliefs and morals, and particularly with respect to impressionable and vulnerable young children (*Yoder* at 211-14);
- Compulsory education laws, combined with school support of "gender transitions" without parents' knowledge, subject young children to education at odds with the family's religious views (*id.* at 211); and
- California's actions substantially interfere with the rights of parents to their free exercise of religion (*id.* at 218-19).

Yoder clearly established that the religious upbringing of children is at the core of the freedoms protected by the Free Exercise Clause. The *Yoder* parents shared the concerns of Applicants here:

> object[ing] to the high school, and higher education generally, because the **values they teach** are in **marked variance** with Amish values and the Amish way of life; they view secondary school education as an impermissible exposure of their children to a "**worldly" influence in conflict with their beliefs**. [*Yoder* at 210-11 (emphasis added).]

In *Yoder*, it was not a coercive requirement to change beliefs that offended the Free Exercise Clause, but a requirement to expose children to "worldly" religious values "at marked variance" with those of the parents. And, as here, the *Yoder* Court understood that forced high school attendance "places Amish children in an **environment hostile** to Amish beliefs." *Id.* at 211 (emphasis added).

II. THE FREE EXERCISE CLAUSE PROVIDES MUCH BROADER PROTECTIONS THAN THE NINTH CIRCUIT UNDERSTANDS.

Although some seem to believe that, so long as a person can pray and worship in his own way, the Free Exercise Clause is satisfied, the free exercise of religion is actually a jurisdictional barrier on the authority of government to intrude on an area of life where duties are owed only to God — a barrier here breached by the state.

The First Amendment provides that "Congress shall make no law ... prohibiting the free exercise [of religion]." The Free Exercise Clause embodies James Madison's revolutionary ideal that government has **no jurisdiction** or authority whatsoever to indoctrinate Americans with respect to **matters of conscience**, as they are **duties owed only to God**, such as their view of transgender issues.

In *Reynolds v. United States*, 98 U.S. 145 (1879), this Court also viewed the Virginia Declaration of Rights as the ideological precursor to the Free Exercise Clause. *Id.* at 162-63. Noting that "'religion' is not defined in the Constitution," this Court looked to the definition in the Declaration of Rights. *See id.* Section 16 of the Declaration of Rights declared that **religion** is:

> **the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence**. [Constitution of Virginia, Section 16, reprinted in ABA Foundation, Sources of Our Liberties (1978) at 312 (emphasis added).]

The *Reynolds* Court recognized that "religion" was exactly as Madison defined it, a subject area that "was not within the cognizance of civil government." *Reynolds* at 163. The Court explained that this **jurisdictional principle** was detailed in James Madison's Memorial and Remonstrance, submitted to the Virginia Assembly in 1785, some nine years after the Declaration of Rights, in support of Thomas Jefferson's Bill for Establishing Religious Freedom. Quoting from the Declaration, Madison wrote these words:

> [W]e hold it for a fundamental and undeniable truth, "that **Religion** or **the duty which we owe to our Creator and the manner of discharging it**, can be directed only by **reason and conviction**, not by **force or violence**." [citing the Virginia Declaration of Rights.] The Religion then of every man must be left to the conviction and **conscience** of every man; and it is the right of every man to exercise it as these may dictate.... We maintain therefore that in matters of Religion, **no man's right is abridged by** the institution of **Civil Society** and that **Religion is wholly exempt from its cognizance**.[4]

Four months later, the General Assembly passed Jefferson's "Act for Establishing Religious Freedom." In the preamble, as the *Reynolds* Court noted, this same jurisdictional principle was reaffirmed. *See Reynolds* at 163. The preamble read:

> Whereas Almighty God hath created the mind free; that **all attempts to influence it by temporal punishments or burthens, or by civil incapacitations** ... are a departure from the plan of the Holy author of our religion, who being Lord both of body and mind, yet chose

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[4] J. Madison, "Memorial and Remonstrance" to the Honorable General Assembly of the Commonwealth of Virginia (June 20, 1785), reprinted in 5 The Founders' Constitution at 82 (item # 43) (P. Kurland & R. Lerner, eds., U. of Chi.: 1987) (emphasis added) (hereinafter The Founders' Constitution).

