

No. 26-180

IN THE
Supreme Court of the United States

EDWARD ALLYN HUDACKO,

Petitioner,

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF OF *AMICUS CURIAE*
THOMAS MORE SOCIETY
IN SUPPORT OF PETITIONER**

THOMAS L. BREJCHA

Counsel of Record

MICHAEL G. McHALE

PETER BREEN

121 West Wacker Drive, Suite 650

Chicago, IL 60601

(312) 878-7464

tbrejcha@thomasmoresociety.org

Counsel for Amicus Curiae

TABLE OF CONTENTS

	<i>Page</i>
INTEREST OF <i>AMICUS CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	5
I. Parents Have Longstanding Fundamental Rights to Notice and Control Over Their Minor Children’s Medical Decisions.	5
A. Parents’ Rights In the “Control” of Children.....	5
B. Parental Control Over Medical Decisions.....	7
C. The Role of Notice in Protecting Parental Rights	8
D. The Ninth Circuit’s Decision Misrepresents the Relationship Between the Fourteenth Amendment and State Court Orders Limiting Parental Rights	10
II. Gender Transition Advocates Have a Pattern of Bypassing Objecting Parents on Ideological Grounds.	11
A. Transgender Healthcare Organizations Advocate Involvement of Parents Only If Not “Harmful”	12
B. Merely Objecting to Gender Transitioning is Allegedly “Harmful” to Adolescents.....	14

1. Bypassing Consent of Parents Who Object to Gender Affirming Care is Built into the WPATH Statement.	15
2. Refusing to Adequately Accept an Adolescent’s Identification with the Opposite Sex is Viewed as Harmful	16
C. When a Parent Does Not “Accept” His Child’s Transgender Identity, Advocates Try to Sideline the Parent’s Influence by Relying on Secrecy	17
III. Calculated Violations of Parental Rights Should Not Be Protected By Qualified Immunity.	19
CONCLUSION	25

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Adoption of Delilah</i> , 107 Mass. App. Ct. 1103, 282 N.E.3d 1163 (2026)	7
<i>Alcala v. Ortega</i> , 128 F.4th 1298 (10th Cir. 2025)	21, 23
<i>Bellotti v. Baird</i> , 443 U.S. 622 (1979)	6
<i>Ginsberg v. New York</i> , 390 U.S. 629 (1968)	6
<i>Graham v. Connor</i> , 490 U.S. 386 (1989)	21
<i>Hodgson v. Minnesota</i> , 497 U.S. 417 (1990)	8
<i>Hoggard v. Rhodes</i> , 141 S. Ct. 2421 (2021)	3, 20, 21
<i>Horvath v. City of Leander</i> , 946 F.3d 787 (5th Cir. 2020)	21
<i>Hudacko v. Regents of the Univ. of Cal.</i> , No. 24-7360, 2025 U.S. App. LEXIS 27380 (9th Cir. Oct. 21, 2025)	10
<i>In re Richardson</i> , No. 378517, 2026 LX 434341 (Mich. Ct. App. Aug. 26, 2026)	7
<i>Mahmoud v. Taylor</i> , 606 U.S. 522 (2025)	4, 9

<i>Mathis v. United States</i> , 579 U.S. 500 (2016)	24
<i>McMurry v. Weaver</i> , 142 F.4th 292 (5th Cir. 2025).....	21
<i>Meyer v. Nebraska</i> , 262 U.S. 390 (1923)	4, 5, 9
<i>Mirabelli v. Bonta</i> , 607 U.S. 492 (2026)	1, 4, 5, 7, 9, 17, 18, 20
<i>Parham v. J.R.</i> , 442 U.S. 584 (1979)	4, 7, 9, 11, 24
<i>Pierce v. Society of Sisters</i> , 268 U.S. 510 (1925)	9
<i>Prince v. Massachusetts</i> , 321 U.S. 158 (1944)	5
<i>Reno v. Flores</i> , 507 U.S. 292 (1993)	6, 8, 11
<i>Saucier v. Katz</i> , 533 U.S. 194 (2001)	21
<i>Schall v. Martin</i> , 476 U.S. 253 (1984)	6
<i>Stanley v. Illinois</i> , 405 U.S. 645 (1972)	8
<i>Taylor v. Riojas</i> , 592 U.S. 7 (2020)	21-22
<i>Vernonia Sch. Dist. 47J v. Acton</i> , 515 U.S. 646 (1995)	6
<i>Villarreal v. City of Laredo</i> , 134 F.4th 273 (5th Cir. 2025).....	22, 23-24

