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; TONY THURMOND, in his official capacity as the California State Superintendent of Public Instruction; LINDA DARLING-HAMMOND, in her official capacity as President of the California State Board of Education, et al.

Respondents.

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

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit

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INTRODUCTION

As complicated as California has tried to make its network of rules and interpretations, its policy is clear: schools must unhesitatingly accept a child's assertion of his or her gender identity and begin a social transition in secret and even over parental objection. Even on California's own telling, public schools must conceal "information about a student's gender identity" unless the *state* decides that the child's *parents* overcome strict scrutiny. Opp.5. But this turns the law on its head, assumes parents to be unfit, and says the state always gets to decide. California calls this a "nuanced, balanced approach." Opp.38. If so, California "balances" the parent's interests like McDonald's balances the cow's.

Straining to muddy the waters, California opens a familiar grab bag of purported "threshold obstacles to review." Opp.15. Each is illusory.

First, California complains that the injunction is simultaneously too simple and too complicated. California argues that the district court and Plaintiffs did not adequately catalog the Rube Goldberg contraption of state constitutional provisions, statutes, rules, regulations and policies that it has cited in more than a half-dozen lawsuits as the basis on which it constructed the challenged policy. But this is a mess entirely of California's own making. And the district court's injunction cuts through the complicated web of policy to specifically and clearly get at the constitutional violations—excluding and deceiving parents while socially transitioning their children.

Then, ignoring the actual harm caused by their policies, California instead misconstrues the injunction, claiming that it requires forced "out[ing]" to abusive

parents. Opp.7. It doesn't. These concerns were thoroughly aired below and the district court carefully accounted for safety concerns in its summary judgment order and permanent injunction.[1] The injunction does not impede schools' ability—or diminish their duty—to protect children from abuse or harm. It simply restores the longstanding presumption of parental fitness that California has flipped on its head. App.23a-24a.

Next, California raises standing and class certification issues to call into question the classwide relief issued here. Following this Court's instructions in *CASA*, Plaintiffs pursued class-action relief against California's policy and the district court issued relief tailored thereto. The well-drawn class has Article III injuries. California's arguments to the contrary would eviscerate class action injunctive relief. As for the strict scrutiny arguments, blatantly violating a right guarded by strict scrutiny does not give California a pass out of class action relief.

Nor is Plaintiffs' focus on *Mahmoud* somehow problematic. Understanding their posture before this Court on a request for emergency relief, Plaintiffs simply chose to focus on the clear entitlement to relief under this Court's recent precedent. California's policy is unconstitutional several times over as the district court found, but once is enough.

Finally, Plaintiffs urgently need and have vigorously pursued relief. While California is focusing on nitpicking, the harm here absent the injunction is real. Too

[1] App.30a ("For the isolated instances where a parent or caregiver commits physical abuse on a child, there [is] … a complete law enforcement and judicial system in place."); see 24-Plt.Exs-6033 ("The Court: It seems [too] extreme. It seems so extreme to want to keep information about a child's health and welfare from the parents, absent the showing that the parent is abusive").

many victims of California's policy, like Child Poe, have attempted or committed suicide. Child & Parental Rights Campaign Br.13, 16-18. For other children, necessary mental health care has been delayed, with predictable consequences. App.42a-47a. Children are left adrift to deal with potentially serious gender incongruity, without the loving support and care of their parents. See Cal. Policy Ctr. Br.3-13. And even when parents know, schools refuse to give them a say in whether or not to socially transition their own children. See *id*. at 14-24. In the teeth of these grave harms and affronts to parental constitutional rights, the district court's injunction protects children and parents by faithfully applying *Mahmoud* and restoring the presumption of parental fitness and religious rights in relation to a child's social transition. See App.26a (citing *Mahmoud* v. *Taylor*, 606 U.S. 522 (2025), and *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972)).