> not to propagate it by coercions on either, as was in his Almighty power to do....[5]

Accordingly, the *Reynolds* Court incorporated Madison's definition of "religion" as the best expression of the intent of the Framers of the Free Exercise Clause.

While the Ninth Circuit may view its policy on so-called transgender students as being purely secular, for the reasons discussed in Section III, *infra*, transgenderism is a set of teachings on moral topics falling squarely in the area of conscience and religious belief. The Parental Exclusion Policy prefers the state's favored religious beliefs above those not only of parents and children who follow the traditional religions of Christianity and Islam, for example, but also of many who follow no organized religion, including agnostics and atheists. The Free Exercise of Religion **does not protect religious people**; rather, it protects a sphere of our lives — termed "**religion**" — from any governmental intrusion. That area of "religion" describes all matters that are matters of conscience — such as our view of moral issues — which are areas where no government may proselytize or coerce.

As this Court has recognized, even those who do not accept the traditional idea of a "God" may nonetheless have beliefs that are religious in nature. "Among **religions** in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, **Secular**

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[5] Act for Establishing Religious Freedom (Oct. 31, 1785), reprinted in 5 The Founders' Constitution at 84 (item #44) (emphasis added).

Humanism and others." *Torcaso v. Watkins*, 367 U.S. 488, 495 n.11 (1961) (emphasis added).

> If an individual deeply and sincerely holds beliefs that are purely ethical or moral in source and content but that nevertheless impose upon him a duty of conscience..., those beliefs certainly occupy in the life of that individual "a place parallel to that filled by ... God" in traditionally religious persons.... [H]is beliefs function as a religion in his life.... [*Welsh v. United States,* 398 U.S. 333, 340 (1970).]

III. CALIFORNIA'S PARENTAL EXCLUSION POLICY ALSO VIOLATES THE ESTABLISHMENT CLAUSE.

Although the parties and the courts below focused on the Free Exercise Clause, this case requires the Court's intervention because California's policy also violates 80 years of this Court's Establishment Clause jurisprudence. If this Court's Establishment Clause jurisprudence prevents teaching Christian doctrine **against** transgender doctrine, then it most certainly also prevents schools from inculcating transgender doctrine, particularly behind the backs of parents.

A. Transgenderism Is at Its Core Religious.

It is a core principle of Christianity that mankind was created in the image of God, and was created in two binary sexes which are not interchangeable, for the specific purpose of reproducing and continuing the species.

- *Genesis* 1:27-28: "So God created man in his own image, in the image of God created he him; male and female created he them. And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth, and subdue it."

Jesus Himself answered any suggestion that God's design might somehow be mutable by human wish:

- *Matthew* 19:4: "And he answered and said unto them, Have ye not read, that he which made them at the beginning made them male and female."
- *Mark* 10:6: "But from the beginning of creation, 'God made them male and female.'"

The Bible's view of transgenderism is clear. It is a denial of God's created order and purposes.

Transgenderism also assaults the beliefs of Islam, as the *Mahmoud* plaintiffs noted, by "encourag[ing] young children to question their sexuality and gender ... and to dismiss parental and religious guidance on these issues." *Mahmoud* at 540.

But transgenderism itself also has ancient religious roots. Many of its proponents have embraced what was a foundational principle of early pagan religions. One of the "gods" of the pagan world was Ishtar, the "goddess of war and sexual love." *See* "Ishtar," *Britannica.* "An ancient Mesopotamian tablet records ... [Ishtar saying] 'When I sit in the alehouse, I am a woman, and I am an exuberant young man.'" J. Cahn, The Return of the Gods (2022) at 118. The goddess Ishtar had summertime festivals and parades. "The parades of the goddess featured men dressed as women, women dressed as men, each dressed as both, male priests parading as women, and cultic women acting as men. They were public pageants and spectacles of the transgendered, the cross-dressed, the homosexual, the intersexual, the cross-gendered." *Id*. at 181.