<i>Wisconsin v. Yoder</i> , 406 U.S. 205 (1972)	9
--	---

Statutes and Other Authorities

U.S. Const. amend. I	9, 19, 20
U.S. Const. amend. IV	21
U.S. Const. amend. XIV	4, 5, 10, 11, 19
42 U.S.C. § 1983	20
1 W. Blackstone, Commentaries	7
2 J. Kent, Commentaries on American Law	7
Alaska Stat. § 47.10.014.....	7
Ariz. Admin. Code § R21-1-501	7
Ariz. Rev. Stat. § 8-201.....	7
Ark. Code Ann. § 12-18-1001	7
Colo. Rev. Stat. § 19-13-102	7
Conn. Gen. Stat. § 45a-607	7
E. Coleman, A.E. Radix, W.P. Bouman, <i>et al.</i> , <i>Standards of Care for the Health of</i> <i>Transgender and Gender Diverse People</i> , <i>Version 8</i> , Statement 6.11, Int’l J. of Transgender Health, 23:sup1 (2022).....	14, 15
Tina Donvito, <i>Coming Out as Gender Fluid:</i> <i>How to Talk to Your Family</i> , U.S. News Health (Sept. 10, 2026) https://health.usnews.com/wellness/mind/artic les/how-to-talk-to-your-family-about-your- gender-fluid-identity	16, 17

<i>Family Rejection Is a Health Hazard for LGBTQ Children and Youth</i> , J. Am. Acad. Child & Adolescent Psychiatry, Vol. 59, Issue 10, Supp. S336 (Oct. 2020)	16
<i>Free Live Webinars: Changes in WPATH Standards of Care</i> , Gender Health Training Inst., https://www.genderhealthtraining.com/soc8/ (last accessed Oct. 15, 2026)	13
<i>Medical Association Statements in Support of Health Care for Transgender People and Youth</i> , GLAAD (June 26, 2024) https://glaad.org/medical-association-statements-supporting-trans-youth-healthcare-and-against-discriminatory/	13
<i>Mission and Vision</i> , WPATH, https://wpath.org/about/mission-and-vision/ (last visited Oct. 9, 2026)	12
Press Release, WPATH & USPATH Condemn Legislation (Mar. 22, 2023), https://wpath.org/wp-content/uploads/2024/11/USPATH_WPATH-Response-to-AG-Bailey-Emergency-Regulation-03.22.2023.pdf	12-13
Caitlin Ryan, <i>FAP Acceptance Project Resources</i> , San Francisco State Univ. (2023) https://familyproject.sfsu.edu/sites/default/files/documents/FAP-Resource-Booklet.pdf (last visited Oct. 15, 2026)	16
Supreme Court Rule 37.2	1

<i>Talking to Doctors and Medical Providers for Parents of Transgender Youth</i> , Human Rights Campaign https://www.hrc.org/resources/transgender-children-and-youth-talking-to-doctors-and-medical-providers (last accessed Oct. 15, 2026).....	13
<i>The Long Awaited 8th Version of WPATH’s “Standards of Care” Is Here</i> , European Fed. of Sexology, https://europeansexology.com/soc-no-8-from-world-professional-association-for-transgender-health-wpath/ (last visited Oct. 15, 2026)	13
<i>Understanding the WPATH Standards of Care Requirements for Gender Affirming Surgery</i> , TransHealthcare (Nov. 16, 2024) https://www.transhealthcare.org/resources/wpath-standards-of-care-requirements-for-gender-affirming-surgery/	13
<i>WPATH Assessments</i> , Jamie Byrne Psychology, https://www.jamiebyrnepsych.com/wpath-assessments.html (last accessed Oct. 9, 2026).....	13
<i>WPATH SOC8, a Manifesto for Trans Healthcare</i> , Facialteam (Sep. 16, 2022) https://facialteam.eu/blog/wpath-soc8/	13
<i>WPATH Standards of Care for the Health of Transgender and Gender Diverse People, Version 8</i> , Gender Identity Res. & Ed. Soc. (Sep. 20, 2022), https://www.gires.org.uk/wpath-standards-of-care-for-the-health-of-transgender-and-gender-diverse-people-version-8/	13

INTEREST OF *AMICUS CURIAE*¹

Amicus Curiae, the Thomas More Society (“TMS”), is a not-for-profit, national public interest law firm based in Chicago, Illinois. TMS is dedicated to restoring respect in law for human life, family, and religious liberty. TMS regularly advocates for parental rights in courts around the country—including with respect to parents’ First and Fourteenth Amendment rights to protect their children from the snares of gender ideology. TMS was Applicants’ counsel of record before this Court in *Mirabelli v. Bonta*, 607 U.S. 492 (2026), which held that “unconsented facilitation of a child’s gender transition” likely violated parents’ longstanding First and Fourteenth Amendment rights. California is attempting to flout that decision on remand, arguing it merely requires notifying parents of their children’s gender transitions *while ignoring any parental objections thereto* over their child’s wishes. See No. 25-8056, Dkt. 45.1, Appellant’s Op. Br. at p. 2 (9th Cir. May 26, 2026) (“Neither substantive due process nor free exercise doctrine entitles the parent plaintiffs to compel school employees to violate state nondiscrimination law by

¹ No Party’s counsel authored this brief in whole or part; no party or party’s counsel contributed money intended to fund the brief; and no person other than *Amicus Curiae*, their members, or their counsel contributed money intended to fund the brief. Counsel for all parties were timely notified of this filing pursuant to Supreme Court Rule 37.2.

disregarding a student's request to use a name or pronouns consistent with their gender identity.").

