25-952

United States Court of Appeals for the Second Circuit

JENNIFER VITSAXAKI,

PLAINTIFF-APPELLANT,

v.

SKANEATELES CENTRAL SCHOOL DISTRICT;
SKANEATELES CENTRAL SCHOOLS' BOARD OF EDUCATION,

DEFENDANTS-APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
CASE NO. 5:24-CV-001155

BRIEF OF FAMILY POLICY ALLIANCE, 34 FAMILY POLICY COUNCILS, PROTECT KIDS COLORADO AS AMICI CURIAE SUPPORTING APPELLANT AND REVERSAL

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INTEREST OF AMICI CURIAE[1]

Amici curiae are the Family Policy Alliance, a national nonprofit advocating for families, and various state organizations with the same mission, Alabama Policy Institute, Alaska Family Council, Arkansas Family Council, Center for Arizona Policy, California Family Council, Delaware Family Policy Council, Florida Family Voice, Indiana Family Institute, The Family Leader (Iowa), Kansas Family Voice, The Family Foundation (Kentucky), Louisiana Family Forum, Maine Christian Civic League, Maryland Family Institute, Massachusetts Family Institute, Michigan Family Forum, Minnesota Family Council, Montana Family Foundation, Nebraska Family Alliance, Cornerstone Action (New Hampshire), New Jersey Family Policy Center, New Mexico Family Action Movement, New York Families Foundation, North Carolina Family Policy Council, North Dakota Family Alliance, Center for Christian Virtue (Ohio), Oklahoma Council of Public Affairs, Pennsylvania Family Institute, Rhode Island Family Institute, Palmetto Family Council (South Carolina), South Dakota Family Voice, Texas Values, The Family Foundation (Virginia), Family Policy Institute of Washington and Protect Kids Colorado. These organizations understand that children do best when they receive care and support from their parents. Except in those tragic and rare circumstances of abuse or neglect,

[1] No counsel for any party authored this brief in whole or in part, and no person or entity, other than amici curiae or its counsel, contributed money to fund the brief's preparation or submission.

the adults who care most and best understand a child are the parents of that child. When other institutions interfere with the parent-child relationship, separating children from that support structure— including parental decision-making in the lives of their children—children suffer.

Amici curiae therefore believe it is the parents, rather than the state, who know what is in the best interests of their minor children. To that end, amici advocate for laws and public school policies that protect parents' fundamental right to nurture and to make decisions concerning the welfare of their children. Amici are united in their interest in ensuring that public schools do not continue to implement policies that interfere with the fundamental rights of parents in the upbringing of their children—policies that conceal information fundamental to a child's identity, personhood, and mental and emotional well-being such as their preferred names and pronouns. Amici curiae's expertise in school policies and legislation that protect parental rights will aid in the Court's consideration of this case.

INTRODUCTION

Over fifty years ago, the Supreme Court declared the "primary role of . . . 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). Unfortunately, the decision of the district court in this case suggests that even the most fundamental and obvious lessons sometimes need to be learned again.

The fundamental right of parents to make decisions concerning the upbringing, care, custody, and control of their children "is perhaps the oldest of the fundamental liberty interests recognized by th[e] Court." *Troxel* v. *Granville*, 530 U.S. 57, 65 (2000) (plurality op.). "[E]xtensive precedent" establishes that it is one of the fundamental rights protected by the Due Process Clause of the Fourteenth Amendment. *Id*. at 66.

Appellees, Skaneateles Central School District and its board, have violated, and are continuing to violate, these fundamental rights by adopting and implementing Policy 7552, entitled "Student Gender Identity" (the "Policy"), that mandates school officials actively conceal the social transitioning of minor children from the children's parents and explicitly disregard directives from parents regarding the upbringing of their children.

Under the framework established by the Supreme Court, violations of fundamental rights are assessed under one of two standards. "Executive" actions are evaluated based on whether the action is arbitrary or "shocks-the-conscience." "Legislative" violations are assessed under the appropriate level of scrutiny for the nature of the right claimed, with violations of fundamental rights subject to strict-scrutiny analysis.

As other federal appellate courts have recognized, the distinction between "executive" and "legislative" action is properly functional, not formalist. When state

actors act in accordance with a pre-established, generally applicable policy, their actions are properly evaluated under the standard for "legislative" actions. In contrast, the "shocks-the-conscience" test is properly reserved for individualized determinations.