> The worship of Inanna/Ishtar played a significant role in ancient Mesopotamian society. Temples dedicated to her were centers of cultural and religious life, where her followers sought her favor and guidance. In these sacred spaces, individuals from all walks of life

> came together, transcending social hierarchies and gender norms. It was within the realm of Inanna/Ishtar's worship that diverse expressions of gender and sexuality found acceptance and celebration. The presence of ... individuals who existed outside the traditional male-female binary, within the temples of Inanna/Ishtar is a testament to the inclusivity of her worship and the recognition of gender diversity in ancient Mesopotamia.[6]

Transgenderism also has roots in the ancient religious belief of Gnosticism. As Princeton Professor Robert George notes, ancient Gnosticism:

> was an understanding of the human being ... that sharply divides the material or bodily, on the one hand, and the spiritual or mental or affective, on the other. For Gnostics, it was the immaterial, the mental, the affective that ultimately matters. Applied to the human person, this means that the material or bodily is inferior — if not a prison to escape, certainly a mere instrument to be manipulated to serve the goals of the "person," understood as the spirit or mind or psyche.[7]

Following in this Gnostic tradition, transgenderism believes that "no dimension of our personal identity is truly determined biologically. If you feel as though you are a woman trapped in a man's body, then you are just that: a ('transgender') woman." *Id.*

> [F]or the neo-Gnostic, the body serves at the pleasure of the conscious self, to which it is subject, and so mutilations and other procedures pose no inherent moral problem.... At the same time, the neo-Gnostic insists that surgical and even purely cosmetic changes aren't necessary for a male to be a woman (or a female a man). The body and its appearance do not matter, except instrumentally. Since your body is not the real you, your (biological) sex and even your appearance need not line up with your "gender identity." [*Id.*]

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[6] G. Sanchez, "Unearthing Mesopotamia's Forgotten Past: The Vibrant Intersection of Religion and LGBTI+ Diversity," *Pride.*

[7] R. George, "Gnostic Liberalism," *First Things* (Dec. 2016).

Christianity rejects both ancient Gnosticism and its modern descendant transgenderism. "Christianity's rejection of body-self dualism answered the challenge to orthodoxy posed by what was known as 'Gnosticism.'" *Id.* To transgenderism, Gnosticism's modern iteration, Christianity counters that "[i]f we are body-mind (or body-soul) composites and not minds (or souls) inhabiting material bodies, then respect for the person demands respect for the body, which rules out mutilation and other direct attacks on human health." *Id.*

Numerous transgender advocates have put their beliefs into Gnostic terms.[8] Justin Sabia-Tanis writes, "I have heard a number of trans folks state that, for them, transition is primarily a spiritual process.… For some of us ... transitioning is a time of deepening spirituality and a journey to come home to ourselves in body, mind, and spirit."[9] Similarly, "Patrick Califia, an ordained minister in the Fellowship of the Spiral Path, notes: 'My patron goddesses kept telling me that it didn't matter, whether I lived as a man or a woman, that they didn't care.… And if I wanted to try living as a man, they thought that was trippy, and they'd go along for the ride.… I feel that getting more honest with myself and taking this risk has made me stronger spiritually.'" *Id.* at 131. Perhaps unavoidably then, the current political debate over transgenderism has taken on distinctly religious overtones.

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[8] T. Romano, "Laverne Cox: 'I Absolutely Consider Myself a Feminist,'" *Dame Magazine* (June 1, 2014).

[9] J. Tanis, Transgender: Theology, Ministry and Communities of Faith at 130 (2003).

When Florida recently passed a law prohibiting genital alteration surgeries on minors, President Biden called it "sinful."[10]

As numerous writers from both the political left and right have noted, those who question the transgender orthodoxy are hounded and attacked with a vigor historically seen in religious attacks against heresy. Author Kathleen Hayes notes:

> [If] trans children's parents ... do not immediately "affirm" their child's form of self-identification, activists will urge not only the child, but also professionals and institutions, to regard the parents as reactionary and toxic. **Many schools obligingly don't tell parents that their child has "come out" as transgender and has a new name**.... If the parent fails to comply, the child is encouraged to declare the parent a transphobe and cut relations.... **[T]he prevailing attitude of treating even mildly cautious parents as the enemy suggests a truly cultish milieu**.[11]

B. This Court Has Long Banned Proselytizing in Government Schools.

This case itself highlights the necessarily religious implications of the transgender debate. The Applicant parents seek to fulfill the Biblical mandate to parents to "bring [their children] up in the nurture and admonition of the Lord." *Ephesians* 6:4. They believe, and wish to teach to their children, that "God created man in his own image, in the image of God created he him; male and female created he them." *Genesis* 1:27. The Applicant teachers seek to obey the Biblical command,

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[10] I. Haworth, "How trans activism became the new religion of the left," *New York Post* (Mar. 18, 2023).