This case, too, represents another example of California officials trampling on fundamental parental rights to notice and participation in their minor children's life-altering gender transition decisions. What California gets away with here regarding an adolescent's medical gender transition procedure without the father's involvement will only embolden its ongoing front-end efforts to facilitate gender transitioning at school without parental consent. TMS thus has an interest in ensuring California health officials are held accountable for their brazen violation of parental rights in this case consistent with the longstanding requirements of the First and Fourteenth Amendments.

INTRODUCTION AND SUMMARY OF ARGUMENT

Qualified immunity is a tool to protect officials who must act in the moment. It should not, however, protect officials who spend months deciding to keep a parent in the dark about his child's impending gender-transition procedure. Yet that is what the Ninth Circuit's decision does. For roughly ten months, physicians at a state university knew that Ted Hudacko opposed gender-transition treatment for his minor son and that a family court had reserved to him the right to consent to any gender-identity-related

surgery. They scheduled the surgery, delayed it while noting that the “father is not supportive,” and then performed it in August 2021, surgically implanting a cross-sex hormone-dispensing device without notice to him. Mr. Hudacko definitively learned of the procedure only when his insurer was billed more than \$209,000. Shielding that conduct with qualified immunity is entirely anomalous. A doctrine built to protect split-second judgment calls has now been extended to a deliberate decision not to inform a parent of his minor child’s impending “gender transition” procedure—in flagrant violation of longstanding parental rights. With this case, qualified immunity descends fully through the looking glass.

Justice Thomas has called qualified immunity’s one-size-fits-all application an “oddity,” asking why officials “who have time to make calculated choices” should receive the same protection as an officer making a split-second decision to use force. *Hoggard v. Rhodes*, 141 S. Ct. 2421, 2421 (2021) (Mem) (Thomas, J., statement respecting denial of certiorari). Judges Ho and Oldham have likewise questioned immunizing officials who had time to plan, investigate the facts, and consult counsel. Respondents had all of that time. Picture an officer who could pause time, walk around a suspect, and consult a lawyer before acting. No one would extend him the same latitude, and Respondents’ position is weaker still.

The anomaly is sharper because of the right at stake. Parents' right to direct the care, custody, and control of their children, including their medical care, is among the oldest liberty interests this Court recognizes. *Meyer*, *Parham*, *Mahmoud*, and *Mirabelli* confirm that this right includes notice of facts bearing on a child's upbringing. Notice is what enables a parent to exercise judgment on his child's behalf. The Ninth Circuit nevertheless treated a family court order narrowing Mr. Hudacko's authority as if it erased his Fourteenth Amendment rights. But a state's power to curtail parental rights in a divorce proceeding remains subject to the Fourteenth Amendment.

Nor was the failure to notify an accident. It reflects a recognizable pattern among gender-transition advocates of sidelining objecting parents. WPATH's Standards of Care urge parental involvement only "unless" it is deemed "harmful," and the surrounding advocacy literature treats a parent's failure to affirm a child's asserted identity as "harm." Under that framework, a parent's objection to medical transition can itself justify his exclusion, and secrecy becomes the means of excluding him. *Mirabelli* involved just such a policy. The premise behind it, that a parent's desire to protect his or her child from a life-altering procedure is per se "harmful," is what makes the calculated secrecy here a strategy rather than an oversight.

Qualified immunity was never meant to shield such deliberate secrecy. This Court should grant the petition and hold that the doctrine does not reach calculated refusals to notify non-abusive parents of their children’s impending gender-transition procedures.

ARGUMENT

I. Parents Have Longstanding Fundamental Rights to Notice and Control Over Their Minor Children’s Medical Decisions.

A. Parents’ Rights In the “Control” of Children

Under the Fourteenth Amendment’s protection of liberty, every American has the right “to marry, establish a home and bring up children.” *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). A necessary corollary of the right to have a family is that parents have “the right of control” over their children. *Id.* at 400. “It is cardinal,” the Court has said, “that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.” *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944). And “the parents’ claim to authority in their own household to direct the rearing of their children is basic in the structure of our

society.” *Ginsberg v. New York*, 390 U.S. 629, 639 (1968).