ARGUMENT

I. California's "Threshold Obstacles" Are Not Obstacles.

A. California is Enforcing a Clear, Simple and Unconstitutional Exclusion Policy.

That California's transition secrecy regime rests on numerous legal sources, Opp.3-8, shows only that the policy is deeply entrenched. And California cannot "increase the difficulty and complexity of remedying parents' constitutional injuries" to "insulate itself from First Amendment liability[.]" *Mahmoud*, 606 U.S. at 592 (Thomas, J., concurring).

Regardless, California's phalanx of policies marches in one direction: parental exclusion. Defendants continue to ignore that as recently as September 2025,

Plaintiffs Jane and John Poe were informed by their child's public school that "because we are *legally required* to follow California state laws that protect every student's right to be addressed by their preferred name and pronouns[,] … we will be addressing your student by their preferred name in the classroom and school setting." 3-Plt.Exs-609. They received this email even though Child Poe *attempted suicide* after her school socially transitioned her for a year without her parents' knowledge, 5-Plt-Exs-1240-48, because of *state* policy as expressed in a flurry of FAQs, alerts, advisories, and enforcement actions since 2016. See 10-Plt.Exs-2481-563.

California's Legal Advisory, FAQs, and model policies confirmed that schools "are *required*" to refrain from disclosing students' transgender status "with [their] parents," absent student consent or "very rare" exceptional circumstances. 9-Plt.Exs-2124-36. The CDE has repeatedly confirmed that it still stands by this policy, see App.93a-96a; 9-Plt.Exs-2075-76; 9-Plt.Exs-1990-93, 2029-30, 2038, 2062-63, 2066-69, 2107-11 (PMQ Dep.). As has the Attorney General. See, *e.g.*, 10-Plt.Exs-2275-76, 2287-89, 2310-12, 2331-32, 2349-51, 2379-92, 2437-38, 2447-48 (PMQ Dep.). Moreover, not once in the Legal Advisory, FAQ page, or Rule 30(b)(6) depositions of Mr. Barrera and DAG Faer does California mention "balanc[ing]" parental interest and student privacy. Opp.1. To the contrary, the Attorney General's LGBTQ "Know Your Rights" webpage states that schools do not "have the right" to inform "parents" of students' expressed gender identity absent student consent or "some limited" exceptional circumstances. 10-Plt.Exs-2383-89, 2481-85 (https://bit.ly/49ayGrt).[2]

[2] California's description of AB 1955 is thus beside the point.

Defendants argue that a 2024 Legal Alert showed that its actual policy is more "nuanced." Opp.4, 34 (citing 10-Plt.Exs-2500-03). But DAG Faer testified that California's position is "in our *briefings* and our legal alert." 10-Plt.Exs-2322, 2334, 2355 (emphasis added). And the Legal Alert makes clear that nothing has changed: the reason "forced outing policies" are unlawful is because of, *inter alia*, "students' California constitutional right to privacy with respect to how and when to disclose their gender identity." 10-Plt.Exs-2502.[3] The district court rightly recognized as much throughout this case. App18a-19a, 32a-33a; 91a-96a, 111a, 154a. The state's gestures toward nuance are empty.

B. The District Court's Injunction is Clear.

California similarly says that because the actual basis for its parental exclusion policy is unclear, "the injunction here is unclear" and the district court "never explained exactly which laws it intended to enjoin." Opp.19. But the district court enjoined California's unconstitutional behavior, not its "laws." And for years, trying to understand California's explanation of its own law has been a whack-a-mole contest—or as the district court said, like "wrestling with a bowl of Jell-O." D.C. Dkt. 143 at 51. In its legal briefs, California has alternatively argued the California Constitution, anti-discrimination statutes, and various regulations—but the CDE and Attorney General have always ultimately reached the same conclusion: school officials must unhesitatingly accept a child's assertion of his or her gender identity,

[3] The Legal Alert also reiterates that because California's public schools are merely "agents of the State," they have a legal duty to follow the state's interpretation of state laws with respect to students' expression of transgender identity at school. 10-Plt.Exs-2501.