Appellant, Jennifer Vitsaxaki, alleges that Appellees acted according to the Policy, which constitutes a prospective, generally applicable policy to conceal information from parents and disregard their instructions regarding the upbringing of their children. Moreover, Vitsaxaki seeks damages and declaratory relief that extends beyond her individual situation. Accordingly, the state actions at issue in this case are "legislative."

Legislative actions are evaluated under a two-part framework: first, the court defines the right at issue, and second, it determines if the liberty interest is a fundamental right. If the right is fundamental, then the government has the burden to show that any infringement of it is narrowly tailored to a compelling state interest.

Vitsaxaki's Verified Complaint sets forth sufficient facts that, when granting all reasonable inferences, states a claim that Appellees have violated her fundamental right to direct the upbringing of her child, Jane, and her sincerely held religious beliefs and that this infringement is not narrowly tailored to a compelling state interest. Accordingly, the decision of the District Court should be reversed, and this matter should be remanded for further proceedings.

ARGUMENT

I. The "Shocks-the-Conscience" Test Does Not Apply to Appellant's Claims.

A. Substantive Due Process Claims are Divided Between Challenges to "Executive" Action and Challenges to "Legislative" Action.

The Due Process Clause of the Fourteenth Amendment requires heightened judicial scrutiny for infringements on fundamental rights—*i.e.*, those rights that are "'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty.'" *Dobbs* v. *Jackson Women's Health Organization*, 142 S. Ct. 2228, 2243 (2022) (quoting *Washington* v. *Glucksberg*, 521 U.S. 702, 721 (1997)). Infringements on fundamental rights must be narrowly tailored to serve a compelling state interest. *Glucksberg*, 521 U.S. at 721.

In *County of Sacramento* v. *Lewis*, the Court drew a distinction between "legislative" and "executive" actions for purposes of substantive due process analysis. 523 U.S. 833, 846 (1998). The Court stated, "While due process protection in the substantive sense limits what the government may do in both its legislative . . . and its executive capacities . . . criteria to identify what is fatally arbitrary differ depending on whether it is legislation or a specific act of a governmental officer that is at issue." *Id.* (citations omitted).

B. The "Shocks-the-Conscience" Test Applies Only to "Executive" Infringements of Substantive Due Process Rights, Not "Legislative" Infringements.

The Court's "cases dealing with abusive executive action have repeatedly emphasized that only the most egregious official conduct can be said to be 'arbitrary in the constitutional sense.'" *Id.* (quoting *Collins* v. *Harker Heights*, 503 U.S. 115, 129 (1992)). Accordingly, "the substantive component of the Due Process Clause is violated by executive action only when it 'can be characterized as arbitrary or conscience shocking, in a constitutional sense.'" *Id.* at 847 (quoting *Collins*, 503 U.S. at 128).

In contrast, substantive due process challenges to legislative actions are not subject to the shocks-the-conscience test. Instead, challenges to the exercise of legislative power ask first if the right at issue is "fundamental" based on our Nation's history and tradition and inherent in the concept of ordered liberty and, if so, whether the legislative act at issue is narrowly tailored and serves a compelling state interest. *Glucksberg*, 521 U.S. at 721.[2]

[2] If a fundamental right is not implicated, an exercise of legislative power is evaluated under the rational basis test.

C. Appellant Alleges What Amounts to a Legislative Violation of Her Substantive Due Process Rights.

As Vitsaxaki's Prayer for Relief in her Verified Complaint makes clear, she is, among other things, challenging the continued application of a prospective, generally applicable policy. Under a functional analysis, prospective, generally applicable policies are properly considered "legislative" rather than executive and should be analyzed under the rubric set forth in *Glucksberg* and its progeny.

i. Government Action that Applies Broadly and Prospectively is Properly Considered "Legislative"; Only Government Actions that are Individualized are Properly Considered "Executive."

The Supreme Court has not clearly defined what makes actions "executive" or "legislative" for purposes of a substantive due process claim. This Court has noted that the distinction between legislative and executive action is "a functional differentiation," with "[s]ome types of executive action, such as regulations . . . more akin to legislative action." *Hancock* v. *Cnty. of Rensselaer*, 882 F. 3d 58, 65 n.2 (2d Cir. 2018).