“Traditionally at common law, and still today, unemancipated minors lack some of the most fundamental rights of self-determination—including even the right of liberty in its narrow sense, *i.e.*, the right to come and go at will. They are subject, even as to their physical freedom, to the control of their parents or guardians.” *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 654 (1995); *see also Reno v. Flores*, 507 U.S. 292, 302 (1993) (quoting *Schall v. Martin*, 467 U.S. 253, 265 (1984)) (“juveniles, unlike adults, are always in some form of custody”).

This Court, however, has explained that parental control is not a limit on the child’s liberty—but a fulfillment of it:

[T]he tradition of parental authority is not inconsistent with our tradition of individual liberty [for a child]; rather, the former is one of the basic presuppositions of the latter. Legal restrictions on minors, especially those supportive of the parental role, may be important to the child’s chances for the full growth and maturity that make eventual participation in a free society meaningful and rewarding.

Bellotti v. Baird, 443 U.S. 622, 638-39 (1979) (plurality).

B. Parental Control Over Medical Decisions

One area in which parents exercise significant control over their minor children is medical decisions, including “recogniz[ing] symptoms of illness and . . . seek[ing] and follow[ing] medical advice,” *see Parham v. J.R.*, 442 U.S. 584, 602 (1979), and pursuing mental health treatment, *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026) (citing *Parham*, 442 U.S. at 602). And properly so. “The law’s concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment for making life’s difficult decisions.” *Parham*, 442 U.S. at 602. Furthermore, the law “has recognized that natural bonds of affection lead parents to act in the best interests of their children.” *Id.* (citing 1 W. Blackstone, *Commentaries* *447; 2 J. Kent, *Commentaries on American Law* *190).

A parent’s right to make medical decisions is not absolute. Refusal to provide a child with available, efficacious medical care to avoid a risk of death or serious harm to the child can constitute neglect, and in most jurisdictions, it does. *See, e.g.*, Alaska Stat. § 47.10.014; Ariz. Rev. Stat. § 8-201; Ariz. Admin. Code § R21-1-501; Ark. Code Ann. § 12-18-1001; Colo. Rev. Stat. § 19-13-102; Conn. Gen. Stat. § 45a-607; *see also, e.g., Adoption of Delilah*, 107 Mass. App. Ct. 1103, 282 N.E.3d 1163 (2026) (unpublished); *In re Richardson*, No. 378517, 2026 LX 434341 (Mich. Ct. App. Aug. 26, 2026) (unpublished).

Even in the context of federal rights, the Court has only permitted the overriding of parental consent through a “judicial bypass” mechanism. *Hodgson v. Minnesota*, 497 U.S. 417, 479 (1990) (Scalia, J., concurring in the judgment in part and dissenting in part). Indeed, “[a]lthough the Court has held that parents may not exercise an absolute, and possibly arbitrary, veto over” certain medical decisions, the Court “has never challenged a State’s reasonable judgment that [such] decision[s] should be made after notification to and consultation with a parent.” *Id.* at 445 (cleaned up).

Absent a finding of abuse, neglect, or unfitness, the parent’s right of control over his child’s medical care should remain intact. *See Reno v. Flores*, 507 U.S. 292, 304 (1993) (explaining, “[s]o long as certain minimum requirements of child care are met,” the best interest of the child standard is not triggered, and “the interests of the child may be subordinated to” other interests); *Stanley v. Illinois*, 405 U.S. 645 (1972) (holding the State was barred by the due process clause from taking custody of an unwed father’s children without a hearing and a particularized finding that the father was unfit).

C. The Role of Notice in Protecting Parental Rights

Two recent decisions from this Court highlight an important aspect of parental rights: notice of

important facts that implicate the parent’s rights in the care, custody, and control of their child. In *Mahmoud v. Taylor*, 606 U.S. 522 (2025), the Court considered a challenge to a Maryland county’s decision to: introduce “‘LGBTQ+-inclusive’ storybooks into the elementary school curriculum”; refuse to provide parents notice of when the books would be used; and disallow opt outs. 606 U.S. at 529-30. Relying on longstanding parental rights decisions like *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972), the Court held that strict scrutiny applied, and “the parents [were] likely to succeed on their claim that the . . . policies unconstitutionally burden[ed] their religious exercise.” *Id.* at 546, 565.

In *Mirabelli v. Bonta*, the Court considered a challenge to California policies that prevented schools from telling parents about their child’s gender transition at school unless the child consented to the school notifying the parent. 607 U.S. at 493. The Court concluded these policies were subject to strict scrutiny, as required by *Mahmoud* and *Yoder*, under the Free Exercise Clause of the First Amendment, and the Plaintiffs were likely to succeed on the merits. *Id.* at 496. The Court reached the same conclusion for the plaintiffs who challenged the policies on due process grounds, as required by *Pierce*, *Parham*, and *Meyer v. Nebraska*, 262 U.S. 390 (1923). *Id.* at 497.