socially transition the child, cannot tell the child's parents without the child's consent, and cannot obey the parent's instructions. See § I.A, *supra* (PMQ depositions). In September 2023, Plaintiffs Mirabelli and West obtained a preliminary injunction against *the CDE*'s enforcement of that policy. And in December 2025 *that injunction* was converted into a classwide permanent injunction *against the CDE and the Attorney General*.[4]

California also misleadingly alleges the injunction permits of "no exceptions." Opp.1, 12, 41. But California simply ignores the injunction, which is straightforward and prohibitory. California officials are enjoined from: (a) allowing teachers to mislead parents about their child's gender presentation; (b) allowing teachers to socially transition a child over parental objection; (c) requiring teachers to secretly socially transition a child; or (d) preventing teachers from speaking to parents about their child's gender incongruence. App.24a. The injunction leaves room for school officials to decide how best to handle manifested gender incongruity—it does *not* mandate that if a child may be behaving as gender incongruent, the school must immediately inform the parents, which Defendants call "forced outing." *Ibid*. On the contrary, the injunction terms reflect the district court's recognition that, while parents have a "right" to be informed about their child's gender incongruence, it is subject to a presumption of parental fitness that can be overcome depending on the

[4] California says the preliminary injunction is not affected by the stay of the permanent injunction. Opp.17. Presumably it means that EUSD remains enjoined even though the CDE no longer is. But Plaintiff West moved to a new school district that also uses California's model policy from the CDE FAQ page, 3-Plt.Exs-624, 5-Plt.Exs-1183, and Plaintiffs Boe and Roe joined the case after the preliminary injunction.

specific needs of the child. App.28a.[5]

C. There Has Been No Undue Delay—at least by Plaintiffs.

California's argument about Plaintiffs' purported delay is also a complete reversal of the facts. Plaintiffs filed their motion for a classwide preliminary injunction in September 2024. D.C. Dkt. 153. Two days later, California moved to stay it, D.C. Dkt. 154, and the district court refused to set it for hearing. See D.C. Dkt. 193 at 5-6. Then, in May 2025, the district court set a status conference to consider setting the preliminary injunction motion for hearing and Plaintiffs noted that, because discovery was nearly complete, proceeding with a permanent injunction would more expeditiously advance this case. See D.C. Dkt. 248 at 5.

California also says Plaintiffs "waited until August 2024 to begin challenging aspects of state law." Opp.16. That's flat wrong. Plaintiffs sued the CDE from the beginning, and their focus throughout the litigation has been to enjoin California officials from applying the state's parental exclusion policy against them, in flagrant violation of their federal constitutional rights. D.C. Dkt. 1. Rightly or wrongly, the CDE and California Attorney General are enforcing a parental exclusion policy based on their view of California law.

[5] California's argument that requiring such a showing would itself harm the child ignores that if there truly were a credible risk, the school must comply with mandatory reporting laws and can invoke child protective services, as the district court observed. App.30a.

II. Plaintiffs Have Satisfied the Standard for Vacatur of the Ninth Circuit's Cursory Stay Order.

A. The *Nken* factors apply here.

Plaintiffs need not make a heightened showing that the Ninth Circuit "clearly and demonstrably erred." See Opp.15. Rather, this Court recently vacated a stay of an injunction using the ordinary *Nken* factors over a dissent's express objection that it should have also applied a "clearly and demonstrably erred" test. *Ala. Ass'n of Realtors* v. *Dep't of Health and Hum. Servs.*, 594 U.S. 758, 763 (2021); *id.* at 766-67 (Breyer, J., dissenting). Further, Defendants omit that the "great deference" test for appellate court stays is because they "*ordinarily* ha[ve] a greater familiarity with the facts and issues in a given case." *Garcia-Mir* v. *Smith*, 469 U.S. 1311, 1314 (1985) (emphasis added). Not so here, where the district court's injunction followed full discovery and an exhaustive review of the record, contrary to the Ninth Circuit's self-described "preliminary review of the [voluminous] record" on a short fuse over the holidays. App.8a.