Like this Circuit, the Fifth Circuit takes a functional approach to "legislative" versus "executive" action. In *Reyes* v. *North Texas Tollway Authority*, the Fifth Circuit summarized: "Although we have not always been transparent as to why we land on one test over the other, we have generally been consistent: . . . government action that is *individualized* to one or a few plaintiffs [is evaluated according to the]

shocks the conscience" standard. 861 F.3d 558, 562 (5th Cir. 2017) (emphasis added). The court went on to observe that this dichotomy "is in sync with the many circuits that expressly apply . . . shocks the conscience to executive action (government acts that are more individualized)." *Id*. (citing *DePoutot* v. *Raffaelly*, 424 F.3d 112, 118 (1st Cir. 2005); *Nicholas* v. *Pa. State Univ.*, 227 F.3d 133, 139 (3rd Cir. 2000) (Alito, J.); *Hawkins* v. *Freeman*, 195 F.3d 732, 738 (4th Cir. 1999); *Putnam* v. *Keller*, 332 F.3d 541, 547 (8th Cir. 2003); *McKinney* v. *Pate*, 20 F.3d 1550, 1557 n.9 (11th Cir. 1994)).

The Fifth Circuit's distinction between individualized government actions and broadly applicable government actions accords with the context, purpose, and justification for the "shocks-the-conscience" test in *Lewis*. *Lewis* places the "shocks-the-conscience" test in the context of individualized actions by state actors. In *Lewis*, the Court drew a distinction between individualized actions and matters of broader policy, observing that "[o]ur Constitution deals with the large concerns of the governors and the governed, but does not purport to supplant traditional tort law in laying down rules of conduct to regulate liability for injuries that attend living together in society." 523 U.S. at 848 (quoting *Daniels* v. *Williams*, 474 U.S. 372, 332 (1986)).

In *Lewis* itself, the Court addressed allegations that a motorcycle passenger was deprived of his substantive due process rights when he was killed in an accident

resulting from a high-speed police chase. *Id.* at 836. Similarly, *Rochin* v. *California*, which first articulated the shocks-the-conscience test, concerned a highly individualized action: the forced pumping of a suspect's stomach to extract capsules the suspect was believed to have swallowed. 342 U.S. 165 (1952).

The purpose and justification for the "shocks-the-conscience" test also supports limiting its application to individualized actions. In *Lewis*, the Court was concerned that an expansive interpretation of substantive due process would impermissibly constitutionalize tort claims. 523 U.S. at 848. The Court stated, "[T]he Fourteenth Amendment is not a 'font of tort law to be superimposed upon whatever systems may already be administered by the States.'" *Id.* (quoting *Paul* v. *Davis*, 424 U.S. 693, 701 (1976)). The Court went on to note that "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process." *Id.* Put differently, *Lewis*'s shocks-the-conscience test is effectively a heightened *mens rea* requirement for individual torts by state actors. *See* Lee Farnsworth, *Conscience Shocking in the Age of Trump*, 2020 WIS. L. REV. 805, 821, 824 (2020) (asserting that the shocks-the-conscience test "gets at a possible difference in mens rea between executive and legislative enactments" and examining the difference between broad policies and traditional tort claims). This framework does not make sense for broad, generally applicable policy determinations. After all, whatever one may think of their legislators and the wisdom of their choices,

legislative bodies and rulemaking authorities do not "negligently" pass a bill or adopt regulations.

ii. Appellant Has Challenged Appellees' Ongoing, Generally Applicable Policy to Conceal Information from Parents.

While Vitsaxaki cites to her own personal experiences to establish standing and to allege an entitlement to compensatory damages, she is challenging the constitutionality of an ongoing, generally applicable policy that is properly categorized as "legislative" for purposes of due process analysis. Specifically, Vitsaxaki challenges the Policy pertaining to the maintenance and confidentiality of student information and record-keeping, which permits both concealment from parents and even deception about a child's gender identity and gender-affirming social transition measures at school. Compl. ¶198, 200. Vitsaxaki alleges that "[n]othing in the Policy requires parental consent—or even notification—before socially transitioning a student by using a name and pronouns that are not associated with the student's biological sex." Compl. ¶202. Rather, "the Policy requires School District staff to determine, as part of developing a Gender Support Plan for a student, whether to inform that student's parents or seek their consent." Compl. ¶203. In fact, the "School District policy prohibit[s] school staff from disclosing information about students' use of incorrect names and pronouns at school unless the parents already knew or the student requested that their parents be told." Compl. ¶84.