**D. The Ninth Circuit’s Decision
Misrepresents the Relationship Between
the Fourteenth Amendment and State
Court Orders Limiting Parental Rights**

This background has direct bearing on the case at hand. As described in the well-pleaded complaint, a cross-sex hormone-dispensing device was surgically implanted in Ted Hudacko’s child without any notice to Mr. Hudacko. App.123a ¶ 104. He discovered the surgery had been performed when he learned that his insurance had been billed more than \$200,000. App.239a, 240a-243a. Mr. Hudacko’s Petition for a Writ of Certiorari presents important issues of qualified immunity, and it does so at the intersection of parental rights—a far different context than the more commonly encountered excessive force cases. *See infra*, Section III.

The Ninth Circuit Court of Appeals presumed that the full scope of Mr. Hudacko’s Fourteenth Amendment right to the “care, custody, and control” of his child could be easily swept away by a State Court order altering his parental rights in a divorce proceeding. *See Hudacko v. Regents of the Univ. of Cal.*, No. 24-7360, 2025 U.S. App. LEXIS 27380 (9th Cir. Oct. 21, 2025) (unpublished). It reasoned that Mr. Hudacko’s parental rights could not be clearly established because the State Court had narrowed his decision-making authority over medical decisions. *See id.*

The Ninth Circuit presumed too much. A state court's ability to alter a parent's rights is subject to scrutiny under the Fourteenth Amendment. In *Reno v. Flores*, the Supreme Court made clear the Fourteenth Amendment would not tolerate the intrusion into a natural family to sever the parent-child bond merely because the State determined it was in the best interest of the child to do so, without finding that the parents had failed to provide adequately for the child. 507 U.S. 292, 304 (1993). Accordingly, the mere existence of a state court order altering a parent's rights cannot itself, without further scrutiny, strip him of the nature of his rights.

Protecting the parental right of notice is always important, but in the context of information that weighs upon issues of a vulnerable and developing child's sexuality and mental health, it is all the more crucial. Notice is the tool that enables a parent to stand on his right to exercise judgment in the midst of life's "difficult decisions" and act in his child's best interests. *See Parham*, 442 U.S. at 602.

II. Gender Transition Advocates Have a Pattern of Bypassing Objecting Parents on Ideological Grounds.

A troubling pattern has emerged. The strategy to ensure children access to so-called "gender-affirming care" is to use secrecy to sideline parents merely on

the grounds that they object to their child “transitioning.”

A. Transgender Healthcare Organizations Advocate Involvement of Parents Only If Not “Harmful”

The Respondents relevant to this Petition are state officials employed as healthcare practitioners with the University of California San Francisco (“UCSF”). They include Stephen Rosenthal, MD, Diane Ehrensaft, PhD, and Janet Yi Man Lee, MD. App. 101a-102a. Tellingly, these Respondents are members of The World Professional Association for Transgender Health (WPATH). App.98a, ¶9.

WPATH is a nonprofit organization “devoted to transgender health.” *Mission and Vision*, WPATH, <https://wpath.org/about/mission-and-vision/> (last visited Oct. 9, 2026). WPATH describes itself as “an international interdisciplinary, professional organization.” *Id.* The group has published the WPATH Standards of Care for the Health of Transgender and Gender Diverse People, which it has touted as “the foremost evidence-based guideline for the provision of” healthcare to transgender children and adolescents. Press Release, WPATH & USPATH

Condemn Legislation (Mar. 22, 2023).² The SOC is regularly cited by missionally aligned organizations as an expert resource for gender-related healthcare.³

² https://wpath.org/wp-content/uploads/2024/11/USPATH_WPATH-Response-to-AG-Bailey-Emergency-Regulation-03.22.2023.pdf.

³ See e.g., *Talking to Doctors and Medical Providers for Parents of Transgender Youth*, HUMAN RIGHTS CAMPAIGN <https://www.hrc.org/resources/transgender-children-and-youth-talking-to-doctors-and-medical-providers> (last accessed Oct. 15, 2026); *Medical Association Statements in Support of Health Care for Transgender People and Youth*, GLAAD (June 26, 2024) <https://glaad.org/medical-association-statements-supporting-trans-youth-healthcare-and-against-discriminatory/>; *Understanding the WPATH Standards of Care Requirements for Gender Affirming Surgery*, TRANSHEALTHCARE (Nov. 16, 2024) <https://www.transhealthcare.org/resources/wpath-standards-of-care-requirements-for-gender-affirming-surgery/>; *WPATH SOC8, a Manifesto for Trans Healthcare*, FACIALTEAM (Sep. 16, 2022) <https://facialteam.eu/blog/wpath-soc8/>; *WPATH Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, GENDER IDENTITY RES. & ED. SOC. (Sep. 20, 2022), <https://www.gires.org.uk/wpath-standards-of-care-for-the-health-of-transgender-and-gender-diverse-people-version-8/>; *The Long Awaited 8th Version of WPATH's "Standards of Care" Is Here*, EUROPEAN FED. OF SEXOLOGY, <https://europeansexology.com/soc-no-8-from-world-professional-association-for-transgender-health-wpath/> (last visited Oct. 15, 2026); *Free Live Webinars: Changes in WPATH Standards of Care*, GENDER HEALTH TRAINING INST., <https://www.genderhealthtraining.com/soc8/> (last accessed Oct. 15, 2026); *WPATH Assessments*, JAMIE BYRNE PSYCHOLOGY, <https://www.jamiebyrnepsych.com/wpath-assessments.html> (last accessed Oct. 9, 2026).