B. The Injunction Complies with Article III and Rule 23.

1. The injunction is appropriately tailored.

California says Plaintiffs ignore the Ninth Circuit's "serious concerns" about the injunction's scope which allegedly "affects every one of their claims." Opp.22. On the contrary, the stay applies even to the named Plaintiffs—including Jane and John Poe, whose daughter *attempted suicide* as a result of California's parental exclusion policy. 5-Plt-Exs-1240-48; see also 5-Plt.Exs-1280 (Jane and John Doe's daughter was socially transitioned beginning in fifth grade without their knowledge). Indeed, California never once acknowledges the September 2025 email to the Poe parents

stating that their daughter's school will continue facilitating her social transition over their religious objections because of state policy. 3-Plt.Exs-609. California's argument that the Poe and Doe parents somehow lack standing because they already "know" their daughters have socially transitioned at school is absurd. Opp.25-26. These parents want to have a say in their daughters' school-facilitated social transition *going forward*. And in any event, similar knowledge was no obstacle to the plaintiff's standing in *Foote* v. *Ludlow Sch. Comm.*, 128 F.4th 336 (1st Cir. 2025).

California's argument that the district court's classwide injunction is "broader than necessary" is classic question begging. In *Mahmoud*, this Court invoked Article III jurisprudence in confirming that a group of parents suffered cognizable religious burdens when the school district's LGBTQ+ storybooks policy posed "a very real threat of undermining the religious beliefs that parents wish to instill in their children." 606 U.S. at 553, 559-60. The same is true here. California requires schools to socially transition a child over parental religious objections and without their knowledge. Accordingly, "it is not clear how the [Ninth] Circuit [and California] expect[] the parents to obtain specific information about how a particular [school]" is applying California's policy "at a particular time." *Id.* at 560. The district court's classwide injunction for religious parents is thus precisely tailored to Plaintiffs and "parents/guardians who submit a request for religious exemption or opt-out" from California's parental exclusion policy. App.89a-90a.

So, too, for parents who object for non-religious reasons. California argues these class members lack standing because of (oft-divided) lower-court opinions finding that parents challenging similar policies lack standing unless they can "show a substantial

risk that their children will identify as transgender." Opp.24. Again, that begs the question. As shown by Plaintiffs throughout this case, "the parents' fear that the school district might make decisions for their children without their knowledge and consent is not 'speculative.'" *Parents Protecting Our Children, UA* v. *Eau Claire Area Sch. Dist.*, 145 S. Ct. 14, 14 (2024) (Alito, J., dissenting from denial of certiorari). Because all class member parents are kept "in the dark about the 'identities' of their children" at school today, *ibid.*, the injunction is no "broader than necessary to provide complete relief" to the parent plaintiffs and class members. *Trump* v. *CASA, Inc.*, 606 U.S. 831, 861 (2025).[6]

2. Class certification was properly granted.

California next asserts the classwide injunction "eliminate[s] the need for [allegedly] millions of [class members] to *demonstrate* standing." Opp.27 (emphasis added). Tellingly, California does not cite any cases—*none*—holding that each absent *class member* must "demonstrate" standing. As Judge Silberman recognized, in agreeing with the side of a circuit split requiring all class members to at least "have a *claimed* injury," "allow[ing] a defendant to challenge factually every unnamed member's injury … would be chaotic." *J.D.* v. *Azar*, 925 F.3d 1291, 1346, 1347 (D.C. Cir. 2019) (Silberman, J., dissenting) (emphasis added). Just so. Moreover, here all

[6] The same is true for teachers. California alleges the injunction protects the use of "*teacher*'s preferred names and pronouns" and potentially pits teacher and parent rights against each other. Opp.11, 38 n.12 (emphasis added). Not so. The injunction protects objecting teachers from having to participate in socially transitioning a child over parental objection, or from having to conceal such a social transition from parents. App.24a. In short, the protection for teachers is directly tied to parents' rights. And because the parents clearly have standing, the scope of the injunction is also properly tailored to provide complete relief to objecting teachers.