[11] K. Hayes, "Gender Ideology's True Believers," *Quillette* (May 19, 2022) (emphasis added).

"[w]herefore putting away lying, speak every man truth with his neighbour: for we are members one of another." *Ephesians* 4:25.

Meanwhile, California schools have a very different belief — and state law imposes this belief on the Applicant parents and teachers. The religious conflict is glaring.

Under this Court's jurisprudence, when compulsory public schools affirm some religious beliefs while disparaging others, an Establishment Clause violation occurs. Merely putting the imprimatur of the state in favor of one religious belief over another is sufficient. Consider this line of cases:

- In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), this Court banned government schools compelling children to salute the flag and pledge allegiance regardless of the particular religious views of the child or the sincerity with which they are held.
- In *McCollum v. Board of Education*, 333 U.S. 203 (1948), the Court stated that compulsory, tax-supported public schools could not enable sectarian groups to give religious instruction to public school students in public school buildings.
- In *Engel v. Vitale,* 370 U.S. 421 (1962), the Court ruled that students in government school could not be required to recite an official state prayer, **even if students may remain silent or be excused**, and the prayer was denominationally neutral.
- In *Abington School District v. Schempp*, 374 U.S. 203 (1963), the Court ruled that school boards many not require passages from the Bible be read or the Lord's Prayer be recited, **even if students may be excused from attending or participating**.
- In *Stone v. Graham*, 449 U.S. 39 (1980), the Court prohibited posting a copy of the Ten Commandments purchased with private contributions on the wall of school classrooms.
- In *Wallace v. Jaffree,* 472 U.S. 38 (1985), the Court struck down a state law authorizing a one-minute period of silence in public schools for meditation and voluntary prayer.

- In *Edwards v. Aguillard*, 482 U.S. 578 (1987), this Court struck down a Louisiana law requiring public schools that taught the theory of evolution to also teach the theory of creation.
- In *Lee v. Weisman*, 505 U.S. 577 (1992), including clergy to offer prayers at a public school graduation ceremony was found to violate the Establishment Clause.
- In *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000), this Court struck down a policy permitting student-initiated, student-led prayer at graduations and football games, although the prayers were required to be "nonsectarian" and "non-proselytizing."

In the Establishment Clause context, this Court has been crystal clear that no coercion need be shown whatsoever. Even when children could be excused, proselytization of all sorts was banned by this line of cases. Students who sought protection from prayer, Bible reading, the Ten Commandments, and even a moment of silence, or even hearing a prayer were protected.

Indeed, in *Everson v. Bd. of Education*, 330 U.S. 1 (1947), this Court made clear that the First Amendment "**requires the state to be a neutral** in its relations with groups of religious believers and non-believers." *Id.* at 18 (emphasis added). This Court nonetheless famously declared that:

> The "establishment of religion" clause of the First Amendment means at least this.... Government can[not] ... pass laws which aid one religion, aid all religions, or **prefer one religion over another**.... No tax in any amount, large or small, can be levied to support any religious activities ... whatever form they may adopt to teach or practice religion.... [*Id.* at 15-16 (emphasis added).]

Teaching children about sexual practices deemed sinful in multiple religious traditions is not purely secular. California's law directly discriminates against the

religious beliefs of the Applicants, instead favoring the state's preferred beliefs. Thus, it is barred by this Court's Establishment Clause jurisprudence.