The most recent version of the SOC, version 8, was published in 2022. It states:

We recommend when gender-affirming medical or surgical treatments are indicated for adolescents, health care professionals working with transgender and gender diverse adolescents involve parent(s)/guardian(s) in the assessment and treatment process, *unless their involvement is determined to be harmful to the adolescent or not feasible*.

E. Coleman, A.E. Radix, W.P. Bouman, *et al.*, *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, Statement 6.11, INT’L J. OF TRANSGENDER HEALTH, 23:sup1, S1-S259 (2022) (herein, “SOC8, Statement 6.11”) (emphasis added).

This raises an important question: what kind of involvement by the parent would be “harmful” to the child? The answer confirms the need to scrutinize any court-imposed limits on parental rights regarding transgender identity issues absent a finding of abuse.

B. Merely Objecting to Gender Transitioning is Allegedly “Harmful” to Adolescents

The WPATH’s specious standards create a *large* escape hatch for treating child gender dysphoria with limited parental involvement. Indeed, a parent’s mere

objection to the possibility of “gender affirming” medical care for his minor child will trigger that escape hatch virtually every time.

1. Bypassing Consent of Parents Who Object to Gender Affirming Care is Built into the WPATH Statement.

Recall, the WPATH standard of care statement begins, “when gender-affirming medical or surgical treatments are indicated for adolescents” SOC8, Statement 6.11. In this way, it begins from the presumption that a health care practitioner has determined that the best treatment for the child *is* to “transition” to the other gender.

Next, the limiting qualification on the parent’s involvement is broad and unspecific. The parent’s involvement turns on a determination of whether involvement would be “harmful.” *Id.* When the doctors have concluded, however, that the appropriate treatment is to “affirm” an adolescent’s expression of the opposite gender by altering his or her secondary-sex characteristics through hormones and surgery, it is easy to see how a parent’s objection to such interventions would be deemed “harmful” to the adolescent: the adolescent would be “harmed” because the parent’s refusal to consent to the “treatment” would prevent the adolescent from obtaining the “care” he needs.

2. Refusing to Adequately Accept an Adolescent's Identification with the Opposite Sex is Viewed as Harmful

The Family Acceptance Project (FAP) has identified various “family rejecting behaviors,” and “family accepting behaviors” that “parents and caregivers use to respond to their children’s LGBTQ identity.” Caitlin Ryan, *Family Acceptance Project Resources*, SAN FRANCISCO STATE UNIV. (2023) <https://familyproject.sfsu.edu/sites/default/files/documents/FAP-Resource-Booklet.pdf> (last visited Oct. 15, 2026). FAP claims that acceptance and affirmation of a child’s LGBTQ identity lead to better health outcomes for the child than rejecting behaviors—those that “try[] to change, prevent, deny or minimize” the LGBTQ identity. *Id.* at 3. For example, one “rejecting behavior” is not using a child’s preferred pronoun or name. *See id.* (explaining that an “accepting behavior” is using a child’s chosen name and pronouns). Pursuant to this research, the same author has published a short article: *Family Rejection Is a Health Hazard for LGBTQ Children and Youth*, J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY, Vol. 59, Issue 10, Supp. S336 (Oct. 2020).

This theme of accepting versus rejecting a child’s transgender identity is apparent in other places, too. U.S. News Health recently published an article about talking to family about gender identity that “feature[d] expert sources.” Tina Donvito, *Coming Out*

as Gender Fluid: How to Talk to Your Family, U.S. NEWS HEALTH (Sept. 10, 2026) <https://health.usnews.com/wellness/mind/articles/how-to-talk-to-your-family-about-your-gender-fluid-identity>. One alleged expert, Rebecca Minor, stated “If someone has a track record of being unsafe or dismissive, you’re allowed to protect and prioritize your well-being.” *Id.* Similarly, Minor said, “If you’re *rejected* by family members, seek support” from others. *Id.* (emphasis added).

This theme of “accepting” versus “rejecting” behaviors leads to the same conclusion as under the WPATH standard discussed above. A parent who refuses to accept and affirm a child’s transgender identity by consenting to gender affirming medical care is allegedly “harming” the child.