Plaintiffs and class members *do claim* common injury—i.e., the burden of having to violate parent's rights, or of having their own parental rights violated. 16-Plt.Exs-3886-91 (motion for class certification). The district court correctly recognized as much in its class certification order, contrary to California's baseless contention otherwise. App.78a-90a; cf. Opp.24.

In additionally alleging Plaintiffs' and class members' claims cannot be resolved "in one stroke" under Rule 23(b)(2), Opp.26-27, California confirms that the Ninth Circuit's cursory order staying the *entirety* of the district court's post-discovery permanent injunction was inappropriate. Indeed, the Ninth Circuit stayed relief even for the individual Plaintiffs. California argues there are no "across-the-board restrictions" to be enjoined for absent class members, Opp.27, in flat contradiction to its own consistent enforcement of the "required" parental exclusion policy.

California also argues strict scrutiny requires "individualized consideration" of various "factual circumstances." Opp.27. But the strict scrutiny answer is often the same for similarly situated individuals under clear constitutional requirements. See *Tandon* v. *Newsom*, 593 U.S. 61, 64 (2021). Here, California's *presumption* of parental unfitness violates precisely the individualized analysis necessary to *overcome* parents' right to direct the education and upbringing of their children. The district court's classwide injunction thus complies with Rule 23(b)(2).

C. Defendants' Brief Merits Arguments Fail.

1. California is violating Parents' Free Exercise rights.

California tellingly complains that Plaintiffs' application leads with *Mahmoud* and *Yoder*. Opp.32. But these precedents remain directly on point.

California protests that *Mahmoud* expressly requires a "close analysis of the facts in the record," Opp.33, but that's what the district court did, and the Ninth Circuit did not have time to do. California also argues that the Ninth Circuit did not "hold" that *Mahmoud* is limited to "curricular requirements," Opp.33 n.10, even while the Ninth Circuit stated explicitly that *Mahmoud* is allegedly "a narrow decision focused on uniquely coercive 'curricular requirements." App.11a.

And, California insists *Mahmoud* applies only to school "coerc[ion]" in arguing its policies "come into play only when a *student* makes the voluntary decision to share with school officials that they are transgender." Opp.34a. But the state simply blinks *Mahmoud*'s rejection of the dissenting argument that "parents who send their children to public school must endure any instruction that falls short of direct compulsion or coercion and must try to counteract that teaching at home"; "[t]he Free Exercise Clause is not so feeble." *Mahmoud*, 606 U.S. at 563. The question is whether the challenged policy poses "a very real threat of undermining" parents' religious beliefs, not "coercion." *Id.* at 553.

California also argues that *Mahmoud* emphasized the importance of student ages in alleged contrast to the older children covered by the district court's injunction. Opp.34. But as the district court found, the challenged policies "apply to children as young as two," App.32a, or as the Attorney General says online, "regardless of [] age." 10-Plt.Exs-2483. Further, parental rights end with emancipation or maturity—not teenage-hood. See Cal. Fam. Code § 7050 (discussing legal effect of emancipation). And *Mahmoud* is grounded in *Yoder*, which involved 14- and 15-year-old children. 406 U.S. at 207. Here, the district court's careful review of the factual record—

including the secret transitions of Child Poe and Child Doe *before they were teenagers*—rightly confirmed Defendants' policy "threatens to undermine" parents' religious beliefs in the same manner as in *Mahmoud*. Lastly, California's parade of "untenable" horribles is just that. They are not at all akin to life-altering actions as socially transitioning children without parental knowledge and over their objections.

2. Teachers' Free Exercise rights are being violated.

California faulters in arguing that while its policies allegedly allow for "nuanced, individualized" disclosures, on the one hand, Opp.34, its "compelling interest" exception is *not* an individualized exemption under *Fulton* v. *City of Philadelphia*, 593 U.S. 522, 533 (2021). Opp.37-38. California can't have it both ways.