Consistent with the Policy, the School District completed a "Gender Support Plan" for Jane that excluded Jane's parents from being notified or consenting to her use of a masculine name and plural pronouns. Compl. ¶141. Vitsaxaki specifically alleges that "[w]hen School District employees treated Jane as a boy by using masculine names and third-person plural pronouns without informing Mrs. Vitsaxaki or seeking her consent, and when concealing those actions from her, they acted pursuant to the Policy and School District customs, practices, and usages." Compl. ¶204.

Vitsaxaki's Prayer for Relief in her Verified Complaint sets forth, in part, a facial challenge to a legislative action. Vitsaxaki plainly seeks to change Appellees' policies with respect to *all* students, not just create individual exceptions or accommodations for herself. Vitsaxaki's requests for relief seek broad, generally applicable remedies including a declaration that "the School District's policy facially and as applied to Mrs. Vitsaxaki violates her First and Fourteenth Amendment rights under the United States Constitution." Compl. at ¶ A. Under a functional analysis, the written policy in this case is a generally applicable, broad policy. Accordingly, the case should be analyzed under the rubric for legislative determinations.

II. The Policy Violates Appellant's Substantive Due Process Rights Under the Legislative Test.

As alleged in the Verified Complaint, the Policy violates parents' fundamental right to direct the care and upbringing of their children. Moreover, the Policy is not narrowly tailored to a compelling state interest. Accordingly, Vitsaxaki's Verified Complaint properly states a claim and should be allowed to proceed.

A. Parents Have a Fundamental Right to Direct the Upbringing and Care of Their Children.

"The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by [the Supreme] Court." *Troxel*, 530 U.S. at 65 (plurality op.). The fundamental right "to direct the education and upbringing of one's children" is so deeply rooted in our Nation's history and tradition and implied in concepts of ordered liberty that it is one of the handful of fundamental rights explicitly recognized by the Court as protected by substantive due process. *Glucksberg*, 521 U.S. at 720.

For nearly a century, the Supreme Court has consistently recognized the basic liberty interest of parents to direct the care and upbringing of their children. The Court first recognized this right in *Meyer* v. *Nebraska*, stating that the Due Process Clause protects "not merely freedom from bodily restraint but also the right of the individual to . . . establish a home and bring up children." 262 U.S. 390, 399 (1923).

The Court went on to refer to a "right of control" in relation to a parents' dominion over their children. *Meyer*, 262 U.S. at 400.

In *Pierce* v. *Society of the Sisters of the Holy Name of Jesus and Mary*, the Court cited "the doctrine of *Meyer*" for the proposition that "the liberty of parents and guardians to direct the upbringing and education of children under their control" is a protected liberty interest. 268 U.S. 510, 534 (1925). The Court went on to state, in no uncertain terms, that *"[t]he child is not the mere creature of the state*; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Id.* at 535 (emphasis added).

Building upon *Meyer* and *Pierce*, in *Prince* v. *Massachusetts*, the Court stated "[i]t is cardinal with us 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. And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter." 321 U.S. 158, 166 (1944) (cleaned up).

In *Stanley* v. *Illinois*, the Court recognized that "[t]he private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection." 405 U.S. 645, 651 (1972). Accordingly, "[t]he rights to conceive and to raise one's children have been deemed 'essential' . . . 'basic civil rights of man,' . . . and '[r]ights far more precious

. . . than property rights.'" *Id.* (quoting *Meyer*, 262 U.S. at 399; *Skinner* v. *Oklahoma*, 316 U.S. 535, 541 (1942); *May* v. *Anderson*, 345 U.S. 528, 533 (1953)).

Given this long history, it is little surprise that just over a month after *Stanley*, the Court declared "[t]he primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Yoder*, 406 U.S. at 232. The Court further reiterated that "the values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society." *Id.* at 213-14.

Citing *Yoder*, in *Quillion* v. *Walcott*, the Court again reiterated "[w]e have recognized on numerous occasions that the relationship between parent and child is constitutionally protected." 434 U.S. 246, 255 (1978). This language was cited by the Court three years later in *H.L.* v. *Matheson*, which declared that "constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of society." 450 U.S. 398, 410 (1981) (quoting *Ginsberg* v. *New York*, 390 U.S. 629, 639 (1968)).