C. When a Parent Does Not “Accept” His Child’s Transgender Identity, Advocates Try to Sideline the Parent’s Influence by Relying on Secrecy

All of this leads to a somewhat predictable conclusion. If a parent “harms” his child by failing to adequately affirm his child’s transgender identity, the supposed right thing to do is limit the parent’s influence over the child’s decision-making. Perhaps there could be no clearer examples of this than *Mirabelli* and the present case.

As described in *Mirabelli*, California created policies that prevented schools from telling parents about their child’s gender transition at school unless the child consented to disclosure. 607 U.S. at 493. On an application to vacate an interlocutory stay order, “[t]he State argue[d] that its policies advance a compelling interest in student *safety* and privacy.” *Id.* at 496 (emphasis added). The implication is clear. A parent who doesn’t adequately affirm his child’s transgender identity allegedly poses a safety risk to his child. And the State’s policy solution was to “cut out the primary protectors of children’s best interests: their parents.” *Id.* at 496–97.

The facts of Mr. Hudacko’s case are an extreme example of how an objecting parent can be sidelined. First, Mr. Hudacko’s influence was sidelined by the family court. The judge asked Mr. Hudacko whether he accepted his son’s transgender identity. Mr. Hudacko expressed doubt about his son’s diagnosis and whether gender affirming care was supported by the data. App. 172a-176a. With its order, the judge stripped Mr. Hudacko of almost all his parental rights, while preserving his right to consent to “any gender identity related surgery” for his son. App. 115a-116a, 150a-152a.

While UCSF was on notice of the family court’s order by September 2020, and of Mr. Hudacko’s opposition to so-called gender affirming care for his son by October 2020, App.118a-119a, 245a-254a,

Respondents arranged for Mr. Hudacko's son to have a cross-sex hormone dispensing device surgically implanted in the child. App.123a, 124a, 159a, 160a, 170a, 196a-235a, 238a-239a. Initially scheduled for June 2021, the surgery was delayed, with the medical notes observing that the "father is not supportive of [his son's] gender care." App.121a-123a, 169a-171a.

The surgery was performed in August 2021. App.123a ¶ 104, 192a-195a, 239a. Mr. Hudacko was given zero notice that the surgery would take place. App.123a ¶ 104. Because Mr. Hudacko was "not supportive of [his son's] gender care," App.121a-123a, 169a-171a, Mr. Hudacko's involvement would have been "harmful" according to transgender advocates; therefore, he was cut out of his son's assessment and "gender transition" treatment process—in flagrant violation of his fundamental parental rights under the First and Fourteenth Amendments.

III. Calculated Violations of Parental Rights Should Not Be Protected By Qualified Immunity.

In this context, the application of qualified immunity can and should look different than the Court's standard application in an excessive force case. As described above, parents have a right to notice about important issues that weigh on the care, custody, and control of their child. When the *strategy* by state officials is to deny parents that right, whether

it is so a child may have a secret transgender identity at school, *see e.g.*, *Mirabelli*, 607 U.S. 492, or to obtain irreversible surgeries affecting secondary sex characteristics without a parent’s consent, a qualified immunity doctrine aimed at split-second decisions made under high-stress situations that put officers’ personal safety at risk makes utterly no sense.

Justice Thomas has described the “one-size-fits-all” application of qualified immunity as an “oddity.” *Hoggard v. Rhodes*, 141 S. Ct. 2421, 2421 (2021) (Mem) (Thomas, J., statement respecting denial certiorari). In *Hoggard*, university officials violated a student’s First Amendment rights by restricting certain speech to a “Free Expression Area” . . . which required prior permission from the school.” *Id.* The Eighth Circuit concluded the university officials’ actions were shielded from litigation by the doctrine of qualified immunity. *Id.* at 2422. “But why should university officers, who have time to make calculated choices about enacting or enforcing unconstitutional policies, receive the same protection as a police officer who makes a split-second decision to use force in a dangerous setting?” *Id.* Justice Thomas noted this approach “is not grounded in the common-law backdrop against which Congress enacted § 1983.” *Id.* (cleaned up). He thus called for reconsideration of “either [the Court’s] one-size-fits-all test or the judicial doctrine of qualified immunity more generally” in “an appropriate case.” *Id.*