This is also the first time California has framed its "compelling need" exception as reflecting the requirements of *strict scrutiny* to overcome a child's state privacy right to hide their gender transition from their parents. See 10-Plt.Exs-2484 ("compelling need" exception involves a "very good reason"; "really depends on the circumstances" Given that strict scrutiny is generally "fatal in fact," here California again confirms that its *default* requirement is parental exclusion.

California also alleges potential resulting havoc to "confidentiality provisions far and wide," Opp.37, ignoring that the teachers' claim is based on their objection to violating *parents' rights* to know about and have a say in their own minor children's social transition at school. That's it. Accord *Meyer* v. *Nebraska*, 262 U.S. 390 (1923) (reversing teacher's conviction based on *parental* rights).

3. Parents' fundamental rights are being violated.

California reduces Plaintiffs' Fourteenth Amendment claim to "a right to receive

particular information from a public school," rather than the right to *consent to a schools' social gender transition of their child.* Opp.30. California further asserts that the "relevant aspects of California law" "do not burden" parents' rights because they allow parents and children to "speak freely with each other." Opp.31. But relying on parent-child conversations outside school is "not realistic" in this context. *Mahmoud*, 606 U.S. at 560.

California also argues that Plaintiffs' ultimately "base" their parental rights claim on the right to "direct their children's medical treatment." Opp.32. Not true. While the state ignores expert testimony that facilitating a child's social transition is considered psychological intervention, App.29, the asserted right is ultimately based in parents' right to direct the upbringing and education of their children, consistent with *Meyer* and *Pierce*, App.38a. See 4-Plt.Exs-925-35; see also *Amici* States Br.7-9; Advancing American Freedom Br.5-13.

III. The Equitable Factors Favor Plaintiffs.

California does not dispute that the "loss of First Amendment freedoms for even minimal periods of time" constitutes irreparable harm. *Roman Cath. Diocese of Brooklyn* v. *Cuomo*, 592 U.S. 14, 19 (2020). Plaintiffs have established that here.

The state's "ambiguous injunction" argument falls flat. There is no need to "decipher what laws are enjoined." Opp.41. The injunction is against enforcement of California's simple and clear parental exclusion policy that *it* believes flows from various laws. And the injunction's prohibition on "permit[ting]" teachers from lying to parents, or blocking them from opting their child out of a social transition, makes sense for California which has "central[ized]" "control" of all schools. App.81a-82a

(quoting *Sato* v. *Orange Cty. Dep't of Educ.*, 861 F.3d 923, 933 (9th Cir. 2017)).

Finally, citing its experts, Ms. Darlene Tando and Dr. Christine Brady, California claims that "[a]ccording to testimony in the record, exposing that information [a child's gender presentation] threatens 'significant psychological, emotional, and sometimes even physical harm' to students." Opp.41; see also Opp.28. But the district court already reviewed and rejected this evidence. The "record evidence" was merely California's experts' ipse dixit in this case. As the district court noted, the defense experts conceded there were no studies supporting their position. App.50a. After more than two years of litigation and full opportunity for discovery, the State of California could present no admissible evidence of actual harm to support its policy.

Instead, California's experts did not meaningfully disagree that parental notice and involvement in their child's social transition efforts is *best for the child*. App.50a. And more notably, California's response never once acknowledges that under *its* clear and simple policy adopted by school districts across California, the Poes' daughter attempted suicide, and the Does' daughter was secretly transitioned as a fifth-grader for almost a year. That California refuses even to acknowledge these inconvenient facts before this Court speaks far more than its 43 pages of briefing.

CONCLUSION

The Court should vacate the Ninth Circuit's interlocutory order staying the district court's injunction until disposition of any petition for certiorari. In addition, given the importance and urgency of the issues, the Court may construe this application as a petition for a writ of certiorari before judgment.

Respectfully submitted.

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