In light of this "extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel*, 530 U.S. at 66 (plurality op.). Indeed, "the interest of parents in

the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by th[e] Court." *Id.*

The scope of this fundamental right is broad, even when it intersects with the rights of the child. In *Stantosky* v. *Kramer*, the Court explained "[t]he fundamental liberty interest of parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents . . . [e]ven when blood relationships are strained, parents retain a vital interest in preventing the destruction of their family life." 455 U.S. 745, 753 (1982).

Based on this venerable line of cases, the right of parents to direct the upbringing and care of their children is a fundamental right protected by the Fourteenth Amendment.

B. The Policy Violates the Fundamental Right of Parents to Direct the Upbringing and Care of Their Children.

As the Court recognized in *Parham* v. *J.R.*, "[t]he law's concept of the family rests upon a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions." 442 U.S. 584, 602 (1979). The Court rejected "[t]he statist notion that governmental power should supersede parental authority in *all* cases because *some* parents abuse and neglect children" as "repugnant to American tradition." *Id*. at 603 (emphases in original). Rather, "[s]imply because the decision of a parent is not agreeable to a

child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state." *Id*.

The Policy attempts to do precisely what the Court in *Parham* forbade: supersede parental authority to direct the upbringing of their children merely because such authority is not agreeable to the child. Parents have a necessary and vital role in decisions concerning the social transitioning of their children because "parents possess what a child lacks in maturity, experience, and capacity of judgment required for making life's difficult decisions." *Id.* at 602. Even if state officials believe that the decision of parents is wrong or "involves some risk," it is still "repugnant to American tradition" to unilaterally arrogate such decisions to the state. The Policy violates the fundamental right of parents to direct the upbringing and direction of their children.

Moreover, the Policy is not "curriculum." *See Parker* v. *Hurley*, 514 F.3d 87, 102 (1st Cir. 2008) (finding that parental authority does not extend to allowing parents to "direct *how* a public school teaches their child.") (emphasis added). The school district is not seeking to add information about gender identity to its course of study. Rather, it is seeking to socially transition students without informing parents and in some cases—such as Vitsaxaki's—actively *misleading* them that such transitioning is occurring unless the child says otherwise. On these facts, Vitsaxaki

has sufficiently pleaded a violation of parents' fundamental right to direct the upbringing and care of their children.

C. The Policy is Not Narrowly Tailored to a Compelling State Interest.

Appellees invoke generalized and abstract interests—such as preventing "discrimination," maintaining student "privacy," and "protecting the physical and emotional well-being of youth"—to justify concealing a child's social transition from her parent. (Mot. to Dismiss Br. 21). But merely citing these interests in the abstract does not satisfy strict scrutiny. A compelling interest must not only be an interest of the highest order, but must also be directly advanced by the specific government action at issue. These asserted interests, stated at such a high level of abstraction, therefore cannot satisfy the rigorous demands of strict scrutiny.

Most notably, the interest in preventing discrimination has no meaningful application to the facts of this case. Discrimination, in the constitutional sense, refers to the unequal treatment of individuals based on their membership in a protected class. What Vitsaxaki seeks is transparency about a child's life-altering decisions and the school's participation in these life-altering changes. If granted, all parents will have access to relevant information about their children, and all classes of individuals will be treated equally. By contrast, it is the school's policy that introduces unequal treatment by treating the decisions of students identifying with the opposite sex differently than other students. Appellees completely miss the mark

in advancing any interest in discrimination as that concept is traditionally understood in constitutional law, let alone narrowly tailoring their policy to a compelling interest.

Nor does a generalized appeal to student privacy justify Appellees' policy of secrecy and deception. Indeed, a child's public gender transition can hardly be considered a private matter to be kept in confidence by the school. While a child may have an interest in confidential discussions with a school counselor, that information ceases to be confidential when shared with the school community. Again, Appellees have completely missed the mark by confusing personal preference with constitutionally protected privacy interests. *See Ricard* v. *USD 475 Geary Cty.*, No. 5:22-cv-04015-HLT-GEB, 2022 U.S. Dist. LEXIS 83742, at *20 (D. Kan. May 9, 2022) ("It is difficult to envision why a school would even claim—much less how a school could establish—a generalized interest in withholding or concealing from the parents of minor children, information fundamental to a child's identity, personhood, and mental and emotional well-being such as their preferred names and pronouns.").