C. Respondents' Transgender Agenda Is Not Neutral toward Religion.

Respondents' position on these thorny religious questions is anything but neutral. California is not just supportive of one side in a religious-cultural war; it is also belligerent. As Applicants note, the Attorney General's position is little short of militant. On his "LGBTQ Discrimination Rights" page, he advises school children:

> Your school, whether public or private, doesn't have the right to "out" you as LGBTQ+ to anyone without your permission, including your parents.... [E]ven if you are "out" about your sexual orientation or gender identity at school, if you're not "out" to your parents at home, and you can reasonably expect that they're not going to find out, then school staff can't tell your family that you are LGBTQ+ without your permission.[12]

He goes on to add, "[y]ou have the right to refuse and prosecute conversion therapy providers in California. Conversion therapy for LGBTQ+ youth is illegal in California." *Id.*

As Applicants note, the California Department of Education "Frequently Asked Questions" page likewise promises students:

> A transgender or gender nonconforming student may not express their gender identity openly in all contexts, including at home.... The right of transgender students to keep their transgender status private is grounded in California's antidiscrimination laws as well as federal and

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[12] "LGBTQ+ Discrimination Rights," California Office of the Attorney General, 10-Plt.Exs-2383-89, 2474, 2481-85 (https://bit.ly/49ayGrt).

> state laws. Disclosing that a student is transgender without the student's permission may violate California's antidiscrimination law ... and may violate the student's right to privacy. [Appendix to Application at 104a.]

The CDE's page offers several "other resources" links, each of which takes sides firmly against the religious beliefs of Applicants. One such "resource" is a website called "Beyond the Binary: A Tool Kit **for Gender Identity Activism** in Schools" (emphasis added). That "tool kit" approvingly highlights a personal testimonial from "Caleb Ryen," a student who "transitioned to male." Ryen discusses the school's effort in getting the student a private bathroom, stating that "[t]he school benefits from not having to deal with crazy conservative parents flipping out."[13]

Contrast the militancy of the California schools with this Court's earlier statement in 1985 when it struck down an Alabama statute authorizing public school teachers to hold a moment of silence for "meditation or voluntary prayer." This Court ruled that "whenever the State itself speaks on a religious subject, one of the questions that we must ask is '**whether the government intends to convey a message of endorsement or disapproval of religion**.'" *Wallace* at 60-61 (emphasis added). Here, California's promotion of one religious belief over another is blatant, intentional, and systemic.

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[13] S. Cho, C. Laub & S. Wall, "Beyond the Binary: A Tool Kit for Gender Identity Activism in Schools" at 8, *Gay Straight Alliance Network* (2004).

In the light of these precedents, California's Parental Exclusion Policy is a painfully clear Establishment Clause violation. Although the policies this Court has struck down may have promoted Christian beliefs, California's policy is the reverse, promoting beliefs at sharp odds with Christianity, Islam, and other historically significant religious traditions.

Abington promised that "[t]he government is neutral, and, while protecting all, it prefers none, and it disparages none." *Abington* at 215. California's policy utterly destroys *Abington*'s promise and effects an unconstitutional establishment of religion under this Court's Establishment Clause jurisprudence.

As professor, writer, feminist, and student of the history of sex and culture, Camille Paglia, has explained: "[T]ransgender phenomena multiply and spread in 'late' phases of culture, as religious, political, and family traditions weaken and civilizations begin to decline."[14]

CONCLUSION

For the foregoing reasons, this Court should construe this application as a petition for a writ of certiorari before judgment, grant review, vacate the Ninth Circuit's interlocutory order staying the district court's injunction, and remand to strike down the California policy.

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[14] C. Paglia, Free Women, Free Men: Sex, Gender, Feminism at 237-38 (2018).

Respectfully submitted,

MICHAEL BOOS
CITIZENS UNITED
1006 Pennsylvania Ave. SE
Washington, DC 20003

JOSEPH W. MILLER
LAW OFFICES OF JOSEPH MILLER, LLC
P.O. Box 83440
Fairbanks, AK 99708

JAMES N. CLYMER
CLYMER MUSSER & SARNO, P.C.
408 West Chestnut Street
Lancaster, PA 17603

J. MARK BREWER
209 N. Nugent Ave.
Johnson City, TX 78636

WILLIAM J. OLSON*
JEREMIAH L. MORGAN
WILLIAM J. OLSON, P.C.
370 Maple Avenue West, Suite 4
Vienna, VA 22180-5615
(703) 356-5070
Fax (703) 356-5085
wjo@mindspring.com
*Counsel of Record

RICK BOYER
INTEGRITY LAW FIRM
P.O. Box 10953
Lynchburg, VA 24506

Attorneys for *Amici Curiae*
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