This is just such a case. The passage of a substantial amount of time should change the qualified-immunity calculation because it provides state officials an opportunity to make a reasoned, calculated decision. When analyzing Fourth Amendment excessive force cases, one often deals with split-second decisions. *E.g.*, *Hoggard*, 141 S. Ct. at 2422; *see also Graham v. Connor*, 490 U.S. 386, 396-97 (1989); *see also Saucier v. Katz*, 533 U.S. 194, 204-05 (2001); *Alcala v. Ortega*, 128 F.4th 1298 (10th Cir. 2025). As Judge Ho on the Fifth Circuit Court of Appeals has observed, however, “It’s one thing to grant qualified immunity when it comes to police officers who are forced to make split-second judgment calls in life-and-death situations. It’s quite another thing to immunize public officials who make a deliberate and calculated decision to violate one’s constitutional rights.” *McMurry v. Weaver*, 142 F.4th 292 (5th Cir. 2025) (Ho, J., concurring); *accord Horvath v. City of Leander*, 946 F.3d 787, 801-03 (5th Cir. 2020) (Ho, J., concurring in the judgment in part and dissenting in part) (distinguishing between “police officers who put their lives on the line” and public officials who make a considered decision to infringe on religious liberties).

The passage of time is relevant because it can significantly increase state officials’ ability to collect accurate and complete information, and make a reasoned decision. *See e.g., Taylor v. Riojas*, 592 U.S.

7, 8-9 (2020) (concluding “no reasonable correctional officer could have concluded that . . . it was constitutionally permissible to house Taylor in such deplorably unsanitary conditions for” six days). The police officer making a split-second decision about whether or not a potentially dangerous individual has a gun likely has only incomplete information. In contrast, the doctor employed by the state university—barring a true medical emergency—has ample time to obtain accurate and largely complete information about the relevant facts and circumstances. He even has time to place an inquiry about the case with the state university’s attorneys. *See Villarreal v. City of Laredo*, 134 F.4th 273, 277 (5th Cir. 2025) (Oldham, J., concurring) (“When an officer has the time to make such plans, to consult counsel, and to investigate all the facts, it is unclear whether and to what extent qualified immunity should apply.”).

In this case, the state officials had *months* to ascertain a course of action that would not violate Mr. Hudacko’s parental rights. They were on notice of Mr. Hudacko’s opposition to gender-affirming care for his son by October 2020, App.118a-119a, 245a-254a, and the surgery ultimately did not take place for another ten months, in August 2021. App.123a ¶ 104, 192a-195a, 239a. One email or phone call by UCSF to Mr. Hudacko at any point between when the surgery was scheduled and when it took place would have been

enough to give Mr. Hudacko an opportunity to protect his rights. But as demonstrated above, secrecy is part and parcel of a calculated strategy to prevent parents like Mr. Hudacko from exercising their rights. So, no one “working together to achieve [a] resolution” related to the surgery, App.121a-123a, 171a, entertained the idea that the resolution needed to include honoring Mr. Hudacko’s right to notice of information that weighed on his parental rights. Protecting such calculated secrecy with qualified immunity is nonsensical.

To illustrate, it is difficult to imagine that the Supreme Court’s qualified immunity doctrine in excessive force cases would function the same way if police officers had the ability to pause time. Consider facts like in *Alcala v. Ortega*, 128 F.4th 1298 (10th Cir. 2025): Man positions himself so that his right arm and hand are blocked from the officer’s view, and in a manner that suggests he might be holding a gun. Officer commands man to put his hands up, and the man does not comply. Officer then pauses time, with man frozen in place, walks around to see what is in the man’s hand, and sees the man holds nothing (or perhaps a knife). He even has a few minutes to call an attorney who represents police officers before he hits “play” on time again, and the action resumes. The doctrine would not logically apply to the Officer in as forgiving a manner in that case. *See, e.g., Villarreal*

134 F.4th at 277 (5th Cir. 2025) (Oldham, J., concurring).

In this case, the action of the state officials is worse. They had *months* to reach out and notify Mr. Hudacko of his child’s intended procedure and to apprise themselves of his deeply rooted fundamental right to involvement in such matters—particularly given the absence of any state-court finding that he was abusive. See *Parham*, 442 U.S. at 602. The qualified immunity doctrine was never designed to protect such calculated secrecy. And especially so when the basis for that secrecy is the notion that a parent’s mere desire to protect his minor child from a life-altering “gender transition” procedure is per se “harmful.” Indeed, applying qualified immunity in this context is like setting out for a “short trip to the train station” only to drive for “two days and 900 miles” across multiple foreign countries based on a wrongly set GPS, simply by “ask[ing] . . . no questions” and “keep[ing] [one’s] foot down.” *Mathis v. United States*, 579 U.S. 500, 536 (2016) (Alito, J., dissenting) (internal quotation marks omitted).

The time for limiting qualified immunity’s application in a scenario like this is long past due.

CONCLUSION

This Court should grant the petition for certiorari.

Respectfully submitted,

THOMAS L. BREJCHA

Counsel of Record

MICHAEL G. MCHALE

PETER BREEN

121 West Wacker Drive, Suite 650

Chicago, IL 60601

(312) 878-7464

tbrejcha@thomasmoresociety.org

Counsel for Amicus Curiae