Appellees fare no better with regard to protecting the physical and emotional well-being of youth. Appellees' vague assertions eviscerate the protections carved out in *Troxel* v. *Granville*—that a fit parent is presumed to know what is in the best interests of her child, and this presumption attaches until it is proven that she

otherwise lacks fitness. 530 U.S. at 68-69 (holding that absent any finding from a court that the parents are unfit, then the parent has the fundamental right, pursuant to the Due Process Clause of the 14th Amendment, to make decisions concerning the care, custody, and control of their children). While the state can insert itself in the parent-child relationship in cases of abuse or neglect, there is no evidence suggesting that is the case here, since no court has made a decision that Vitsaxaki is unfit to raise her child. Rather, Appellees have applied an unconstitutional presumption opposite to that of *Troxel* by inferring that Vitsaxaki and others similarly situated are unfit to know these important decisions relating to their children—without the ordinary protections of due process. *Id*. at 72-73 ("[T]he Due Process Clause does not permit a State to infringe on the fundamental right of parents to make childrearing decisions simply because a state judge believes a 'better' decision could be made."); *see also Ricard*, at *21 ("[W]hether the District likes it or not, that constitutional right includes the right of a parent to have an opinion and to have a say in what a minor child is called and by what pronouns they are referred."). Many school policies across the country, like the one at issue here, make a broad leap by treating every parent as a threat to their child without any due process. While some students may fear parental disapproval, discomfort, or disagreement, those concerns do not rise to the level of abuse or neglect.

Rather than keeping parents in the dark, schools should involve parents because it is precisely situations like these where parental involvement can make all the difference. Except in the case of abuse or neglect, a child's parents are the adults who care most about that child, have the most invested in the child, and know the child best.

Parental involvement is particularly critical when a child is questioning his or her gender. Teenagers are increasingly being encouraged to adopt stereotypes about the opposite sex and then to adopt new gender identities based on those stereotypes. What at first was a phenomenon mostly affecting biological males has now shifted to primarily affecting biological females.[3] And as time has elapsed to contemplate the effects of transition, it is clear that many regret the decisions to socially and medically transition.[4] Additionally, it has been observed that those who are transitioning as teens often experience other psychological issues or are affected by social media or those in their social circles.[5] Parental involvement can help to

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[3] ABIGAIL SHRIER, IRREVERSIBLE DAMAGE: THE TRANSGENDER CRAZE SEDUCING OUR DAUGHTERS (2020).

[4] Pamela Paul, *As Kids They Thought They Were Trans. They No Longer Do.,* N.Y. TIMES, Feb. 4, 2024, https://www.nytimes.com/2024/02/02/opinion/transgender-children-gender-dysphoria.html.

[5] Leor Sapir, et al., Letter to the Editor, *The U.S. Transgender Survey of 2015 Supports Rapid-Onset Gender Dysphoria: Revisiting the "Age of Realization and Disclosure of Gender Identity Among Transgender Adults,"* 53 ARCH SEX BEHAV 863 (Dec. 18, 2024), https://link.springer.com/article/10.1007/s10508-023-02754-9.

connect the dots for their kids so that they can get the appropriate help in order to avoid unnecessarily embarking on irreversible, life-altering changes. Appellee's Policy not only cannot be justified by appealing to youth protection, but the Policy actually undermines the goal of protecting the physical and emotional well-being of youth. Therefore, this Policy interfering with the parent-child relationship cannot survive review.

Appellees' Policy is not narrowly tailored to or the least restrictive means to any compelling government interest. Instead, the school adopted a blanket approach based on ideological considerations, not the real needs of children. The danger of allowing such speculative justifications to satisfy strict scrutiny is clear: it reduces the fundamental right of parents to a nullity whenever the government disagrees with parents' worldview. But constitutional rights do not yield to bureaucratic preferences. The school's blanket approach violates the Constitution by overriding parental authority without due process or even any evidence of harm.

CONCLUSION

For the reasons stated above, Appellees' Policy and actions should be evaluated as a legislative infringement on fundamental rights. Because Appellees' Policy and actions fail strict scrutiny, the decision to grant Appellees' Motion to Dismiss should be reversed.

Respectfully submitted,

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June 12, 2025

CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Fed. R. App. P. 29(a)(5) and Local Rule 29.1(c) because this brief contains 4,754 words, excluding parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in Word using a proportionally spaced typeface, 14-point Times New Roman.

/s/ Randall L. Wenger
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 12, 2025, the foregoing was filed electronically and served on the other parties via the court's ECF system.

/s/ Randall L. Wenger
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